



Colorado
Commission on
Criminal &
Juvenile
Justice
2022 Annual Report

2022



COLORADO
**Commission on Criminal
& Juvenile Justice**

Department of Public Safety

CCJJ Annual Report | 2022

Report to the Governor, the Speaker of the House
of Representatives, the President of the Senate,
and the Chief Justice of the Colorado Supreme
Court, pursuant to C.R.S. 16-11.3-103(5)

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COLORADO
Department of Public Safety

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Acknowledgments

Under the leadership of Chair Stan Hilkey and Vice Chair Abigail Tucker, the Commission continued its efforts to study and make recommendations to improve the state's justice system.

The Commission is grateful for its dedicated task force chairs and working group leaders: Michael Dougherty, Rick Kornfeld, Co-chairs of the Sentencing Reform Task Force; Glenn Tapia, Leader of the Sentencing Alternatives/Decisions & Probation Working Group; Michael Dougherty, Leader of the Sentence Structure Working Group; and Emily Fleischmann, Brian Mason, and Greg Mauro, Co-leaders of the Sentence Progression Working Group.

The Commission could not complete its work without the dedication of task force and working group members who volunteer their time to work on topics the Commission has prioritized. The task force members attend at least monthly meetings (working groups convening sometimes on a weekly basis) and undertake assignments between meetings, reflecting a strong dedication to improving the administration of justice in Colorado. These professionals invest considerable time to study and discuss improvements in current processes, and the Commission is grateful for their expertise and commitment to this work.

In particular, the Commission is appreciative for the work of Maureen Cain from the Office of Public Defender, Michael Dougherty from the 20th JD District Attorney's Office, Greg Mauro from the Denver Division of Community Corrections, Tom Raynes from the Colorado District Attorney's Council, Dan Rubinstein from the 21st JD District Attorney's Office, and Glenn Tapia from the Division of Probation Services. Additionally, the Commission is thankful for the several members of this Sentence Structure Study group who actively participated and testified in the 2022 legislative session in support of the bills derived from the Commission's recommendations. The Commission is greatly appreciative of their time and dedication to these significant efforts.

The Commission thanks the leadership of the organizations who commit their staff and resources to work on behalf of Commission initiatives.

Finally, the Commission is particularly grateful to its consultant, Richard Stroker. Mr. Stroker assists with planning and facilitating the meetings of the Commission and its study groups. He provided guidance, perspective, encouragement, and clarity to the Commission during Fiscal Year 2022.

Commission Members

Stan Hilkey,

Chair

Executive Director

Department of Public Safety

Abigail Tucker

Vice Chair

Representing Mental Health Treatment Providers

Tajuddin “Taj” Ashaheed (appointed 09/2021)

Representing Offenders

Terri Carver

State Representative, House District 20

Representing the State Legislature (R)

Minna Castillo Cohen

Director, Children, Youth & Families (CDHS)

Designee for the Executive Director of the

Department of Human Services

Shawn Day

Aurora Municipal Judge

Representing Municipalities

Janet Drake

Deputy, Criminal Justice Section,

Attorney General’s Office

Designee for the Attorney General

Valarie Finks

Victims Representative, 18th Judicial District

Representing Victim Rights Organizations

Jaime FitzSimons (partial term appointment 02/22)

Sheriff, Summit County

Representing Sheriffs

Bob Gardner

State Senator, Senate District 12

Representing the State Legislature (R)

Priscilla Gardner

Supervising State Public Defender

Representing Juvenile Justice

Julie Gonzales

State Senator, Senate District 34

Representing the State Legislature (D)

Serena Gonzales-Gutierrez

State Representative, House District 4

Representing the State Legislature (D)

Kristen Hilkey (resigned 12/2021)

Chair, Colorado State Board of Parole

Colorado State Board of Parole

Kristiana Huitron (appointed 09/2021)

Voces Unidas for Justice, Executive Director

Representing Victim Advocates

Jessica Jones

Private Defense Attorney

At-large

William Kilpatrick (resigned 03/2022)

Chief, Golden Police Department

Representing Chiefs of Police

Richard Kornfeld

Private Defense Attorney

Representing Criminal Defense

Matt Lewis (resigned 07/2021)

Sheriff, Mesa County

Representing Colorado Sheriffs

Andrew Matson

Colorado CURE

Representing Offenders

Greg Mauro

Director, Denver Division of Community Corrections
At Large

Derek McCoy (appointed 09/2021)

Diversity, Equity, Inclusion & Philanthropy
Director, Northwestern Mutual
Representing Victims/Survivors of Crime

Patrick Murphy

Chief Judge, 11th Judicial District
Representing the Colorado Judicial Branch

Steve O’Dorisio (appointed 09/2021)

County Commissioner
Representing Counties/County Commissioners

Angie Paccione

Executive Director
Department of Higher Education

Tom Raynes

CDAC Executive Director
Representing the Colorado District Attorneys’
Council

Megan Ring

State Public Defender
Office of the Colorado State Public Defender

Michael Rourke (designated Jan. 21)

District Attorney, 19th Judicial District
Representing District Attorneys

Gretchen Russo

Juvenile Parole Board Member
Designee for the Chair of the Juvenile Parole Board

Jennifer Stith

Executive Director, WINGS Foundation
Representing Victims/Survivors of Crime

Glenn Tapia

Director, Division of Probation Services
Representing the Colorado State Judicial Branch

Ann Tapp

Executive Director, Safehouse Progressive Alliance
for Nonviolence
Representing Victim Rights Organizations

Dean Williams

Executive Director
Department of Corrections

Joe Thome

Director, Division of Criminal Justice,
Department of Public Safety
Ex officio Member

Task Force and Committee Members

July 2021–June 2022

Sentencing Reform Task Force

Name	Affiliation
Rick Kornfeld, <i>Co-chair</i>	Defense/Private defense
Michael Dougherty, <i>Co-chair</i>	Prosecution/District Attorney's Office, 20th J.D.
Taj Ashaheed	Lived Experience/ Second Chance Center
Maureen Cain	Defense/ State Public Defender's Office
Terri Carver	Legislature/ State House District 20
Jeff Chostner	Prosecution/ District Attorney's Office, 10th J.D.
Christie Donner	Advocate/ CO Criminal Justice Reform Coalition
Valarie Finks	Victim Representative/ District Attorney's Office, 1st J.D.
Bob Gardner	Legislature/ State Senate District 12
Julie Gonzales	Legislature/ State Senate District 34
Serena Gonzales-Gutierrez	Legislature/ State House District 4
Kristen Hilkey	Parole Board/ Chair
Kazi Houston	Victim Representative/ Rocky Mountain Victim Law Center
Henry Jackson	Sentencing Disparity Expert/ Metro State University
Jessica Jones	Defense/ Private defense
Sarah Keck	Judicial Branch/ Court Services
Brian Mason	Prosecution/District Attorney's Office, 17th J.D.
Andrew Matson	Lived Experience/ Colorado CURE
Greg Mauro	Director/ Denver Division of Community Corrections
Heather McClure	Lived Experience/ Adams County Criminal Justice Council
Tom Raynes	Prosecution/ CO District Attorneys' Council
Michael Rourke	Prosecution/ District Attorney's Office, 19th J.D.
Dan Rubinstein	Prosecution/ District Attorney's Office, 21st J.D.
Glenn Tapia	Judicial Branch/ Director, Div. of Probation Services
Lisa Wayne	Defense/ Private defense
Dean Williams	Department of Corrections/ Executive Director

Sentence Progression Working Group

Name	Affiliation
Emily Fleischmann, <i>Co-Leader</i>	Defense/Office of State Public Defender
Brian Mason, <i>Co-Leader</i>	Prosecution/DA Office, 17 th JD
Greg Mauro, <i>Co-Leader</i>	Denver Division of Community Corrections
Joseph Archambault	Office of the State Public Defender
Taj Ashaheed	Lived Experience/ Second Chance Center
Christie Donner	CO, Criminal Reform Coalition
Bob Gardner	State Senate/ District 12
Rick Kornfeld	Defense/ Private defense
Andrew Matson	Lived Experience/ Colorado CURE
Merideth McGrath	Div. of Parole/ Colorado Dept. of Corrections
Richard Morales	Latino Coalition
Steve O'Dorisio	Adams Co. Board of Commissioners
Amber Pedersen	CO Dept. of Corrections
Michael Rourke	District Attorney's Office, 19th J.D.
Emily Tofte Nestaval	Rocky Mountain Victim Law Center
Abigail Tucker	Behavioral Health Provider
Catrina Weigel	District Attorney's Office, 20th J.D.

Sentence Structure Working Group

Name	Affiliation
Michael Dougherty, Leader	District Attorney's Office, 20th J.D.
Maureen Cain	Office of the State Public Defender
Valarie Finks	Victim Compensation, DA Office, 1st J.D.
Jessica Jones	Defense/ Private defense
Tom Raynes	Colorado District Attorney's Council
Dan Rubinstein	District Attorney's Office, 21st J.D.
Lisa Wayne	Defense/ Private defense

Sentencing Alternatives/Decisions & Probation Working Group

Name	Affiliation
Glenn Tapia, Leader	Probation Division/ Judicial Branch
Chris Gallo	District Attorney's Office, 18th J.D.
Kristin Heath	Jefferson County Justice Services
Kathryn Herold	Defense/ Boulder Public Defender Office
Kazi Houston	Victim Representative/ Rocky Mt. Victim Law Center
Matthew James	District Attorney's Office, 2nd J.D.
Heather McClure	Lived Experience/ Adams County CJ Council
Clay McKisson	District Court Judge, 3rd J.D./ Judicial Branch
Jenifer Morgen	Probation/ 17th J.D.
Greg Otte	Probation/ 8th J.D.
Megan Ring	Defense/State Public Defender
Elaina Shively	District Attorney's Office, 20th J.D.
Abigail Tucker	Behavioral Health Treatment Provider

Legislative Subcommittee

Name	Affiliation
Stan Hilkey, <i>Chair</i>	Department of Public Safety
Abigail Tucker, <i>Vice Chair</i>	Representing Mental Health Treatment Providers
Shawn Day	Aurora Municipal Judge (representing Municipalities)
Janet Drake	Criminal Justice Division, Attorney General's Office
Tom Raynes	Colorado District Attorneys' Council (Ad Hoc, Representative of CCJJ)
Megan Ring	State Public Defender's Office
Joe Thome, CCJJ Staff	Division of Criminal Justice
Joel Malecka, Staff	CDPS Legislative Liaison

Pretrial Release Task Force

This task force was placed on hiatus in June 2020 and did not meet during fiscal year 2022. For membership information, consult the Commission website at ccjj.colorado.gov/ccjj-prtf

Commission Staff

Jack Reed

Research Director
Office of Research and Statistics
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1 Introduction

This report documents the Commission’s fifteen year of activities and accomplishments, specifically describing the Commission’s activities between July 1, 2021, and June 30, 2022. During this period, all Commission meetings continued to occur on a virtual platform due to the continuing COVID-19 pandemic. In Fiscal Year 2022, the Commission’s work focused on issues related to sentencing reform and received in-depth presentations on Colorado crime trends, victims’ services and human trafficking, and pretrial outcome research. Additionally, Commissioners heard updates on the Governor’s budget, the newly created Behavioral Health Administration (BHA), regular updates regarding legislative activities, and the Task Force and Working Groups’ progress. An annual boards and commissions best practices training was offered to Commissioners in October 2021. More detailed information can be found in the “Activities of the Commission” section.

The Sentencing Reform Task Force was seated by the Commission in September 2020 to address the

sentencing topics delineated in the 2020 biennial letter from Governor Jared Polis pursuant to House Bill 2018-1287 (See Fiscal Year 2021 CCJJ Annual Report). Subsequently, the Task Force created working groups to focus on the areas of sentence progression, probation and sentencing alternatives, conditions of parole, and sentence structure. The Parole Working Group concluded its work at the end of fiscal year 2021. The Sentence Progression Working Group was placed on hiatus in July 2021 and re-activated in September 2022 with additional members.

During Fiscal Year 2022, the Commission approved a total of seven recommendations – six legislative and one policy - in the areas of probation, professional licensure offenses, theft of public benefits, intermediate sanction confinement facility, and possession of weapons by previous offenders. During the 2022 legislative session, six recommendations from the Sentencing Reform Task Force were drafted into legislation and signed into law by Governor Polis. The content of two pieces

of legislation included elements of six Commission recommendations (see Table 1.1 on the next page.) Legislative reforms are one type of systemic change the Commission pursues. It also recommends changes to operational policy, business practice, and agency philosophy.

This 2022 report is organized as follows: Section 2 provides a summary of the Commission’s mission as reflected in its enabling legislation, along with its membership; Section 3 discusses Commission and committee activities from July 2021 through June 2022; Section 4 details the Commission’s recommendations and outcomes; and Section 5 describes the Commission’s next steps.

Table 1.1 Commission-supported bills presented to the 2022 General Assembly

Bill Number	Bill Title	Status
House Bill 22-1257	The adoption of 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses: FY22-SR #01. Define the Purposes of Probation FY22-SR #05. Implement Individualized Behavioral Responses to Probation Violations FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations FY22-SR #07. Revise Value Basis for Theft of Public Benefits FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility FY22-SR #09. Revise Felony Offenses Eligible for the Crime of POWPO	Signed

Bills that are related to previous recommendations or provide clarifying changes to previous CCJJ bills

Bill Number	Bill Title	Status
House Bill 22-1229	Adopt clean-up provisions to Senate Bill 21-271 which enacted the 2021 recommendations of the Colorado Commission on Criminal and Juvenile Justice. (Note: This "clean-up" bill was not initiated by CCJJ, but reflected continuing work by CCJJ and collaborating entities, agencies and legislators.) <i>This bill revised elements of statute related to SB 21-271 related to CCJJ Recommendation FY21-SR #01. Revise Misdemeanor Sentencing and Offenses)</i>	Signed
Senate Bill 22-018	Expand the court reminder program (Note: This bill was not initiated by CCJJ, but included elements of a previous CCJJ recommendation.) <i>(See also SB 19-036 related to CCJJ Recommendation FY19-PR #10. Create a Statewide Court Date Reminder System)</i>	Signed



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Legislative Intent and Membership

The Colorado Commission on Criminal and Juvenile Justice (“Commission”) was created by House Bill 2007-1358 with specific mandates. These initial mandates may be found in §16-11.3-101 through §16-11.3-105, C.R.S. and §24-1-128.6, C.R.S. The Commission was re-authorized during the 2018 legislative session by House Bill 2018-1287. More information on the Commission enabling legislation and statutory duties can be found on its website at ccjj.colorado.gov/ccjj-creation.

The Commission comprises 29 voting members and one ex-officio, non-voting member. Twenty members are appointed representatives of specific stakeholder groups, and ten are designated to serve based on their official position. Terms of the appointed members are for no more than two consecutive three-year terms, in addition to any partial term. The Commission includes state agency

representatives, legislators, the department of law, and multiple private and public stakeholders. As such, approved recommendations represent the views of the entire Commission and not that of any single agency or Commission partner.

During Fiscal Year 2022, the Commission saw a turnover in membership with the departure of four Commissioners whose first term expired on June 30, 2021. Tajundin “Taj” Ashaheed replaced Andrew Matson, Steve O’Dorisio replaced Nancy Jackson, Kristiana Huitron replaced Jennifer Stith, Derek McCoy replaced Ann Tapp. Additionally, Jaime FitzSimons was appointed for a partial term to replace Matt Lewis, who resigned in July 2021, and the replacement of Kristen Hilkey—who resigned in December 2021, had not yet been announced.



3

Activities of the Commission

This section summarizes the activities and accomplishments of the Commission in Fiscal Year 2022. The topics covered in this section include the following:

- A summary of the educational presentations made to the Commission regarding local and national criminal justice initiatives and efforts;
- A description of a statutorily mandated training required by 2018 legislation for all of Colorado's Boards and Commissions;
- A report of the work of the Task Force and Working Groups of the Commission.

Educational Presentations

The monthly Commission meetings provide a platform for ongoing education and information sharing regarding local and national criminal justice issues and trends. During Fiscal Year 2022, experts provided three topical presentations, and three updates summarized below.

Presentation: Criminal Justice Trends in Colorado
Jack Reed, Research Director for the Division of

Criminal Justice, presented in February 2022 with data for offenses and arrests, court filings, and correctional populations.

The total crime rate (violent and property) increased in Colorado by 8.6% between 2019 and 2020 while the U.S. total crime rate decreased by -6.2%. Colorado was ranked 5th highest in total crime rate increase in the country. The national crime rate was not calculated for 2021 due to changes in FBI reporting requirements.

Colorado's violent crime rate increased by 17% between 2019 (pre-pandemic) and 2021 (post-pandemic). This included increases of 47% in the murder rate, 15% in the robbery rate, and 31% in the aggravated assault rate. This contrasts with a 6% reduction in the sexual assault rate. The total number of homicides in Colorado for 2021 reached an all-time high of 357, up 47% from 2019 (n=227). A similar increase was seen for the overall property crime rate, which went up 20% between 2019 and 2021. An increase in the motor vehicle theft rate of +86% was a main driver in the overall property crime increase, followed by +15% in the burglary rate and +8% in the larceny/theft rate.

Fentanyl is a serious public health and public safety risk in both Colorado and across the nation. The Rocky Mountain HIDTA Task Force reported 55,816 fentanyl dosage units (DU) seized in 2020, which increased by 558% 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.

Trends in both criminal and delinquency filings were summarized. Between FY2020 and FY2021, there was a 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%. Since 2019, there has been a decrease in felony drug filings in district courts, possibly due to the changes in the 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.

Trends in correctional populations have fluctuated significantly since the beginning of the COVID-19 pandemic. 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 CDOC 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.

The number of *discretionary* parole releases increased 123% from 2017 (N=2,557) to 2020 (N=5,711) 123% increase 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). Finally, since 2012 there has been a steady decline in juveniles in the custody of the Division of Youth Services.

Presentation: Human Trafficking & Victims Services

In April 2022, Commissioners heard presentations on victims' services & human trafficking by Kelly Kissell and Maria Trujillo from the Division of Criminal Justice's Office of Victims Programs. The Colorado Human Trafficking Council's (CHTC) legislative purpose is to bring together leadership from community-based and statewide anti-trafficking efforts, to build and enhance collaboration among communities and counties within the state, to establish and improve comprehensive services for victims and survivors of human trafficking to assist in the successful prosecution of human traffickers, and to help prevent human trafficking in Colorado.

- The Legislative mandates for the CHTC include:
 - Standards for victim services providers
 - Recommendations for statutory changes
 - Develop a statewide public awareness campaign
 - Develop training standards and curricula
 - Identify best practices for the prevention of human trafficking
 - Data collection on the incidence of human trafficking and the efforts of law enforcement
 - Publish an annual report
 - Research and pursue funding opportunities to fulfill council goals

- Recommendations on whether a law should be enacted that grants immunity or other legal protections for minor victims of sex trafficking
- Conduct a post-enactment review of the affirmative defense for charges of prostitution.

The CHTC has successfully put forward a number of recommendations that have been enacted into law. These include a bill to define child sex trafficking as a form of child abuse and neglect, create immunity and an affirmative defense for minor victims of trafficking, updates to the wage theft law, and an update to the Children’s Code for 24-hour child care facilities that serve trafficking survivors.

The CHTC has engaged in an award-winning public awareness & outreach campaign. The goal was to increase the general public knowledge about all types of human trafficking in the state of Colorado. The media-targeted markets were Denver, Colorado Springs, and Grand Junction. The 2020 media launch had a digital focus for 3 months, driving significant traffic to the website. In 2021 focused on awareness tactics during the late summer months to achieve a significant number of impressions across the state. Adjustments were made to the program to improve the Spanish language approach and implement a strategically driven organic social media push.

The media campaign resulted in an increase in calls and texts to the human trafficking hotline. Additionally, the successful social media campaign drove traffic to social platforms and the website.

The Office for Victims Programs

Ms. Kissell provided a presentation on the purpose, function, and funding of OVP (as mentioned above, this presentation is available at ccjj.colorado.gov/meetings/meetings-2022). The Office for Victims Programs (OVP) in the Division of Criminal Justice at the Colorado Department of Public Safety includes the following programs: Crime Victim Services Funding, Human Trafficking Council, Victim Rights Compliance, Sexual Assault Victim Emergency (SAVE) program, Standards and technical assistance

for Victim Compensation, and Standards and technical assistance for local Victim Assistance and Law Enforcement programs (VALE).

The Division of Criminal Justice (DCJ) is the state administering agency (SAA) for the Victims of Crime Act (VOCA) grant program. VOCA funds are distributed as part of a competitive grant process every 2 years – “Crime Victim Service Funds”

She detailed the amount of funding available through the different programs, including VALE, Victims of Crime Act (VOCA), SASP, and Violence Against Women Act (VAWA). Each state receives a formula grant based on population from the Office for Victims of Crime (OVC) to help support victim services.

Victim Services Funding: SASP=\$460K; VAWA=\$2.6M; State VALE=\$1M; Local VALE=\$9.9M; VOCA=\$18M.

VOCA is funded through fines and penalties levied against criminals convicted of federal crimes, forfeited bail bonds, special assessments from the US Attorney’s Office, and Congress sets a cap on the amount of funds that can be distributed by the OVC. The VOCA cap reached \$4.44B in 2018 and decreased to \$2.64B in 2020.

Ms. Kissell discussed the difficulty in sustaining victim services. OVP’s VOCA award had its highest award in 2018 approximately \$58M while the 2021 VOCA award was approximately \$18M (68% reduction). Similarly, in the last funding cycle, OVP awarded \$93M VOCA in awards for 2 years while in this funding cycle, OVP awarded \$55.5M in VOCA awards (41% reduction). There has been stakeholder work led by the three state victim services coalitions and DCJ for the past year with Senator Winter and Representative Duran to improve the sustainability of state victim service funding.

Presentation: Pretrial Outcome Research

Boulder County COVID Response

Mr. Dougherty, District Attorney for the 20th Judicial District and Co-chair for the Sentence Reform Task Force started the presentation by expressing appreciation for the partnership between the 20th Judicial District Attorney's office, the Boulder County Criminal Justice Services, the Sheriff's Office, and community stakeholders.

In March 2020, the onset of COVID-19 necessitated a swift and significant response to reduce the jail population. Through system-wide collaboration, and over the first month of COVID, the jail population was reduced by 46% through releases that included:

- The immunocompromised
- Those with 45 days or less remaining on their sentence
- Those on work release.

In addition, new arrest standards and presumptive PR bond eligibility were implemented to reduce the number of individuals booked into jails. In the first few months of 2020, Boulder County released eligible inmates on Personal Recognizance (PR) bonds who were at 45 days or less of their original release dates to reduce the jail population during the COVID-19 pandemic.

Ms. Birchard, a researcher from the Boulder County Criminal Justice Services, continued describing the Boulder County COVID outcomes and highlights of their pretrial research.

The goal of the study was to understand public safety and court appearance outcomes for individuals released from jail during the first 3 months of COVID. The findings will help inform what practices may be maintained to support ongoing efforts to ensure public safety and effectively manage the jail population in Boulder County.

Data was collected for all jail releases during the first three months of COVID (3/16/20-6/15/20) and compared with the same three-month period in 2019. They tracked public safety and court appearance for the six-month period after release. Recidivism rates include new charges (new case filed), not including failure to appear. Public safety rates are defined as no new charges or filings during the supervised pretrial period.

Key Findings

Recidivism

Overall recidivism rates were comparable in 2019 and 2020 when looking at new charges within Boulder County. In 2019, the recidivism rate was lower for PR bonds than for secured bonds. However, in 2020, the recidivism rate was comparable for both bond types when looking at new cases statewide.

Though fairly low in both years, the rate of escalation from misdemeanor to felony for the recidivism charge was somewhat higher in 2020 compared to 2019. In 2020, felony releases had a higher recidivism rate than in 2019, with new misdemeanor charges making up the majority of the increase. The proportion of felony releases that had a new felony was comparable by bond type in 2019 and 2020.

Those who had an initial property charge had a higher rate of recidivism than other charge types. Of those who recidivated, 23% had four or more recidivism events. Homeless individuals and those with mental health issues comprised a significant proportion of those with four or more recidivism events.

Court Appearance

Of those who were released, 68% did not have an FTA within 6 months of initial release and 66% of those who received a PR Bond did not have an FTA within 6 months. A greater proportion of those who received a summons had an FTA. Those who had an FTA on the first release had a higher recidivism rate.

Three-year Pretrial Trends 2019-2021

While already fairly high, PR bond rates ordered for lower-risk defendants, those assessed by the Colorado Pretrial Assessment Tool (CPAT) at level 1 or 2, increased somewhat in 2020 and 2021. However, PR bond rates ordered for higher-risk defendants (CPAT levels 3 and 4) increased significantly during COVID.

The agreement rate between the bond type recommended and what was ordered for high-risk defendants was particularly disparate in 2020 and 2021, with a higher percentage being ordered PR bonds than was recommended by the CPAT tool. Among CPAT 3s and 4s, the public safety rate was comparable regardless of bond type.

Recommendations

- Address behavioral health needs and stability factors such as homelessness as early as possible in the process of system involvement.
- Develop a better understanding of release conditions that best support successful pretrial outcomes.
- Assess current practices around court date notification to identify areas of opportunity for supporting increased court appearances.
- Gain a better understanding of the interplay between court appearance and recidivism and how best to mitigate increased risk.
- Engage law enforcement agencies in dialogue about the impact of enforcement practice changes on outcomes.
- Study the impact of sentencing practices and reforms on pretrial outcomes.
- Continue to monitor public safety and court appearance outcomes post-COVID to understand whether these outcomes will improve in a post-COVID landscape or are part of a new normal.

Jefferson County Pretrial Outcomes

Mr. John Hilgendorf from Jefferson County Justice Services presented on Jefferson County Pretrial Outcomes. The focus of the study included failure to appear (FTA) warrants, the impact of increased use of Personal Recognizance (PR) bonds on appearance rates among pretrial defendants, and an examination of who failed to appear while on pretrial supervision.

Key Findings

Pretrial outcomes

There was a notable increase in PR bonds ordered at advisements since April 2021. There was an increase in FTA rates, especially for those defendants assessed as high risk by the CPAT (Risk levels 3 or 4).

The next question was who failed to appear on pretrial supervision. When accounting for CPAT risk, criminal history, prior failure to appear, and current offense, there was no significant relationship between the type of bond posted and failing to appear in court while on pretrial supervision. The strongest predictors for failure to appear were CPAT risk levels, failure to appear history, and certain offense types.

High-risk (CPAT 3 and 4) cases were more likely to FTA, compared to CPAT 1 cases; CPAT 3 cases were three times more likely to FTA; CPAT 4 cases were about twice as likely to FTA.

Defendants with multiple prior FTAs were more likely to FTA on pretrial supervision when compared to defendants with no history of failing to appear. Theft cases, especially CPAT 3 and 4 cases, had high rates of failure to appear, with CPAT 3 theft cases having a 43.5% FTA rate. Domestic Violence and DUI had low rates of failing to appear, regardless of the type of bond posted. Domestic Violence cases given a PR bond had an FTA rate of just 6.5%. The overall FTA rate for DUI cases on pretrial supervision was just 4%; 7% for PR bonds; and 3% for summons.

Using technology to improve outcomes

In November 2021, Jefferson County started a text notification program to remind pretrial defendants of upcoming court hearings. Defendants receive two reminders per court hearing, one reminder a week before and one a day before the court hearing.

There is no noticeable increase in appearance rates among CPAT 1 and 2 defendants who appeared in court, regardless of text notifications. However, there was a significant difference in appearance rates among higher-risk (CPAT 3 and CPAT 4) defendants who received multiple text reminders. For CPAT 3 defendants there was an 85% appearance rate before text notifications were implemented; after multiple notifications were implemented, the appearance rate was 92% among defendants. Among CPAT 4 defendants, the appearance rate was 76% rate before text notifications; after, the rate was 82% among defendants who received multiple text reminders.

Text messages were also implemented to remind GPS defendants to charge their GPS units. The number of violations filed for defendants failing to charge their GPS unit decreased since GPS charge notifications began. Before the texting program, filings for GPS violations were consistently between 50 and 60 violations per quarter, while after texting filings dropped to less than 20 per quarter.

Public Safety Investment

Mr. Oppenheim from the Office of the Governor shared that the Governor recognizes the importance of public safety and has made it a priority for FY 2022-23. This year, the Governor's budget includes a \$113 million comprehensive Public Safety Investment Package to fund a breadth of multi-disciplinary strategies. The Public Safety Investment Package involves several agencies: local law enforcement, the Department of Corrections (CDOC), the Department of Human Services (CDHS), the Governor's Office, and the Department of Public Safety (CDPS). Below are highlights from the presentation.

The investment package proposes the following:

1. Community Investments (\$35.9M managed through CPDS)
 - Community-Based Competitive and Targeted Grants
A flexible grant program for multi-disciplinary crime prevention and intervention programs by law enforcement and other local agencies.
 - Crime Prevention through Safer Streets Grant Program
This strategy includes a "hot spots" study as well as a grant program where DPS and local governments evaluate and design safer streets and neighborhood models and discourage crime and revitalize community image.
 - Preventing Bias-Motivated Violence Grants Funding would support a preventing bias-motivated violence grant program to provide funds for training programs focused on building strong communities, increasing awareness and understanding, and preventing bias-motivated violence.
 - Young Offender Intervention and Prevention Pilot Program Grants
This grant program is intended to create a blueprint that connects schools, public safety, public health, and other agencies into a single response to reduce crime and violence among young people.
 - School Safety Resources Grants
A competitive grant program for school districts to apply for school safety enhancements. Allowable uses would include an expansion of mental health resources, training for mental health professionals, and infrastructure improvements such as locked doors. Managed through DPS.
2. Public Safety Workforce Investment (\$16.6M managed through CDPS)
 - Statewide Crime Prevention Forum
One-time funding for a forum in which the findings will be used to inform the design of the grant programs within the package.

DPS will engage a national Crime Justice Technical Assistance Organization to facilitate a convening of state and local stakeholders to socialize best practices on crime prevention.

- **Workforce Recruitment, Expansion, Retention**
A grant program for recruitment, retention, and tuition support activities to address the public safety workforce shortages being experienced by local agencies.
 - **Colorado Bureau of Investigations Staffing**
DPS reports that the Colorado Bureau of Investigation (CBI) is understaffed for its workload and in comparison, to other states of similar circumstances. Funding will be used to improve CBI staffing levels so that they can more effectively accomplish their mission.
 - **Central Evidence Facility Improvement**
The Department reports that the CBI facility is not big enough, nor secure enough, to store a growing amount of state-held evidence.
 - **Project Oversight**
The project management team will ensure that individual strategies of the Public Safety Package are coordinated, manage project timelines, conduct budget work, and so forth to ensure the successful implementation of the entire project package.
3. **Recidivism Reduction Investments (\$7.1M managed by various agencies)**
- **Restorative Justice Pilot (CDOC)**
One-time funding to implement a pilot of a trauma-responsive, restorative culture through Restorative Justice (RJ) practices and interventions.
 - **Fire Mitigation Equipment of Inmate Fire Team (CDOC)**
Funding to provide additional critical equipment to assist in meeting fire mitigation goals in partnership with the Department of Natural Resources (DNR).
- **Youth Employment (CDHS)**
One-time funding to bolster education and job readiness training programs for the youth care of the Division of Youth Services to improve outcomes after release.
 - **Take-Two Program Expansion (CDOC)**
An existing barrier to the implementation of the Take TWO program is difficulty transporting offenders to employers. This one-time funding will be used to hire a consultant and implement recommendations for cost-effective transportation, thus expanding the number of employers and offenders who can partake in Take TWO.
 - **Behavioral Health Shar in the Criminal Justice System (CDPS)**
This project will allow the Division of Criminal Justice (DCJ) within CDPS to enable Colorado jails' interoperability with Colorado Integrated Criminal Justice Information System (CICJIS).
4. **Domestic Violence (\$6M CDHS)**
- **Domestic Violence Program Support**
As proposed in the Governor's budget request, CDHS would receive \$6M for gender-based violence prevention services, including anti-domestic violence and anti-sexual assault services to mitigate the compounded safety concerns faced by interpersonal violence survivors during the COVID-19 pandemic. The funds will be split to support anti-domestic violence and anti-sexual organizations, enhance pet safety in domestic violence shelters, directly support survivors of interpersonal violence, develop public awareness, expand the "Caring Dads" pilot program, and support broad domestic violence prevention work at the Department.
5. **Behavioral Health Investments (\$47.4M managed through various agencies)**
- **Criminal Justice Early Prevention Program (CDPS)**
The proposed grant program will allow

communities to develop criminal justice redirection infrastructure to prevent at-risk individuals from becoming involved in the criminal justice system or penetrating further into the system.

- **New Beds at Mental Health Institute at Fort Logan to Address the Competency Waitlist (CDHS)**
 The Colorado Department of Human Services (CDHS) is statutorily required to provide competency evaluations and restoration services for patients in the forensic system. In FY 19-20, the Office of Behavioral Health received approval for Capital Construction funding to renovate two units at the Colorado Mental Health Institute at Fort Logan. The renovation and associated operating funds will add 44 forensic treatment beds. These units will be ready for occupancy in October 2022.
- **Behavioral Health Worker Loan Forgiveness (CDPHE)**
 Funding would be used to expand this program, which can be done by increasing the amount each professional is eligible for, increasing the number of providers' services, incentivizing (i.e. increasing the payment for) participation in the program for serving certain populations like those experiencing homelessness and/or those involved in the criminal justice system. Additionally, funds will be used for granting scholarships and/or bonuses so that otherwise eligible individuals without loans may become eligible.

Behavioral Health Administration (BHA) Implementation

Ms. Gina Lasky, a consultant from Health Management Associates (HMA) presented an update on the Behavioral Health Administration (BHA) implementation. A previous update on the BHA implementation occurred at a special Commission meeting on April 30, 2021 (See FY21 CCJJ Annual report).

The BHA is designed to build on partnerships and relationships between the many facets of

Behavioral Health and the Criminal Justice system. These include:

- The BHA Advisory Council, with representatives from the criminal justice system
- A Criminal Justice working group to report to the Advisory Council
- A core position will be created within the BHA to provide criminal justice expertise

The 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?

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.

The mission of the BHA is to:

- Elevate the voices of consumers and family members with lived experience of behavioral health issues and the behavioral systems in Colorado.
- Ensure equity and address behavioral health disparities.
- Problem solve and implement solutions through collaboration and effective relationships.

- Impact the entire behavioral health system, including the commercial system from prevention to recovery.
- 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

Behavioral Health Administration Activity

At the May 2022 meeting, Mr. Hilkey introduced Dr. Morgan Medlock, the new BHA Commissioner, and a member of the Governor's Cabinet.

House Bill 2022-1278 established the duties of the BHA, which will launch on July 1, 2022.

The vision of the BHA is to create a behavioral health system that works for all Coloradans

- A system where nobody is left behind, including those who are justice-involved.
- A unified vision & strategy across the continuum of care
- Improved funding services
- Comprehensive data
- System coordination

Dr. Medlock and her team embarked on a statewide tour to better understand the behavioral health needs of Coloradans. Dr. Medlock described a new crisis center model in Salida offering mobile and on-site crisis responses, a drop-off center for behavioral health services with the promise of rapid assessments, and on-site acute behavioral health treatments. The BHA vision is to have a comprehensive, equitable, accessible, affordable, and effective continuum of behavioral health services.

The BHA is hiring a Deputy Commissioner for Equity and System Effectiveness. The BHA sponsored five equity fellows named to the national equity-grounded behavioral health leadership program with the College for Behavioral Health Leadership.

The BHA has established priorities for Criminal Justice Partners. These include:

- Build on existing collaborations to improve the relationship and connection between criminal justice and behavioral health.
- Raise awareness and understanding of criminal justice within the BHA to inform policy, strategy, and standards.
- Incorporate priorities of criminal justice partners in improving BHA assessment, treatment, and services for justice-involved individuals.
- Expand and streamline a comprehensive continuum of care for justice-involved individuals.
- Improve payment models and address current barriers to service availability, particularly for high-risk and high-need cases transitioning out of institutional care (e.g. Institutes or Corrections).
- Improve accountability of providers to serve those with justice involvement
- Address and improve data interoperability.

Criminal Justice/Behavioral Health Roadmap Objectives:

- Objective 1: Colorado's criminal justice and

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

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

behavioral health systems promote and invest in accessible and effective programs, strategies, and practices.

- Objective 2: Colorado’s behavioral health and criminal justice workforce has the capacity and resources needed to provide deflection, diversion, and intervention services.
- Objective 3: State and local agencies and organizations serving people dually involved in Colorado’s criminal justice and behavioral health systems are coordinated, communicating, and aligned.

Senate Bill 22-196. Health Needs of Persons in Criminal Justice System. This bill establishes the early intervention, deflection, and redirection from the criminal justice system grant program in the BHA:

- to provide grants to local governments, federally recognized Indian Tribes, healthcare providers, and community-based organizations,
- to fund programs and strategies that prevent people with behavioral health needs from becoming involved with the criminal justice system, or that redirect individuals in the criminal justice system with behavioral health needs from the system to appropriate services.
- Local law enforcement agencies are eligible for a grant to develop or expand a co-responder community response program.

Statutorily mandated training for all Colorado’s Boards and Commissions (House Bill 2018-1198)

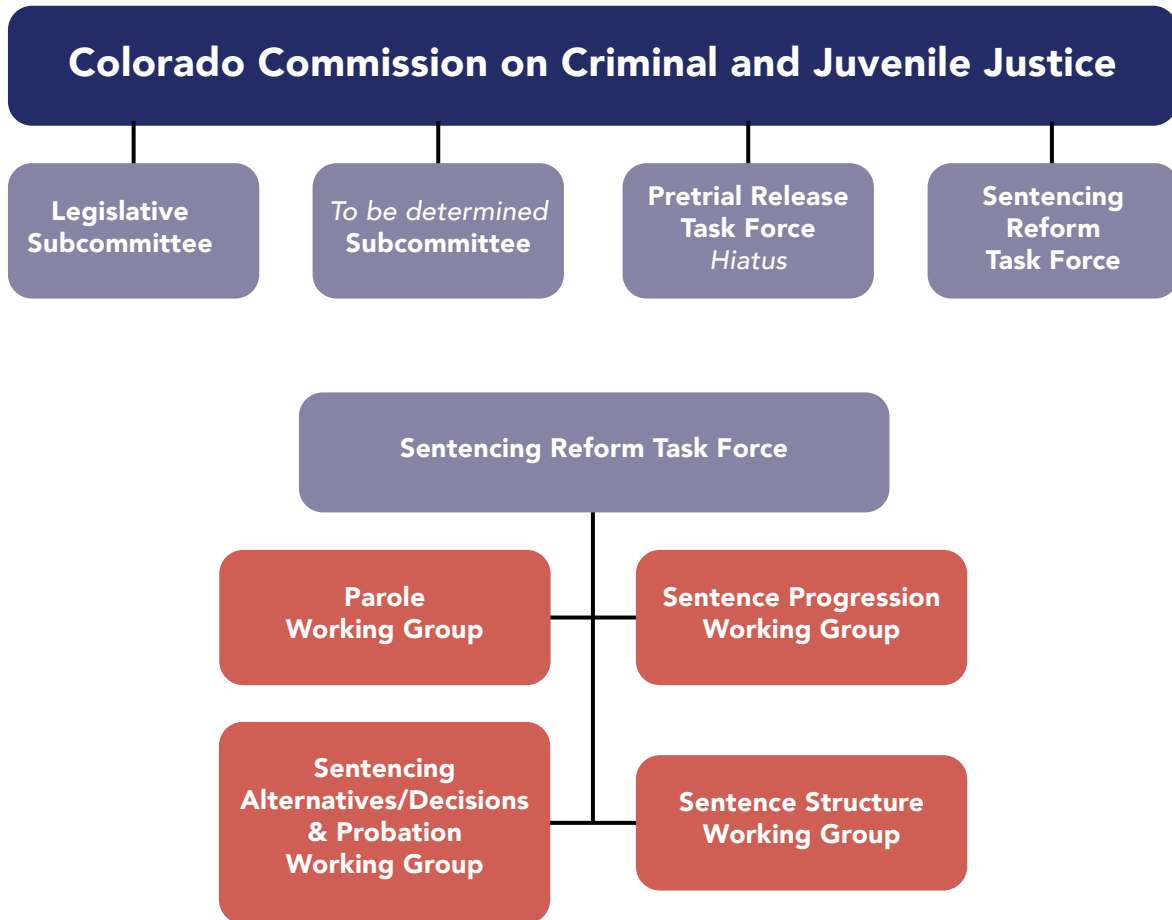
Ms. Ingrid Barrier from the Attorney General’s Office explained to the Commission that legislation was passed in 2018 calling for an annual training for all of Colorado’s boards and commissions (H.B. 2018-1198). Ms. Barrier provided training on topics ranging from statutory mandates and staff duties to decision-making processes, the open meetings requirement under the Sunshine Law, and the Colorado Open Records Act.

Work of the Commission’s Task Force and Subcommittee

The Commission’s work during Fiscal Year 2022 was undertaken by the following three committees and three working groups (see Figure 3.1)

- Legislative Subcommittee, Chair Stan Hilkey
- Pretrial Release Task Force (On hiatus), Chair Stan Hilkey
- Sentencing Reform Task Force, Co-chairs Rick Kornfeld & Michael Dougherty
 - Parole Working Group (*concluded at the end of FY21*)
 - Sentence Progression Working Group
 - Sentencing Alternative/Decisions & Probation Working Group
 - Sentence Structure Working Group

Figure 3.1 Commission and Subcommittees/Task Forces



Legislative Subcommittee

This ongoing Subcommittee meets primarily during the legislative session to ensure that bills based on Commission recommendations continue to reflect the intent of the Commission when amendments and modifications occur. Members review legislation and legislative changes as bills progress through the General Assembly.

During this fiscal year the Chair of the Commission, Stan Hilkey, convened the Legislative Subcommittee on February 15, 2022, at the request of Subcommittee member Tom Raynes. Mr. Raynes requested the phone meeting to review one potential amendment (see below) to *House Bill 2022- 1229 (Concerning Adopting*

Clean-Up Provisions to Senate Bill 21-271 which Enacted the 2021 Recommendations of the Colorado Commission on Criminal and Juvenile Justice). He felt a decision regarding a potential amendment was warranted to determine whether the amendment was consistent with the intent of *Recommendation FY21-SR #01 (Revise Misdemeanor Sentencing and Offenses [Statutory])*, which provided the source material for *S.B. 21-271 (Concerning the adoption of the 2021 Recommendations of the Colorado Criminal and Juvenile Justice Commission regarding Sentencing for Offenses)*.

After this brief discussion and in accord with CCJJ “Legislative-Related Policies,”³ the Legislative Subcommittee quorum represented by Stan

³ The CCJJ “Legislative-Related Policies” document is available from ccjj.colorado.gov/ccjj-bylaws-policy, specifically at, cdpsdocs.state.co.us/ccjj/About/2018-05-31_LegislativePolicy-Subc.pdf

Hilkey, Tom Raynes, and Megan Ring agreed that the potential amendment continued to reflect the intent of *Recommendation FY21-SR #01*. (See amendment in the meeting notes at <https://ccjj.colorado.gov/ccjj-legsubc> under the “Previous Meetings” tab).

On March 10, 2022, Stan Hilkey convened the Legislative Subcommittee at the request of Subcommittee member Tom Raynes. Mr. Raynes requested the meeting to review several amendments to *House Bill 2022-1257 (Concerning the Adoption of 2022 Recommendations of the Colorado Criminal Juvenile Justice Commission regarding Sentencing Provisions for Offenses)*. He felt a brief discussion of and decision regarding the potential amendments were warranted to determine whether the amendments were consistent with the intent of Recommendations *FY22-SR #06 (Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory])*, and *FY22-SR #05 (Implement Individualized Behavioral Responses to Probation Violations [Statutory])*.

After a brief discussion and in accordance with CCJJ “Legislative-Related Policies,” the Legislative Subcommittee quorum represented by Stan Hilkey, Abigail Tucker, Janet Drake, Shawn Day, and Tom Raynes agreed that the potential amendments continued to reflect the intent of Recommendations *Recommendation FY21-SR #05*, and *FY21-SR #06*. (See amendments in the meeting notes at <https://ccjj.colorado.gov/ccjj-legsubc> under the “Previous Meetings” tab)

On May 10, 2022, Stan Hilkey requested an email vote by the CCJJ Legislative Subcommittee at the request of Subcommittee member Tom Raynes. Mr. Raynes requested the consideration of members regarding the consistency between one proposed amendment to *House Bill 2022-1257 (Concerning the adoption of 2022 recommendations of the Colorado Criminal Juvenile Justice Commission regarding sentencing provisions for offenses)* and the related CCJJ *Recommendation FY22-SR #09 (Revise Felony Offenses Eligible for the Crime of POWPO [Statutory])*.

In accord with CCJJ “Legislative-Related Policies,” the Legislative Subcommittee members (Stan Hilkey

[Chair], Shawn Day, Janet Drake, Tom Raynes, and Megan Ring) submitted votes by email, 5-0 unanimously in the affirmative, that the proposed amendment continued to reflect the intent of *Recommendation FY22-SR #09*. (See amendments in the meeting notes at <https://ccjj.colorado.gov/ccjj-legsubc> under the “Previous Meetings” tab)

Pretrial Release Task Force

Following the approval of recommendations by the Commission (see Fiscal Year 2020 CCJJ annual report), the Pretrial Release Task Force remained on hiatus during Fiscal Year 2022.

Sentencing Reform Task Force

The Sentencing Reform Task Force held its first meeting on September 9, 2020. The Commission directed this task force to address the sentencing topics delineated in the 2020 biennial letter from Governor Jared Polis. During Fiscal Year 2021, the task force completed the revision of misdemeanor offenses and developed *Recommendation FY21-SR #01. Revise Misdemeanor Sentencing Offenses*, approved by CCJJ, introduced and enacted in 2021. During Fiscal Year 2022, the Task Force continued to receive presentations and evaluate potential recommendations from its three Working Groups.

- Sentence Progression Working Group**
 At the beginning of Fiscal Year 2022, the Working Group asked for feedback from the Sentencing Reform Task Force regarding the direction of the work. The Working Group developed a list of proposed topics to address while commenting this would significantly expand the scope of work at a working group level. Upon review of the list and in view of the comments offered, the Task Force agreed that it would be best for the Sentencing Progression Working Group to go on hiatus until the suggestions for working topics were developed. On April 6, 2022, Michael Dougherty, and Rick Kornfeld (Co-chairs of the Sentencing Reform Task Force) announced the reactivation of the Progression Working Group. The reactivated Progression Working Group held its first meeting on June 28, 2022.

- **Assignment:** 1) Examine the use of options and incentives to create a more integrated system of progression and release from incarceration. 2) Review opportunities to better match individuals with possible re-entry placements or alternatives.
 - **Areas of focus:** Examine the current end-of-sentence options (Community Correction, Parole, and Intensive Supervision Inmate [ISP-I] program)
 - **Work-to-date:** The Working Group held its first meeting on June 28, 2022.
 - **Next areas of work:** Start defining and prioritizing a scope of work. The timeline established by the group is to develop a proposal by the winter of 2022.
 - **Sentencing Alternatives/Decisions & Probation Working Group**
 - **Assignment:** Examine the operation of probation regarding the use of conditions, the length of supervision, and responses to violations; alternatives that can be used at the time of sentencing; and define the purposes of probation and the impact of probation practices on the prison population.
 - **Areas of focus:** The Working Group identified the following priorities:
 - Define the statutory purpose of probation
 - Examine probation practices regarding the use of conditions, length of supervision, responses to violations, and revocations
 - Examine ethnic and gender disparities in probation outcomes/practices and recommend strategies to abate disparate treatment and/or outcomes.
 - Examine the impact on the prison population
 - Evaluate probation level of supervision in the interest of proper dosage and approaches (e.g. avoiding over-supervision)
 - Examine the impact of Traumatic Brain Injury (TBI) in revocations and other outcomes and recommend strategies to better accommodate persons with TBI.
 - Consider alternatives that can be utilized at the time of sentencing.
- Work-to-date:** During Fiscal Year 2022, the Working Group focused on defining the statutory purpose of probation, avoiding over-supervision, and examining probation practices regarding the use of conditions, length of supervision, responses to violations, and revocations.
- The Working Group developed five recommendations, three approved by the Commission:
- FY22-SR #01. Define the purposes of probation (Statutory)*
- FY22-SR #03. Increase Access to Telehealth Services for Behavioral Health (Policy).*
- FY22-SR #05. Implement Individualized Behavioral Responses to Probation Violations (Statutory)*
- The two recommendations below were returned to the Working Group for further study and consideration.
- FY22-SR #02. Develop a Swift Reparative Intervention Program for Persons Convicted of a Petty Offense (Statutory)*
- FY22-SR #04. Improve Collaborative Treatment for Justice-Involved People (Statutory)*
- Next areas of work:** The WG will focus on probation sentence length and particularly on early termination for people on probation. A preliminary proposal that would promote consistency across the judicial districts regarding the timing and criteria for early termination will be presented to the Task Force in the fall of 2022.
- **Sentence Structure Working Group**
 - **Assignment:** Study felony and misdemeanor sentencing grids, sentence ranges, sentence enhancements (habitual, extraordinary risk),

work to promote consistency and certainty in sentencing and simplify various aspects of the sentencing code.

- **Areas of focus:** Promote consistency and certainty in sentences; simplify crimes and sentencing; eliminate redundant offenses; undertake a thorough review of all felony offenses and sentences:
 - Review of the enhanced felony severity classification chart
 - Review the felony sentencing grid
 - Review Sentencing ranges
 - Examine Sentence Enhancements (Habitual, Extraordinary risk)
 - Review Mandatory consecutive sentences for crimes of violence
 - Examine CDOC lengths of stay for felony offenses.
- **Work-to-date:** Completed the revision of misdemeanor offenses and developed *Recommendation FY 21-SR #01 Revise Misdemeanor Sentencing and Offenses*.

During Fiscal Year 2022, the Working Group focused on reviewing and identifying revisions related to *Senate Bill 2021-271. Misdemeanor Reform* for the successful implementation of the bill is expected in March 2022, and developed four recommendations:

FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory]

FY22-SR #07. Revise Value Basis for Theft of Public Benefits [Statutory]

FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility (Statutory)

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

Following a preliminary presentation to

the Commission, members of the Sentence Structure Working Group offered a Question & Answer session to answer questions from Commissioners on POWPO. The Commission approved the recommendation on February 11, 2022.

At the beginning of this Fiscal Year, the Working Group conducted stakeholder listening sessions to gather feedback as they begin their review of felony sentencing offenses and felony sentencing with the goal of building more certainty into sentencing. The group aims to eliminate redundant offenses and to create cut points for crimes that result in financial harm.

Next areas of work: The next area of focus will continue the review of the felony sentencing grids and felony offenses with an immediate focus on the crime severity chart. A crime severity chart proposal will be presented to the Task Force in the fall of 2022.

Summary

This section provided a summary of the work of the Commission and its committees from July 2021 through June 2022. The Pretrial Release Task Force remained on hiatus during Fiscal Year 2022. The Sentencing Reform Task Force and its three active Working Groups continued to address the sentencing topics delineated in the 2020 biennial letter from Governor Jared Polis. All Commission meetings continued to use a virtual platform in an effort to limit the spread of COVID-19. The Sentence Progression Working Group was placed on hiatus for several months and reactivated in June 2022. The Structure and Alternatives/Decisions & Probation working groups produced seven recommendations approved by the Commission during the time frame for this report. The Commission benefitted from various educational presentations, updates and training, and approved all recommendations presented by the Sentencing Reform Task Force in the areas of sentencing.



4

Recommendations and Outcomes

This section presents the seven recommendations developed by the Sentencing Reform Task Force and approved by the Commission in Fiscal Year 2022. Not all of the Commission’s recommendations are legislative in nature, and not all recommendations that are drafted into bills survive the legislative process.

The recommendations reported below include the original text approved by the Commission. Please note the following formatting guides:

- Numbering of recommendations in this report is standardized. The notation will include the fiscal year of the recommendation (for example, “FY22”), letters indicating the task force from which the recommendation originated (e.g., Sentencing Reform by a “SR”), and a sequence number.
- If a recommendation was numbered and presented to the Commission, but not approved, it is not included in this report. This may result in the impression that numbers have been skipped, but this is not the case.
- Recommendations may include additions to existing statutory or rule language as indicated by CAPITAL letters or deletions that are represented as ~~strikethroughs~~.

SENTENCING REFORM TASK FORCE

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 Colorado statute does not currently define the purposes of probation. Since its evolution in the United States in the mid-1800s, probation was not designed for the purposes of incapacitation, punishment or retributive justice. The role of probation is to provide rehabilitative and restorative intervention for qualifying persons (see qualifications in §18-1.3.201, C.R.S.), to enhance public safety and is limited to prioritize and serve the purposes defined above.

Outcome This recommendation, approved by the Commission on December 10, 2021, involves statutory revisions and is first applicable for action during the FY 2022 legislative session. During the FY 2022 Legislative Session, this recommendation was included in *House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses)*. The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.

For **Proposed Statutory Language**, see full recommendation at [www. https://ccjj.colorado.gov/ccjj-recyr-fy22](https://ccjj.colorado.gov/ccjj-recyr-fy22)

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 duplicate 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

Accessing in-person or face-to-face behavioral health services is often challenging and limiting for people involved in the criminal justice system. These persons report that childcare obligations, transportation issues, employment obligations, driver's license limitations, and limited hours for accessing in-person treatment places them at risk of non-compliance. Some also report that in-person treatment often positions them in risky situations for relapse when exposed to high-risk situations and other individuals in group settings who are less invested in their personal behavior change. Further, in rural communities in Colorado, there is a limited, and somewhat monopolized, supply of in-person treatment for justice-involved people. This is especially true in rural communities where interpretation services or multi-lingual clinicians are in very short supply resulting in limited services for those who do not speak English as their primary language. Beyond those limitations, permanent telehealth capacity provides opportunities to supplement basic weekly outpatient treatment with more enhanced or intensive outpatient substance use disorder services. This is particularly critical for persons with more complex risk/need profiles who have assessed needs beyond basic outpatient services.

Telehealth can also offer easier access to after-care services for those who are in transition from inpatient to outpatient services. Research has begun to emerge that shows promising opportunities for telehealth services, especially when used as a supplement or adjunct to in-person therapeutic interventions.¹ The COVID-19 pandemic provided opportunities for

1 American Psychological Association. (2013, July 31). Guidelines for the practice of telepsychology. (Retrieved from www.apa.org/practice/guidelines/telepsychology)

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the criminal justice system to temporarily build capacity for telehealth services. Telehealth for behavioral health services, if made permanent, can increase supply and can mitigate monopolized access to clinical services to justice involved people. It can also address the myriad of competing issues that people face when balancing general life obligations with requirements of community-based supervision.

Outcome This recommendation, approved by the Commission on December 10, 2021, involves agency/entity implementation.

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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), §16-11.5105, §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. Define the Purposes of Probation*) rather than the finite and limited responses in current statute that reflect retributive, punitive, and deterrent-based justice methods.

Discussion

Contemporary best practice guidelines for both probation and problem-solving court programs compel community supervision agencies to have smarter tolerance for substance use, especially for those with diagnosed substance use disorders. Agencies and programs that align with best practices respond to substance use and other violation behavior with corresponding systems of individualized and structured responses. Ideal response systems prioritize cognitive-behavioral, motivational, psycho-educational, and therapeutic responses over retributive and punishment-based sanctions. This recommendation provides an opportunity to align probation's responses to violation behavior, including substance use, with the recommended statutory purpose of probation (included in CCJJ Recommendation *FY22-SR #01. Purposes of Probation*). This recommendation specifically prioritizes rehabilitative, reparative, and restorative justice methods over retributive, punitive, and deterrent-based justice methods.

§16-11-209, CRS (Duties of Probation Officers) was created as law during a period of the 1980s where the criminal justice system prioritized punitive rather than therapeutic responses as a response to drug and alcohol abuse for people on probation. As a result, current law is in conflict between CRS §16-11209 (2) and (3) where responses to first and second and subsequent positive drug tests are primarily punitive; while law from 1991 legislation (§16-11.5-105) approaches drug use with a more balanced model that includes both punitive sanctions and motivational incentives. This recommendation is intended to create consistent and modernized law for community-supervision that establishes a system of individualized behavioral responses to positive drug tests and other violation behavior for persons supervised on probation.

Current law prioritizes rehabilitative over punitive responses to violation behavior for the juvenile justice system but not for the adult criminal justice system. CRS §16-11-209 (2) and (3) require responses to positive drug tests that are finite, limited, and primarily punitive rather than giving probation staff other behavioral tools, beyond punishment, to respond to ongoing substance use. The requirements in law are ineffective and misaligned with criminological and addiction medicine best practice standards. Our legislature recognized this when it reformed Title 19 (Colorado Children's Code) via Senate Bill 19-108 (Juvenile Justice Reform) to prioritize rehabilitative over punitive responses to violation behavior for the juvenile-justice system.

CRS §16-11-209 (2) and (3) also present potential legal and liability problems for probation staff and agencies. This can occur in cases where probation responds to positive drug tests with cognitive behavioral or other intermediate responses that do not strictly adhere to

the finite list of punitive response in sections (2)(a) through (d) and (3)(a) through (e). Probation cannot operate outside this legal requirement without compromising personal and organizational risks.

Colorado's probation and parole agencies engaged in a multi-state study of revocation trends with the Crime and Justice Institute (CJI) in 2020. The outcomes, findings, and recommendations of that work are expected to be published formally with a state report in late 2021 with the finding that positive drug tests are one of several drivers to probation revocations. The CJI has also drafted recommendations for Colorado to modernize state law to include CRS §16-11-209 as well as for the State Court Administrator's Office to revise the Standards for Probation in Colorado and Division of Probation Services training around the use of responses to violation behavior (*see the Principles of Effective Intervention and Core Correctional Practices at cj institute.org*). This recommendation, if implemented, will align with the findings and recommendations of this revocation study from the Crime and Justice Institute who will be publishing a national report of its work in early 2022 in addition to a Colorado specific report.

Consequences for drug-related probation violations should not inherently be less discretionary than other types of violations with greater potential public harm, such as violations of protection orders and other contact with victims.

For the criminal justice system overall, there are downstream consequences of probation operating strictly within the limited requirements in CRS §16-11-209 (2) and (3). Specifically, people on probation with low level offenses such as Petty Offenses and Drug Misdemeanors could experience a premature escalation of criminal justice involvement due to revocations that originate from 2nd and subsequent positive drug tests. This can lead to not only collateral consequences for justice-involved people but also for the justice system itself in the misapplied use of public resources for jails and prisons. Because the list of required responses to positive drug tests is finite and primarily punitive, local criminal justice resources are squandered on unnecessary administrative and legal proceedings for revocation of those who test positive for substances. In this respect, current law consumes probation, court, prosecutor, defense, and victim resources for unnecessary revocation proceedings that are required by current law.

Outcome

This recommendation, approved by the Commission on January 14, 2022, involves statutory revisions and is first applicable for action during the FY 2022 legislative session. During the FY 2022 Legislative Session, this recommendation was included in House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses). The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.

For **Proposed Statutory Language**, see full recommendation at [www. https://ccjj.colorado.gov/ccjj-recyr-fy22](http://www.https://ccjj.colorado.gov/ccjj-recyr-fy22)

FY22-SR #06. Revise Penalties for Unauthorized Practice of Certain Professions or Occupations [Statutory]

Amend §12-20, C.R.S., to include a new statutory section with additional professions, the practice of which without a license, should be a felony due to a public safety risk.

These professions include:

- The profession of an electrician, as regulated under article 115 of this title 12;
- Professional engineering, as regulated under article 120 of this title 12;
- Architecture, as regulated under article 120 of this title 12;
- Audiology, as regulated under article 210 of this title 12;
- Dentistry, as regulated under article 220 of this title 12; [dental hygienist removed]
- Direct-entry midwifery, as regulated under article 225 of this title 12;
- Medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as regulated under article 240 of this title 12;
- Practical or professional nursing, as regulated under article 255 of this title 12; [practical removed]
- Nursing home administration, as regulated under article 265 of this title 12;
- Optometry, as regulated under article 275 of this title 12;
- Pharmacy, as regulated under article 280 of this title 12;
- Respiratory therapy, as regulated under article 300 of this title 12;

Discussion Prior to Senate Bill 2021-271, professional licensure offenses were primarily misdemeanor offenses with an increase to a felony level for 2nd and subsequent offenses. In S.B. 21-271, increased penalties for second and subsequent offenses were eliminated. Upon further review, it was determined that certain professional licensure violations be classified as felonies applicable for the first offense due to public safety risk concerns.

Outcomes This recommendation, approved by the Commission on January 28, 2022, involves statutory revisions and is first applicable for action during the FY 2022 legislative session. During the FY 2022 Legislative Session, this recommendation was included in House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses). The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.

FY22-SR #07. Revise Value Basis for Theft of Public Benefits [Statutory]

Amend Colorado Revised Statutes related to theft of public benefits to clarify that the amount of theft is based on the amount of benefits paid for which the person is not legally entitled. More specifically, the level of criminal offense is based on the amount of benefits received by the person for which the person is not entitled and does not include the amount the person is entitled to receive.

Discussion Senate Bill 2021-271 provides that the theft of public benefits be value based, representing a philosophy to which the Commission remains committed. However, recent case law (No. 19SC933, People v. Vidaur) has confused the value of the benefits for the purpose of calculating the crime level of the offense. Statute should be clarified that the amount of theft is based on the amount of benefits paid for which the person is not legally entitled. More specifically, the level of criminal offense is based on the amount of benefits received by the person for which the person is not entitled and does not include the amount the person is entitled to receive.

Outcome This recommendation, approved by the Commission on January 28, 2022, involves statutory revisions and is first applicable for action during the FY 2022 legislative session. During the FY 2022 Legislative Session, this recommendation was included in House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses). The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.

FY22-SR #08. Add Prison as an Intermediate Sanction Confinement Facility (Statutory]

Amend §17-2-103, C.R.S., to grant statutory authority to the Executive Director of the Colorado Department of Corrections to confine parolees in a prison facility, in addition to utilizing jails, for the purpose of confinement as an intermediate sanction for up to 14 days without filing a complaint seeking revocation of parole. This will provide the Department of Corrections and parole officers additional options for swift and sure intermediate sanctions.

Discussion For current “swift & sure” sanctions (up to 14 days with no parole revocation filed) for technical parole violations, it is recommended that the Colorado Department of Corrections be given statutory authority to directly book into a prison facility, as well as utilizing jails, where that is an option, as currently allowed in statute. The Parole Board may also modify conditions for technical parole violations as authorized in statute. This will provide parole officers additional options for intermediate sanctions.

Outcome This recommendation, approved by the Commission on January 28, 2022, involves statutory revisions and is first applicable for action during the FY 2022 legislative session. During the FY 2022 Legislative Session, this recommendation was included in House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses). The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.

For **Proposed Statutory Language**, see full recommendation at [www. https://ccjj.colorado.gov/ccjj-recyr-fy22](https://ccjj.colorado.gov/ccjj-recyr-fy22)

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 (See Appendix A) based on public safety considerations.

Discussion

Senate Bill 2021-271 made significant changes to §18-12-108, C.R.S., Possession of a Weapon by a Previous Offender (POWPO) and is scheduled for implementation on March 2022. The implementation date was designed to allow a period of review and feedback on the statutory revisions to identify any gaps, omissions, and/or mistakes in the extraordinarily detailed 350-page bill. A review was conducted of the list of eligible crimes that invoke the crime of POWPO and input was gathered from District Attorneys, representatives from Colorado Ceasefire and other community groups dedicated to gun safety issues. Based on this review and the stakeholder feedback, this recommendation expands the list of offenses to include additional non-VRA crimes that result in the POWPO offense. Also appended to the list are two POWPO-related provisions inadvertently excluded from Senate Bill 2021-271 that were previously approved as part of Recommendation *FY21-SR #01 (Revise Misdemeanor Sentencing and Offenses [Statutory])*.

Outcome

This recommendation, approved by the Commission on February 11, 2022, involves statutory revisions and is first applicable for action during the FY 2022 legislative session. During the FY 2022 Legislative Session, this recommendation was included in House Bill 2022-1257 (Concerning the adoption of the 2022 recommendations of the Colorado Criminal and Juvenile Justice Commission regarding sentencing provisions for offenses). The bill was passed by the General Assembly 3/31/2022 and was signed by the Governor 4/7/2022.



5 Next Steps

At the close of Fiscal Year 2022, the Commission continued to support the ongoing work of the Sentencing Reform Task Force in response to the sentencing topics delineated in the 2020 Biennial letter from Governor Jared Polis pursuant to House Bill 2018-1287. The Community Corrections Task Force was seated by the Commission to address the mandates outlined in House Bill 2022-1368. The goals of the Task Force are to examine and make findings and recommendations to the Commission before July 1, 2023, concerning whether it is appropriate to expand access to community corrections programs for persons convicted of misdemeanors.

As this report is concluded, the Sentence Structure Working Group continues to work on a revision of the felony sentencing grid and a review of felony offenses with an immediate focus on the crime severity chart. The Working Group expects to present a crime severity chart proposal to the

Task Force in the fall; the Sentencing Alternatives/Decisions & Probation Working Group is developing a recommendation that would promote consistency across the judicial districts regarding the timing and criteria for early termination to be presented to the Sentencing Reform Task Force in the fall of 2022. The Sentence Progression Working Group has been reactivated and completed the first examination of the current end-of-sentence options (Community Corrections, Parole, and Intensive Supervision-Inmate [ISP-I] program) and will start to define and prioritize its scope of work. The timeline established by the group is to develop a proposal by the winter of 2022. The Community Corrections Task Force conducted a first planning meeting in July 2022 and a full Task Force meeting was held on August 22, 2022, during which members heard a presentation on misdemeanor offenses in Colorado, and the scope of work to be discussed at further meetings.

On September 15, 2022, the Commission received the 2022 Governor’s biennial letter including suggested topics for the Commission to study, per C.R.S. 16-11.3-103(7). Mr. Hilkey, Chair of the Commission communicated with Commissioners that the Commission will discuss at its October 2022 meeting, how to address and prioritize the topics delineated from the letter.

Details of the outcomes of these endeavors will be included in the FY 2023 CCJJ annual report.

Summary

The Commission will continue to meet on the second Friday of the month, and information about the meetings, documents from those meetings, and information about the work of all of the Commission committees can be found on the Commission website at ccjj.colorado.gov. The Commission expects to present its next annual report in the fall of 2023.



6
Appendices

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Appendix A Overview-Behavioral Health Administration Implementation

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CCJJ website under December 10, 2021, meeting tab.

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Appendix B Criminal Justice Trends in Colorado

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Appendix C The Colorado Human Trafficking Council

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Appendix D Overview: Office for Victims Programs

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Appendix E Overview & Update – Behavioral Health Administration

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Appendix E Overview & Update – Behavioral Health Administration

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Appendix F Presentation: Boulder County COVID Outcomes

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Appendix G Jefferson County Pretrial Outcomes

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COLORADO
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2022