



2018 COLORADO COMMISSION
ON CRIMINAL & JUVENILE JUSTICE
ANNUAL REPORT

CCJJ ANNUAL REPORT 2018

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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Acknowledgements

Under the leadership of Chair Stan Hilkey and Vice-Chair Doug Wilson, 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: Stan Hilkey, Pretrial Release Task Force chair; Sheriff Joe Pelle, Mental Health/Jails Task Force chair; Robert Werthwein, Juvenile Continuity of Care Task Force chair; and Joe Thome and Jessica Jones, co-chairs of the Age of Delinquency Task Force.

Vice-Chair Doug Wilson, the State Public Defender, retired at the end of Fiscal Year 2018, having served as a member of the Commission from its inception in 2007 and as its vice-chair since 2012. Doug's commitment to the Commission's mission, his dedication to promoting the work of the Commission, and his efforts to ensure that the Commission's work was relevant and timely, contributed considerably to the Commission's accomplishments during his tenure. Doug's significant influence on the Commission is noteworthy and greatly appreciated.

The Commission could not complete its work without the dedication of dozens 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 and undertake homework assignments in 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 Mark Evans from the Office of the Public Defender, Patrick Fox from the Department of Human Services, Frank Cornelia and Moses Gur from the Colorado Behavioral Healthcare Council, Abigail Tucker from the Community Reach Center, and Melissa Roberts from the Department of Corrections.

Finally, the Commission is particularly grateful to its consultant, Richard Stroker. Mr. Stroker has provided guidance, perspective, encouragement and clarity to the Commission during Fiscal Year 2018.

Commission members

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Chair

Executive Director

Department of Public Safety

Douglas K. Wilson

Vice Chair

State Public Defender

Chris Bachmeyer (appointed February 2018)

District Court Judge, 1st Judicial District

Representing Colorado State Judicial

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Metropolitan State University of Denver

Representative for the Executive Director of the

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John Cooke

State Senator, Senate District 13

Representing the State Legislature (R)

Valarie Finks

Victims Representative, 18th Judicial District

Representing Victims' Rights Organizations

Kelly Friesen (appointment expired June 2018)

Grand County Juvenile Justice Department

Representing Juvenile Justice

Charles Garcia (appointment expired June 2018)

At-large

Tony Gherardini (designated August 2017)

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Jessica Jones

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At-large

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State Senator, Senate District 26

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William Kilpatrick

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Representing Chiefs of Police

Cynthia Kowert (designated January 2018)

Deputy, Criminal Justice Section

Representing the Attorney General's Office

Evelyn Leslie (appointment expired June 2018)

Colorado School for Family Therapy

Representing Mental Health Treatment Providers

Joe Morales

Chairman, Colorado State Board of Parole

Representing the State Board of Parole

Norm Mueller (appointment expired June 2018)

Criminal Defense Attorney

Haddon, Morgan, & Foreman, P.C.

Joe Pelle

Sheriff, Boulder County

Representing Colorado Sheriffs

Rick Raemisch
Executive Director
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Joseph Salazar
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Representing the State Legislature (D)

Lang Sias
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Scott Turner (resigned December 2017)
Deputy, Criminal Justice Section
Representing the Attorney General's Office

Michael Vallejos (resigned February 2018)
Chief Judge, 2nd Judicial District
Representing Colorado State Judicial

David Weaver (resigned March 2018)
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Peter A. Weir (appointment expired June 2018)
District Attorney, 1st Judicial District
Representing District Attorneys

Robert Werthwein (resigned July 2017)
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Department of Human Services

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Representing the Chair of the Juvenile Parole Board

Dave Young (appointment expired June 2018)
District Attorney, 17th Judicial District
Representing District Attorneys

Joe Thome
Director of the Division of Criminal Justice
Department of Public Safety
Non-Voting Member

Task force and committee members

July 2017 - June 2018

Age of Delinquency Task Force

Name	Affiliation
Joe Thome, <i>Co-chair</i>	Division of Criminal Justice
Jessica Jones, <i>Co-chair</i>	Private Defense Attorney
Molli Barker	Juvenile Assessment Center, 18th Judicial District
Jim Bullock	District Attorney's Office, 16th Judicial District
Shawn Cohn	Denver Juvenile Probation
Kelly Friesen	Grand County Juvenile Justice Department & Senate Bill 94, 14th Judicial District
Bev Funaro	Victim's Advocate
Tony Gherardini	Department of Human Services
Melanie Gilbert	Juvenile Court Magistrate, State Judicial
Dafna Michaelson Jenet	State Representative, House District 30
Cynthia Kowert	Attorney General's Office
Dan Makelky	Douglas County Department of Human Services
Rose Rodriguez	Community Corrections
Gretchen Russo	Department of Human Services
Tariq Sheikh	District Attorney's Office, 17th Judicial District
Sara Strufing	Public Defender's Office
Meg Williams	Division of Criminal Justice, Office of Adult and Juvenile Justice Assistance

Juvenile Continuity of Care Task Force

Name	Affiliation
Robert Werthwein, <i>Chair</i>	Department of Human Services, Office of Children, Youth & Families
Angela Brant	Public Defender's Office
Shawn Cohn	Denver Juvenile Probation
Susan Colling	State Court Administrators Office, Probation Services
Sheri Danz	Office of Child's Representative
Bill Delisio	Colorado Judicial Branch, Family Law Programs
Kelly Friesen	Grand County Juvenile Justice Department & Senate Bill 94, 14th Judicial District
Rebecca Gleason	District Attorney's Office, 18th Judicial
Anders Jacobson	Department of Human Services, Division of Youth Corrections
Bill Kilpatrick	Golden Police Department

Dan Makelky	Douglas County Human Services
Mike Tessean	Jefferson County Juvenile Assessment Center
Meg Williams	Division of Criminal Justice, Office of Adult and Juvenile Justice Assistance

Legislative Committee

Name	Affiliation
Stan Hilkey	Department of Public Safety
Norm Mueller	Criminal Defense Attorney
Joe Pelle	Boulder County Sheriff's Department
Tom Raynes	Colorado District Attorneys' Council
Joe Thome	Division of Criminal Justice
Scott Turner	Attorney General's Office, Criminal Justice Section
Douglas Wilson	Public Defender's Office

Mental Health/Point of Contact through Jail Release Task Force

Name	Affiliation
Joe Pelle, <i>Chair</i>	Boulder County Sheriff's Department
Jamison Brown	Colorado Jail Association
John Cooke	State Senator, Senate District 13
Frank Cornelia	Colorado Behavioral Healthcare Council
Patrick Costigan	17th JD District Attorney's Office
Patrick Fox	Officer of Behavioral Health
Charlie Garcia	CCJJ At-Large Member
Tina Gonzales	Colorado Health Partnerships
Benjamin Harris	Colorado Department of Health Care Policy and Financing
Evelyn Leslie	Mental Health Treatment Provider
Matthew Meyer	Mental Health Partners
Joe Morales	Parole Board
Norm Mueller	Criminal Defense Attorney
Lenya Robinson	Colorado Department of Health Care Policy and Financing
Jagruti Shah	Office of Behavioral Health
Charles Smith	Substance Abuse and Mental Health Services Administration
Abigail Tucker	Community Reach Centers
Michael Vallejos	Chief Judge, 2nd Judicial District
Dave Weaver	Douglas County Commissioner
Doug Wilson	Public Defender's Office

Pretrial Release Task Force

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Chris Bachmeyer	Judge, 1st Judicial District
Jennifer Bradford	Metro State University
Maureen Cain	Criminal Defense Attorney
Steve Chin	Colorado Association of Pretrial Services
Valarie Finks	Victims Representative, 18th Judicial District
Charles Garcia	CCJJ At Large member
Mike Garcia	Division of Probation Services
Bill Kilpatrick	Golden Police Department
Mindy Masias	State Court Administrator's Office
Greg Mauro	Denver Community Corrections
Patrick Murphy	Judge, 17th Judicial District
Clifford Riedel	District Attorney's Office, 8th Judicial District
Monica Rotner	Boulder County Community Justice Services
Joseph Salazar	State Representative, House District 31
Lang Sias	State Representative, House District 27
Kirk Taylor	Pueblo County Sheriff's Office
Douglas Wilson	Public Defender's Office
Bo Zeerip	District Attorney's Office, 21st Judicial District

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1

Introduction

This report documents the Commission's eleventh year of activities and accomplishments, describing the Commission's activities between July 1, 2017 and June 30, 2018. During Fiscal Year 2018, the Commission's work focused on the continuity of care for juveniles involved in both the justice and child welfare systems, the age of delinquency for juveniles involved in the justice system, pretrial release, re-entry, and issues related to the mental health of individuals from point-of-contact with law enforcement through release from jail. The Commission also explored issues regarding factors driving the population at the Department of Corrections, brain injury screening for justice-involved individuals, and diversion programs in district attorney's offices. Commissioners received in-depth data presentations on the impact of House Bill 13-1236, a Commission initiative that resulted in bond reform, and the parole board decision making process. Additionally, the Commission heard from legislators about two interim subcommittees whose work was intertwined with that of the Commission. They also heard from Judicial Branch

representatives about the work of the Bail Blue Ribbon Commission, whose work also intersects with that of the Commission.

After months of study, in Fiscal Year 2018, the Commission approved seven recommendations in the areas of juvenile continuity of care, re-entry, and pre-file mental health diversion programs. The Commission also approved another (eighth) recommendation to extend the repeal date of the Commission beyond July 2018. During the 2018 legislative session, the content of six recommendations became legislation and were signed into law by Governor Hickenlooper. Elements of recommendations from two previous years (Fiscal Year 2012 and Fiscal Year 2017) were also included in two additional pieces of legislation, bringing the total number of Commission-influenced pieces of signed legislation to seven (see Table 1.1). Legislative reforms are one type of systemic change the Commission promotes. It also recommends changes to operational policy, business practice, and agency philosophy.

This 2018 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, task force and committee activities from July

2017 through June 2018; Section 4 details the Commission’s recommendations and outcomes, including the recommendations that resulted in 2018 legislation; and Section 5 describes the Commission’s next steps.

Table 1.1. Commission-supported bills presented to the 2018 General Assembly

Bill number	Bill title	Status
House Bill 18-1251	Concerning measures to improve the efficiency of the community corrections transition placements, and, in connection therewith, making an appropriation <i>(Recommendations included in this bill - FY17-CC02.)</i>	Signed
House Bill 18-1287	Concerning the extension of the repeal of the Colorado Commission on Criminal and Juvenile Justice, and, in connection therewith, making an appropriation <i>(Recommendations included in this bill - FY18-CCJJ01.)</i>	Signed
House Bill 18-1344	Concerning relief from collateral consequences of criminal actions <i>(Recommendation included in this bill - FY17-RE01.)</i>	Signed
House Bill 18-1418	Concerning the use of criminal convictions in employment <i>(Recommendation included in this bill - FY17-RE03.)</i>	Signed
Senate Bill 18-154	Concerning a requirement for a local juvenile services planning committee to devise a plan to manage dually identified crossover youth <i>(Recommendations included in this bill - FY17-JCC01 & 02.)</i>	Signed

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

House Bill 18-1040	Concerning incentives for provision of sex offender services in the department of corrections <i>(Note: This bill was <u>not initiated by CCJJ</u>, but addressed a previous CCJJ recommendation - FY12-SO10.)</i>	Signed
Senate Bill 18-249	Concerning establishing alternative programs in the criminal justice system to divert individuals with a mental health condition to community treatment <i>(Note: This bill was <u>not initiated by CCJJ</u>, but, during the legislative process, was completely revised to reflect all the elements of an existing CCJJ recommendation - FY18-MH01.)</i>	Signed



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Legislative intent and membership

The Commission is comprised of 26 voting members and one ex-officio, non-voting member. Eighteen members are appointed representatives of specific stakeholder groups, and eight are identified to serve based on their official position. Terms of the appointed representatives are variable. For more information please see House Bill 07-1358, which established the Commission, available on the CCJJ website at <http://cdpsweb.state.co.us/ccjj/legislation.html>.

The Commission saw significant turnover in membership during Fiscal Year 2018 with the departure of twelve Commissioners. Judge Chris Bachmeyer replaced Judge Michael Vallejos as a representative of State Judicial. Tony Gherardini replaced Robert Werthwein representing the

Department of Human Services and Cynthia Kowert replaced Scott Turner for the Attorney General's Office. At the end of Fiscal Year 2018 Mike Garcia retired from State Judicial and Doug Wilson retired as the State Public Defender, concluding their work on the Commission. Additionally, David Weaver accepted a job as a U.S. Marshall leaving the County Commissioner seat vacant. Six additional Commissioners reached the end of their terms at the close of Fiscal Year 2018: Kelly Friesen, Charles Garcia, Evelyn Leslie, Norm Mueller, Dave Young and Peter Weir. At the writing of this report, new Commissioners had yet to be appointed or assigned but that information will be detailed in the Fiscal Year 2019 report.



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Activities of the Commission

This section summarizes the activities and accomplishments of the Commission in Fiscal Year 2018. 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 the planning process undertaken to define the work strategy for the Commission's priority issue areas through Fiscal Year 2018,
- A report on the work of the Commission's Task Forces and Committees, and
- An account of the legislative process resulting in the renewal of the Commission and resulting changes to the structure 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 2018, experts were brought in to present on nine issues discussed below.

2017 legislative interim committees

During the 2017 legislative session two interim study committees were established to address criminal justice issues that were also of importance to the Commission. In the spirit of collaboration and also to avoid duplication of efforts, the Chairs of the study committees were invited to attend and present at the August 2017 Commission meeting. Representative Pete Lee, Chairman of the Sentencing in the Criminal Justice System Interim Study Committee, and Senator Don Coram, Chairman of the County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee, both offered information about the charge and desired outcomes of their committees.

Representative Lee explained the charge for the Sentencing in the Criminal Justice System Interim Study Committee as follows:

To study Colorado's sentencing scheme, our charge as a committee is to consider offenses and penalties associated with specific criminal categories and how evidence based and cost effective changes could be implemented that would achieve the statutory goals of sentencing, simplify the sentencing structure and allow for prison resources to be used for highest risk offenders to promote the purposes of punishment, accountability and public Safety. More specifically, we are charged with evaluating the use of mandatory minimums, continued viability of extraordinary risk crimes, examining habitual offender scheme in light of current research, best practices and resource limitations, and finally development of Second Look Legislation to address long sentences.

During the presentation, Representative Lee explained that the Committee is authorized to propose five bills in the 2018 legislative session, all within the scope of the charge. He also stated his desire to work in conjunction with the Commission. He added that the Committee will be reviewing proposals put forth by the Commission in previous years that were not furthered by the Legislature. Representative Lee encouraged Commissioners to attend committee meetings and offer their input on bills they believe have merit.

Follow-up: *During the 2018 legislative session this Committee proposed five bills, two of which were eventually signed into law. One of the bills was based on a previous Commission recommendation that called for lowering mandatory parole from five years to three years. The second bill signed into law called for the reauthorization of the Commission on Criminal and Juvenile Justice.*

Senator Coram explained that one of the main topics of the County Courthouse and County Jail Funding and Overcrowding Solutions Interim Study Committee concerns the issue of funding, specifically the cost to counties required to house inmates in jail who are waiting for a bed at the

Department of Corrections (DOC). The Committee is also studying costs associated with the maintenance of court houses, jail facilities and justice centers. Additionally, there are problems with sentencing, particularly the oftentimes extremely lengthy sentences given to non-violent offenders. He added that the Committee would welcome any assistance from the Commission regarding bail/bond and pretrial release reform.

Follow-up: *During the 2018 legislative session this Committee proposed three bills, one of which eventually was signed into law.*

Department of Corrections population drivers

During the Sentencing in the Criminal Justice System Interim Study Committee meetings mentioned above, Representative Lee asked the Division of Criminal Justice (DCJ) to provide information about the factors driving the increase in the prison population. Kim English, Research Director for the Division of Criminal Justice, and Senior Analyst Linda Harrison, responded to the request. Following that presentation to the Interim Committee, Ms. English and Ms. Harrison, presented the same information, for educational purposes, to the full Commission during its August 2017 meeting.

Ms. English explained that researchers analyzed trends in arrests; filings by judicial district, crime type, gender and race/ethnicity; convictions; sentences and probation revocations to DOC; and aspects of the current DOC population, including the recent increase in women as a proportion of the total population. The full analysis included background and history of the Colorado prison population, factors influencing the increase in the population, current data trends, and the multiple reasons why the population will likely continue to increase. Ms. English concluded by noting that many factors are driving the increase in the prison population: increases in the number of arrests, filings, convictions, prison sentences, probation revocations, and the growth of the state population. Legislation also contributes to growth

as does an increase in sentencing to prison for drug possession crimes and an increase in motor vehicle thefts. Please see Appendix A for more detailed information including the full PowerPoint and supporting data document.

Disproportionate Minority Contact (DMC)/CLEAR Act follow-up

During Fiscal Year 2018, Commissioners received a supplemental presentation on the Community Law Enforcement Action Reporting Act, also referred to as the CLEAR Act. The CLEAR Act was the result of Senate Bill 15-185 that mandated the Division of Criminal Justice (DCJ) to annually analyze and report the distribution of race/ethnicity and gender at multiple decision points in the justice system process (arrest, filing, disposition, sentencing and revocation). During Fiscal Year 2017 Commissioners received the initial CLEAR Act presentation, and in Fiscal Year 2018, Kim English, Research Director for the Division of Criminal Justice, presented the second-year of CLEAR Act findings.

Ms. English reminded Commissioners that after the 2017 presentation they requested the analysis be disaggregated by judicial districts so that the information could be discussed by local criminal justice planners. That analysis was completed and the Office of Research and Statistics disseminated the reports to all of the (mostly larger) judicial districts that have a criminal justice planner and a criminal justice coordinating council. The reports were also distributed to all of the district attorneys, the state's public defenders, the County Sheriffs of Colorado (CSOC) and the Colorado Association of Chiefs of Police.

Ms. English also explained that two important differences were made between the analyses undertaken in the first and second years of the CLEAR reporting mandate. First, to improve upon the accuracy of the race/ethnicity designation in court data, court cases were matched to the Colorado Bureau of Investigation's National Incident Based Reporting System (NIBRS) arrest data, which contains both race and ethnicity. Second, multivariate

analyses were conducted in the statewide analysis and for the larger judicial districts to better control statistically for items such as prior cases, concurrent cases and felony crime category and felony conviction level. Nevertheless, findings from the second year were similar to that of the first year and overall, the analyses revealed the following:

- Blacks were more likely than Whites and Hispanics to be arrested,
- Blacks and Hispanics, both juveniles and adults, were less likely than Whites to receive a deferred judgment, and
- Blacks and Hispanics were more likely compare to Whites to receive a prison sentence.

The 22 individual reports prepared for each judicial district, plus the statewide report, are available at colorado.gov/pacific/dcj-ors/race-and-ethnicity-decision-points-judicial-districts-2017 and a copy of the CLEAR Act presentation can be found in Appendix B.

Brain injury screening and justice-involved individuals

In October 2017, Commissioners heard a presentation on brain injury screening for justice involved individuals. Judy Dettmer from the MINDSOURCE Brain Injury Network explained that the screening program operates on a federal grant and is housed in the Department of Human Services. Target sites for the program include jails in Boulder, Denver and Larimer counties along with Veterans Courts, drug courts, probation and the Division of Youth Services.

The program accomplishes three primary goals: screening for both lifetime history and neuropsychological brain injury within the criminal justice setting, referring individuals who are screened positive for brain injury to case management and education consultation (for youths), and building the capacity of criminal justice personnel to better understand justice-involved individuals who have a brain injury.

Program findings show prevalence rates of Traumatic Brain Injury (TBI) in criminal justice settings are much higher compared to the general population and many of these individuals have sustained moderate to severe brain injuries. Additionally, co-occurring TBI and behavioral health conditions are much higher for justice-involved individuals than in the general population. There is also a lack of capacity for community providers to conduct neuropsychological screening and, while data is available on the success rate of screenings, both long-term treatment and recidivism measures will take more time. Ms. Dettmer concluded her presentation by asking the Commission to consider best practice policy and training recommendations regarding TBI, and to explore ways to help create funding streams to support both screening and case management services.

District attorney diversion programs

Commissioners explored issues surrounding adult and juvenile diversion programs during several meetings in Fiscal Year 2018 as they were determining future areas of work. Those discussions prompted the Commission's two district attorney representatives, Peter Weir and Dave Young, along with the Colorado District Attorneys' Council (CDAC), to provide a presentation to Commissioners describing the current district attorney diversion programs around the state.

Tom Raynes, the Executive Director of CDAC, led the discussion which included both handouts and a PowerPoint presentation. Michael Rourke, the District Attorney from the 19th Judicial District, also offered some perspectives on challenges and successes of diversion programs specific to rural jurisdictions.

During his presentation, Mr. Raynes asserted that there are ongoing efforts around the state to actively and aggressively explore alternatives to prosecutions and convictions, and that there are many long-standing, locally funded, effective juvenile and adult programs that minimize a person's contact with the system or eliminate it altogether. Mr. Raynes presented data on the number of

available programs, the funding for programs, the number of people served and resulting recidivism rates. Mr. Raynes also noted that judicial districts vary greatly in size, demographics, and available resources, and while a jurisdiction may not have a formal diversion program, diversion practices are often still taking place.

Mr. Weir and Mr. Young also described the diversion programs in their respective districts, outlining participation and success rates. They both agreed with Mr. Raynes that impediments to implementing diversion programs in all jurisdictions include not only the expense of operating the programs from a district attorney's perspective, but also the need for significant community resources which are not available everywhere, particularly in smaller and more rural jurisdictions.

Bond reform impact

The majority of the May 2018 meeting was dedicated to providing updates on two initiatives that were the result of work by the Commission, bond reform and parole board decision making.

In 2013, the Commission promoted bond reform by recommending a more evidence-based release decision making process, discouraging the use of bond schedules with money as the sole condition of release, and recognizing the need to expand pretrial services. These three concepts were incorporated into House Bill 13-1236 which was signed by the governor in May 2013.

Peg Flick, Senior Research Analyst with the Office of Research and Statistics in DCJ, provided a presentation that compared practices from the three years before the passage of the bond reform legislation to three years after legislation, to determine what changes had taken place. Results from the pre- and post- periods show:

- Statewide the use of PR (personal recognizance) bonds for felony cases increased from 12% to 21% (75% increase); PR bonds for misdemeanor cases increased from 16% to 27% (69% increase),

- The increased use of PR bonds varied widely across districts,
- Statewide FTA's (failure to appear) for felony cases increased from 16% to 25% for PR bonds (56% increase), and 17% to 21% for cash/surety bonds (23% increase),
- New filings while on bond increased for both cash/surety (18% to 19%) and PR (12% to 14%) bond but the increases were small,
- The percent of felony cases on PR bond **with drug charges** increased from 31% to 41% (32% increase),
- Cases with drug charges, compared to non-drug cases, failed to appear at a much higher rate (30% vs 18%).

Please see Appendix C for a complete copy of the 2013 Bond Reform Initiative analysis.

Parole board decision making

The second presentation during the May 2018 meeting was titled *Parole Board Decisions: FY2017 Release Guidelines Report*. Dr. Kevin Ford of the Office of Research and Statistics in DCJ provided the presentation and explained that the creation of parole release guidelines was the result of work by the Commission's Post-Incarceration Supervision Task Force in 2009 and 2010.

In creating parole release guidelines, the Task Force worked to ensure that the guidelines reflected evidence-based practices by prioritizing public safety and actuarially-determined risk, criminogenic needs, and offender readiness for parole. It was also important that the guidelines organize and streamline the information available to the parole board, promote consistency in parole decision making, and allow for systematically collecting data on parole decision making. Those Commission recommendations were included in House Bill 10-1374, Concerning Parole. Also included in the legislation was a requirement that the parole board and DCJ issue an annual report to the General

Assembly regarding the outcomes of decision by the Board. Mr. Ford's presentation summarized the 2017 Annual Report and included information about the development of the guidelines, the release decision factors, the structured decision matrix, and the Parole Board Release Guidelines Instrument. Mr. Ford's presentation also included the outcomes of release decisions made from Fiscal Year 2013 through Fiscal Year 2017 along with the degree of agreement between the Parole Board and the guidelines matrix. The full report can be found at colorado.gov/ccjj/ccjj-reports and a copy of the presentation can be found in Appendix D.

Age of delinquency and juvenile brain development

As part of an ongoing effort to educate Commissioners on the work of the individual task forces, the June 2017 Commission meeting featured a presentation on juvenile brain development, which has informed some of the work of the Age of Delinquency Task Force. Gianina Irlando, with the Office of the Independent Monitor in the City and County of Denver, and Audra Bishop, from the Children, Youth and Families Branch of the Department of Public Health and Environment, offered a presentation to the Commission that had previously been presented to the Age of Delinquency Task Force.

Ms. Irlando explained that the Independent Monitor's Office is an independent oversight organization for Denver's police and sheriff departments. The Office oversees internal affairs investigations and releases public reports, including outlining ways to improve the interactions between officers and youth on the street. Her portion of the presentation highlighted a program called *Bridging the Gap: Kids and Cops*, which teaches both law enforcement officers and youth how to positively interact with each other. An element of the program organizes dozens of stakeholder organizations to participate on an advisory board to engage community members in dialogue. The final piece of

the project includes implementation of community facilitator trainings which, among other things, contain the components of restorative justice, trauma awareness, and Mental Health First Aid® for youth. The facilitators are expected to deliver the curriculum in the community three to five times per year and there have been dozens of trainings in a 2½ year period reaching more than 1,000 youth. More information on *Bridging the Gap: Kids and Cops* can be found at kidsandcops@denvergov.org.

Ms. Irlando then introduced her colleague Audra Bishop, explaining that she has an extensive background in youth brain development. Prior to Ms. Bishop's current work at the Department of Public Health and Environment (for eight years), she also worked for 14 years in residential and juvenile justice settings. Ms. Bishop presented a PowerPoint on adolescent development and explained that when it comes to youth development, it is important to understand that failure will always be part of the equation, and that environmental factors, trauma and social determinants of health all impact youth behavior.

Judicial's Bail Blue Ribbon Commission

During Fiscal Year 2018 the Colorado Supreme Court established the Bail Blue Ribbon Commission to study issues similar to those under consideration by the Commission's Pretrial Release Task Force. Mindy Masias, chief of staff for the Judicial Branch, attended the June, 2018 Commission meeting and described the membership and charge of the Blue Ribbon Commission, adding that she and Judge Carlos Samour are the co-chairs of the group. Ms. Masias attended the Commission meeting in the spirit of collaboration and emphasized that one of the purposes of the Bail Blue Ribbon Commission is to work complementarily with the Commission. A goal for the Blue Ribbon Commission is to ensure that judges, court staff and probation staff stay abreast of any changes being contemplated by both the Pretrial Release Task Force and the Blue Ribbon Commission. Ms. Masias concluded by suggesting

Commissioners visit the Blue Ribbon Commission's homepage at https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Index.cfm.

Commission Work Plan for Fiscal Year 2018

The Commission typically holds a retreat every February to review operational practices, consider the Commission's annual goals and status of those goals, and to identify desired outcomes for the year ahead. However, Fiscal Year 2018 saw a departure from that norm due to the fact the Commission itself was statutorily slated to conclude its work altogether on June 30, 2018. As noted previously, a bill was brought forward by the Sentencing in the Criminal Justice System Interim Study Committee during the 2018 legislative session calling for the reauthorization of the Commission. Nevertheless, Commissioners agreed that until the outcomes of that bill were determined, the annual retreat and creation of a formalized work plan for Fiscal Year 2019 should be delayed.

The Commission did, however, discuss and identify one new work area and established an additional task force during Fiscal Year 2018. Two previous task forces, the Re-entry Task Force and the Juvenile Continuity of Care Task Force, both concluded work in summer 2017 creating the capacity to undertake the study of one additional topic. Time was dedicated in both the October and November 2017 meetings for Commissioners to revisit three study areas that were identified during the February 2017 retreat and that were not pursued due to capacity restraints, until the recent conclusion of the two aforementioned task forces. The three identified interest areas were sentencing clarification, the age of delinquency, and the issue of population drivers for the Department of Corrections. After extensive discussions in the October and November 2017 meetings, a vote was held and Commissioners determined that the next Commission area of study should be on the age of delinquency. With that

decision, work plans were formally in place for each of the Commission's Task Forces and Committees for Fiscal Year 2018:

- **Mental Health/Point of Contact through Jail Release Task Force:** This Task Force has produced extensive work in the areas of early diversion, the competency system in Colorado, and mental health training for law enforcement. During Fiscal Year 2018 the Task Force shifted its focus to the provision of mental health services **in** jail and alternative placement options for individuals in custody with severe mental illness who require services beyond the capacity of the jail to manage.
- **Pretrial Release Task Force:** This Task Force focused its work in Fiscal Year 2018 on the following three areas: development of recommendations regarding the use of pretrial services and risk assessment tools on a statewide basis, exploring the possible development of a pretrial detention approach which could reduce the reliance on cash bonds, and examining opportunities to improve implementation of 2013 statutory changes.
- **Age of Delinquency Task Force:** Commissioners called for the development of a task force to address the following topics: appropriateness of juvenile placements and treatment based

on considerations of brain development, chronological age, maturity, trauma history and potential traumatic impacts; review of the appropriateness of assessments currently in use; and Youthful Offender System outcomes following recent eligibility changes. This Task Force was seated in February 2018.

The details of this work plan are discussed below.

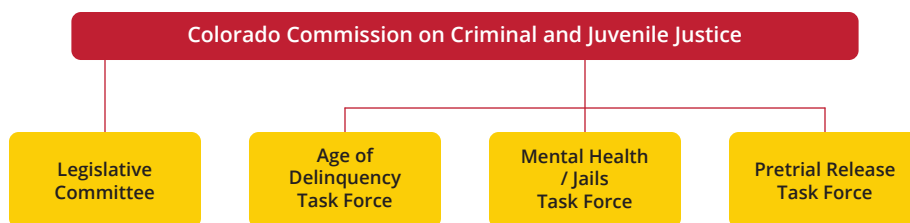
Commission Task Forces and Committees¹

The Commission's work plan for Fiscal Year 2018 included a focus on the areas of study described above. To this end, Commission work during Fiscal Year 2018 was undertaken by the following three groups:

- Mental Health/Point of Contact Through Jail Release Task Force (Joe Pelle, chair)
- Pretrial Release Task Force (Stan Hilkey, chair)
- Age of Delinquency Task Force (Jessica Jones and Joe Thome, co-chairs)

Figure 3.1 reflects the organization and scope of work undertaken by the Commission, Task Forces and Committees.

Figure 3.1. Commission, task force and committee organizational chart



¹ Task forces are long term working groups with multiple objectives; Committees are typically short term (usually meeting for less than one year) with focused objectives.

Mental Health/Point of Contact through Jail Release Task Force

This Task Force, also known as the Mental Health/Jails Task Force, was seated in June 2016 with the charge of exploring ways to divert individuals with mental and behavioral health problems away from the criminal justice system, while recognizing that some individuals with acute mental and/or behavioral health problems will need to be incarcerated and so effective response options should be available. Commission member and Boulder County Sheriff Joe Pelle is the Chair of the Task Force.

In Fiscal Year 2017, the Task Force focused its efforts on identifying opportunities to refer individuals to services early in the (pre-jail and jail) process in order to avoid criminal justice processing. That work resulted in four recommendations presented to the Commission and detailed in last year's report. During the course of Fiscal Year 2018, the Task Force explored opportunities to divert individuals **in** the criminal justice system from jail. This work resulted in one recommendation that was presented to the Commission as follows:

- **FY18-MH01** recommended proposing the development of pilot programs for pre-file mental health diversion in judicial districts where the option or resources for the option may be lacking.

This proposal was approved by the Commission in January 2018 and a bill was passed during the 2018 Legislative Session consistent with the content of the recommendation. Senate Bill 18-249 called for establishing alternative programs to divert individuals with a mental health condition to community treatment and was signed into law by Governor Hickenlooper. Details of the recommendation can be found in Section 4.

The third and final area of work for the Task Force is to study the provision of mental health services in jails and explore alternative placement options for individuals in custody with severe mental illness. The goal is to reduce jail length stay for individuals

struggling with significant behavioral health issues that exceed jail resources to safely manage and that adversely impact individual's ability to rapidly process through the justice system. The intended population includes individuals booked into Colorado jails on misdemeanor or felony charges, who are ineligible for diversion because of incurring more serious charges, and who have acute behavioral health needs that exceed jail resources, and who require an appropriate setting for stabilization and treatment. At the writing of this report, the Task Force is exploring a concept in which local jails and regional hospitals or acute care facilities enter into partnerships to provide necessary health services to jail detainees who have acute needs that are beyond the jails' ability to address. The Task Force hopes to have a final recommendation on this topic prepared for the Commission in early 2019 and will likely conclude at that time. The specifics of that proposal and the remaining work will be detailed in the Fiscal Year 2019 report.

Pretrial Release Task Force

The Pretrial Release Task Force was seated by the Commission in June 2017 and was charged with considering implementation efforts associated with 2013 legislation regarding bail reform, and to produce recommendations regarding potential improvement to bail practices and pretrial services in light of emerging best practices and national trends.

The Task Force is chaired by Commission Chair Stan Hilkey, and at the end of Fiscal Year 2018 the group had concluded its first full year of work. During that year the Task Force engaged in an extensive review of Colorado data and information concerning the use of personal recognizance bonds, the existence of pretrial services, and the use of the CPAT (Colorado Pretrial Assessment Tool) risk assessment tool. The Task Force also examined work taking place in other jurisdictions concerning bail/bond reform.

The Task Force identified three areas of focus and in Fiscal Year 2018 created working groups to address the following:

1. Develop recommendations regarding the use of pretrial services and risk assessment tools on a statewide basis,
2. Explore the possible development of a pretrial detention approach which could reduce the reliance on cash bonds, and
3. Examine opportunities to improve implementation of 2013 statutory changes.

At the writing of this report all three working groups were preparing recommendations and the outcomes of this activity will be reported in the 2019 annual report.

Age of Delinquency Task Force

The Age of Delinquency Task Force was seated in February 2018 and is co-chaired by Commissioners Jessica Jones and Joe Thome. The Task Force was created to consider the current age of delinquency (10-17 year olds) and explore research and emerging evidence concerning the appropriate systems, treatment and placement options for these youth in light of issues such as age, brain development, maturity and risk to the public.

During the initial meetings, Task Force members received several presentations from subject matter experts who offered pertinent data and information about juveniles and developmental considerations. With that material in mind the group agreed on the following three areas of study:

1. Examining intervention options, treatment services, and alternatives for 10-12 year olds, which currently includes placement in the juvenile justice system,
2. Exploring options and approaches regarding the management of “transitional” populations (18-21 year olds), and
3. Reviewing repercussions associated with “mingling” younger (10-12 year olds) and older juveniles.

The Task Force started its work by focusing on the first study area and, at the writing of this

report, is specifically exploring the following: opportunities to expand the availability and use of Juvenile Assessment Centers, encouraging meaningful collaborative interactions among key system players, promoting restorative justice approaches where appropriate, and examining alternative responses to less serious offenses by this population. An update on the work of this Task Force and any resulting recommendations will be available in the Fiscal Year 2019 report.

Juvenile Continuity of Care Task Force

The Juvenile Continuity of Care Task Force was seated in June 2016 and charged with improving the case management process for juveniles known as “crossover youth” who are involved in multiple systems (probation, child welfare, Division of Youth Corrections). This Task Force completed the entirety of its work during Fiscal Year 2017 and produced three recommendations focusing methods to improve the outcomes for dual status youth, as follows:

- **FY17-JCC01** called for the development of a case plan to formally recognize, identify, and address the needs of crossover youth. Specifically, this recommendation requires each judicial district’s Juvenile Services Planning Committee to devise a crossover plan for the identification and notification of cases involving crossover youth.
- **FY17-JCC02** authorized the use of existing marijuana tax revenue (distributed to Senate Bill 1991-94 programs, each of which has a Juvenile Services Planning Committee) to allow the funds to be used to support the development and implementation of local crossover youth plans and services.
- **FY17-JCC03** encouraged the Colorado Department of Human Services’ Division of Child Welfare to promulgate rules that provide guidance, regarding permanency planning for crossover youth, to county departments of social/human services under Social Service Rules Volume 7.

These three recommendations were produced and approved by the Task Force *outside* the time period of this report; however, the Commission did not approve the three proposals until July 2017, which falls *inside* the time period of this report. Therefore, details of all three recommendations are provided in Section 4 of this report. It is also important to note that Recommendations FY17-JCC01 and FY17-JCC02 became Senate Bill 18-154, which passed the legislature and was signed into law by Governor Hickenlooper. With the completion and approval of these recommendations, the Juvenile Continuity of Care Task Force concluded its work in the summer of 2017.

Re-entry Task Force

The Re-entry Task Force was established in April 2015 and, like the Juvenile Continuity of Care Task Force, finalized its work in summer 2017, outside the timeframe for this report. The Re-entry Task Force produced seven final recommendations (FY17-RE01 through FY17-RE07), three of which were approved by the Commission outside the timeframe for this report and three of which were approved by the Commission inside the timeframe of this report. Recommendation FY17-RE01 was sponsored as House Bill 18-1344 and Recommendation FY17-RE03 became House Bill 18-1418, with both pieces of legislation eventually signed into law. The Task Force recommendations were concentrated in the areas of housing and the collateral consequences of a conviction, as follows:

- **FY17-RE01** updates the orders of collateral relief in statute to allow eligible individuals to request an order of collateral relief after the time of sentencing, eliminate duplicative statutory language regarding orders of collateral relief, and create an order of collateral relief in the Children's Code.
- **FY17-RE02** calls for the prevention of adverse private employment actions on the basis of non-conviction, sealed, and expunged records.

- **FY17-RE03** recommends revising statutory guidance on state licensure and employment decisions through a variety of avenues including preventing consideration of arrests that did not result in a conviction and preventing consideration of convictions that have been pardoned, sealed, or expunged.
- **FY17-RE04** encourages the promotion of housing opportunities for people with non-convictions, sealed, and expunged records.
- **FY17-RE05** provides statutory guidance on public housing decisions.
- **FY17-RE07** recommends continuing or expanding financial support of Colorado's adult pretrial diversion programs.

Details of the three recommendations approved by the Commission within the timeframe for this report (FY17-RE04, RE05 and RE07) can be found in Section 4. Details of the three recommendations approved outside the timeframe for this report (FY17-RE01, RE02 and RE03) can be found in the Commission's Fiscal Year 2017 report. A seventh recommendation, FY17-RE06, which limited the distribution of records concerning arrests that did not result in charges being filed, did not receive Commission approval.

Typically, recommendations that are approved by the Commission and require statutory modifications continue through the legislative process the same year they are generated, however, occasionally, a legislative recommendation may not receive sponsorship that same year and may instead be revisited by a legislator and sponsored in a subsequent year(s). This was the case in Fiscal Year 2018 with the passage of two pieces of legislation. First, House Bill 18-1040 called for the Department of Corrections to institute an incentive plan to contract for more mental health professionals in difficult-to-serve geographic areas. While this bill was not initiated by the Commission in Fiscal Year 2018, it did address a previous Commission recommendation, FY12-SO10, produced by the

Sex Offense/Offender Task Force in Fiscal Year 2011. Similarly, House Bill 18-1251 called for the Department of Corrections to improve the efficiency of community corrections placements. This piece of legislation was based on a recommendation produced by the Community Corrections Task Force (FY17-CC02) which was approved by the Commission in 2016.

One final piece of legislation, House Bill 18-1287, extended the repeal date of the Commission and, as mentioned previously, was the result of a recommendation made by the General Assembly's Sentencing in the Criminal Justice System Interim Study Committee. The Commission also produced and approved a recommendation to continue its work and extend the repeal date beyond the statutory termination date of June 30, 2018. The full text of that recommendation can be found in Section 4.

Commission Renewal

The process of reauthorizing the Commission during Fiscal Year 2018 required a significant amount of attention by the Commission, Commission leadership and Commission staff. Previous legislation, Senate Bill 13-007, extended the repeal date of the Commission to July 1, 2018. House Bill 18-1287 extended that repeal date to July 1, 2023 and included a change in membership. Four additional positions were added, increasing the Commission to 30 members. These include a representative of a nonprofit organization

representing municipalities, a position who is a crime victim, a victim's advocate not employed by a law enforcement agency, and a person with prior involvement in the criminal justice system. Additionally, the bill added a limitation on Commission member service, and a requirement that in even-numbered years the Commission request a letter from the Governor and the General Assembly regarding desired topics of study.

Summary

This section reviewed the work of the Commission and its task forces from July 2017 through June 2018. During that time, the Commission continued the work of previously established task forces (Mental Health/Jails and Pretrial Release) and created one new area of work, the Age of Delinquency Task Force. The Juvenile Continuity of Care Task Force and the Re-entry Task Force both concluded work **before** the start of Fiscal Year 2018, however, recommendations produced by both groups are included here (and detailed in Section 4) as they were approved by the Commission during the timeframe for this report. The Commission benefitted from various educational presentations, and it approved eight recommendations in Fiscal Year 2018. The General Assembly passed seven pieces of legislation that either originated as Commission recommendations or contained elements of Commission recommendations. Additional information and details of Fiscal Year 2018 recommendations are available in Section 4.



4

Recommendations and outcomes

This section presents the eight recommendations approved by the Commission in Fiscal Year 2018. Not all of the Commission's recommendations are legislative in nature, and recommendations that do become bills are not always signed into law. Recommendations from three task forces are described below in the following order: Mental Health/Point of Contact through Jail Release, Juvenile Continuity of Care, and Re-entry. As mentioned previously, the Juvenile Continuity of Care and Re-entry recommendations were originally generated in Fiscal Year 2017, but are included in this report as they were **approved** by Commissioners during Fiscal Year 2018. One additional recommendation, FY18-CCJJ01, was produced by the Commission, not a task force.

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, "FY18"), letters indicating the task force from which the recommendation originated (e.g., Mental Health/ Jails Task Force by a "MH", or Juvenile Continuity of Care by "JCC"), and a sequence number.
- Some recommendations may appear to have been skipped or missing, but this is not the case. If a recommendation was numbered and presented to the Commission, but not approved, it is not included in this report.
- Recommendations may include additions to existing statutory or rule language as indicated by CAPITAL letters or deletions that are represented as ~~strikethroughs~~.

Mental health/point of contact through jail release recommendations

FY18-MH01 Develop pre-file mental health diversion pilot programs

This recommendation proposes the development of pilot programs for pre-file mental health diversion in judicial districts where the option or resources for the option may be lacking. The pilot will:

- Develop post-arrest, pre-file diversion programs specifically for individuals experiencing mental health disorders and who meet specific criteria and are determined able to benefit from diversion to treatment rather than being processed through the criminal justice system.
- Create pre-file mental health diversion programs that utilize a stakeholder-created, reviewed, and approved model.

In addition, local officials should promote the utilization of Adult Pretrial Diversion Programs and funding as created by 18-1.3-101, C.R.S.

Discussion

Despite mounting efforts to increase pre-arrest diversion for individuals with mental health disorders, some will continue to be charged and booked before their mental health concerns are clearly identified. Although mental health courts are operating across our state, they are a costly process and require defendants to enter a plea, creating long term difficulties in finding housing, employment, and rejoining their communities upon release.

Colorado has experience with pre-trial diversion programs through collaboration with community mental health providers, with examples both historically and currently in Denver's municipal court, and across the state.

To promote public safety, good outcomes for all citizens, and efficiency in our government and judicial system, promising models must be pursued to divert individuals into treatment at the earliest possible discretionary point. The Judicial Department currently oversees and administers programs within District Attorney's office, funded by 18-1.3.101, C.R.S., to create diversion programs. The Department will benefit from pursuing partners for and promoting the utilization of the model proposed in this recommendation.

Proposed statutory language

No legislative action is necessary to implement these programs, although the Colorado Judicial Branch may benefit from a supplemental budget request to add staff to oversee, track, and evaluate this program.

Please see Appendix E for the full recommendation details.

Juvenile continuity of care recommendations

FY17-JCC01 Create a plan to formally recognize and address the needs of *crossover youth*

Define *crossover youth*² and *crossover plan* in statute and require each local Juvenile Services Planning Committee, established in C.R.S. 19-2-211, to devise a crossover plan for the identification and notification of cases involving crossover youth.

- I. Add crossover youth definitions to 19-1-103 C.R.S.
- II. Add a new section to 19-2-211 C.R.S., numbered 19-2-211.5 C.R.S.
 - a. To require the Juvenile Service Planning Committee in each judicial district to adopt a plan for identifying and notifying the human/social services representatives, probation representatives, S.B. 94 coordinators, juvenile court representatives, public defenders, district attorneys, parents and guardians ad litem of a youth 's crossover status.
- III. Add language to 24-1.9-102 (1)(e) C.R.S., (Collaborative Management Statute)
 - a. To explicitly include and permit local Collaborative Management Programs to establish memorandums of understanding with the local Juvenile Services Planning Committees for the coordination of services for crossover youth.
- IV. Add a new section to Title 19 Article 2 C.R.S.
 - a. To require the court to consider a youth's crossover status at all stages of the proceedings (i.e., pre- and post-adjudication) and not be used against the youth in a manner contrary to the principles informing the crossover youth practice model.

Discussion Colorado law does not explicitly define crossover youth nor does it require the identification, notification and coordinated case management of crossover youth. This recommendation is a first step to better serving crossover youth in a more effective and efficient manner and in a way that serves the best interests of the youth and the community. The purposes of this recommendation are as follows:

- Formalize collaboration specific to crossover youth;

² Crossover youth, sometimes referred to as "dually involved" or "multisystem" youth, are youth who are involved in both the child welfare and juvenile justice systems. In Colorado, it is estimated that upwards of 80% of the youth committed to the Division of Youth Services have a prior history of child welfare involvement. It is further estimated that 60% have experienced prior out-of-home care placement through the child welfare system. Research has found these youths to be at higher risk for poor developmental outcomes (see Haight, et.al. (2016) for a review) and to have higher recidivism rates compared to those involved only in the juvenile justice system (Huang, et al. (2015). Crossover youth are described as higher risk by juvenile justice decision-makers and receive harsher dispositions than their non-crossover counterparts (Ryan, Hertz, Hernandez, & Marshall, 2017; Morris & Freundlich, 2005; Conger & Ross, 2001; Jonson-Reid & Barth, 2000). Research reflects importance of designing comprehensive, integrated approaches for improving the outcomes of crossover youth (e.g., Cusick, Goerge, & Bell, 2009; Munson & Freundlich, 2005). Such approaches typically involve multisystem collaborations, minimally between child welfare and juvenile justice professionals, but also law enforcement, education, behavioral health, and court personnel (Wiig & Tuell, 2004; Siegel & Lord, 2004; Halemba & Lord 2005; American Bar Association, 2008; Herz & Ryan, 2008; Nash & Bilchik, 2009). Without integrated and comprehensive efforts—including coordinated case assignment, joint assessment processes, coordinated case plans and coordinated supervision—crossover youth are less likely to receive the appropriate services and placements they need to improve their outcomes in both the short- and long-term (Widom & Maxfield, 2001; Cusick, Goerge, & Bell, 2009).

- *Facilitate early identification and information sharing between agencies;*
- *Ensure communication and collaboration with existing initiatives including the Collaborative Management Program;*
- *Facilitate consideration of least restrictive placement based on individual needs and protection of the public;*
- *Facilitate the successful discharge from the juvenile justice system as early as possible;*
- *Reduce recidivism;*
- *Encourage a coordinated plan with engagement from the youth and family or natural supports; and*
- *Contribute the maximum use of community resources.*

National studies have shown that dual status youth, or those who have come into contact with both the child welfare and juvenile justice systems, have higher rates of complex trauma histories than the general youth population resulting in behavior problems which lead to juvenile justice system involvement. They are also more likely to be detained, detained for longer periods of time, and have histories of out-of-home placements with the child welfare system. The level of services required to address their complex trauma needs as well as the behavior which has led to juvenile justice system involvement is costly and disruptive and results in further traumatic experiences due to multiple changes in educational settings, placements and services. In Colorado, it has been estimated that upwards of 80% of the youth committed to the Division of Youth Services have a prior history of child welfare involvement. It is further estimated that 60% have experienced prior out-of-home care placement through the child welfare system.

To address the complex needs of dual status youth, national experts identified the following four key components which must be in place for effective reform: 1) Routine identification of Dual Status Youth; 2) Using validated screening and assessment tools; 3) Coordination in case planning and management; and 4) Engaging youth and families in decision-making processes that impact them.³

Proposed statutory language

- **19-1-103 C.R.S. – Definitions:**
 - **DUALLY IDENTIFIED CROSSOVER YOUTH:** YOUTH WHO ARE CURRENTLY INVOLVED WITH THE JUVENILE JUSTICE SYSTEM AND THE CHILD WELFARE SYSTEM OR HAVE A HISTORY IN THE CHILD WELFARE SYSTEM.
 - **CROSSOVER YOUTH PLAN:** THE PORTION OF THE ANNUAL PLAN AS SET FORTH IN 19-2-211 C.R.S. DEVISED IN EACH JUDICIAL DISTRICT BY THE JUVENILE SERVICES PLANNING COMMITTEE THAT OUTLINES IDENTIFICATION AND NOTIFICATION OF CROSSOVER YOUTH AS DESCRIBED IN 19-2-211.5 C.R.S.

³ See the report at the Robert F. Kennedy Children's Action Corps: rfknrcjj.org/wp-content/uploads/2014/04/Dual-Status-Youth-Initiative-Report-First-Edition-Early-Gains-and-Lessons-Learned.pdf.

- **19-2-211 C.R.S. – Local juvenile services planning committee – creation – duties: NO CHANGES...** If all of the boards of commissioners of each county or the city council of each city and county in a judicial district agree, there shall be created in the judicial district a local juvenile services planning committee that shall be appointed by the chief judge of the judicial district or, for the second judicial district, the presiding judge of the Denver juvenile court from persons recommended by the boards of commissioners of each county or the city council of each city and county within the judicial district. The committee, if practicable, shall include, but need not be limited to, a representative from the county department of social services, a local school district, a local law enforcement agency, a local probation department, the division of youth corrections, private citizens, the district attorney's office, and the public defender's office and a community mental health representative and a representative of the concerns of municipalities. The committee, if created, shall meet as necessary to develop a plan for the allocation of resources for local juvenile services within the judicial district for the fiscal year. The committee is strongly encouraged to consider programs with restorative justice components when developing the plan. The plan shall be approved by the department of human services. A local juvenile services planning committee may be consolidated with other local advisory boards pursuant to section 24-1.7-103 C.R.S.
- **19-2-211.5 C.R.S. – IDENTIFICATION AND NOTIFICATION OF CROSSOVER YOUTH (ADD .5 to Section 19-2-211 C.R.S. – Local Juvenile Services Planning Committee – creation – duties)**
 - AS SET FORTH IN 19-2-211 C.R.S., THE PLAN SHALL INCLUDE THE MANAGEMENT OF CROSSOVER YOUTH, AS DEFINED IN 19-1-103 C.R.S. THE PLAN SHALL OUTLINE A PROCESS FOR THE IDENTIFICATION AND THE NOTIFICATION OF THE YOUTH'S CROSSOVER STATUS TO THE CHILD WELFARE SYSTEM AND OTHER PARTIES NOTED BELOW. THE PLAN SHALL INCLUDE THE EFFECTIVE COORDINATION OF CASE MANAGEMENT AND SERVICES, AND THE ENGAGEMENT OF CROSSOVER YOUTH AND THEIR CAREGIVERS. THE PLAN SHALL CONSIDER OTHER COLLABORATIVE INITIATIVES, INCLUDING BUT NOT LIMITED TO THE COLLABORATIVE MANAGEMENT PROGRAM, PER SECTION 24-1.9-102. THE PLAN SHALL CONTAIN A DESCRIPTION AND PROCESS TO INCLUDE THE FOLLOWING:
 - IDENTIFICATION: A PROCESS FOR THE IDENTIFICATION OF CROSSOVER YOUTH, AS DEFINED IN 19-1-103, AT THE EARLIEST REASONABLE POINT OF CONTACT
 - A METHOD FOR COLLABORATING AND EXCHANGING INFORMATION WITH OTHER JUDICIAL DISTRICTS
 - NOTIFICATION: A PROCESS FOR PROMPTLY COMMUNICATING INFORMATION ABOUT THE YOUTH'S CROSSOVER STATUS BETWEEN THE CHILD WELFARE AND JUVENILE JUSTICE SYSTEMS AND TO NOTIFY EACH OTHER OF NEW INVOLVEMENT IN RESPECTIVE SYSTEMS OR INFORMATION THAT MAY AID IN THE IDENTIFICATION OF DUAL STATUS YOUTH. WITHIN THE PLAN THE FOLLOWING SHOULD BE NOTIFIED IF APPLICABLE: PUBLIC DEFENDERS, DISTRICT ATTORNEYS, S.B.94 COORDINATORS, HUMAN SERVICES REPRESENTATIVES, PROBATION

REPRESENTATIVES, JUVENILE COURT REPRESENTATIVES, PARENTS AND GUARDIANS AD LITEM.

- APPROPRIATE PLACEMENT: A PROCESS FOR IDENTIFYING THE LEAST RESTRICTIVE APPROPRIATE PLACEMENT.
 - SHARING AND GATHERING INFORMATION: A PROCESS FOR SHARING AND GATHERING INFORMATION IN ACCORDANCE WITH ALL APPLICABLE LAW AND RULES.
 - COORDINATION OF CASE MANAGEMENT: A PROCESS FOR THE DEVELOPMENT OF A SINGLE CASE MANAGEMENT PLAN AND IDENTIFYING THE LEAD AGENCY FOR CASE MANAGEMENT PURPOSES.
 - ASSESSMENTS: A PROCESS THAT FACILITATES THE SHARING OF ASSESSMENTS AND CASE PLANNING INFORMATION.
 - MULTI-DISCIPLINARY STAFFING: A PROCESS FOR MULTI- DISCIPLINARY GROUP OF PROFESSIONALS TO CONSIDER DECISIONS THAT INCLUDES BUT IS NOT LIMITED TO: YOUTH AND COMMUNITY SAFETY, PLACEMENT, PROVISION OF NEEDED SERVICES, ALTERNATIVE TO DETENTION AND COMMITMENT, PROBATION, PAROLE, PERMANENCY, EDUCATION STABILITY AND CASE CLOSURE.
 - SECURE DETENTION: CROSSOVER YOUTH IN SECURE DETENTION WHO ARE DEEMED ELIGIBLE FOR RELEASE BY THE COURT SHALL BE PLACED IN A LESS RESTRICTIVE SETTING WHENEVER POSSIBLE TO REDUCE DISPARITY BETWEEN CROSSOVER AND NON-CROSSOVER YOUTH IN DETENTION.
- **24-1.9-102 (1) (e) C.R.S. – Memorandum of understanding – local-level interagency oversight groups – individualized service and support teams – coordination of services for children and families – requirement – waiver.**
 - Nothing shall preclude the agencies specified in paragraph (a) of this subsection (1) from including parties in addition to the agencies specified in paragraph (a) of this subsection (1) in the memorandum of understanding developed for purposes of this section AND MAY INCLUDE THE JUVENILE SERVICES PLANNING COMMITTEE AS DEFINED IN SECTION 19-2-211 AND SECTION 19-2-211.5.

FY17-JCC02 Utilize existing funds for local crossover youth plans and services

Authorize the utilization of existing marijuana tax revenue distributed to Senate Bill 1991-94 entities to allow these funds to be used to support the development and implementation of local crossover youth plans and services.

Discussion

Crossover youth⁴ are particularly vulnerable to negative outcomes, including recidivism. Specifically, they tend to have significant educational problems, high rates of placement changes, and high rates of substance abuse and mental health problems; when they enter the juvenile justice system, they are more likely to stay longer and penetrate deeper into the system than their delinquent-only counterparts (see Footnote 2). To address these special needs, it is necessary to expand resources available to local jurisdictions for the purpose of providing effective services to crossover youth.

Currently, funding is provided to the Division of Youth Services for services and activities as outlined in Senate Bill 1991-94.⁵ Additionally, Senate Bill 2014-215 (C.R.S. 12-43.3-501) provides funds to serve adolescents with substance abuse problems. However, there are restrictions on how these funds may be used (services must address marijuana and treatment), and available funds are not always completely spent by local jurisdictions.⁶

Because crossover youth are at an elevated risk for substance use and abuse, this recommendation expands the use of these funds to serve this population. Although the current purpose of SB 2014-215 includes providing support for efforts outlined in SB 1991-94, this proposal would allow the Juvenile Services Planning Committees (JSPCs) to use these funds to assist in the development and implementation of the crossover youth case plans to be developed pursuant to C.R.S. 19-2-211.5, including specialized services that benefit the crossover youth population.

Further, the expanded use of these funds would allow local JSPCs to request training and technical assistance from the Colorado Department of Human Services/Office of Children, Youth and Families, in developing and implementing their crossover youth plans.

⁴ Crossover youth, sometimes referred to as “dually involved” or “multisystem” youth, are youth who are involved in both the child welfare and juvenile justice systems. In Colorado, Division of Youth Services researchers found that 25% of the detention population is waiting for a Department of Human Services decision or action, and that these youths stay in detention, on average, nearly twice the duration of non-DHS youth. Research has found these youths to be at higher risk for poor developmental outcomes (see Haight, et.al. (2016) for a review) and to have higher recidivism rates compared to those involved only in the juvenile justice system (Huang, et al. (2015)). Crossover youth are described as higher risk by juvenile justice decision-makers and receive harsher dispositions than their non-crossover counterparts (Ryan, Hertz, Hernandez, & Marshall, 2017; Morris & Freundlich, 2005; Conger & Ross, 2001; Jonson-Reid & Barth, 2000). Research reflects importance of designing comprehensive, integrated approaches for improving the outcomes of crossover youth (e.g., Cusick, Goerge, & Bell, 2009; Munson & Freundlich, 2005). Such approaches typically involve multisystem collaborations, minimally between child welfare and juvenile justice professionals, but also law enforcement, education, behavioral health, and court personnel (Wiig & Tuell, 2004; Siegel & Lord, 2004; Halemba & Lord, 2005; American Bar Association, 2008; Herz & Ryan, 2008; Nash & Bilchik, 2009). Without integrated and comprehensive efforts—including coordinated case assignment, joint assessment processes, coordinated case plans and coordinated supervision—crossover youth are less likely to receive the appropriate services and placements they need to improve their outcomes in both the short- and long-term (Widom & Maxfield, 2001; Cusick, Goerge, & Bell, 2009).

⁵ Senate Bill 1991-94 established the Juvenile Services Fund to provide resources to local jurisdictions to fund alternative to incarceration services described in local juvenile services plans developed by each jurisdiction. These plans are developed by each judicial district’s Juvenile Services Planning Committees (JSPCs).

⁶ Of the \$2M annual authorization, \$1.2M was allocated in FY2015, \$1.7M in FY2016, and \$1.4M as of June 5, 2017.

FY17-JCC03 Require permanency planning for *legally free* youth following a commitment to the Division of Youth Services

The Colorado Department of Human Services, Division of Child Welfare, should promulgate rules that provide guidance on *permanency planning*⁷ to county departments of social/human services under Social Service Rules Volume 7.⁸ These rules should provide guidance to counties in circumstances involving a *legally free*⁹ youth (where parental rights have been terminated and there is no legal guardianship) who is either returning to county custody after a period of DYS commitment or is projected to emancipate from the Division of Youth Services (DYS).

Discussion

Youth who age out of the foster care or justice systems often leave with few skills, minimal education, and inadequate preparation for living as productive, independent adults. To “age out” of the foster care system means youths are discharged to “self” rather than to a family they can count on and call their own. Many of these youth, without a permanent family or meaningful relationship connections, will suffer a variety of negative outcomes including poor health, unemployment, criminal involvement, mental health and substance abuse problems, and homelessness. Crossover youth, involved in both the juvenile justice and child welfare systems, are at especially high risk for the negative outcomes mentioned here.

The three goals of child welfare in the United States, according to the Department of Health and Human Services, Administration for Children and Families, are safety, permanency, and well-being. In Colorado, significant inconsistency exists across counties regarding efforts to ensure the safety, permanency, and well-being of youth who complete a DYS sentence. It is not uncommon for some counties to close a child welfare case when a crossover youth is sentenced to DYS, leaving these youths without permanency planning services and, consequently, significantly vulnerable to negative outcomes.

This recommendation seeks to ensure that crossover youth receive the case planning and services necessary to prepare them for successful independent living. Clear procedures and processes must be developed to ensure consistency across jurisdictions and continued efforts by county officials to establish legal permanency when these youth transition into and out of the juvenile justice system. The Annie E. Casey Foundation promotes the use of an integrated approach to youth permanency and preparation for adulthood to address the complex needs unique to adolescents in foster care. This excellent resource also applies to the experience of crossover youth.

⁷ Permanency for youth includes a permanent legal connection to a family, such as reuniting with birth parents, adoption, kinship care, or legal guardianship. Physical permanency is having a home or a place to be; relational permanency is having a relationship or connection with a caring adult (e.g., maternal and paternal kin, teachers, neighbors, former foster parents) (Mallon, 2011).

⁸ The majority of Colorado regulations affecting social services are included in the Code of Colorado Regulations under *CDHS: Social Service Rules, Volume 7*. See the Colorado Secretary of State CCR website at: sos.state.co.us/CCR/NumericalDeptList.do (Browse to CDHS: 1008, Rule 12 CCR 2509).

⁹ *Legally free* is a term applied to children and youth where parental rights have been terminated and there is no identified “second” family or legal guardianship.

Re-entry recommendations

FY17-RE04 Promote housing opportunities for people with non-conviction, sealed, and expunged records

Promote community safety and economic growth by:

- Preventing adverse housing action on the basis of arrests that did not result in conviction, or criminal justice records that have been sealed or expunged.
- Allowing prospective tenants denied housing due to a criminal history or credit record to obtain a copy of the record.
- Correcting a statutory omission regarding landlords' inquiry into sealed records.
- Enacting protections for landlords in civil cases.

Discussion *Obtaining housing is a lifelong challenge for those with a criminal record, and a significant hurdle facing individuals returning from incarceration.¹⁰ This is of widespread concern, as nearly one in three Americans of working age have some form of criminal record.¹¹ In Colorado alone, over 190,000 people were arrested in 2015,¹² and there are more than 1.5 million individuals in the state's criminal record database.¹³*

The inability of large numbers of people to obtain housing adversely affects the public's safety and welfare. On an individual level, stable housing is a key factor that enables people to avoid future arrests and incarceration.¹⁴ More broadly, the community as a whole is negatively impacted by restrictions that concentrate individuals in low-rent, distressed neighborhoods.¹⁵ Numerous studies have shown that the housing related consequences of a criminal record may disparately

¹⁰ U.S. Dept. of Housing & Urban Dev. (2016, April 4). *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions*. Washington, DC (see pp. 1-2 at portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf); *The Piton Foundation* (2007, Spring). Study portrays struggles people face after prison. *The Piton Perspective*. Denver, CO (at cdpsdocs.state.co.us/ccjj/Resources/Ref/PitonPerspective-Spr2007.pdf); Tran-Leung, M.C. (2015, February), *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. Chicago, IL: The Shriver Center (see pp. 1-3 at povertylaw.org/files/docs/WDMF-final.pdf); Maureen Cain, Policy Director, Colorado Criminal Defense Institute (Aug. 24, 2016), presentation to the CCJJ Collateral Consequences Working Group; and Richard Morales, Deputy Executive Dir., Latino Coalition for Community Leadership, (Aug. 10, 2016) presentation to the CCJJ Collateral Consequences Working Group.

¹¹ Bureau of Justice Statistics (2014, January), *Survey of State Criminal History Information Systems*, Washington, DC: U.S. Dept. of Justice (see Table 1 on p. 14 at ncjrs.gov/pdffiles1/bjs/grants/244563.pdf); and McGinty, J. C. (2015, Aug. 7), How many Americans have a police record?, *The Wall Street Journal* (at wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802).

¹² Colorado Bureau of Investigation, *Crime in Colorado 2015*, crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 1, 2017).

¹³ *Survey of State Criminal History*, *supra* note 2, at p. 14, Table 1.

¹⁴ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (Apr. 18, 2011); *Office of General Counsel Guidance*, *supra* note 1, at p. 1; and National Research Council. (2008). *Parole, Desistance from Crime, and Community Integration. Committee on Community Supervision and Desistance from Crime*. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press (see pp. 23-24 at cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf).

¹⁵ *Parole*, *supra* note 5, at p. 54-55; and Roberts, J. (2011). Why misdemeanors matter: Defining effective advocacy in the lower criminal courts. *U.C. Davis Law Review*, 45(2), 277-372 (see pp. 300-301 at lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2_Jenny_Roberts.pdf)

impact individuals and communities of color.¹⁶ It is thus necessary to ensure that Colorado's justice-involved population has an opportunity to obtain secure and affordable housing.

Many landlords regularly rely on criminal background checks as a means for screening rental applicants, and may refuse to rent to individuals with criminal records based on concerns about public safety or the perception that those individuals are less likely to meet rental obligations.¹⁷ A criminal history thus poses a significant barrier to finding quality rental housing in Colorado.¹⁸ Housing options may also be limited by inaccurate or incomplete criminal records from either public¹⁹ or private²⁰ record reporting services.

Colorado currently places no restrictions on a private landlord's ability to withhold or terminate housing based on an individual's criminal record.²¹ Landlords are prohibited from asking individuals to disclose sealed conviction records.²² The law currently has no mechanism, however, for enforcing that prohibition.²³ Landlords are not prohibited from asking individuals to disclose sealed records not relating to convictions.²⁴

Under federal law, however, a landlord's consideration of a tenant's criminal history may give rise to liability. Because criminal record exclusions can have a disparate impact based on race and national origin, they are regulated under the federal Fair Housing Act.²⁵ A housing

¹⁶ Carson, E. A. (2015, September). *Prisoners in 2014*. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics (reporting on p. 15 that as of December 31, 2014, black men were imprisoned in state and federal facilities at a rate of 2,724 per 100,000, Hispanic men were imprisoned at a rate of 1,091 per 100,000, and white men were imprisoned at a rate of 465 per 100,000; similar disparities exist for women) (at [bjs.gov/content/pub/pdf/p14.pdf](https://www.bjs.gov/content/pub/pdf/p14.pdf)); and *Office of General Counsel Guidance*, *supra* note 1, at p. 2.

¹⁷ Vallas, R. & Dietrich, S. (2014, December). *One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*. Washington, DC: Center for American Progress, (see p. 19 at cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf).

¹⁸ Enterprise Community Partners (2017, February). *Protecting Colorado's Renters: A Call for State & Local Policy Action* (at enterprisecommunity.org/download?fid=15091&nid=19246); and Chiriboga-Flor, A. & Williams, Z. (2016, September), *Warning Gentrification in Progress: Community Perspective on the Denver Metro Housing Crisis*, Denver, CO: 9to5 Colorado (see p. 8 at 9to5.org/wp-content/uploads/2016/09/HOUSING-REPORT-1.pdf).

¹⁹ Bureau of Justice Statistics (2015, December). *Survey of State Criminal History Information Systems—2014*, Washington, DC: U.S. Dept. of Justice (see p.2-3 and Table 1 on p. 14 at [ncjrs.gov/pdffiles1/bjs/grants/249799.pdf](https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf)) (noting the various states have different rates of reporting final dispositions for arrests, and that in Colorado 19% of arrests have associated dispositions).

²⁰ Elejalde-Ruiz, A. (2015, Oct. 29). \$13M penalty for background check errors that cost jobs, hurt reputations. *Chicago Tribune* (at [chicagotribune.com/business/ct-background-check-penalties-1030-biz-20151029-story.html](https://www.chicagotribune.com/business/ct-background-check-penalties-1030-biz-20151029-story.html)).

²¹ In Oregon, "a landlord may not consider a previous arrest of the applicant if the arrest did not result in a conviction" unless the arrest resulted in charges that have not been dismissed. Only certain types of convictions can be considered. Oregon Rev. Stat. § 90.303. Several municipalities have similar laws. Both Champaign and Urbana, Illinois, prohibit housing discrimination on the basis of an arrest record. Champaign, IL, Code Ch. 17, Art. V, § 17-71 (at municode.com/library/il/champaign/codes/code_of_ordinances?nodeId=MUCO_CH17HURI_ARTVDIHOCOSP); Urbana, IL Code Ch. 12, Art. III, §§ 12-37, 12-64 (at municode.com/library/il/urbana/codes/code_of_ordinances?nodeId=COOR_CH12HURI_ARTIIIDI); Newark, New Jersey prohibits landlords and real estate brokers from inquiring about or taking adverse action on the basis of a non-pending arrest that did not lead to conviction, and records that have been erased or expunged. City of Newark, NJ, (2012, September), Legislation File #12-1630, Version 1 (at newark.legistar.com/LegislationDetail.aspx?ID=1159554&GUID=6E9D1D83-C8D7-4671-931F-EE7C8B2F33FD&FullText=1, last visited May 23, 2017); San Francisco, California, does not permit affordable housing providers to consider most arrests that did not lead to a conviction, convictions that have been dismissed or expunged, or convictions more than seven years old. San Francisco, CA, Police Code, Article 49, § 4906 (at sf-hrc.org/sites/default/files/ARTICLE%2049_%20Final.pdf); Seattle, Washington, has passed a resolution recommending that landlords not exclude residents on the basis of arrests not resulting in convictions. City of Seattle, Office of the City Clerk (2016, June), Resolution 31669, Version 3 at seattle.legistar.com/LegislationDetail.aspx?ID=2737445&GUID=4E0573F5-8990-47D2-BE8D-85BE81C1E83B (last visited May 23, 2017).

²² 24-72-703(4)(d)(I), C.R.S. 2016.

²³ Cf. § 24-72-309, C.R.S. 2016 (before Colorado's record sealing statutes were moved to part 7 of chapter 72 of title 24, it was a misdemeanor to violate their provisions).

²⁴ 24-72-702(1)(f), C.R.S. 2016.

²⁵ *Office of General Counsel Guidance*, *supra* note 1, at p. 2; and U.S. Dept. of Housing & Urban Dev. (2015, November 2), *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions* (see p. 5 at portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf).

provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider has no intent to discriminate.²⁶

Arrests alone are not proof of criminal activity.²⁷ Housing providers who impose exclusions based solely on an arrest without conviction cannot prove that the exclusion actually assists in protecting resident safety or property.²⁸ Policies and practices that impose exclusions based on conviction records must be necessary to achieve a substantial, legitimate, nondiscriminatory interest.²⁹ Guidance from the federal Department of Housing and Urban Development states that conviction-based exclusions should account for the nature and severity of the conviction, the time that has passed since the conviction, and whether the conviction demonstrates a risk to resident safety or property.³⁰

Proposed statutory language

Please see Appendix F for the full recommendation details.

²⁶ *Office of General Counsel Guidance, supra* note 1, at 2.

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.* at 6.

³⁰ *Id.* at 6-7.

FY17-RE05 Provide statutory guidance on public housing decisions

Promote community safety and economic growth by:

- Preventing public housing authorities from taking adverse action against individuals on the basis of arrests that did not result in a conviction, or convictions that have been pardoned, sealed or expunged.
- Requiring public housing authorities to consider other convictions using the same criteria the state currently applies for licensure and employment decisions.

Discussion *Obtaining housing is a lifelong challenge for those with a criminal record, and a significant hurdle facing individuals returning from incarceration.³¹ This is of widespread concern, as nearly one in three Americans of working age have some form of criminal record.³² In Colorado alone, over 190,000 people were arrested in 2015.³³*

The inability of large numbers of people to obtain housing adversely affects the public's safety and welfare. On an individual level, stable housing is a key factor that enables people to avoid future arrests and incarceration.³⁴ More broadly, the community as a whole is negatively impacted by restrictions that concentrate individuals in low-rent, distressed neighborhoods.³⁵ Numerous studies have shown that the housing related consequences of a criminal record may disparately impact individuals and communities of color.³⁶ It is thus necessary to ensure that Colorado's record-based restrictions on public housing are both fair to individuals and productive to the safety and welfare of society.

³¹ U.S. Dept. of Housing & Urban Dev. (2016, April 4). *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions*. Washington, DC (see pp. 1-2 at portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf); The Piton Foundation (2007, Spring). Study portrays struggles people face after prison. *The Piton Perspective*. Denver, CO (at cdpsdocs.state.co.us/ccjj/Resources/Ref/PitonPerspective-Spr2007.pdf); Tran-Leung, M.C. (2015, February), *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. Chicago, IL: The Shriver Center (see pp. 1-3 at povertylaw.org/files/docs/WMDM-final.pdf); Maureen Cain, Policy Director, Colorado Criminal Defense Institute (Aug. 24, 2016), presentation to the CCJJ Collateral Consequences Working Group; and Richard Morales, Deputy Executive Dir., Latino Coalition for Community Leadership, (Aug. 10, 2016) presentation to the CCJJ Collateral Consequences Working Group.

³² Bureau of Justice Statistics (2014, January), *Survey of State Criminal History Information Systems*, Washington, DC: U.S. Dept. of Justice (see Table 1 on p. 14 at ncjrs.gov/pdffiles1/bjs/grants/244563.pdf); and McGinty, J. C. (2015, Aug. 7), How many Americans have a police record?, *The Wall Street Journal* (at wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802).

³³ Colorado Bureau of Investigation, *Crime in Colorado 2015*, crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 1, 2017).

³⁴ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (Apr. 18, 2011); *Office of General Counsel Guidance*, *supra* note 1, at p. 1; and National Research Council. (2008). *Parole, Desistance from Crime, and Community Integration. Committee on Community Supervision and Desistance from Crime*. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press (see pp. 23-24 at cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf).

³⁵ *Parole*, *supra* note 5, at p. 54-55; and Roberts, J. (2011). Why misdemeanors matter: Defining effective advocacy in the lower criminal courts. *U.C. Davis Law Review*, 45(2), 277-372 (see pp. 300-301 at lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2_Jenny_Roberts.pdf).

³⁶ Carson, E. A. (2015, September). *Prisoners in 2014*. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics (reporting on p. 15 that as of December 31, 2014, black men are imprisoned in state and federal facilities at a rate of 2,724 per 100,000, Hispanic men are imprisoned at a rate of 1,091 per 100,000, and white men are imprisoned at a rate of 465 per 100,000; similar disparities exist for women) (at bjs.gov/content/pub/pdf/p14.pdf); and *Office of General Counsel Guidance*, *supra* note 1, at p. 2.

Because criminal record exclusions may have a disparate impact based on race and national origin, they are regulated under the federal Fair Housing Act.³⁷ A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider has no intent to discriminate.³⁸

Arrests alone are not proof of criminal activity.³⁹ Housing providers who impose exclusions based solely on an arrest without conviction cannot prove that the exclusion actually assists in protecting resident safety or property.⁴⁰ Policies and practices that impose exclusions based on conviction records must be necessary to achieve a substantial, legitimate, nondiscriminatory interest.⁴¹ Guidance from the federal Department of Housing and Urban Development states that conviction based exclusions should account for the nature and severity of the conviction, the time that has passed since the conviction, and whether the conviction demonstrates a risk to resident safety or property.⁴²

Colorado currently places no restrictions on public housing authorities' ability to withhold or terminate housing based on an individual's criminal record.⁴³ State law does, however, currently regulate their creation, powers, and tenant selection.⁴⁴ Additionally, the Department of Local Affairs, Division of Housing, is statutorily tasked with receiving and administering funding to some local housing authorities.⁴⁵

This recommendation includes two statutory elements:

1. Amend section 29-4-210 (rentals and tenant selection).
2. Amend section 24-34-502 (unfair housing practices prohibited).

³⁷ *Office of General Counsel Guidance, supra* note 1, at p. 2; and U.S. Dept. of Housing & Urban Dev. (2015, November 2), *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions* (see p. 5 at portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf).

³⁸ *Office of General Counsel Guidance, supra* note 1, at 2.

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ *Id.* at 6.

⁴² *Id.* at 6-7.

⁴³ In Oregon, "a landlord may not consider a previous arrest of the applicant if the arrest did not result in a conviction" unless the arrest resulted in charges that have not been dismissed. Only certain types of convictions can be considered. Oregon Rev. Stat. § 90.303. Several municipalities have similar laws. Both Champaign and Urbana, Illinois, prohibit housing discrimination on the basis of an arrest record. Champaign, IL, Code Ch. 17, Art. V, § 17-71 (at municode.com/library/il/champaign/codes/code_of_ordinances?nodeld=MUCO_CH17HURI_ARTVDIHOCOSP); Urbana, IL Code Ch. 12, Art. III, §§ 12-37, 12-64 (at municode.com/library/il/urbana/codes/code_of_ordinances?nodeld=COOR_CH12HURI_ARTIIIDI); Newark, New Jersey prohibits landlords and real estate brokers from inquiring about or taking adverse action on the basis of a non-pending arrest that did not lead to conviction, and records that have been erased or expunged. City of Newark, NJ, (2012, September), Legislation File #12-1630, Version 1 (at newark.legistar.com/LegislationDetail.aspx?ID=1159554&GUID=6E9D1D83-C8D7-4671-931F-EE7C8B2F33FD&FullText=1, last visited May 23, 2017); San Francisco, California, does not permit affordable housing providers to consider most arrests that did not lead to a conviction, convictions that have been dismissed or expunged, or convictions more than seven years old. San Francisco, CA, Police Code, Article 49, § 4906 (at sf-hrc.org/sites/default/files/ARTICLE%2049_%20Final.pdf); Seattle, Washington, has passed a resolution recommending that landlords not exclude residents on the basis of arrests not resulting in convictions. City of Seattle, Office of the City Clerk (2016, June), Resolution 31669, Version 3 at seattle.legistar.com/LegislationDetail.aspx?ID=2737445&GUID=4E0573F5-8990-47D2-BE8D-85BE81C1E83B (last visited May 23, 2017).

⁴⁴ 29-4-201 to -232, C.R.S. 2016.

⁴⁵ 24-32-705(1)(i), -705(1)(n), C.R.S. 2016.

Proposed statutory language

This recommendation gives meaning to Colorado's current record sealing laws, and applies existing Fair Housing Act guidance. It would prevent housing authorities from taking adverse action against an individual based on arrests that did not result in conviction, sealed records, and expunged records. Under all of those circumstances, either the individual has not been convicted of a crime, or a judge has already determined that the record in question should not be available to the public.⁴⁶ Housing authorities would apply the same considerations to other convictions that the state government is required to apply in the context of licensure and employment.⁴⁷

The proposed provisions would be enforceable by the Colorado Department of Regulatory Agencies, Civil Rights Division.⁴⁸ The civil rights commission could, after following existing notice and hearing procedures, issue a cease and desist order if it found a housing authority was engaging in prohibited practices.⁴⁹ It could also order damages, penalties, injunctions, or other equitable remedies as provided by current law.⁵⁰ The recommendation would also allow aggrieved individuals to initiate a civil action seeking similar remedies.⁵¹

Consistent with existing law, this recommendation aims to ensure record-based restrictions on public housing are both fair to individuals and productive to the safety and welfare of Colorado society.

1. Amend section 29-4-210 by adding subsection (1)(e).

(1) In the operation or management of housing projects, any housing authority at all times shall observe the following duties with respect to rentals and tenant selection:

(e) It shall not deny or terminate dwelling accommodations, or take adverse action against any person, on the basis of any arrest or charge for which a person has not been convicted for a criminal offense and the criminal case is not actively pending, a conviction for which the person has been pardoned, a conviction for which records have been sealed or expunged, or a conviction for which a court has issued an order of collateral relief specific to dwelling accommodations. If the housing authority determines that a person has had any other criminal conviction, the housing authority shall consider the following factors when determining whether the conviction disqualifies the person for dwelling accommodations:

(I) The nature of the conviction;

(II) Whether there is a direct relationship between the conviction and a risk to resident safety or property;

⁴⁶ With the exception of certain controlled substance and human trafficking related offenses, the sealing of a record reflects that a judge has already determined that the harm to the individual's privacy outweighs the public's interest in the availability of the record. 24-72-702(1)(b)(II)(B), -704(1)(c), -705, -706, -708(3), C.R.S. 2016.

⁴⁷ 24-5-101(4), C.R.S. 2016.

⁴⁸ 24-34-306, C.R.S. 2016.

⁴⁹ 24-34-306(9), C.R.S. 2016.

⁵⁰ 24-34-508(1), C.R.S. 2016.

⁵¹ 24-34-306(11), -306(14), -306(15), 24-34-505.6, C.R.S. 2016.

(III) Any information produced by the person or produced on his or her behalf regarding his or her rehabilitation and good conduct; and

(IV) The time that has elapsed since the conviction.

2. Amend section 24-34-502 by adding subsection (1)(I).

(1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(I) For any housing authority, as defined in section 29-4-203(1), to fail to comply with the provisions of section 29-4-2

FY17-RE07 Support pretrial diversion programs

Continue or expand financial support for Colorado's adult pretrial diversion programs.

Discussion Based on a CCJJ recommendation,⁵² in 2013 the General Assembly replaced the previously-existing deferred prosecution statute with a "pretrial diversion" disposition option in criminal cases.⁵³

Diversion is a voluntary individualized agreement between the defendant and the prosecution, under which the defendant agrees to certain conditions before entering a guilty plea.⁵⁴ If the defendant fulfills his or her obligations, the associated criminal charges are either never filed in court or dismissed with prejudice.⁵⁵ A successfully completed diversion agreement shall not be considered a conviction for any purpose.⁵⁶

The legislature's intent when enacting the pretrial diversion statute was to facilitate diversion of defendants from the criminal justice system when diversion "may prevent defendants from committing additional criminal acts, restore victims of crime, facilitate the defendant's ability to pay restitution to victims of crime, and reduce the number of cases in the criminal justice system."⁵⁷ Pretrial diversion should "ensure defendant accountability while allowing defendants to avoid the collateral consequences associated with criminal charges and convictions."⁵⁸

When enacting the pretrial diversion statute, the legislature also created the Adult Diversion Funding Committee. Elected district attorneys can apply to the committee to receive state funding for the creation or operation of adult diversion programs.⁵⁹

In 2014, the first fiscal year the committee took applications, District Attorney's Offices from the 6th, 9th, 15th, and 16th Judicial Districts⁶⁰ requested and received funding to start pretrial diversion programs. District Attorney's Offices in the 20th and 21st Judicial Districts⁶¹ requested and received funding beginning in fiscal year 2017. All six of those jurisdictions are now operating adult pretrial diversion programs that did not exist before the General Assembly made funding available through the committee. District Attorney's Offices in the 2nd, 4th, and 22nd Judicial Districts⁶² applied for and were allocated funding to either start new diversion programs or support existing programs in fiscal year 2018.

⁵² FY13-CS #4 (Expand the availability of adult pretrial diversion options within Colorado's criminal justice system) (at cdpsdocs.state.co.us/ccjj/Meetings/2012/2012-11-09_CSTFRec_Pretrial_FY13-CS4.pdf).

⁵³ Ch. 336, sec. 1, § 18-1.3-101, 2013 Colo. Sess. Laws 1952 (H.B. 13-1156).

⁵⁴ § 18-1.3-101(9), C.R.S. 2016.

⁵⁵ *Id.*

⁵⁶ *Id.* at -101(10)(b).

⁵⁷ *Id.* at -101(1).

⁵⁸ *Id.*

⁵⁹ § 13-3-115(2), C.R.S. 2016.

⁶⁰ 6th Judicial District: Archuleta, La Plata, and San Juan Counties; 9th Judicial District: Garfield, Pitkin, and Rio Blanco Counties; 15th Judicial District: Baca, Cheyenne, Kiowa, and Prowers Counties; and 16th Judicial District: Bent, Crowley, and Otero Counties.

⁶¹ 20th Judicial District: Boulder County; and 21st Judicial District: Mesa County.

⁶² 2nd Judicial District: Denver County; 4th Judicial District: El Paso and Teller Counties; and 22nd Judicial District: Dolores and Montezuma Counties.

Diversion programs supported by the committee employ a spectrum of models designed to meet the needs of their respective communities. The program in the 6th Judicial District, for instance, engages large numbers of individuals who have committed low-level offenses.⁶³ The 16th Judicial District's program, in contrast, facilitates intensive intervention for a smaller number of individuals who have committed relatively high level, albeit non-violent, offenses.⁶⁴ Although the first four programs to receive funding were all in rural counties, an increasing number of urban jurisdictions are now starting their own.

In fiscal year 2016, 502 people enrolled in the four then operational grant-funded jurisdictions, an increase of 67% from the prior year.⁶⁵ There were 419 people who successfully completed diversion agreements during the same period, 75% of all terminations.⁶⁶ Enrollees paid 94% of restitution in cases where restitution was ordered.⁶⁷

The General Assembly appropriated \$390,233 for the committee to allocate to adult diversion programs in the committee's first year of existence.⁶⁸ The committee also has access to \$77,000 of Correctional Treatment Funding.⁶⁹ Those amounts have remained consistent in subsequent years. The demand for funding, however, has grown as more jurisdictions have decided to start pretrial diversion programs. Requests for fiscal year 2018 funding totaled \$694,653.16.⁷⁰

Non-statutory recommendation

CCJJ continues to support the creation and operation of adult pretrial diversion programs in all areas of the state. The number of cases in the traditional criminal justice system is being reduced, restitution is being paid, and defendants are being held accountable while avoiding the collateral consequences associated with a conviction.⁷¹ The current discrepancy between requested and available funding for adult diversion programs is, however, limiting programs' ability to fully realize their potential. CCJJ thus recommends that the General Assembly continue to provide funding to adult diversion programs at existing or greater levels.

⁶³ Adult Diversion Funding Committee (2016, January). *Adult Diversion Annual Legislative Report: Fiscal Year 2015-2016* (see p. 5 at www.courts.state.co.us/Administration/Program.cfm?Program=55).

⁶⁴ *Id.* at 6-7.

⁶⁵ *Id.* at 13-14.

⁶⁶ *Id.* at 13.

⁶⁷ *Id.* at 15.

⁶⁸ Ch. 336, sec. 17, 2013 Colo. Sess. Laws 1963 (H.B. 13-1156).

⁶⁹ State of Colorado Correctional Treatment Board. (2015, November). *FY2017 Funding Plan* (see p. 4 at www.courts.state.co.us/userfiles/file/Administration/Probation/CTB/FY2017%20Funding%20Plan.pdf).

⁷⁰ Kyle Gustafson, Court Programs Analyst, Colo. State Court Adm'r Office (Feb. 23, 2017).

⁷¹ See § 18-1.3-101(1), C.R.S. 2016.

Colorado Commission on Criminal and Juvenile Justice

FY18-CCJJ01 Continue the Colorado Commission on Criminal and Juvenile Justice

The critical mission of the Commission – to study and make recommendations that ensure public safety, respect the rights of crime victims, and reduce recidivism, and that are evidence-based, cost-effective, and sensitive to disproportionate minority overrepresentation – requires ongoing effort. The need for collaboration among multidisciplinary stakeholders and subject matter experts to study complex issues and recommend improvements in the administration of justice has not diminished. Therefore, 16-11.3-105, C.R.S., should be amended to extend the Commission beyond the statutory termination date of June 30, 2018.

Discussion

The 26-member Commission was established by the General Assembly in House Bill 2007-1358. The compelling reasons that led to the creation of the Commission, stated in the original legislative declaration, continue to exist. The legislative declaration stated that ensuring public safety and respecting the rights of crime victims are paramount concerns, as is maintaining public safety through the most cost-effective use of limited criminal justice resources through “evidence-based analysis of the criminal justice system in Colorado.” Colorado’s large and complex adult and juvenile justice systems impact the lives of all Colorado citizens. Multidisciplinary collaboration is at the core of the Commission’s work, and recommendations are developed with a keen awareness of relevant research, data, and evidence-based information. Members of the Commission and its task forces have committed hundreds of hours of teamwork to improving the administration of justice in Colorado.

Selected accomplishments since the 2013 reauthorization of the Commission include the following:

- *Drug law restructuring (S.B.13-250) resulted in these outcomes:*
 - *More than 5,500 cases became eligible for a misdemeanor conviction following felony charges, per the “wobbler” in the three years following enactment;*
 - *Also in the three years following enactment, due to changes to penalties, 8,006 felony cases were filed as misdemeanors avoiding the collateral consequences of a felony conviction;*
 - *The average sentence to prison declined by eight months for more than 2,100 felony drug cases; Legislative Council estimated this bill would result in \$5M annual savings to the Department of Corrections.⁷²*
- *Theft law restructuring (H.B.13-1160) was estimated to save \$1M annually, according to Legislative Council.*
- *Clarifying certain value-based offenses (H.B. 14-164) was estimated to save \$7M over five years, according to Legislative Council.*

⁷² See http://cdpsdocs.state.co.us/ors/docs/reports/2017_SB250-Rpt.pdf

- *Promoting best practices in bond setting (H.B.13-1236).*
- *Updating the purposes of parole (H.B.16-1215) and community corrections (H.B. 17-1147) to reflect evidence-based practices.*
- *Promoting law enforcement training in Mental Health First Aid® which POST⁷³ agreed to include in its basic academy standard curriculum, and in its in-service curriculum, training 200 officers per month.*
- *Promoting a stronger community-bases crisis response system and limiting the use of jails for emergency mental health holds (S.B.17-207).*
- *Promoting an informed and coordinated case management plan and services approach for “crossover youth,” those juveniles in both the child welfare system and the juvenile justice system.*
- *Responding to General Assembly and Governor requests for special studies and reports in the following areas:*
 - *Clarification of marijuana laws (S.B.13-283)*
 - *Study of the prosecution and conviction of human trafficking cases*
 - *Review and make recommendations regarding Florida’s “Jessica’s Law”*
 - *The efficacy of implementing enhanced sentencing for certain crimes against emergency medical service providers (H.B.14-1214)*
 - *Comprehensive review of cyberbullying and the most effective response (H.B.14-1131)*

⁷³ The Colorado Peace Officer Standards and Training (POST), managed by the Colorado Attorney General's Office, documents and oversees the certification and training of all active peace officers and reserve officers working for Colorado law enforcement agencies. Mental Health First Aid® is an 8-hour evidence-based, interactive eight-hour course that presents an overview of mental illness and substance use disorders.



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Next steps

Task forces and committees

At the close of Fiscal Year 2018, the Commission continued to support the ongoing work of the following task forces:

- Mental Health/Point of Contact through Jail Release Task Force (Joe Pelle, chair)
- Pretrial Release Task Force (Stan Hilkey, chair)
- Age of Delinquency (Jessica Jones and Joe Thome, co-chairs)

As this report goes to press, multiple recommendations are being prepared for presentation to the Commission by the Pretrial Release Task Force. Recommendations from the

Mental Health/Jails and Age of Delinquency Task Forces are expected in 2019. The Mental Health/Jails and Pretrial Release Task Forces will likely conclude their work during Fiscal Year 2019.

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 the task forces and committees can be found on the Commission's web site at www.colorado.gov/ccjj. The Commission expects to present its next written annual report in the fall of 2019.



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Appendices

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Appendix A:
Department of Corrections / Population Drivers

Presentation to the Interim Study Committee Regarding Comprehensive Sentencing Reform in the Criminal Justice System

What is driving the increase in the state prison population?

July 11, 2017

Kim English, Research Director

Linda Harrison, Senior Statistical Analyst

Colorado Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics

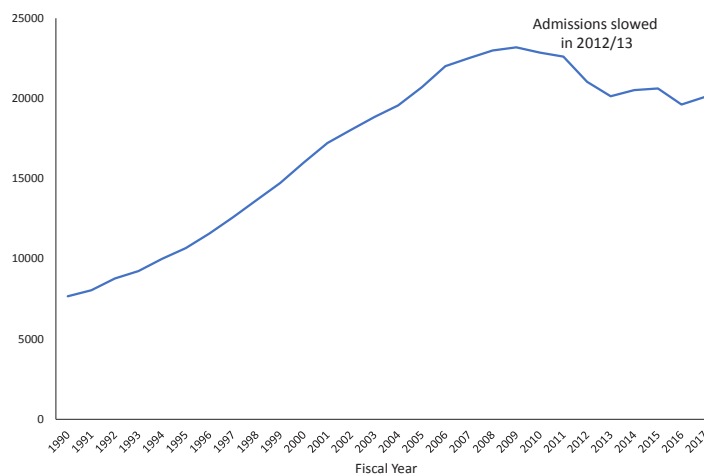


Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

1

Prison population began to decline in 2010

Figure 1. Colorado prison population, Fiscal Year End 1990-2017



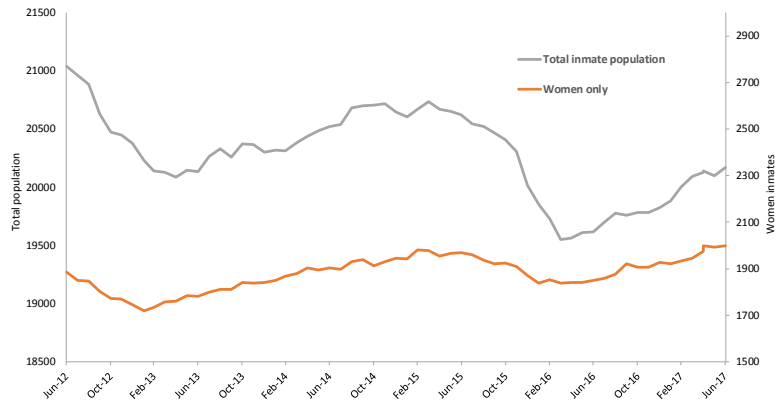
Data source: Colorado Department of Corrections Monthly Capacity and Population Reports. Available at: <https://www.colorado.gov/pacific/cdoc/departamental-reports-and-statistics>

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

2

Admissions declined, then increased, then parole TVs declined significantly, then....

Figure 2. Quarterly figures: Total inmate population and women population, July 2012-June 2017



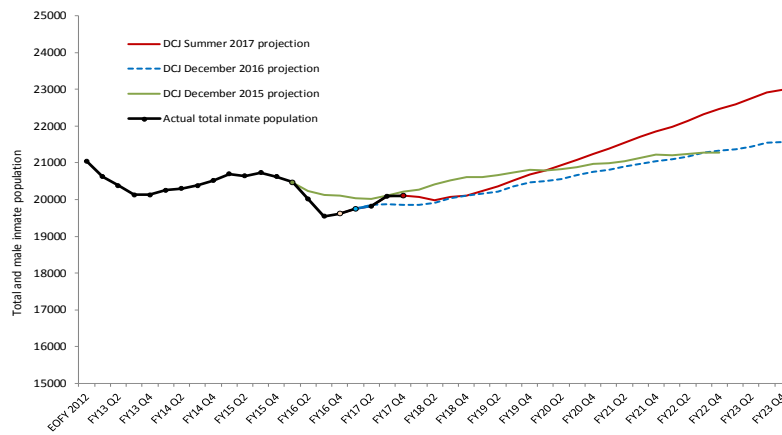
Data source: Colorado Department of Corrections Monthly Capacity and Population Reports. Available at: <https://www.colorado.gov/pacific/cdoc/departamental-reports-and-statistics>

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

3

DCJ prison population forecast predicted growth

Figure 3: Actual and projected total prison population FY 2005 through FY 2023: Comparison of DCJ December 2015, December 2016, and Summer 2017 Prison Population Projections



Data source: Actual population figures FY 2005 through FY 2016: Colorado Department of Corrections Monthly Capacity and Population Reports. Available at: <https://www.colorado.gov/pacific/cdoc/departamental-reports-and-statistics>

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Arrests increasing

Table 1. Colorado Arrests CY 2012 to 2016

Crime	2012	2013	2014	2015	2016
Aggravated Assault	3,814	3,880	4,083	4,402	4,929
Arson	106	106	103	116	161
Burglary	1,804	2,018	2,255	1,993	2,237
Drug Violations	17,814	12,262	13,253	14,861	16,622
Embezzlement	116	89	93	97	101
Forgery	714	664	594	589	735
Fraud	1,639	1,778	1,962	2,235	2,707
Group B Offenses	112,190	118,913	122,769	116,037	116,363
Homicide/Manslaughter	118	118	125	106	150
Human Trafficking	0	0	2	6	3
Kidnapping/Abduction	506	531	594	655	708
Motor Vehicle Theft	841	1,093	1,295	1,737	2,240
Other	6,075	6,495	6,758	7,459	7,780
Other Sex Offenses	330	320	273	291	291
Robbery	780	893	829	887	858
Sexual Assault	489	489	515	488	459
Simple Assault	11,686	12,544	13,677	14,432	14,437
Theft	16,001	19,987	22,956	22,638	21,959
Weapon Violations	1,456	1,543	1,837	1,949	2,138
Total	176,479	183,723	193,973	190,978	194,878

Also: Ratio of arrests to filings increasing slightly.

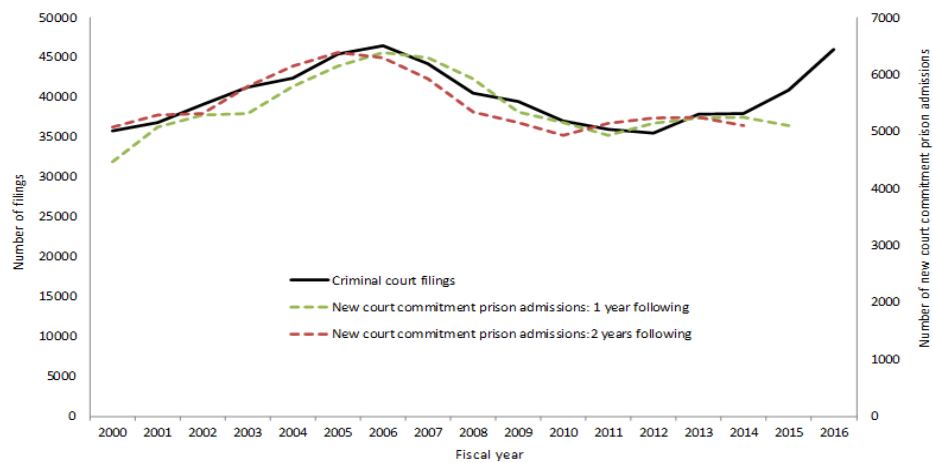
Data source: CBI Beyond 20/20.

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Criminal filings increasing

Figure 4. Correspondence of Colorado criminal court filings FY 2000 through FY 2016 and new court commitments in following years



Data Sources: Colorado Dept. of Corrections Annual Statistical Reports; Colorado Judicial Branch Annual Statistical Reports, FY 2000-FY 2016. District and county court filings are included, with the exception of Denver County court.

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Felony DUI, drugs, MVT, assault

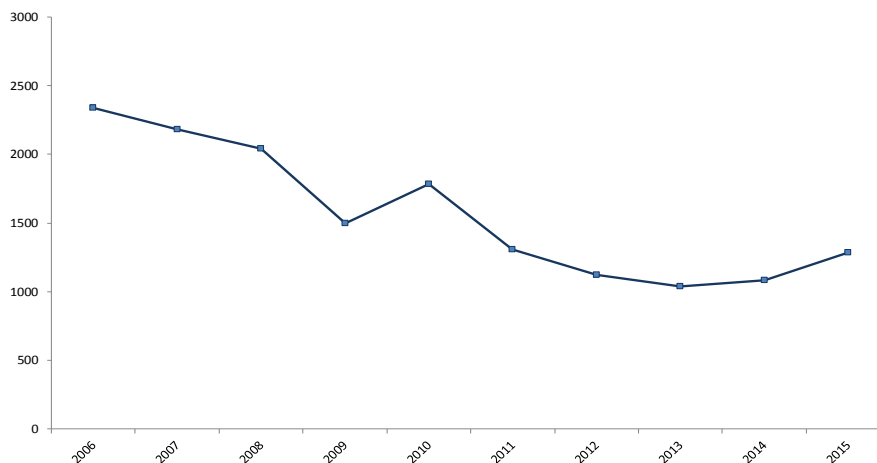
- **Felony DUI.** The passage of HB 15-1043, which created a class of felony DUI offenders, increased admissions to prison much more quickly than expected, with 110 offenders admitted to prison with a felony DUI as their most serious crime during FY 2016 alone.
- **Cases sentenced to DOC.** An analysis of district court cases sentenced to DOC in 2015 and 2016 found the following offense types increased in 2016. *Most notable was drug possession, which increased by 17% overall, and by 24% for women.*
 - Drug possession 17%
 - Drug distribution 12%
 - Motor vehicle theft 15%
 - Assault 16%
 - Forgery/fraud 15%
 - Weapons 10%

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Probation revocations increasing slightly

Figure 5. Adult probation revocations sentenced to DOC: FY 2006 – FY 2015



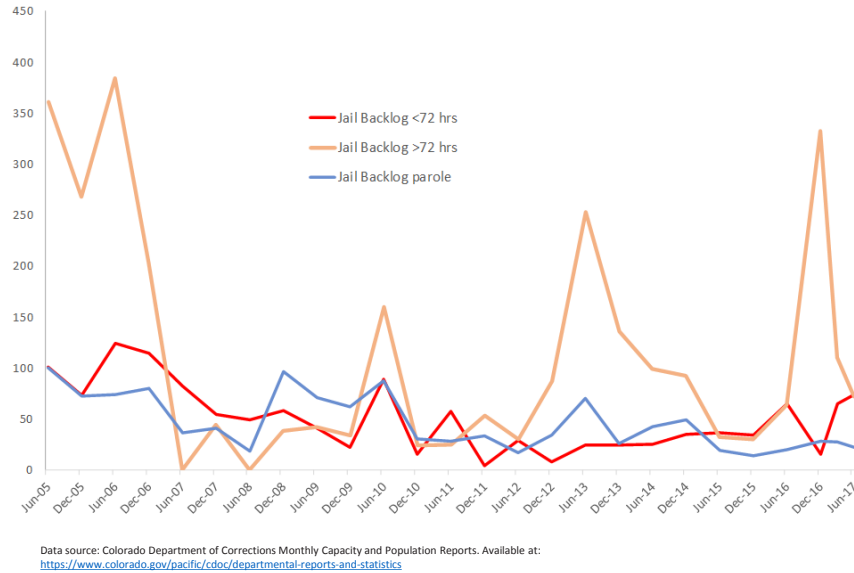
Source: Colorado State Judicial Branch, Colorado Judicial Branch Annual Recidivism Reports. Denver, CO: Colorado Judicial Branch, Division of Probation Services. Available at <http://www.courts.state.co.us/Administration/Unit.cfm?Unit=eval>

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Jail backlog variation not atypical

Figure 6. Jail backlog, June 2005-June 2017

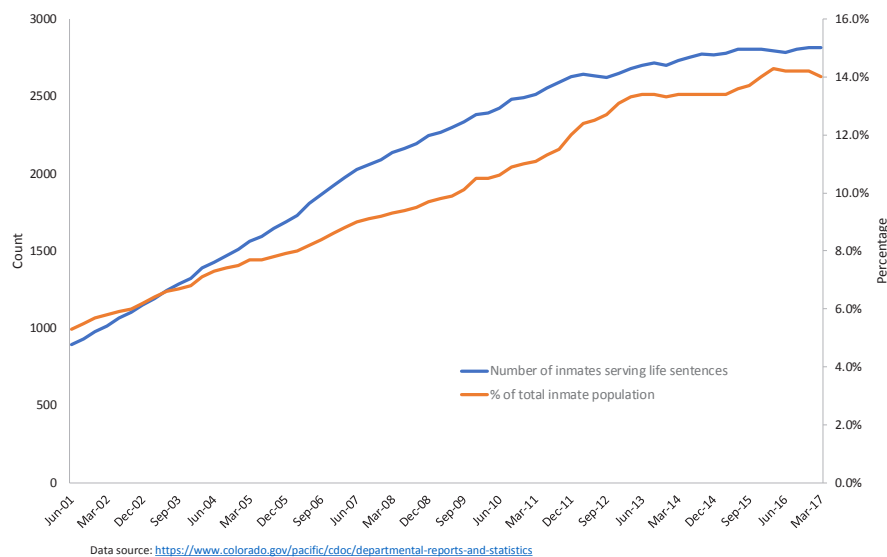


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Life without parole and Lifetime Supervision Act of 1998

Figure 7. Inmates with life sentences, June 2001-March 2017

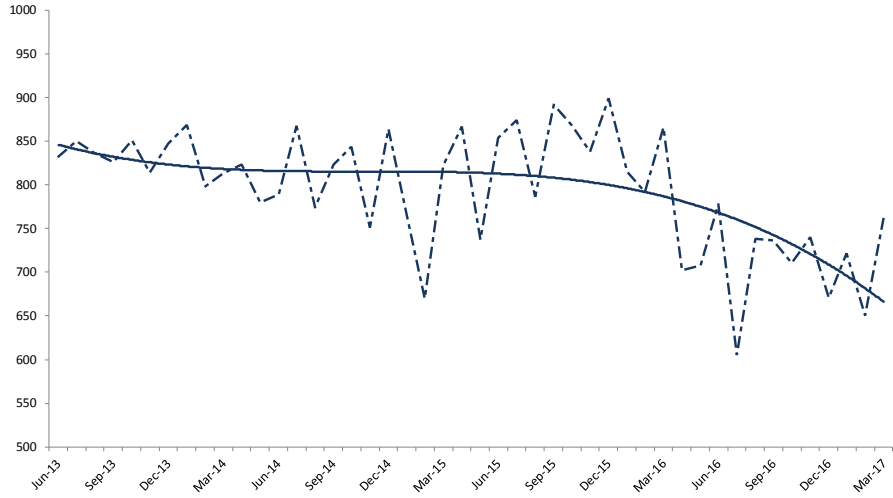


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Prison releases declining

Figure 8. Total prison releases FY 2014 through March 2017, by quarter



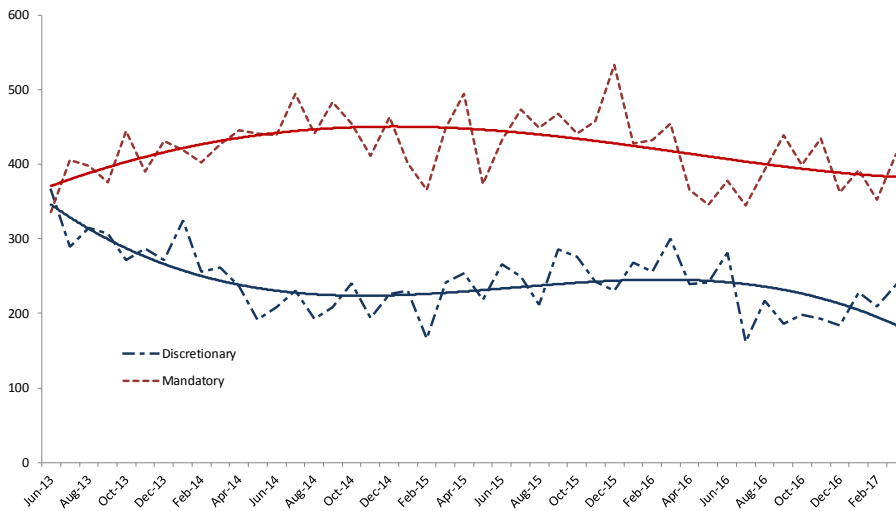
Data sources: Colorado Department of Corrections Monthly Capacity and Population Reports. Available at: <https://www.colorado.gov/pacific/cdoc/departamental-reports-and-statistics>

Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Releases to parole declining

Figure 9. Releases to parole by type FY 2014 through March 2017, by quarter



Data sources: Colorado Department of Corrections Monthly Capacity and Population Reports. Available at: <https://www.colorado.gov/pacific/cdoc/departamental-reports-and-statistics>

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State population growth

- Very strong growth in the Colorado adult population is expected in upcoming years, particularly for those within the 24-44 year old age range.
- This growth is expected to accelerate, especially between FY 2017 and FY 2020, according to the state Demographer’s Office.
- The Demographer’s Office estimates growth in the overall Colorado Population at a rate of approximately 100,000 per year through at least 2028.

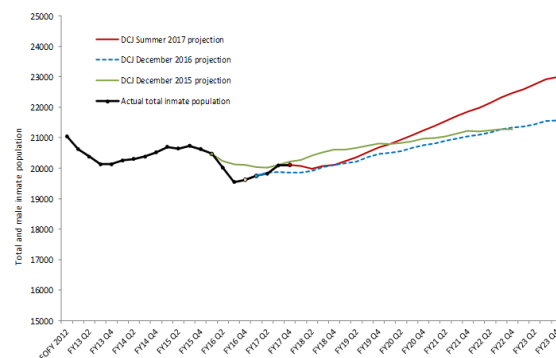
Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Summary

- Arrests increasing
- Filings increasing
- Felony DUI
- Drugs, MVT, Assault
- Probation revocations increasing
- Life/indeterminate sentences stack up in prison
- Prison releases declining
- State population growth

Figure 10: Actual and projected total prison population FY 2005 through FY 2023: Comparison of DCJ Prison Population Projections: December 2015, December 2016, and Summer 2017



Presented to the Colorado Commission on Criminal and Juvenile Justice, 8/11/2017

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Appendix B:
Community Law Enforcement Reporting Act



Follow-up Analyses: CY 2016 C.L.E.A.R. Act Report

**Community Law Enforcement Action Reporting Act
Pursuant to Senate Bill 2015-185**

Kim English, DCJ
Colorado Commission on Criminal and Juvenile Justice
December 8, 2017



Colorado Commission on Criminal & Juvenile Justice

Background

In 2015, the General Assembly passed Senate Bill 185, the **Community Law Enforcement Action Reporting Act** (C.L.E.A.R. Act) mandating that the Division of Criminal Justice (DCJ) analyze and report data annually from:

- law enforcement agencies
- the Judicial Department
- the adult parole board

to reflect decisions made at multiple points in the justice system process.

The CLEAR Act requires that the data be analyzed by race/ethnicity and gender.



Colorado Commission on Criminal & Juvenile Justice

Criminal Justice Decision Points

- Arrest
 - on view/probable cause
 - custody/warrant
 - summons
- Court filing
- Case outcome
- Initial sentence
- Revocation
- Parole

Follow-up Analyses: CY2016 CLEAR Act Report

December 8, 2017

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Colorado Commission on Criminal & Juvenile Justice

2015 Statewide Summary

- Blacks more likely to be arrested
- Blacks less likely to get deferred judgments
- Blacks more likely to receive sentence to confinement
- The last 2 bullets apply even when holding constant the number of concurrent cases and prior case history

After the March 2017 presentation of the CLEAR Act findings, the Commission requested that the next analysis break out the information by the 22 judicial districts. Reports and dashboard available at: colorado.gov/dcj-ors/ors-SB185.

Follow-up Analyses: CY2016 CLEAR Act Report

December 8, 2017

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Colorado Commission on Criminal & Juvenile Justice

In 2016, statewide:

Blacks represented 4% of the adult state population and accounted for...

- 12% of arrests
- 11% of adult district court filings
- 10% of cases sentenced

Hispanic adults represented 18% of the population and accounted for...

- 23% of arrests
- 28% of adult district court filings
- 29% of cases sentenced



Colorado Commission on Criminal & Juvenile Justice

Two important differences between the 2015 and 2016 analyses

#1

Judicial systematically collects information about race but not ethnicity. Most Hispanics are in the White category.

In 2016 Hispanics represented 22% of the Colorado population, but only 6% of cases were classified as Hispanic in Judicial's data.

To improve upon the accuracy of the race/ethnicity designation in court data in this analysis, court cases were matched to the Colorado Bureau of Investigation's National Incident Based Reporting System (NIBRS) arrest data, which contains both race and ethnicity.

If the ethnicity recorded for any arrest was found to be Hispanic, then the race/ethnicity was set to Hispanic. Otherwise, the original race/ethnicity designation from the court record was used.



Colorado Commission on Criminal & Juvenile Justice

Two important differences between the 2015 and 2016 analyses

#2

Multivariate analyses were conducted in the statewide analysis and for the larger judicial districts to better control statistically for

- Prior cases
- Prior convictions for a specific violent crime(s)*
- Other concurrent cases
- Felony conviction level
- Instant offense type (drug, property, other, violent)
- Whether the instant offense was a specific violent crime

*1st degree homicide; 2nd degree homicide; 1st degree assault; 2nd degree assault; 1st degree kidnapping; 2nd degree kidnapping; sex assault (felony); unlawful sexual contact (felony); sex assault on a child; sex assault on a child position of trust; aggravated robbery; 1st degree arson; 1st degree unlawful termination of pregnancy; 2nd degree unlawful termination of a pregnancy



Colorado Commission on Criminal & Juvenile Justice

This allowed us to ask these questions:

After controlling for the factors just described....

1. Compared to Whites, are Blacks (or Hispanics) more or less likely to receive a sentence to the Department of Corrections for felony convictions in district court?
2. Compared to Whites, are Blacks (or Hispanics) more or less likely to receive a deferred judgment for convictions in district court?
3. Compared to Whites, are Black juveniles (or Hispanic juveniles) more or less likely to receive a deferred judgment for convictions in juvenile court?



Colorado Commission on Criminal & Juvenile Justice

2016 Summary

Jurisdiction	Hispanic Adults DOC	Black Adults DOC	Hispanic Adults NO Def Judg	Black Adults NO Def Judg	Hispanic Juveniles NO Def J	Black Juveniles NO Def J
Statewide	X	X	X	X	X	X
1 st JD	X		X		X	
2 nd JD		X			X	X
4 th JD		X*	X			X
8 th JD	X					
17 th JD			X		X	
18 th JD	X	X	X	X	X	X

An “X” indicates that, compared to Whites, the group was statistically significantly MORE likely to receive that sentence (*see exception). An empty cell indicates that there was no difference OR that the sample was too small to detect a statistically significant difference.

* Black adults were LESS likely than Whites to receive a DOC sentence.



Colorado Commission on Criminal & Juvenile Justice

Data & Stats - Race and Ethnicity at Decision Points - 2016

Race and Ethnicity at Decision Points - 2016

In 2015, the General Assembly passed Senate Bill 185, the Community Law Enforcement Action Reporting Act, or the CLEAR Act. The CLEAR Act mandates that the Division of Criminal Justice (DCJ) annually analyze and report data provided by law enforcement agencies, the Judicial Department, and the adult Parole Board, to reflect decisions made at multiple points in the justice system process. The CLEAR Act requires that the data be analyzed by race/ethnicity and gender. Senate Bill 15-185 mandated DCJ to report these data disaggregated by offense type.

DCJ prepared a statewide REPORT, REPORTS BY JUDICIAL DISTRICT and an interactive data DASHBOARD that presents the findings for calendar year 2017. These two reporting mechanisms—the reports and the data dashboard—should be viewed together since only the reports contains information regarding the data sets and the research methods. The reports also contains data from the adult Parole Board and additional analyses regarding the impact of concurrent cases and prior history on court sentences. Only the dashboard includes detailed offense categories, that is, 17 arrest offense categories and 25 court case crime categories.

Because it is difficult to identify patterns in analyses that involve many categories, the report and the dashboard present a summary of the findings by collapsing the offense categories into four broad groups: **Drugs, Other, Property and Violent** crimes. Individual crime types are included in the dashboard within the four broad categories. Some crime types include multiple types of offenses. Please see Appendix A and Appendix B of the REPORT for information regarding the crime classification. The crime types include inchoate offenses (attempt, conspiracy, and solicitation).

Finally, the cases represented in the arrests, filings, sentences, and parole board sections are not necessarily the same cases. This is due to the fact that a lag exists between when an arrest results in a filing, when a filing results in a sentence, and when an offender is paroled. This study analyzes events (arrests, filings, sentences, parole decisions) that occurred in a single year.

[2016 Interactive Data Dashboard](#)
This link navigates to interactive dashboard for the statewide and judicial district data.

[2016 Statewide Report](#) (pdf)
(The 2015 annual report may be found at the link below)

[2016 Reports by Judicial District](#) (pdf)

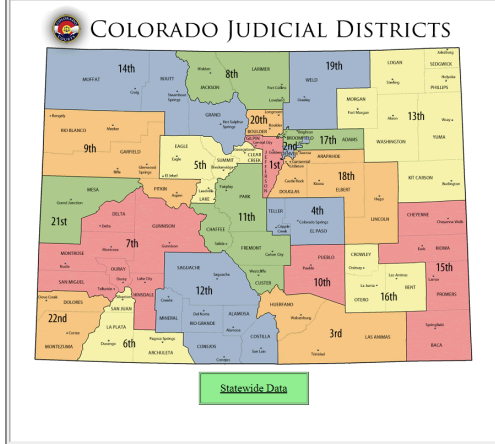
- [1st Judicial District](#)
- [2nd Judicial District](#)
- [3rd Judicial District](#)
- [4th Judicial District](#)
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- [21st Judicial District](#)
- [22nd Judicial District](#)

colorado.gov/dcj-ors/ors-SB185



Colorado Commission on Criminal & Juvenile Justice

Race and Ethnicity at Decision Points by Judicial Districts



colorado.gov/dcj-ors/ors-SB185

Follow-up Analyses: CY2016 CLEAR Act Report

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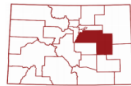
Colorado Commission on Criminal & Juvenile Justice

Senate Bill 15-185 CLEAR Act

2016

Community Law Enforcement Action Reporting Act

18th Judicial District



18th Judicial District: Population race/ethnicity estimates, 2016

Age Group	Race/Ethnicity	%	N
Adult	Black	75%	749,937
	Hispanic	7%	50,612
	Other	14%	102,015
	White	6%	47,549
Juvenile	Black	73%	549,761
	Hispanic	25%	247,932
	Other	8%	20,607
	White	22%	54,848
All	Other	7%	17,936
	White	62%	154,542
	All	100%	997,869

Data source: Office of the State Demographer, <http://demography.data.colorado.gov/population/series/race-ethnicity/county-race-by-age-estimates>

October 2017



colorado.gov/dcj-ors/ors-SB185

Follow-up Analyses: CY2016 CLEAR Act Report

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Colorado Commission on Criminal & Juvenile Justice

From the Brennan Center for Justice

Reducing racial/ethnic disparities in jails (2015)

Roundtable participants included Commissioner Raemisch

Officials in local jurisdictions can create a cross-agency Task Force to reduce racial disparities

1. Identify drivers; pinpoint where disparities are most pervasive.
2. Specify goals and measures of success for the jurisdiction
3. Require training for all system actors to overcome implicit racial bias; for anyone who exercises discretion
4. Encourage prosecutors to prioritize serious and violent offenses; don't conflate "success" with number of prosecutions or convictions
5. Increase indigent representation in misdemeanor cases when jail time is an available punishment
6. Provide "bench cards" to judges to combat implicit bias and unnecessary use of jail

Follow-up Analyses: CY2016 CLEAR Act Report

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Colorado Commission on Criminal & Juvenile Justice

From the Brennan Center for Justice

Reducing racial/ethnic disparities in jails (2015)

1. Focus on low level offenses

- Once stopped, Blacks more likely to be arrested
 - Exploratory analysis by DCJ found Blacks were more likely to receive a court filing following arrest compared to Whites and Hispanics
- 2014 study by National Bureau of Economic Research found charges more likely to be filed following arrest compared to previous decades
- ***Expand pre-arrest diversion programs***
- ***Expand pre-charge and pretrial diversion programs***

Follow-up Analyses: CY2016 CLEAR Act Report

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Colorado Commission on Criminal & Juvenile Justice

From the Brennan Center for Justice
Reducing racial/ethnic disparities in jails (2015)

2. Focus on unnecessary use of pretrial detention

- Research shows length of pretrial detention is linked to longer post-sentence confinement in jail and prison
- Blacks more likely to be confined pre-trial
- Leads to loss of job, housing, healthcare
- ***Use risk assessment tools***
- ***Expand pretrial services programs***
- ***Divert low-level offenders***
- ***Eliminate money-based pretrial systems***

Follow-up Analyses: CY2016 CLEAR Act Report

December 8, 2017

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Colorado Commission on Criminal & Juvenile Justice

From the Brennan Center for Justice
Reducing racial/ethnic disparities in jails (2015)

3. Consider the aggressive collection of criminal justice debt

- Racial disparities are reinforced by socioeconomic inequality
- ***Assess individuals' abilities to pay***

4. Everyone who exercises discretion: Undergo training to identify and confront implicit racial/ethnic bias

Follow-up Analyses: CY2016 CLEAR Act Report

December 8, 2017

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Colorado Commission on Criminal & Juvenile Justice

From the President's Task Force on 21st Century Policing

Law enforcement agencies should...

- Embrace a guardian mindset, promoting the dignity of all individuals and protecting everyone's Constitutional rights (Procedural Justice)
- Consider the collateral damage of any given safety strategy on public trust
- Strive to create a diverse workforce
- Infuse community policing and problem solving principles throughout the organizational structure
- Work with schools to develop alternatives to suspension/expulsion
- Ensure training occurs throughout an officer's career with procedural justice at the center/lessons to improve social interactions/lessons on addiction/ lessons on recognizing and confronting implicit bias



Colorado Commission on Criminal & Juvenile Justice

Thank you for your attention today

Appendix C: Bond Reform Impact Analysis



2013 Bond Reform: A Commission Initiative

Kim English, Research Director
Peg Flick, Senior Analyst
Division of Criminal Justice
Department of Public Safety

*Presentation to the Colorado Commission on Criminal and Juvenile Justice
May 11, 2018*



Colorado Commission on Criminal & Juvenile Justice

House Bill 2013-1236, signed by the governor on May 11, 2013, incorporated three Commission recommendations:

1. Implement evidence-based decision making practices and standardized bail release decision making guidelines (including the use of empirically developed risk assessment instruments)
2. Discourage the use of financial bond for pretrial detainees and reduce the use of bonding schedules
3. Expand and improve pretrial approaches and opportunities in Colorado

C.R.S. 16-4-103—setting and selection of bond criteria

- Presumption of release under least-restrictive conditions unless the defendant is unailable
- Individualization of release conditions
- Mandatory consideration of a defendant's financial condition
- Consideration of ways to avoid unnecessary pretrial detention

May 11, 2018

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H.B.13-1236 Bond Analysis

- Cases filed 3 years pre- and post- H.B. 13-1236
 - Pre- 2011 to 2013, Post- 2014 to 2016
 - Felony and Misdemeanor (excluding Denver County) cases
 - 650,000+ cases
- Bond set type: Personal Recognizance vs Cash/Surety
- Failure to Appear rate
- New Filing rate

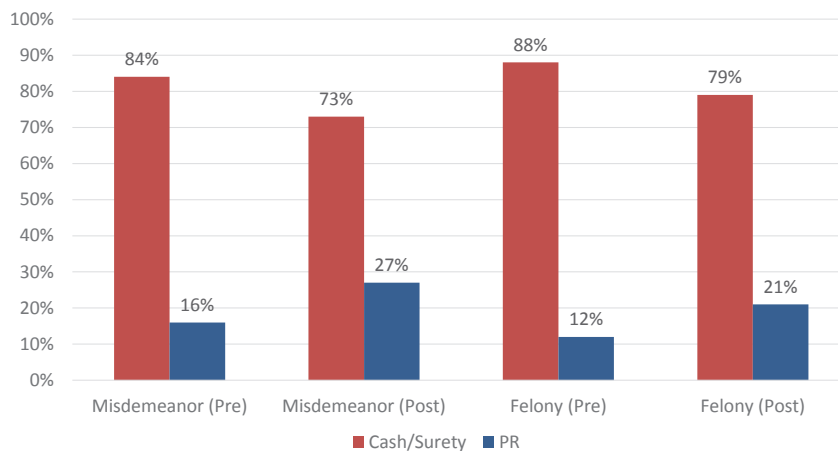
May 11, 2018

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H.B.13-1236 Bond Analysis

Cash/Surety vs PR Bonds, Pre- and Post- H.B.13-1236



Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CIASS) and analyzed by DCJ/ORS.

May 11, 2018

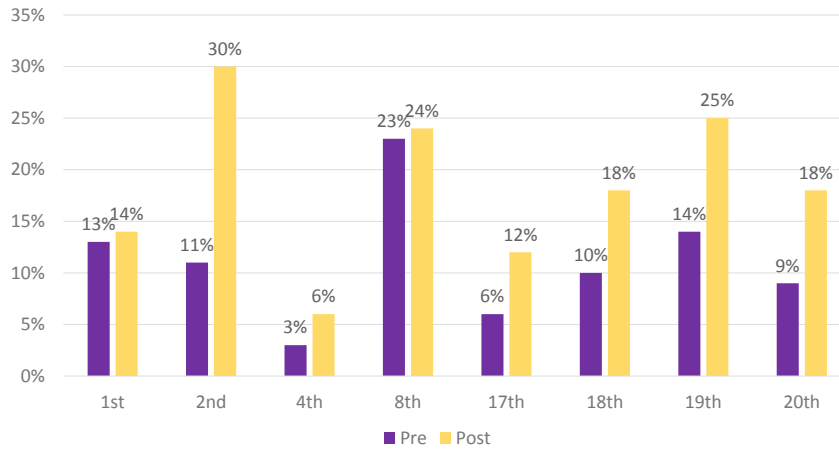
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Colorado Commission on Criminal & Juvenile Justice

H.B.13-1236 Bond Analysis

Percent of PR Bonds Set for Felony Cases Pre- and Post-H.B.13-1236



Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

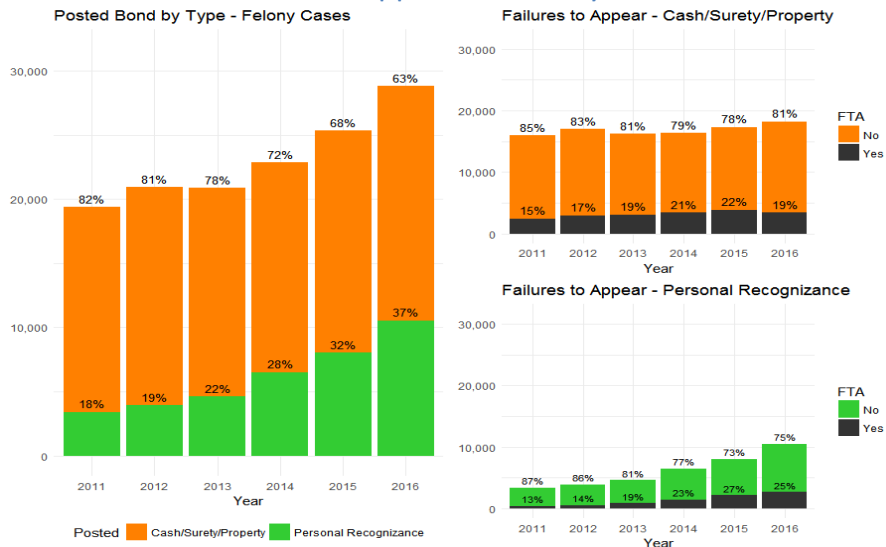
May 11, 2018

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Colorado Commission on Criminal & Juvenile Justice

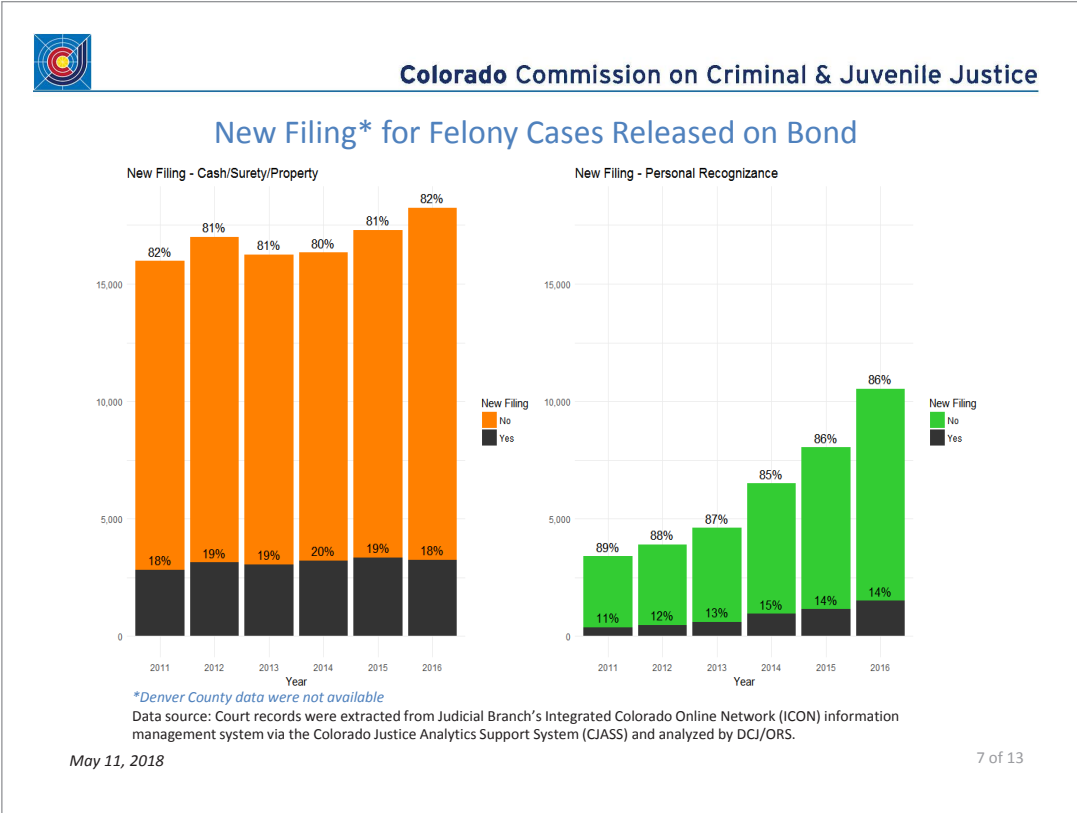
Failures to Appear for Felony Cases



Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

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Colorado Commission on Criminal & Juvenile Justice

Top 10 New Filing* Offenses for Felony Cases

Most serious offense category**	Pre		Post	
	%	N	%	N
Traffic Misdemeanor	24%	2,521	23%	3,025
Misdemeanor Assault ¹	22%	2,265	18%	2,469
Other Custody Violations ²	7%	743	10%	1,326
Drug Possession	8%	794	8%	1,127
Theft	8%	826	6%	825
Drug Distribution	4%	413	5%	616
Other Property	4%	437	4%	541
Burglary	4%	407	4%	518
Felony Assault	3%	352	4%	535
Forgery/Fraud	3%	340	4%	529

*New filings in Denver County court were not available.
 **Includes attempts, solicitation, and conspiracy
¹Misdemeanor assault includes Violation of a Protection order.
²Other Custody Violations includes Violation of Bond Conditions.

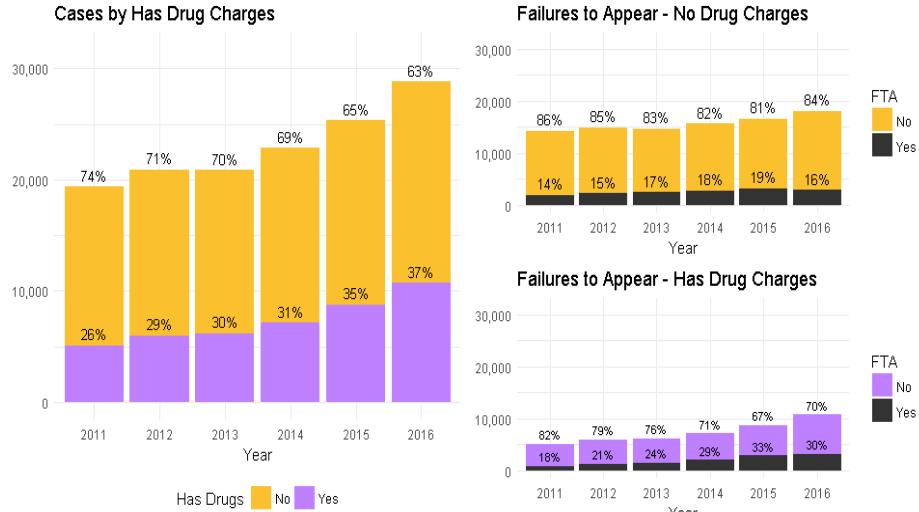
Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

May 11, 2018 8 of 13



Colorado Commission on Criminal & Juvenile Justice

Failures to Appear for Felony Cases, by Has Drug Charges



Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

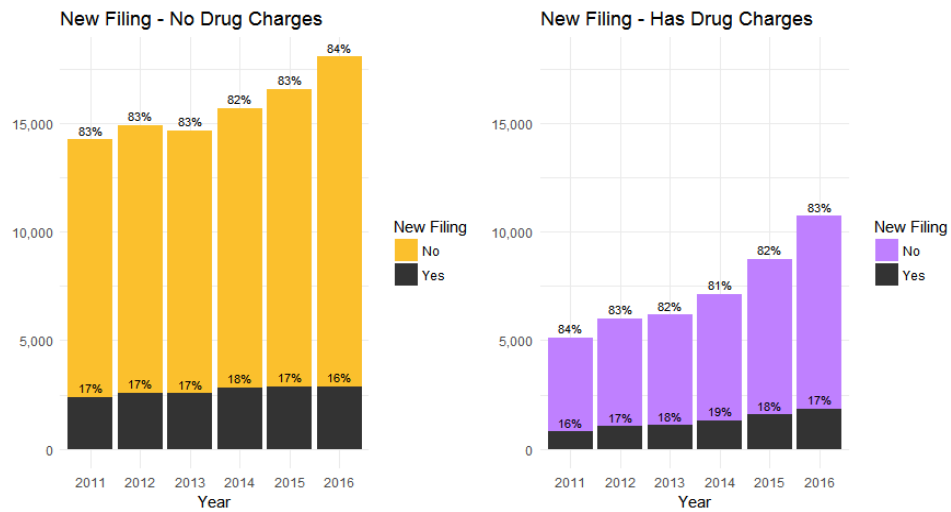
May 11, 2018

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Colorado Commission on Criminal & Juvenile Justice

New Filing* for Felony Cases Released on Bond



*Denver County data were not available

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS.

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Colorado Commission on Criminal & Juvenile Justice

Felony Cases Bond Type Posted by Presence of Drug Charges

	Pre		Post	
	%	N	%	N
Cash/Surety/Property	81%	49,232	67%	51,867
No drug charges	72%	35,537	69%	35,595
Has drug charges	28%	13,695	31%	16,272
Personal Recognizance	19%	11,916	33%	25,081
No drug charges	69%	8,272	59%	14,725
Has drug charges	31%	3,644	41%	10,356
Total	100%	61,148	100%	76,948

Data source: Court records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CIASS) and analyzed by DCJ/ORS.

May 11, 2018

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Colorado Commission on Criminal & Juvenile Justice

In Summary

Comparing the 3 year pre- and post- periods:

- Statewide the use of PR bonds for felony cases increased from 12% to 21% (75% increase); PR bond for misdemeanor cases increased from 16% to 27% (69% increase)
- Increased use of PR Bond varied widely across districts
- Statewide FTA's for felony cases increased from 16% to 25% for PR bonds (56% increase), and 17% to 21% for Cash/Surety bonds (23% increase).
- New filings while on bond increased for both Cash/Surety (18% to 19%) and PR (12% to 14%) bond but the increases were small.

May 11, 2018

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Colorado Commission on Criminal & Juvenile Justice

In Summary

Comparing the 3 year pre- and post- periods:

- The percent of felony cases on PR bond with drug charges increased from 31% to 41% (32% increase).
- Cases with drug charges failed to appear at a much higher rate (30% vs 18%).

https://cdpsdocs.state.co.us/ors/docs/impact/2018-02_ORIS-BondReformImpact-HB13-1236.pdf

May 11, 2018

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Appendix D: Parole Board Decision Making



Parole Board Decisions FY 2017 Release Guidelines Report

- An FY 2010 Commission Initiative -

Kevin Ford, Division of Criminal Justice
Department of Public Safety

*Presentation to the Colorado Commission on Criminal and Juvenile Justice
May 11, 2018*



Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

CCJJ Recommendation

FY10-PIS03. Introduce a structured decision-making guide.

- Creation of the Colorado Parole Board Release Guidelines Instrument;
- Include in the legislative declaration (C.R.S. 17-22.5-404) that the guidelines reflect evidence-based practices by prioritizing public safety and actuarially-determined risk, criminogenic needs, and offender readiness for parole;
- Organize and streamline existing information;
- Promote consistency in parole decision making; and
- Allow for systematically collecting data on parole decision making.

CCJJ, 5/11/2018

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House Bill 2010 – 1374: Concerning Parole.

- **Guidelines development** - In consultation with the Board, DCJ mandated to develop administrative release guideline (§17-22.5-107(1)), and DOC mandated to develop administrative revocation guideline (§17-22.5-107(2))
 - **Release/revocation factors** - release considerations to include thirteen non-exclusive decision factors (§17-22.5-404(4)), and revocation considerations to include nine non-exclusive decision factors (§17-22.5-404(5)).
- **Annual report** - Board and DCJ are mandated to issue an annual report to the General Assembly regarding the outcomes of decisions by the Board (§17-22.5-404(6)(e)(I), C.R.S.).

CCJJ, 5/11/2018

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GUIDELINES DEVELOPMENT (§17-22.5-107(1))

Statute specifically states that the guidelines must...

Provide a consistent framework to evaluate and weigh:

- specific statutory release decision factors,
- based on a structured decision matrix, and
- offer an advisory release decision recommendation.

CCJJ, 5/11/2018

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FY 2017 Decisions Report

Statutory: RELEASE DECISION FACTORS (§17-22.5-404(1))

1. victim statement;
2. actuarial risk of reoffense;
3. criminogenic need level;
4. program or treatment participation and progress;
5. institutional conduct;
6. adequate parole plan;
7. threat/harass victim or victim's family (direct or indirect);
8. aggravating or mitigating factors from the criminal case;
9. statement from parole sponsor, employer, or other support person;
10. previous abscond/escape or attempt while on community supervision;
11. effort to obtain or the completion of GED or equivalent or college degree during incarceration;
12. PB use the CARAS (Colorado Actuarial Risk Assessment Scale); and
13. PB use the administrative release guideline instrument (PBRGI).

**Guideline
factors in blue**

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

Guidelines: RELEASE DECISION FACTORS - RISK

Item #1: The Colorado Actuarial Risk Assessment Scale

Item #2: Code of Penal Discipline / Victim Threat

Item #3: Code of Penal Discipline/ Class I Offense

Item #4: Code of Penal Discipline/ Class II Offense

Item #5: Escape/Abscond or Attempt

Item #6: 60 Years of Age or Older *

Item #7: Medical Condition Reduces Risk of Re-Offense *

Item #8: Manageable in the Community * [Rating by Board member]

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* **Risk moderator** 6



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FY 2017 Decisions Report

Guidelines: RELEASE DECISION FACTORS - READINESS

Item #9: Level of Service Inventory-Revised

Item #10: Level of Service Inventory-Rater Box Average*

Item #11: Program Participation / Progress [*Rating by Board member*]

Item #12: Treatment Participation / Progress [*Rating by Board member*]

Item #13: Parole Plan [*Rating by Board member*]

(* Rating of positive adjustment)

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

Guidelines: RELEASE DECISION FACTORS

Under study: PBRGI Version 2

- PB would like the PBRGI advisory recommendation to reflect more of the factors they use in decision-making.
- PB and DCJ working collaboratively since Fall 2017.
- Include additional factors considered by the Board, and include more specific information on existing factors.

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FY 2017 Decisions Report

PBRGI Version 2: New and revised factors under study:

- **Misdemeanor history**
- **Victim impact/input**
- **Severity/Type of offense**
- **Criminogenic needs**
(In addition to LSI, **use the CTAP-ORAS needs assessments: PIT, RT, SRT**)
- **Community supervision failures (recency and pattern)**
(Community Corrections, Probation, and Parole)
- **Vocational/Education program participation (evaluate “dose” received)**
- **Institutional misconduct (COPDs) (recency and pattern)**
- **Treatment received while in DOC (evaluate “dose” received)**
- **Parole plan accommodations (rate all plan elements separately)**
Employment plan/opportunities, Housing, Community support, etc.)

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

GUIDELINES DEVELOPMENT (§17-22.5-107(1))

Statute specifically states that the guidelines must...

Provide a consistent framework to evaluate and weigh:

- specific statutory release decision factors,
- based on a **STRUCTURED DECISION MATRIX**, and
- offer an advisory release decision recommendation.

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

DECISION MATRIX			
RISK CATEGORY	READINESS CATEGORY		
	3-High	2-Medium	1-Low
1-Very Low			
2-Low			
3-Medium			
4-High			
5-Very High			

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

GUIDELINES DEVELOPMENT (§17-22.5-107(1))

Statute specifically states that the guidelines must...

Provide a consistent framework to evaluate and weigh:

- specific statutory release decision factors,
- based on a structured decision matrix, and
- offer an **advisory release decision recommendation.**

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

ADVISORY RELEASE DECISION RECOMMENDATION MATRIX			
RISK CATEGORY	READINESS CATEGORY		
	3-High	2-Medium	1-Low
1-Very Low	RELEASE	RELEASE	RELEASE
2-Low	RELEASE	RELEASE	DEFER
3-Medium	RELEASE	RELEASE	DEFER
4-High	RELEASE	DEFER	DEFER
5-Very High	DEFER	DEFER	DEFER

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

Parole Board Release Guidelines Instrument (PBRGI)

- During FY 2011 and 2012, DCJ worked with CCJJ working group members, the Parole Board, and OIT @ CDOC to design an automated system to score inmates on the guidelines factors and provide an advisory recommendation.
- FY 2011 and FY 2012 – status reports issued on system development.
- During FY 2013, the PBRGI was implemented (September 2012).
- FY 2013 to present – annual decision reports submitted to the GA.

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FY 2017 Decisions Report

House Bill 2010 – 1374: Concerning Parole.

- **Guidelines development** - In consultation with the Board, DCJ mandated to develop administrative release guideline (§17-22.5-107(1)), and DOC mandated to develop administrative revocation guideline (§17-22.5-107(2))
 - **Release/revocation factors** - release considerations to include thirteen non-exclusive decision factors (§17-22.5-404(4)), and revocation considerations to include nine non-exclusive decision factors (§17-22.5-404(5)).

- **Annual report** - Board and DCJ are mandated to issue an annual report to the General Assembly regarding the outcomes of decisions by the Board (§17-22.5-404(6)(e)(I), C.R.S.).

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FY 2017 Decisions Report

FY 2017 Annual Report

Report Sample

- Decisions made regarding hearings and reviews finalized between 7/1/2016 and 6/30/2017
- Parole candidates between parole eligibility date (PED) and mandatory release date (MRD)
- Discretionary decisions only
Excludes circumstances not within the Board’s control (e.g., Court orders, “statutory releases”, inmate unavailability)

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FY 2017 Decisions Report

BOARD HEARING TYPES

1. “Regular” hearing - Single member of the Board conducts and renders a decision. Two members decide, if the inmate is serving a life sentence and is parole eligible.

2. Full Board review - A case *may* be referred to full Board review for any reason following the initial (“regular”) hearing or *shall* be referred to a full Board review for release* in cases involving violence or a sex offense. Conducted and decided by at least four of seven Board members. If necessary, remaining members are polled until a majority threshold is met.

(* Deferral does not require full Board review in these cases.)

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

BOARD HEARING TYPES (continued)

3. File review - an option allowing a review rather than a meeting with the offender when victim notification is not required AND one or more specific statutory conditions is met:

- a special needs release,
- detainer to the U.S. Immigration and Customs Enforcement agency,
- inmate within six months of the mandatory release date (MRD), or
- *inmate assessed “low” or “very low” in actuarial risk and meets Board’s re-entry readiness criteria (August 2017).*

CCJJ, 5/11/2018

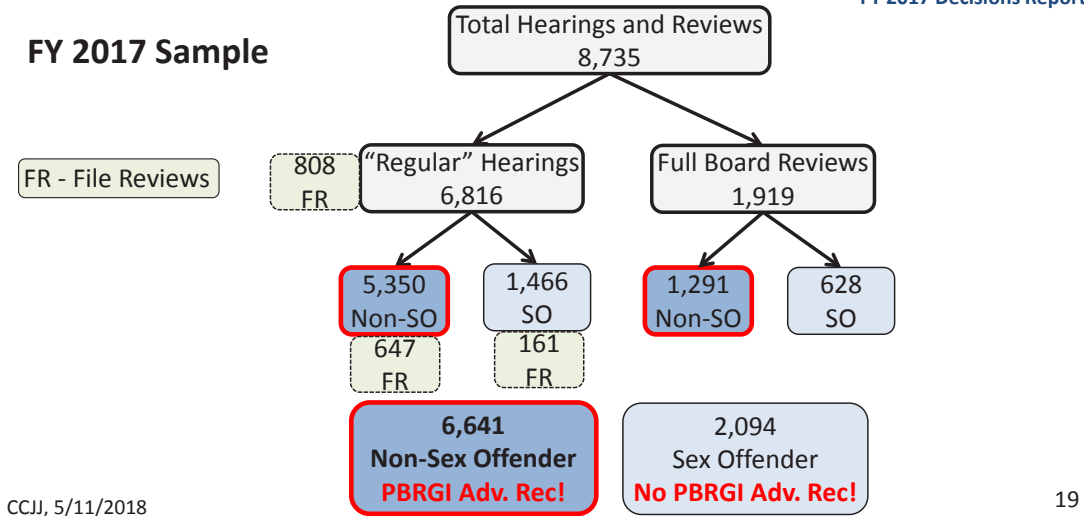
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FY 2017 Decisions Report

FY 2017 Sample



Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

DISCRETIONARY DECISION OPTIONS

- Refer to full Board review
- Release
- Table (“Conditional Discretionary Release Pending”)
- Defer

Table

- Set parole conditions, but release is pending specific requirement(s).
- Requirement(s) met...offender Released
- Requirement(s) not met...decision amended and offender Deferred

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

DISCRETIONARY DECISION OPTIONS (continued)

Defer

Defer (to a subsequent hearing date)
 One, three or five years or a “custom” period

Defer to MRD

- Offender will not be seen again prior to MRD
- Parole conditions are set
- *Can* occur up to 14 months prior to MRD
- *Typically* occurs up to 6 months prior to MRD

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

FY 2017 Findings

Overall agreement: 73%

Rate of deferral agreement: 90%

(2,592 / 2,879)

Rate of Release agreement: 53%

(1,318 / 2,471)

Parole Board Hearing Decisions Count (Percent)	PBRGI Advisory Recommendations		Total PB Decisions
	Defer	Release	
Defer	1,744 (33%)	737 (14%)	2,481 (46%)
Defer to MRD	848 (16%) [All Defer=2,592 (48%)]	416 (8%) [All Defer=1,153 (22%)]	1,264 (24%) [All Defer=3,745 (70%)]
Release	287 (5%)	1,318 (25%)	1,605 (30%)
Total PBRGI Recs	2,879 (54%)	2,471 (46%)	5,350 (100%)

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FY 2017 Decisions Report

PB DECISIONS & PBRGI RECOMMENDATIONS	Fiscal Year				
	2013* (n=5,263)	2014 (n=5,980)	2015 (n=5,572)	2016 (n=4,950)	2017 (n=5,350)
PB / PBRGI AGREEMENT (72%)	69%	73%	72%	72%	73%
RELEASE					
PB Decision (34%)	39%	32%	32%	36%	30%
PBRGI Rec. (51%)	54%	50%	52%	54%	46%
(Release Agreement, 56%)	(58%)	(55%)	(55%)	(57%)	(53%)
DEFER					
PB Decision (66%)	61%	68%	68%	64%	70%
PBRGI Rec. (49%)	46%	50%	48%	46%	54%
(Defer Agreement, 89%)	(82%)	(90%)	(91%)	(89%)	(90%)

* Partial year - 10 months, following the September 2012 implementation.

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FY 2017 Decisions Report

PBRGI: ADVISORY RELEASE DECISION RECOMMENDATION MATRIX

What is the degree of PB/PBRGI agreement within the guidelines matrix?

Risk	Readiness		
	High	Medium	Low
Very Low	Release	Release	Release
Low	Release	Release	Defer
Medium	Release	Release	Defer
High	Release	Defer	Defer
Very High	Defer	Defer	Defer

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

FY 2017: Agreement within Guidelines Matrix

Blue – Agree to Release

Red – Agree to Defer

Risk	Readiness		
	High	Medium	Low
Very Low	75%	46%	22%
Low	83%	44%	95%
Medium	80%	42%	97%
High	82%	77%	95%
Very High	55%	79%	97%

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FY 2017 Decisions Report

File Reviews by Fiscal Year

There has been a 50-fold increase in the use of file reviews over the last five years...primarily due to a single file-review criterion.

REMINDER: BOARD HEARING TYPES

3. File review - an option allowing a review rather than a meeting with the offender when a decision does not require victim notification and meets one or more specific statutory conditions:

- a special needs release,
- detainer to the U.S. Immigration and Customs Enforcement agency,

Of note in the following table...

- **inmate within six months of the mandatory release date (MRD), or**
- *inmate assessed "low" or "very low" in actuarial risk and meets Board's re-entry readiness criteria (August 2017).*
- ~~Class 1 COPD in the last 12 months [PB Rules] (repealed in 2015)~~

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FY 2017 Decisions Report

File Reviews by Fiscal Year

Count (Percent within FY)	Fiscal Year				
	2013 (n=8,403)	2014 (n=9,550)	2015 (n=9,093)	2016 (n=8,480)	2017 (n=8,735)
Total File Reviews	16 (>1%)	282 (3%)	381 (4%)	614 (7%)	808 (9%)
Within Six Months of MRD	7 [^] (44%)	149 [^] (53%)	222 [^] (58%)	592 (96%)	752 (93%)
PB DECISION Defer	4 (25%)	136 (48%)	170 (45%)	200 (33%)	200 (25%)
Defer to MRD	6 (37.5%)	135 (48%)	203 (53%)	392 (64%)	561 (69%)
[Defer Total]	6 [62.5%]	135 [96%]	203 [98%]	392 [96%]	561 [94%]
Release	6 (37.5%)	11 (4%)	8 (2%)	22 (4%)	47 (6%)

[^] In FY 2013, 2014 and part 2015, the Board had the option to use file reviews for inmates with a Class I COPD. In 2015, these offenders became ineligible for parole application hearings.

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

FY 2017 PB Decision and PBRGI Advisory Recommendation

FILE REVIEWS (n=647)

71% - Overall Agreement

19% Release agreement (n=44 of 227 Release recommendations)

99% Defer agreement (n=417 of 420 Defer recommendations)

FULL BOARDS (n=1,291)

64% - Overall agreement

64% Release agreement (725 of 1,131 Release recommendations)

99% Defer agreement (96 of 160 Defer recommendations)

INMATES labeled SEX OFFENDER (n=2,094)

18% (372) Release 82% (1,722) Total Defer

66% (1,387) Defer (to a subsequent hearing date)

16% (335) Defer to MRD

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Colorado Commission on Criminal & Juvenile Justice

FY 2017 Decisions Report

*Analysis of Colorado State Board of Parole Decisions:
FY 2017 Report*

Report available at,
colorado.gov/ccjj/ccjj-reports

Kevin Ford, DCJ

Presentation to the Colorado Commission on Criminal and Juvenile Justice, May 11, 2018

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Appendix E:
Recommendation FY18-MH01 details

[As Approved]

MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

January 12, 2018

FY18-MH #01. Develop Pre-File Mental Health Diversion Pilot Programs.

Recommendation FY18-MH #01

This recommendation proposes the development of pilot programs for pre-file mental health diversion in judicial districts where the option or resources for the option may be lacking. The pilot will:

- Develop post-arrest, pre-file diversion programs specifically for individuals experiencing mental health disorders and who meet specific criteria and are determined able to benefit from diversion to treatment rather than being processed through the criminal justice system.
- Create pre-file mental health diversion programs that utilize a stakeholder-created, reviewed, and approved model (See **Appendix A.**)

In addition, local officials should promote the utilization of Adult Pretrial Diversion Programs and funding as created by §18-1.3-101, C.R.S.

Discussion

Despite mounting efforts to increase pre-arrest diversion for individuals with mental health disorders, some will continue to be charged and booked before their mental health concerns are clearly identified. Although mental health courts are operating across our state, they are a costly process and require defendants to enter a plea, creating long term difficulties in finding housing, employment, and rejoining their communities upon release.

Colorado has experience with pre-trial diversion programs through collaboration with community mental health providers, with examples both historically and currently in Denver's municipal court, and across the state.

To promote public safety, good outcomes for all citizens, and efficiency in our government and judicial system, promising models must be pursued to divert individuals into treatment at the earliest possible discretionary point. The Judicial Department currently oversees and administers programs within District Attorney's office, funded by §18-1.3.101, C.R.S to create diversion programs. The Department will benefit from pursuing partners for and promoting the utilization of the model proposed in this recommendation.

Proposed Statutory Language

No legislative action is necessary to implement these programs, although the Colorado Judicial Branch may benefit from a supplemental budget request to add staff to oversee, track, and evaluate this program.

[As Approved]

MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

January 12, 2018

Appendix A

The Mental Health/Jails Taskforce designated a workgroup to develop the proposed model for Pre-File Mental Health Diversion Programs.

Vision:

Contribute to Colorado's effort to be the healthiest state by achieving sustainable systems and strategies that support good behavioral health outcomes, reduce incarceration and justice-involvement, save taxpayer dollars, and improve lives.

Purpose:

To recommend a model for a **pre-file mental health diversion program**. The model will serve as the basis for a pilot in sites across the state, including at least one rural and at least one urban pilot site. This model will achieve better and more sustainable behavioral health and public safety outcomes in our community by diverting individuals with mental health disorders, who have been accused of a low-level crime, out of the criminal justice system and into community treatment. This model will reduce incarceration of individuals living with behavioral health disorders, save taxpayer dollars, and improve lives through effective behavioral health interventions.

Workgroup Members:

- Frank Cornelia
- Patrick Fox
- Joe Pelle
- Abigail Tucker
- Doug Wilson
- Lucy Ohanian

Model Summary:

- **Target Population:** Individuals living with behavioral health disorders whose disorders have contributed to or created the circumstances leading to low-level criminal behavior; in particular, those who have frequent contact with police and the courts and who would benefit from effective health interventions instead of repeated incarceration.
- **Goals:** Reduce the number of individuals with behavioral health disorders in jails by a designated percentage (to be set by each pilot), reduce the number and cost of court cases involving a person with a behavioral health disorder, demonstrate cost-savings and other measurable efficiencies in justice and healthcare resources management, and promote measurable positive life outcomes for individuals living with behavioral health disorder.
- **Key performance measures:** Data shall be examined over a six-month period, and may include:
 - Recidivism of individuals diverted to the program
 - Impact on jail bed days
 - Treatment engagement, measured by provider claims
 - Impact on court costs

[As Approved]

MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

January 12, 2018

Model Principles:

- This model targets people who have been recently arrested for non-serious crimes; however, persons who have pending criminal charges and otherwise fit the criteria may also be considered.
- This model builds on existing focus and collaboration at the early intercepts of the Sequential Intercept Model¹ and prior.
- The model depends on alliances among law enforcement entities (i.e., arresting officer, jail personnel), judicial entities (i.e., public defenders, district attorneys, judges), and local mental health providers.
 - The partners must be dedicated to the program and form strong relationships.
 - In rural pilots, partners may operate regionally and via telehealth to cover viable caseloads.
- The model will depend on a series of discretionary decisions, including police discretion that an arrest is necessary, jail discretion to determine who to screen for mental health concerns, a discretionary recommendation by an evaluator as to whether to divert, and the ultimate decision to divert. These decisions will be informed by the criteria described herein, an assessment of criminogenic risk, a mental health assessment conducted by partnering clinicians, and information gathered during the arrest and processing.
- To foster collaboration and promote diversion to treatment, it is recommended that partnering evaluators be affiliated with or hired by local community mental health centers.
- To cultivate trust among partners and promote good outcomes for participants, no evaluation results or statements made about the current alleged crime will be used against participants for purposes of prosecution in the target offense. This model must ensure that all information obtained directly from or about the potential participant is privileged and confidential and may not be used in any fashion to promote the prosecution of the charges for which the participant is presently being evaluated.
- To foster successful behavioral health outcomes, the treatment provider will seek to use non-coercive methods of treatment; and, once diverted, the participant will have no further participation in the criminal justice system for the subject charges (other than narrow optional exceptions described below).

¹ The *Sequential Intercept Model* (Munetz and Griffin, 2006) identifies five conceptual points at which standard criminal justice processing points can be interrupted to offer community-based alternatives: (1) law enforcement/emergency services; (2) initial detention/initial court hearing; (3) jails/courts; (4) re-entry; and (5) community corrections/support.

[As Approved]

MENTAL HEALTH/POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

January 12, 2018

- Prosecutors in counties that elect to participate in this project will need to agree, as part of this project, to defer filing charges in cases where individuals are recommended for this pre-charge diversion effort (through the screening process) and the judge finds the person is appropriate for this pre-charge diversion effort after hearing from the parties. If the prosecutor elects to maintain future filing authority, the circumstances under which the subject charges may be (re)filed are limited to either the participant (1) committing a new criminal offense in the six months after the diversion decision or (2) a complete failure by the participant to initiate treatment.
 - In order to assess initiation of treatment for purposes of future filing of charges, pilot programs may choose to implement a one-time communication from the treatment provider to the district attorney that simply indicates whether or not the participant has initiated treatment.

Proposed Model:

1. Adult arrestees who are brought into detention will be screened by a booking nurse, deputy, or other detention personnel for behaviors indicative of a mental or behavioral health disorder. The task force recommends that participants in the model use evidence-supported screening tools (e.g., Brief Jail Mental Health Screen² or the Colorado Pre-trial Assessment Tool³); however, the screening tool will be determined at the discretion of the detention facility with the goal of causing minimal or no disruption to the normal course of business.
2. Initial eligibility is based on the arresting charge and limited to:
 - a. Non-VRA crime Petty Offenses & Non-VRA Misdemeanors
 - b. Further, the specific pilot sites may agree to additional eligible charges. If all of the participants agree to add additional eligible charges, the workgroup recommends consideration of:
 - i. Non-VRA Low-level felonies (Felony 4, 5, 6)
 - ii. Low-level Drug Felonies (D3 and D4)

² See Osher, F. Scott, J.E., Steadman, H.J., & Robbins, P.C. (2006). Validating a brief jail mental health screen: Final technical report (NCJ 213805). National Institute of Justice. (ncjrs.gov/App/Publications/abstract.aspx?ID=235309)

³ Pretrial Justice Institute. (2012). The Colorado Pretrial Assessment Tool (CPAT). Rockville, MD: PJI. (pretrial.org/download/risk-assessment/CO%20Pretrial%20Assessment%20Tool%20Report%20Rev%20-%20PJI%202012.pdf)

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3. Upon determination of initial eligibility, and before the filing of charges, the mental health evaluator will meet with the individual in the jail to conduct an initial assessment.
 - a. While uniform assessment criteria should be included for all pilot sites, a structured evaluation tool may not be necessary. Assessments should, at a minimum, examine:
 - i. Current symptomatology of a behavioral health disorder
 - ii. History of behavioral health concerns, diagnoses, or treatment
 - iii. Current involvement in treatment – this may include consultation with current providers
 - iv. Social determinants of health (i.e., homelessness, employment, physical health, etc.)
 - v. Willingness to engage in diversion program and commit to treatment
 - b. During the assessment, and if the jurisdiction has implemented the one-time report requirement, the evaluator will obtain a limited Release of Information (ROI) to allow for the one-time report as well as data collection.
 - c. The assessment will benefit from face-to-face interaction, but to promote rapid recommendations telehealth may be considered.
 - d. Evaluations will be prioritized based on legal charges, focusing on lowest level offenses first.
4. Upon determination of a mental health concern, the evaluator will make a recommendation to divert into treatment. This recommendation will be sent to all partners:
 - a. Public defenders and district attorneys
 - b. Judges overseeing the pilot program
 - c. Community mental health providers, to prepare for rapid intake and connection to services.
5. Partners will receive the recommendation from the evaluator and discuss any confounding issues or concerns. Upon discussion, one of the following determinations will be made:
 - a. Agreement to divert with a “no-file” procedure and no report back.

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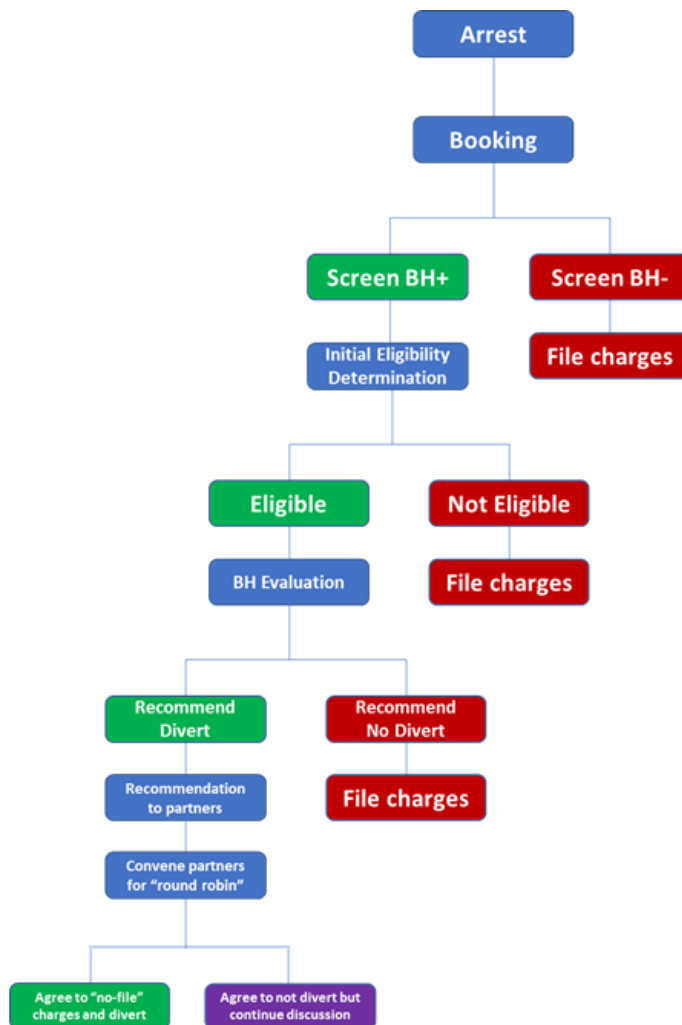
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- b. Agreement to defer decision with a plan to collect or review additional information.
6. The Mental Health Evaluator will report the outcome of the process (diverted or not), demographic information, as well as Medicaid ID if applicable to the entity that is collecting outcomes data.

Proposed Model/Decision Tree



Appendix F:
Recommendation FY17-RE04 details

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FY17-RE #04. Promote housing opportunities for people with non-conviction, sealed, and expunged records.

Recommendation

Promote community safety and economic growth by:

- Preventing adverse housing action on the basis of arrests that did not result in conviction, or criminal justice records that have been sealed or expunged.
- Allowing prospective tenants denied housing due to a criminal history or credit record to obtain a copy of the record.
- Correcting a statutory omission regarding landlords' inquiry into sealed records.
- Enacting protections for landlords in civil cases.

Discussion

Obtaining housing is a lifelong challenge for those with a criminal record, and a significant hurdle facing individuals returning from incarceration.¹ This is of widespread concern, as nearly one in three Americans of working age have some form of criminal record.² In Colorado alone, over 190,000 people were arrested in 2015,³ and there are more than 1.5 million individuals in the state's criminal record database.⁴

The inability of large numbers of people to obtain housing adversely affects the public's safety and welfare. On an individual level, stable housing is a key factor that enables people to avoid future arrests and incarceration.⁵ More broadly, the community as a whole is negatively

¹ U.S. Dept. of Housing & Urban Dev. (2016, April 4). *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions*. Washington, DC (see pp. 1-2 at portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf); *The Piton Foundation* (2007, Spring). Study portrays struggles people face after prison. *The Piton Perspective*. Denver, CO (at cdpsdocs.state.co.us/ccij/Resources/Ref/PitonPerspective-Spr2007.pdf); Tran-Leung, M.C. (2015, February), *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. Chicago, IL: The Shriver Center (see pp. 1-3 at povertylaw.org/files/docs/WDMD-final.pdf); Maureen Cain, Policy Director, Colorado Criminal Defense Institute (Aug. 24, 2016), presentation to the CCJJ Collateral Consequences Working Group; and Richard Morales, Deputy Executive Dir., Latino Coalition for Community Leadership, (Aug. 10, 2016) presentation to the CCJJ Collateral Consequences Working Group.

² Bureau of Justice Statistics (2014, January), *Survey of State Criminal History Information Systems*, Washington, DC: U.S. Dept. of Justice (see Table 1 on p. 14 at ncjrs.gov/pdffiles1/bjs/grants/244563.pdf); and McGinty, J. C. (2015, Aug. 7), How many Americans have a police record?, *The Wall Street Journal* (at wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802).

³ Colorado Bureau of Investigation, *Crime in Colorado 2015*, crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 1, 2017).

⁴ *Survey of State Criminal History*, *supra* note 2, at p. 14, Table 1.

⁵ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (Apr. 18, 2011); *Office of General Counsel Guidance*, *supra* note 1, at p. 1; and National Research Council. (2008). *Parole, Desistance from Crime, and Community Integration*. Committee on Community Supervision and Desistance from Crime. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press (see pp. 23-24 at cdpsdocs.state.co.us/ccij/Resources/Ref/NCR2007.pdf).

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impacted by restrictions that concentrate individuals in low-rent, distressed neighborhoods.⁶ Numerous studies have shown that the housing related consequences of a criminal record may disparately impact individuals and communities of color.⁷ It is thus necessary to ensure that Colorado's justice-involved population has an opportunity to obtain secure and affordable housing.

Many landlords regularly rely on criminal background checks as a means for screening rental applicants, and may refuse to rent to individuals with criminal records based on concerns about public safety or the perception that those individuals are less likely to meet rental obligations.⁸ A criminal history thus poses a significant barrier to finding quality rental housing in Colorado.⁹ Housing options may also be limited by inaccurate or incomplete criminal records from either public¹⁰ or private¹¹ record reporting services.

Colorado currently places no restrictions on a private landlord's ability to withhold or terminate housing based on an individual's criminal record.¹² Landlords are prohibited from asking

⁶ Parole, *supra* note 5, at p. 54-55; and Roberts, J. (2011). Why misdemeanors matter: Defining effective advocacy in the lower criminal courts. *U.C. Davis Law Review*, 45(2), 277-372 (see pp. 300-301 at lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2_Jenny_Roberts.pdf).

⁷ Carson, E. A. (2015, September). *Prisoners in 2014*. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics (reporting on p. 15 that as of December 31, 2014, black men are imprisoned in state and federal facilities at a rate of 2,724 per 100,000, Hispanic men are imprisoned at a rate of 1,091 per 100,000, and white men are imprisoned at a rate of 465 per 100,000; similar disparities exist for women) (at bjs.gov/content/pub/pdf/p14.pdf); and *Office of General Counsel Guidance*, *supra* note 1, at p. 2.

⁸ Vallas, R. & Dietrich, S. (2014, December). *One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records*. Washington, DC: Center for American Progress, (see p. 19 at cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf).

⁹ Enterprise Community Partners (2017, February). *Protecting Colorado's Renters: A Call for State & Local Policy Action* (at enterprisecommunity.org/download?fid=15091&nid=19246); and Chiriboga-Flor, A. & Williams, Z. (2016, September), *Warning Gentrification in Progress: Community Perspective on the Denver Metro Housing Crisis*, Denver, CO: 9to5 Colorado (see p. 8 at 9to5.org/wp-content/uploads/2016/09/HOUSING-REPORT-1.pdf).

¹⁰ Bureau of Justice Statistics (2015, December). *Survey of State Criminal History Information Systems- 2014*, Washington, DC: U.S. Dept. of Justice (see p.2-3 and Table 1 on p. 14 at ncjrs.gov/pdffiles1/bis/grants/249799.pdf) (noting the various states have different rates of reporting final dispositions for arrests, and that in Colorado 19% of arrests have associated dispositions).

¹¹ Elejalde-Ruiz, A. (2015, Oct. 29). \$13M penalty for background check errors that cost jobs, hurt reputations. *Chicago Tribune* (at chicagotribune.com/business/ct-background-check-penalties-1030-biz-20151029-story.html).

¹² In Oregon, "a landlord may not consider a previous arrest of the applicant if the arrest did not result in a conviction" unless the arrest resulted in charges that have not been dismissed. Only certain types of convictions can be considered. Oregon Rev. Stat. § 90.303. Several municipalities have similar laws. Both Champaign and Urbana, Illinois, prohibit housing discrimination on the basis of an arrest record. Champaign, IL, Code Ch. 17, Art. V, § 17-71 (at municode.com/library/il/champaign/codes/code_of_ordinances?nodeId=MUCO_CH17HURI_ARTVDIHOCOSP); Urbana, IL Code Ch. 12, Art. III, §§ 12-37, 12-64 (at municode.com/library/il/urbana/codes/code_of_ordinances?nodeId=COOR_CH12HURI_ARTIIIDI); Newark, New Jersey prohibits landlords and real estate brokers from inquiring about or taking adverse action on the basis of a non-pending arrest that did not lead to conviction, and records that have been erased or expunged. City of Newark, NJ, (2012, September), Legislation File #12-1630, Version 1 (at newark.legistar.com/LegislationDetail.aspx?ID=1159554&GUID=6E9D1D83-C8D7-4671-931F-EE7C8B2F33FD&FullText=1, last visited May 23, 2017); San Francisco, California, does not permit affordable housing providers to consider most arrests that did not lead to a conviction, convictions that have been dismissed or

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individuals to disclose sealed conviction records.¹³ The law currently has no mechanism, however, for enforcing that prohibition.¹⁴ Landlords are not prohibited from asking individuals to disclose sealed records not relating to convictions.¹⁵

Under federal law, however, a landlord's consideration of a tenant's criminal history may give rise to liability. Because criminal record exclusions can have a disparate impact based on race and national origin, they are regulated under the federal Fair Housing Act.¹⁶ A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider has no intent to discriminate.¹⁷

Arrests alone are not proof of criminal activity.¹⁸ Housing providers who impose exclusions based solely on an arrest without conviction cannot prove that the exclusion actually assists in protecting resident safety or property.¹⁹ Policies and practices that impose exclusions based on conviction records must be necessary to achieve a substantial, legitimate, nondiscriminatory interest.²⁰ Guidance from the federal Department of Housing and Urban Development states that conviction based exclusions should account for the nature and severity of the conviction, the time that has passed since the conviction, and whether the conviction demonstrates a risk to resident safety or property.²¹

This recommendation includes five statutory elements:

- 1. Enact subsection 24-34-502(1)(I) (unfair housing practices prohibited).**
- 2. Amend section 24-34-501 (definitions).**
- 3. Enact section 38-12-701 (proposed title: access to records).**
- 4. Amend section 24-72-702 (sealing of arrest and criminal records other than convictions).**
- 5. Enact section 38-12-512 (proposed title: protection for landlords).**

expunged, or convictions more than seven years old. San Francisco, CA, Police Code, Article 49, § 4906 (at [sf-hrc.org/sites/default/files/ARTICLE%2049_%20Final.pdf](http://hrc.org/sites/default/files/ARTICLE%2049_%20Final.pdf)); Seattle, Washington, has passed a resolution recommending that landlords not exclude residents on the basis of arrests not resulting in convictions. City of Seattle, Office of the City Clerk (2016, June), Resolution 31669, Version 3 at seattle.legistar.com/LegislationDetail.aspx?ID=2737445&GUID=4E0573F5-8990-47D2-BE8D-85BE81C1E83B (last visited May 23, 2017).

¹³ § 24-72-703(4)(d)(I), C.R.S. 2016.

¹⁴ Cf. § 24-72-309, C.R.S. 2016 (before Colorado's record sealing statutes were moved to part 7 of chapter 72 of title 24, it was a misdemeanor to violate their provisions).

¹⁵ § 24-72-702(1)(f), C.R.S. 2016.

¹⁶ *Office of General Counsel Guidance*, *supra* note 1, at p. 2; and U.S. Dept. of Housing & Urban Dev. (2015, November 2), *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions* (see p. 5 at portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf).

¹⁷ *Office of General Counsel Guidance*, *supra* note 1, at 2.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ *Id.* at 6.

²¹ *Id.* at 6-7.

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Proposed Statutory Language

These recommendations would prevent adverse housing decisions on the basis of non-pending arrests that did not result in a conviction, or convictions that have been sealed or expunged. They would also prohibit creating restrictive covenants based on the same. Their language parallels the language of recommendation FY17-RE #02, which applies to private employers.

These recommendations would also allow individuals denied housing to obtain a copy of the report that served as the basis for denial, and would correct an existing omission that allows landlords to inquire about sealed non-conviction records. Finally, they would protect landlords from civil liability based on tenants' criminal history in the same way employers are currently protected. Together, these recommendations aim to ensure record-based restrictions on housing are both fair to individuals and productive to the safety and welfare of Colorado society.

1. Enact subsection 24-34-502(1)(I):

This recommendation gives meaning to Colorado's current record sealing laws, and applies existing Fair Housing Act guidance. It would prevent adverse housing action against an individual based on non-pending arrests that did not result in conviction, sealed records, and expunged records. Under all of those circumstances, either the individual has not been convicted of a crime, or a judge has already determined that the record in question should not be available to the public.²²

The proposed provisions would be enforceable by the Colorado Department of Regulatory Agencies, Civil Rights Division.²³ The civil rights commission could, after following existing notice and hearing procedures, issue a cease and desist order if it found a landlord was engaging in prohibited practices.²⁴ It could also order damages, penalties, injunctions, or other equitable remedies as provided by current law.²⁵ The recommendation would also allow aggrieved individuals to initiate a civil action seeking similar remedies.²⁶

(1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(I) For any person to make any inquiry about, or to act adversely to an individual on the basis of, a record of any arrest or charge that did not result in a conviction

²² With the exception of certain controlled substance and human trafficking related offenses, the sealing of a record reflects that a judge has already determined that the harm to the individual's privacy outweighs the public's interest in the availability of the record. §§ 24-72-702(1)(b)(II)(B), -704(1)(c), -705, -706, -708(3), C.R.S. 2016.

²³ § 24-34-306, C.R.S. 2016.

²⁴ § 24-34-306(9), C.R.S. 2016.

²⁵ § 24-34-508(1), C.R.S. 2016.

²⁶ §§ 24-34-306(11), -306(14), -306(15), 24-34-505.6, C.R.S. 2016.

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and the criminal case is not actively pending, or any criminal justice record that has been sealed or expunged, in connection with showing, selling, transferring, renting, leasing, or providing financial assistance or loans for any housing.

2. Amend section 24-34-501 as follows:

(4) "Restrictive covenant" means any specification limiting the transfer, rental, or lease of any housing because of disability, race, creed, color, religion, sex, sexual orientation, marital status, familial status, national origin, ~~or~~ ancestry, **OR A RECORD OF ANY ARREST OR CHARGE THAT DID NOT RESULT IN A CONVICTION AND THE CRIMINAL CASE IS NOT ACTIVELY PENDING, OR ANY CRIMINAL JUSTICE RECORD THAT HAS BEEN SEALED OR EXPUNGED.**

3. Enact section 38-12-701:

In many cases, rental applicants pay the cost of their criminal background check as a component of a non-refundable rental application fee. Several states have enacted policies that allow applicants to obtain a copy of their criminal or consumer credit report through landlords.²⁷ This gives applicants the opportunity to review their report for accuracy, and notify the record repository of any inaccuracies that may be unduly undermining their access to housing.

If a landlord denies an application for a rental agreement and that denial is based in whole or in part on a tenant screening company, criminal history report, or consumer credit reporting agency report on that applicant, the landlord shall give the applicant notice of that fact and, upon request, provide the applicant with a copy of the report. If a copy of the report is requested, the landlord shall promptly give written notice to the applicant of the name and address of the company or agency that provided the report upon which the denial is based, unless written notice of the name and address of the screening company or credit reporting agency has previously been given.²⁸ A landlord may satisfy this requirement by providing an electronic copy of a report, unless a written copy is requested.

²⁷ California Civil Code § 1950.6(f); Oregon Rev. Stat. § 90.295(4), (5); Washington Rev. Code § 59.18.257(1)(a)(iii), (1)(c).

²⁸ This language is based on an Oregon statute that requires landlords to notify applicants if their denial was based on a consumer or credit screening report, and permits the landlord to provide a copy of the report to the applicant. Oregon Rev. Stat. § 90.295(4), (5).

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4. Amend section 24-72-702 as follows:

(1)(f)(l) Employers, **LANDLORDS**, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning the sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

5. Enact section 38-12-512:

(1) Information regarding the criminal history of a tenant or former tenant may not be introduced as evidence in a civil action against a landlord or the landlord's employees or agents that is based on the conduct of the tenant or former tenant if:

- (a) The nature of the criminal history does not bear a direct relationship to the facts underlying the cause of action; or
- (b) Before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case or the tenant or former tenant received a pardon; or
- (c) The record is of an arrest or charge that did not result in a criminal conviction; or
- (d) The tenant or former tenant received a deferred judgment at sentence and the deferred judgment was not revoked.²⁹

²⁹ This proposed statutory language is based on an existing limitation on the admission of criminal history information in civil actions against employers. See § 8-2-201(2), C.R.S. 2016.

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