

colorado commission on criminal & juvenile justice

ANNUAL REPORT 2017



CCJJ ANNUAL REPORT 2017

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

Fiscal Year 2017 marked the Commission's 10th year of work. 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: Peter Weir, Community Corrections Task Force chair; Jeanne Smith, Data Sharing Task Force chair; Stan Hilkey, Re-entry Task Force Chair; Sheriff Joe Pelle, Mental Health/Jails Task Force chair; Robert Werthwein, Juvenile Continuity of Care Task Force chair; and Doug Wilson, Mandatory Parole Committee chair.

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 from the Colorado Behavioral Health 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 2017.

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Department of Public Safety
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July 2016 - June 2017

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Name	Affiliation
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Tom Raynes	Colorado District Attorneys' Council
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Jamison Brown	Colorado Jail Association
John Cooke	State Senator, Senate District 13
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Michael Vallejos	Chief Judge, 2nd Judicial District
Dave Weaver	Douglas County Commissioner
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Charles Garcia	CCJJ At Large member
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Jennifer Bradford	Metro State University
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Lang Sias	State Representative, House District 27
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Tom Giacinti	Community Corrections Representative
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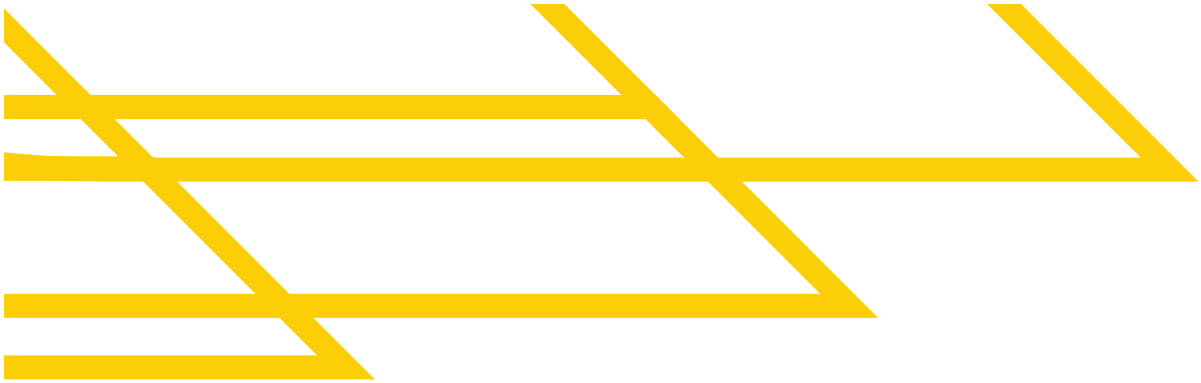
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1

Introduction

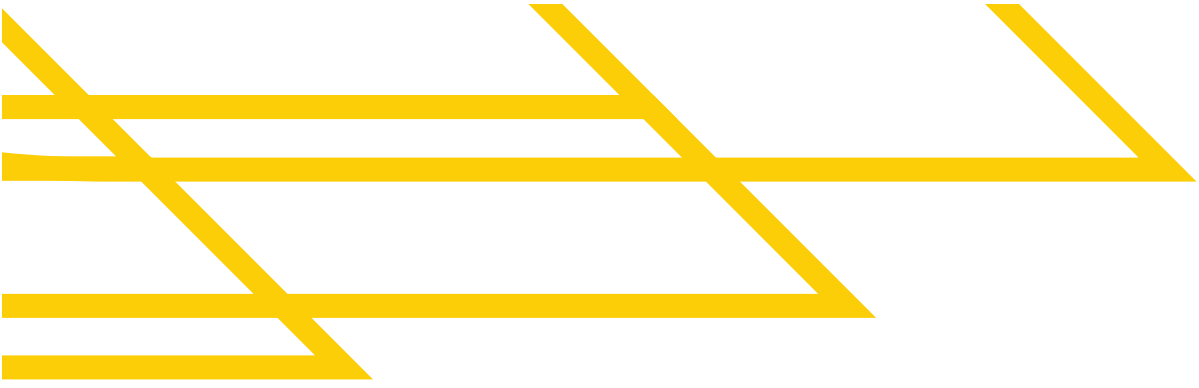
This report documents the Commission's tenth year of activities and accomplishments. It describes the Commission's activities between July 1, 2016 and June 30, 2017. During Fiscal Year 2017, the Commission's work focused on the continuity of care for juveniles involved in both the justice and child welfare systems, pretrial release, re-entry, community corrections 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 Colorado's crisis response system, marijuana legalization and the housing crisis faced by justice involved individuals. Commissioners received an in-depth data presentation on the impact of Senate Bill 13-250, a years-long Commission initiative that resulted in a new sentencing grid for individuals convicted of drug crimes. Additionally, the Commission was keenly interested in the findings from the Community Law Enforcement Action Reporting Act, or the CLEAR Act, which analyzes decisions made at multiple points in the justice system process by race, ethnicity and gender.

After months of study, in Fiscal Year 2017, the Commission approved ten recommendations in the areas of community corrections, re-entry, and crisis services and emergency mental health commitment placement. During the 2017 legislative session, the content of four recommendations became three pieces of legislation and were signed into law by Governor Hickenlooper (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 2017 report is organized as follows: Section 2 provides a summary of the Commission's mission as reflected in the enabling legislation's original legislative intent along with its membership; Section 3 discusses Commission, task force and committee activities from July 2016 through June 2017; Section 4 details the Commission's recommendations and outcomes, including the recommendations that resulted in 2017 legislation; and Section 5 describes the Commission's next steps.

Table 1.1. Commission-supported bills presented to the 2017 General Assembly

Bill number	Bill title	Status
House Bill 17-1147	Concerning defining the purposes of community corrections programs. [Commission Recommendation FY17-CC01 included in this bill]	Signed
House Bill 17-1308	Concerning allowing individualized conditions of parole. [Commission Recommendation: FY16-RE01 included in this bill]	Signed
Senate Bill 17-207	Concerning strengthening Colorado’s statewide response to behavioral health crises, and, in connection therewith, making an appropriation. [Commission Recommendations FY17- MH01 and FY17-MH02 included in this bill]	Signed



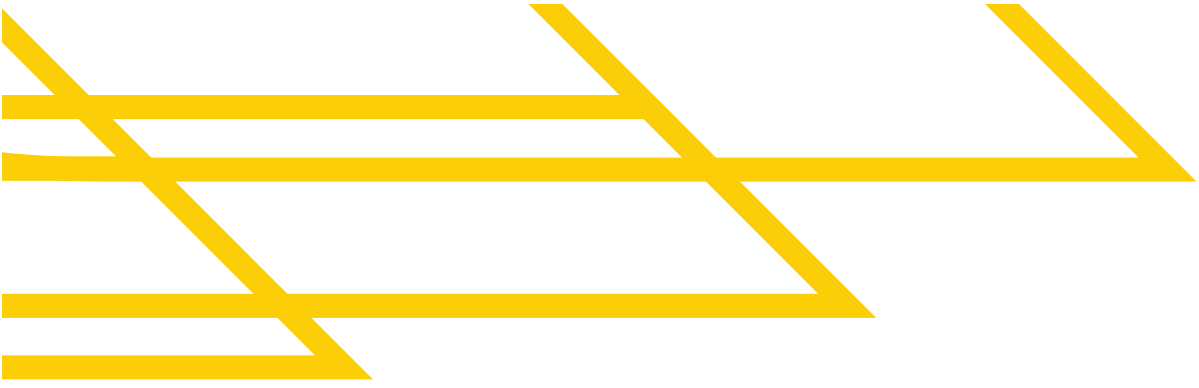
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Legislative intent and membership

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>.

During Fiscal Year 2017 the Commission welcomed five new members: Valarie Finks replaced Kate Horn-Murphy as the representative for Victims'

Rights Organizations, and Mike Garcia was designated to fill the vacant Colorado State Judicial position. Senator Daniel Kagan replaced Senator Pat Steadman and Representative Joe Salazar replaced Representative Beth McCann. The Director of the Division of Criminal Justice, Jeanne Smith, retired during Fiscal Year 2017 and her replacement, Joe Thome, filled the ex-officio position. Additionally, the Commission welcomed Richard Stroker as the new Commission consultant. Mr. Stroker replaced long-time consultant Paul Herman after he retired at the end of Fiscal Year 2016.



3

Activities of the Commission

This section summarizes the activities and accomplishments of the Commission in Fiscal Year 2017. The topics covered in this section include the following:

- A report on the work of the Commission's Task Forces and Committees,
- A summary of the educational presentations made to the Commission regarding local and national criminal justice initiatives and efforts, and
- A description of the planning process undertaken to define the work strategy for the Commission's priority issue areas for calendar year 2017.

Commission task forces and committees¹

The Commission's strategic plan for Fiscal Year 2017 included a focus on the following areas of study:

Continued work on community corrections, data sharing, juvenile continuity of care, mental health from the point of contact through jail release and re-entry. The Commission also established one new task force in the spring of 2017 to address work in the area of pretrial release. To this end, Commission work during Fiscal Year 2017 was undertaken by the following six groups:

- Community Corrections Task Force (Peter Weir, Chair)
- Data Sharing Task Force (Jeanne Smith, Chair)
- Juvenile Continuity of Care Task Force (Robert Werthwein, Chair)
- Mental Health/Point of Contact Through Jail Release Task Force (Joe Pelle, Chair)
- Pretrial Release Task Force (Stan Hilkey, Chair)
- Re-entry Task Force (Stan Hilkey, Chair)

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.

Figure 3.1. Commission, task force and committee organizational chart

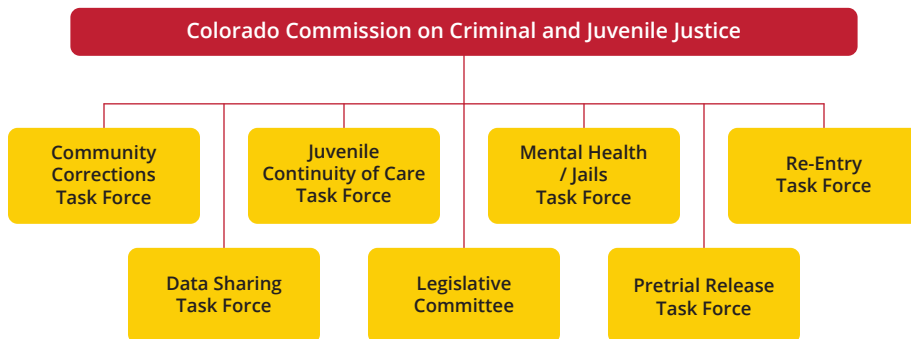


Figure 3.1 reflects the organization and scope of work undertaken by the Commission, Task Forces and Committees.

Community Corrections Task Force

Community Corrections in Colorado refers to a system of halfway houses located throughout the state that provide residential and community-based programming to individuals who are being *diverted* from prison as well as those *transitioning* from prison back to the community. The Community Corrections Task Force began meeting in April 2013, chaired by Commission member Peter Weir. The following is the Task Force’s statement of the purpose of community corrections:

The purpose of community corrections is to ensure public safety and further the sentencing goals of the State of Colorado. This is accomplished by utilizing community corrections boards and the local community to identify appropriate individuals to be placed in the community, implement research-based policies, practices and programs to assist individuals so that they may successfully function in the community.

During Fiscal Year 2017, the Community Corrections Task Force concluded more than three years of work with a focus on recommendations relating to the Intensive Supervision Parole – Inmate Status (ISP-I) population of community corrections residents. An

ISP-I resident is someone who has been released from a Department of Corrections (DOC) institution and is either in a community corrections facility or has completed a community corrections program, yet has not been officially released to parole by the Parole Board. These individuals are often not paroled due to the severity of their crime rather than their risk to reoffend. To address this issue, the ISP-I Working Group convened and met from April through November 2016, producing three recommendations as follows:

- **FY17-CC01** called for an update to the statute governing the mission and purpose of Community Corrections, providing legislative guidance for current and future Community Corrections boards, facilities and programs.
- **FY17-CC02** outlined a new community corrections re-entry referral process which repealed the statutory definition of ISP-I and created a new method for release of inmates from the Department of Corrections to community corrections.
- **FY17-CC03** outlined a community re-entry process that; established a process of referrals to community corrections based on explicit criteria, included a definition of successful completion of community corrections and expanded the use of DOC’s Achievement Earned Time for inmates in community corrections programs.

Both the Community Corrections Task Force and the Commission approved all three proposals, however, only one of the recommendations was sponsored as a bill (Recommendation FY17-CC01 which became House Bill 17-1147). Details of all three recommendations can be found in Section 4. With the completion and approval of these recommendations the Community Corrections Task Force concluded its work in December 2016.

Data Sharing Task Force

The Data Sharing Task Force was seated in April 2015, chaired by Commissioner Jeanne Smith. The Task Force consisted of six Commission members and one non-Commissioner who was a member of the defense bar. The role of the Task Force was to review data sharing protocols and processes to improve offender management and services, and to make recommendations to the Commission. Early on, the Task Force identified the value of creating a cross-agency, web-based, offender data portal that would allow authorized users to view integrated criminal justice-related information from multiple sources. To this end, a recommendation was presented to and passed by the Commission to support a state-led effort to create a strategic planning committee composed of municipal, county, and state representatives with expertise in data systems, governance structures, privacy laws, and related issues, and that it be supported by sufficient resources to develop a cross-agency data collection and information sharing system.

In Fiscal Year 2017 the Task Force held four meetings to build on the recommendation created in 2016. While the Task Force made positive strides in this endeavor it also faced significant hurdles. The focus of the Task Force work was to determine the feasibility of creating a protocol for sharing municipal court data; however it proved to be more complicated than expected to persuade municipal court officials to participate in a state-wide effort. It was also recognized that local jurisdictions were able to make more significant strides in this area of work. Given the ongoing hurdles faced by the Task

Force at the state level, it was determined that the Commission would be better served by tracking the efforts of other entities working to improve data sharing. With that in mind, Commissioners agreed during the February 2017 retreat that the Task Force had completed its assigned mission and should conclude its work.

Juvenile Continuity of Care Task Force

The Juvenile Continuity of Care Task Force, chaired by Commissioner Robert Werthwein, 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). In Fiscal Year 2017, the Task Force identified areas of work and defined the focus of the task force to be “the effective use of information, resources and approaches amongst several agencies in order to better achieve desired outcome for dual status youth”.

Throughout the course of the year, the Task Force received educational presentations and began to define the framework and the essential elements of an ideal crossover youth model. Two Working Groups were created to explore issues around a youth’s point of entry into the system along with issues pertaining to assessment, case management and available services.

The Working Groups presented three recommendations to the Task Force as follows:

- **FY17-JCC01** called for the development of a plan to formally recognize and address the needs of crossover youth, and to require each local Juvenile Services Planning Committee to devise a cross-over 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 entities) 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 on permanency planning to county departments of social/human services under Social Service Rules Volume 7.

The Juvenile Continuity of Care Task Force approved all three recommendations during Fiscal Year 2017; however, the Commission did not approve the three proposals until July 2017 (which falls outside the time period of this report). Therefore, details of all three recommendations will be provided in the Commission's 2018 report. At the writing of this report, it is anticipated that FY18-JCC01 and FY18-JCC02, which are legislative recommendations, will be carried as bill(s) during the 2018 legislative session. Additionally, with the completion and approval of these recommendations, the Juvenile Continuity of Care Task Force concluded its work in the summer of 2017.

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.

During the course of 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 help avoid criminal justice processing. As part of this work the Task Force studied issues around initial point of contact, decision making, and identification of appropriate responses to a variety of different situations. This work resulted in four recommendations that were presented to the Commission as follows:

- **FY17-MH01** recommended strengthening and enhancing existing crisis services and providing resources to expand the system to ensure an appropriate health care response to behavioral health crises across Colorado.
- **FY17-MH02** called for changes to the emergency mental health commitment statute removing jails and correctional facilities as a placement option for individuals on an M1 (emergency mental health) hold and allowing intervening professionals to transport individuals to an outpatient facility for evaluation for treatment.
- **FY17-MH03** called for the inclusion of Mental Health First Aid® Curriculum in Colorado Peace Officer Standards and Training (POST) in-service training.
- **FY17-MH04** endorsed the inclusion of Mental Health First Aid® Curriculum in Colorado Peace Officer Standards and Training (POST) Basic Academy.

The Commission approved all four recommendations in January 2017. The proposals also garnered support from other stakeholder groups working on complementary efforts including Colorado's Mental Health Hold Task Force and the Equitas Foundation. Recommendations FY17-MH01 and FY17-MH02 became Senate Bill 17-207, which passed the legislature and was signed into law by Governor Hickenlooper. Details of all four recommendations can be found in Section 4.

The second area of work for the Task Force is exploring opportunities to divert from jail individuals with mental health needs who have law enforcement contact. The Task Force hopes to have a second set of recommendations on this topic prepared for the Commission by spring 2018.

Pretrial Release Task Force

The Pretrial Release Task Force was seated by the Commission in June 2017 and charged with addressing the following topics: Compliance

variation from jurisdiction to jurisdiction under the current pretrial statute; barriers to implementation of the current statute including cost, resources, and cost of pretrial supervision; communication issues between pre-trial services, courts, defense attorneys and prosecutors; training and general awareness of risk assessment tools including a review of the Colorado Pretrial Assessment Tool (CPAT); and an environmental scan of pretrial use in Colorado and around the country.

The Task Force is chaired by Commission Chair Stan Hilkey and at the end of Fiscal Year 2017 the Task Force was in the process of creating a strategic plan to address the targeted topic areas. Outcomes of this activity will be reported in the 2018 annual report.

Re-entry Task Force

The Re-entry Task Force, chaired by Commission Chair Stan Hilkey, was established in April 2015 with an original goal of addressing the following: technical violations and conditions of supervision, collateral consequences of a conviction, and the study of issues pertaining to access of medical and mental health care for offenders. During Fiscal Year 2017, the Task Force concentrated its work in the areas of housing and collateral consequences of conviction, eventually producing seven recommendations for presentation to the Commission, 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 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, in state licensure and employment decisions.

- **FY17-RE04** encourages the promotion of housing opportunities for people with non-conviction, sealed, and expunged records.
- **FY17-RE05** provides statutory guidance on public housing decisions.
- **FY17-RE06** limits the distribution of records concerning arrests that did not result in charges being filed, preserving the presumption of innocence.
- **FY17-RE07** recommends continuing or expanding financial support of Colorado's adult pretrial diversion programs.

The Commission approved three of these recommendations (FY17 – RE01, RE02 and RE03) during the timeframe for this report in June, 2017. The Commission approved three more of these recommendations (FY17 – RE04, RE05 and RE07) in August, 2017 (**outside** the timeframe for this report). At the writing of this report it is anticipated that all six recommendations will be carried as bills during the Fiscal Year 2018 legislative session. Details of the three recommendations approved during Fiscal Year 2017 can be found in Section 4 of this report and details of the remaining recommendations (approved in Fiscal Year 2018) will be outlined in the Fiscal Year 2018 report. Additionally, even though Commissioners did not approve recommendation FY17-RE06, they did request that the Collateral Consequences Working Group of the Re-entry Task Force pursue efforts to revisit the recommendation and return to the Commission with a revised recommendation. With a majority of the Re-entry Task Force recommendations approved the Re-entry Task Force concluded its work in summer 2017.

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 2017, experts were requested to present on seven issues discussed below.

Housing issues for justice involved individuals

During the September 2016 Commission meeting, representatives from the field of housing addressed Commissioners. Presenters were Annie Bacci from the Corporation for Supportive Housing, and Kristin Toombs and Susan Niner of the Division of Housing in the Department of Local Affairs (DOLA). The presentations included a broad national overview of housing challenges for justice involved individuals, followed by a look at state and local issues. Additionally during that meeting, there was an update on housing initiatives underway at the Department of Corrections and an explanation of the housing work taking place in the Re-entry Task Force.

The presentation by Ms. Bacci focused on Supportive Housing for justice-involved populations. She explained that Supportive Housing combines affordable housing with needed services, in the hopes of helping individuals who face complex challenges to live with stability, autonomy and dignity. One of the emerging best practices for justice-involved individuals regarding housing is the Frequent Users Systems Engagement model or FUSE. FUSE targets the frequent users of the jail system, the homeless system and the behavioral health system. The FUSE model has been shown to increase cost savings for communities and increase system collaboration while promoting quality of life and self-sufficiency among those with housing challenges. The program is operating in several cities and counties across the country including locally with Denver's Pay for Success (PFS) project, commonly referred to as a Social Impact Bond. PFS is based on a performance-based loan from private investors intended to provide up-front capital for

service interventions targeted to the re-entry population, with the goal of achieving certain outcomes. Once outcomes are achieved in a community (in this case the City and County of Denver), private investors are reimbursed.

Kristin Toombs and Susan Niner outlined the role of the Colorado Division of Housing (DOH) in addressing housing issues specifically. Ms. Toombs began by explaining that much of the work of DOLA overlaps with the work of the Corporation for Supportive Housing. DOH was originally created as a way to increase affordable housing throughout Colorado and the Division helps communities create affordable housing projects that also include supportive services such as rental assistance vouchers and other gap financing.

DOH is the largest housing authority in the state of Colorado and distributes approximately 6,000 vouchers statewide every year. One of the main barriers with many voucher programs is that there simply are not enough vouchers to meet the need, and often people who are justice-involved have significant challenges securing housing because of their criminal history. As a result, DOH is working with housing providers and landlords to encourage them to change their criminal history background check policies. Recently the U.S. Department of Housing and Urban Development and the Department of Justice released a statement informing housing providers that they cannot operate under an umbrella ban of refusing to serve certain populations (for example, people with criminal histories).

Melissa Roberts, the Director of Adult Parole at the Department of Corrections (DOC) provided a presentation on DOC's housing initiatives and explained that the Parole Division has been working diligently with DOLA and the Governor's Office of Homeless Initiatives to develop relationships with landlords to address housing issues as they relate to individuals with criminal records. The DOC's Division of Adult Parole wants to better leverage supportive housing vouchers for justice involved individuals, along with developing partnerships with developers.

The DOC is also working to determine the most appropriate housing model for parolees re-entering the community and is determining how best to leverage funding for more stable housing and successful outcomes. The Department is also updating its case management practices to focus specifically on tracking what **type** of housing offenders are participating in, along with tracking the funding source for that housing. DOC also created a Housing and Stabilization Unit which consists of a team of nine officers, a team leader and a supervisor. Parole also moved a field operation team of officers into the Re-entry Center at the Denver office, resulting in officers from the Stabilization Unit working side-by-side with the re-entry staff to better address the issues of housing in general, with a specific focus on high risk/high need individuals.

Marijuana legalization in Colorado

In November 2016, Commissioners heard a presentation on the early findings from an analysis of marijuana legalization in Colorado. Jack Reed from the Office of Research and Statistics in the Division of Criminal Justice presented findings from his analysis of the impacts of Amendment 64, which allowed for the retail sale and possession of marijuana. Colorado passed medical marijuana legalization in 2000, which was implemented and commercialized in 2009. Recreational marijuana was passed in 2012 and was commercialized in 2014.

Mr. Reed explained the impacts of marijuana legalization on three areas: public safety, public health and youth access. Concerning public safety, presentation highlights included the following information:

- Legalization has resulted in a 58% reduction in arrests for possession from nearly 13,000 in 2012 to approximately 5,400 in 2015.
- There are geographic variations throughout the state regarding arrest rates but arrests are generally higher in the Denver metro area.

- There has been a decrease in arrests across all races; however the decreases were significantly greater for Whites than Hispanics or African Americans. Geographically, the disproportionality is occurring across the state.
- The illegal activity that is still occurring in Colorado is not insignificant and large illegal grow operations have resulted in the seizure of thousands of pounds of illegal plants.
- In general, the people who are growing large amounts of illegal marijuana in Colorado are not growing it to sell in Colorado. "Colorado marijuana" carries a certain amount of clout and is highly sought-after in other states where marijuana is still illegal.
- Fatalities on Colorado roadways involving both cannabinoid positive drivers and fatalities **with** cannabinoid positive drivers increased by 80% from 2013 to 2015 (note that drivers positive for cannabinoid may also be positive for another drug as this occurs 57% of the time); 20% of fatalities on Colorado roadways in 2015 had some nexus to a driver with cannabis in their system. As a comparison, approximately 25% of fatalities in the same year tested positive for alcohol only.

Concerning public health, presentation highlights included the following information:

- The National Survey on Drug Use and Health shows that in 2014, approximately 31% of young adults (18-25) in Colorado had used marijuana; nationally 19% of young adults had used marijuana during that same year.
- The biggest jump in usage is among adults 26 and over. In Colorado, in 2014, adult usage was double that of the national average with 12% of adults in Colorado using marijuana versus 6% nationally.

- Hospitalization rates involving marijuana as one of the first three drugs mentioned at intake increased from 274² in 2000 (prior to legal medical marijuana) to 547 in 2015 (after retail marijuana commercialization).
- From 2000 to 2015 there has also been a significant increase in marijuana exposure calls to poison control centers across every age group except for 18-24 year olds, with the biggest increase in those 25 years and older.

Concerning youth access to marijuana, presentation highlights included the following information:

- The Healthy Kids Colorado Survey shows that in 2015, 21.2% of high school students reported using marijuana “in the past 30 days.” That rate has remained fairly steady over the past ten years with 22.7% of high school students reporting usage in 2005, and only minor variations between 2005 and 2015.
- However, the same survey shows that usage trends for alcohol and cigarettes have both significantly **decreased** from 2005 to 2015. Alcohol usage decreased from 47% to 30% while cigarette usage decreased 19% to 9%.
- The much smaller National Survey on Drug Use and Health asked youth 12 to 17 years old in Colorado about their marijuana usage “in the past month.” Usage rose from 7.6% in 2006 to 12.6% in 2014. For youth nationwide, usage increased from 6.7% in 2006 to 7.2% during the same year.
- Marijuana offenses in schools increased from 2012 to 2015. Elementary and secondary schools reported an increase in offenses from 1,766 in 2012 to 1,809 in 2015. Offenses at colleges and universities increased from 887 to 1,087 during the same time period.

Mr. Reed concluded his presentation by reminding Commissioners that the full report is available on the Division of Criminal Justice website, <http://cdpsdocs.state.co.us/ors/docs/reports/2016-SB13-283-Rpt.pdf>

Colorado Crisis Response System

As part of an ongoing effort to educate Commissioners on the work of the individual task forces, the December 2016 Commission meeting featured a presentation on Colorado’s Crisis Response System, which influenced the work of the Mental Health / Point of Contact Through Jail Release Task Force and the Task Force’s subsequent recommendations. Frank Cornelia from the Colorado Behavioral Healthcare Council offered a brief presentation on Colorado’s Crisis Response System.

Mr. Cornelia highlighted the services and resources available through the Crisis Response System including the following: crisis walk-in centers and crisis stabilization units, mobile response units and support hotlines. He also outlined the reach and availability of crisis service providers across the state. The presentation concluded with a description of what is working well in Colorado, including strengthened relationships with first responders and with referral agencies, the increased provision of peer services and reported satisfaction by those people receiving services. Mr. Cornelia also outlined future opportunity areas such as the need for more early diversion opportunities, more co-responder models and increased community-based alternatives to jails. The presentation served as a platform and introduction to four recommendations that were subsequently prepared by the Mental Health/ Jails Task Force that addressed issues of how to strengthen the current system to provide viable solutions in a number of different areas.

² Rate per 100,000 hospitalizations with possible marijuana exposures, diagnoses, or billing codes in first three codes.

Disproportionate Minority Contact (DMC)

During Fiscal Year 2017, Commissioners received a presentation that summarized its work on DMC, including seven recommendations (please see Appendix A) along with findings from the Community Law Enforcement Action Reporting Act, also referred to as the CLEAR Act, the result of Senate Bill 15-185. The CLEAR Act mandates that the Division of Criminal Justice (DCJ) 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). In March 2017, Kim English, Research Director for the Division of Criminal Justice, lead the conversation around both the Commissions' MOR/DMC work and the CLEAR Act findings. She explained that, apart from the original seven recommendations, data analyses undertaken by research staff for the Commission's task forces include information on race/ethnicity when the data are available. Further, conversations about DMC/MOR are had by the full Commission and not delegated to a task force or committee. With that in mind, Ms. English and Senior Analyst Peg Flick presented findings from the CLEAR Act report to Commissioners. Overall, the statewide analysis 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 compared to Whites to receive a prison sentence.

At the conclusion of this presentation, Commissioners requested that the next CLEAR Act analysis be disaggregated by judicial district so that the information could be discussed by local criminal justice practitioners. Please see Appendix B for the CLEAR Act presentation.

Impact of Senate Bill 13-250

In 2013 the Colorado General Assembly passed Senate Bill 13-250 (concerning changes to sentencing of persons convicted of drug crimes) which created a new drug sentencing grid that reflected years of Commission work. During the June, 2017 meeting Kim English and Peg Flick of the Office of Research and Statistics in the Division of Criminal Justice offered a presentation to Commissioners detailing the impact of Senate Bill 13-250.

Ms. English explained that SB13-250 was the result of work by the Drug Policy Task Force from 2009 through 2013. That work began after the Governor and Attorney General requested in 2009 that the Commission investigate if *“there (are) evidence-based data to support changes in the length of sentence for those who use controlled substances, and should there be a focus on substituting treatment for punishment?”* The Commission recommendation that resulted in Senate Bill 13-250 was based on strong, well-documented evidence about the value of substance abuse treatment, and the resulting legislation included a new sentencing grid for drug offenses and the development of a new option for drug offenders to avoid a felony conviction (the “wobbler”). The bill instructed the court to exhaust all remedies before sentencing certain drug offenders to the Department of Corrections. The analysis of the impact of SB13-250 found fewer individuals sentenced to the Department of Corrections, shorter sentences to those who were sent to prison, a decrease in felony drug charges and an increase in misdemeanor drug charges. Details of the analysis and findings can be found in the presentation in Appendix C.

National Criminal Justice Reform Project

During Fiscal Year 2017, the Commission collaborated with the Governor's Office in a joint venture to pursue an opportunity to participate in the National Criminal Justice Reform Project (NCJRP) hosted by the National Governors Association and the National Criminal Justice Association. The goal of the initiative

was to assist states with criminal justice reform and long term strategic planning over several years. During the application process, Colorado was chosen as one of 20 states to participate in a two-day forum during which states were evaluated to help identify priorities for reform. While Colorado was not one of the five states selected for the actual project, the process of convening relevant stakeholders and learning from other states was a valuable educational opportunity for some of the Commission members.

Of the People Campaign

In June 2017, Commissioner Jen Bradford from Metro State University facilitated a presentation by a small group of university students who developed an anti-hate initiative called the Of the People Campaign. Ms. Bradford became involved with the student project through the U.S. Department of Homeland Security which encouraged the development of such a student team. The initiative included participation from student groups around the country and the world, all of which were asked to develop anti-hate campaigns. The students explained that their campaign promotes community driven, proactive, positive and inclusive responses to acts of hate via anti-diversity or anti-government groups. Commissioners participated in a robust conversation following the presentation and with their expertise were able to offer the students some tips and ideas to assist in the development of their program.

Commission retreat and work plan through Fiscal Year 2018

In February 2017, the Commission held its annual retreat with the plan of revisiting Commission operational practices, reviewing the Commission's 2016 goals and status of those goals, and identifying Commission goals and desired outcomes for the remainder of 2017 into Fiscal Year 2018. During these discussions Commissioners reviewed their past accomplishment and activities, and brainstormed future work areas.

At the conclusion of the retreat, Commissioners produced a strategic plan for future work. That strategy included the following work plans for each of the Commission's task forces and committees:

- **Data Sharing Task Force:** At the retreat it was determined that the Data Sharing Task Force had accomplished as much as possible in its work to determine the feasibility of creating a statewide data sharing portal for municipal court data. The Commission agreed the work of the Task Force would be suspended to allow a focus on other priorities.
- **Re-entry Task Force:** The Commission agreed that this group would finalize its work on collateral consequences and that the Task Force would discontinue its work in the summer of 2017 to also allow for a focus on other Commission priorities.
- **Juvenile Continuity of Care Task Force:** Commissioners applauded Task Force members for their ongoing work regarding dual-status youth. It was determined that the Task Force would finalize recommendations regarding the development of a model to identify and manage cases involving dual-status youth by the summer of 2017 and complete its work by fall 2017.
- **Mental Health/Point of Contact through Jail Release Task Force:** Commissioners acknowledged the productive and ongoing work by this Task Force in the areas of early diversion, the management of acutely ill inmates in local jails, and the competency system in Colorado. Commissioners encouraged the group to continue its work through Fiscal Year 2018.

During the retreat, one new area of study was identified for attention in the coming year as follows:

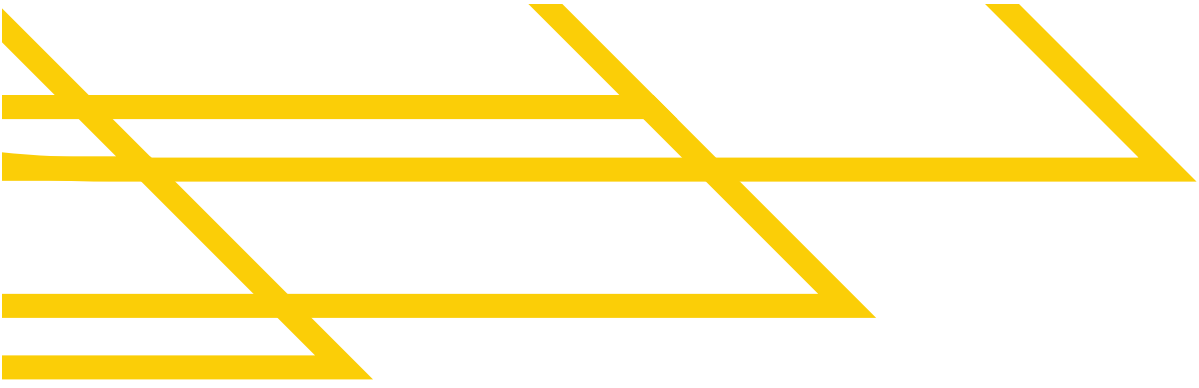
- **Pretrial Release Task Force:** Commissioners called for the development of a task force to study and make recommendations on a variety of pretrial release issues including the following: Compliance with the 2013 bail/bond statute, training and

general awareness of risk tools, the validity and review of the Colorado Pretrial Assessment Tool (CPAT), and an environmental scan of pretrial use in Colorado and around the country.

Summary

This section reviewed the work of the Commission and its task forces, committees and working groups from July 2016 through June 2017. The Commission continued the work of previously established task

forces and committees (Community Corrections, Data Sharing, Juvenile Continuity of Care, Mental Health/Jails and Re-entry) and created one new area of work with the Pretrial Release Task Force. The Commission benefitted from various informational presentations, and it approved 10 recommendations in Fiscal Year 2017. Additional information regarding Fiscal Year 2017 recommendations and subsequent 2017 legislation is available in Section 4.



4

Recommendations and outcomes

This section presents the ten recommendations approved by the Commission in Fiscal Year 2017, plus one that was approved in June 2016 (FY16-RE01) that did not become legislation until Fiscal Year 2017. Not all of the Commission's recommendations are legislative in nature, and recommendations that do become bills are not always signed into law. However, the following table presents the bills that began as Commission recommendations, passed during the 2017 legislative session and were signed by the Governor.³

Recommendations produced by three task forces are presented in this section in the following order: Community Corrections, Re-entry and Mental Health/ Point of Contact through Jail Release. Please note

that one Re-entry Task Force recommendation (FY16-RE01) was originally approved in June 2016 and is documented in the Commission's Fiscal Year 2016 report. The recommendation is included again in this report because it became a bill and was signed into law during Fiscal Year 2017. In this same vein, three Re-entry recommendations are included here that were approved during Fiscal Year 2017, although they will likely go through the 2018 legislative process.

The recommendations reported below include the original text approved by the Commission. However, in instances where recommendations were drafted into legislation and passed into law, the language may have been modified to better reflect statutory intent.

³ The full text of each bill may be found on the Commission's website at www.colorado.gov/ccjdir/L/Legislation.html.

Table 4.1. 2017 Legislative Session “Commission Bills”

Bill number	Bill title (and originating Commission recommendation)
House Bill 17-1147	Concerning defining the purposes of community corrections programs. <ul style="list-style-type: none"> • <i>FY17-CC01 Codify the mission and purpose of Community Corrections in language similar to that of Parole as enacted by Senate Bill 16-1215.</i>
House Bill 17-1308	Concerning allowing individualized conditions of parole. <ul style="list-style-type: none"> • <i>FY16-RE01 Update the statute governing parole conditions, C.R.S. 17-2-201, to give the parole board and community parole officers discretion to select individualized conditions of parole.</i>
Senate Bill 17-207	Concerning strengthening Colorado’s statewide response to behavioral health crises, and, in connection therewith, making an appropriation. <ul style="list-style-type: none"> • <i>FY17-MH01 Position the Colorado Crisis Services System as the comprehensive response to behavioral health emergencies in all Colorado communities by making the following reforms: a) Strengthen and enhance existing crisis services and resources; B) Amend C.R.S. 27-60-103 to clarify the intent of the crisis system; c) Undertake conforming regulatory changes to crisis system contracting; and d) Commit resources to incentivize the development and expansion of the crisis services provider network.</i> • <i>FY17-MH02 Amend Title 27 of Colorado Revised Statutes (C.R.S), section 65-105, to remove jails and correctional facilities as a placement option for individuals on an M1 (emergency mental health) hold. Introduce language that allows intervening professionals to transport individuals to an outpatient facility for immediate evaluation for treatment based on evidence of need.</i>

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, “FY17”), letters indicating the task force from which the recommendation originated (e.g., Community Corrections Task Force by a “CC”, or Re-entry by an “RE”), 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~~.

Community corrections recommendations

FY17-CC01 **Purpose of community corrections**

Codify the mission and purpose of Community Corrections in language similar to that of Parole as enacted by Senate Bill 16-1215.

Discussion *This action will provide legislative guidance for current and future Community Corrections boards and facilities/programs.*

Proposed statutory language

The purposes of this article with respect to Community Corrections are to:

- a. Further all purposes of sentencing and improve public safety by reducing the incidence of future crime through design and implementation of research-based policies, practices, programs and standards;
- b. Prepare, select, and assist people who, after serving a statutorily defined period of incarceration, will be transitioned and returned to the community through supported partnerships with local Community Corrections boards;
- c. Set individualized conditions of Community Corrections supervision and to provide services and support to assist people in community corrections in addressing identified risks and needs; and
- d. Achieve a successful discharge from Community Corrections supervision through reduction of risks and needs and satisfactory compliance with conditions of placement.

FY17-CC02 New Community corrections re-entry referral process

Under this recommendation the following processes and procedures will take place:

1. Crime of Violence (COV) offenders will be eligible for community corrections reentry placement upon acceptance by both a community corrections board and a community corrections program, and at their Parole Eligibility Date (PED). Eligibility for Non-COV offenders will remain the same under current statute.
2. The Department of Corrections (DOC) shall provide a community referral packet which shall include, but not be limited to: current validated actuarial offender risk and need information, projected release dates, prior supervision outcomes, institutional conduct, programming completed, verified re-entry plan, victim statement if Victim Rights Act (VRA), individualized recommendations concerning the appropriateness of placement in the community, and the Parole Board Action Sheet.
3. If a program/board accepts a COV offender, the offender will be seen by the Parole Board. If the Parole Board approves the offender for the Performance-based Parole Track, the Board will set conditions; the offender will then be transferred to the program and will be paroled upon successful completion of the program. If the Parole Board does not approve the offender for the Performance-based Parole Track, the offender will not be transferred to the program. Non-COV offenders who are accepted to community corrections will be placed without seeing the parole board and upon successful completion of the program will be paroled. The parole board will set conditions for Non-COV offenders upon successful completion of community corrections.
4. In addition to professional judgment and actuarial risk assessment tools, community corrections boards and facilities/programs shall, to the extent possible, utilize a structured, research-based decision making process.
5. Repeal the Statutory Definition of Intensive Supervision Program-Inmate: To repeal the minimum standards and criteria for the operation of Intensive Supervision Programs, specifically C.R.S. 17-27.5-102 Subsections 2, 3, 4.

Discussion

The new community reentry process:

- *Eliminates the Intensive Supervision Parole – Inmate Status (ISP-I) problem by removing the possibility that an inmate could successfully complete a Community Corrections program and then not be paroled.*
- *Creates a better process to ensure that those being referred to Community Corrections are appropriate for placement.*
- *Creates additional incentives to successfully complete Community Corrections programs.*
- *Creates process efficiencies in the Community Corrections referral process.*
- *Increases transparency of confinement and reentry to the community for victims.*
- *Increases inmate incentives to complete institutional rehabilitation and treatment programs.*
- *Furtheres the purposes of Parole and Community Corrections.*

- *The purpose of repealing the statutory definition of Intensive Supervision Program-Inmate is to remove from statute the minimum requirements of ISP and instead allow the DOC more discretion to craft evidence-based program requirements commensurate with recommended policy change. This will facilitate the elimination of the ISP-I population.*

Proposed statutory language

C.R.S. 17-27.5-102 (2016)

17-27.5-102. Minimum standards and criteria for the operation of intensive supervision programs

(1) The department shall have the power to establish and enforce standards and criteria for administration of intensive supervision programs.

(2) The standards and criteria shall require that offenders in the program receive at least the minimum services consistent with public safety, including highly restricted activities, weekly face-to-face contact between the offender and the program staff, daily telephone contact between the offender and the program staff, a monitored curfew at the offender's place of residence at least once a month, employment visitation and monitoring at least twice each month, home visitation, drug and alcohol screening, treatment referrals and monitoring, assuring the payment of restitution, and community service in a manner that shall minimize any risk to the public.

(3) An offender as defined in section 17-27-102 (6) is eligible for an intensive supervision program only upon the recommendation of the department if such offender has not more than one hundred eighty days remaining until such offender's parole eligibility date or upon a transfer from a community corrections residential program under article 27 of this title if such offender has not more than one hundred eighty days remaining until such offender's parole eligibility date and if the local community corrections board finds that the correctional needs of such offender will be better served by such supervision. The local community corrections board has the authority to accept, reject, or reject after acceptance the participation of any offender in each and every intensive supervision program under this article. In selecting offenders for transfer to an intensive supervision program, the department and the local community corrections board shall consider, but shall not be limited to, the following factors:

- (a) The frequency, severity, and recency of disciplinary actions against the offender;
- (b) The offender's escape history, if any;
- (c) Whether the offender has functioned at a high level of responsibility in a community corrections program, if applicable;
- (d) Whether the offender will have adequate means of support and suitable housing in the community; and
- (e) The nature of the offense for which the offender has been incarcerated.

(4) At least two weeks prior to placement of a nonparoled offender in an intensive supervision program, the executive director shall notify or cause to be notified the respective prosecuting attorney and the law enforcement agency of the affected unit of local government; and he shall have previously notified the affected corrections board.

FY17-CC03 Establish community re-entry process procedures

The timing of the Community Reentry Process will take place as follows:

Referral criteria: DOC will define “displayed acceptable institutional behavior” under C.R.S. 18-1.3.301 (2) (b) as the following:

- The offender has spent at least 6 months continuously incarcerated upon admission, regression or revocation
- The offender has a classification/institutional placement of medium or lower
- The offender has not received a Class I COPD in the last year
- The offender has not received a Class II COPD in the last 6 months

Definition of successful community corrections completion: The Division of Criminal Justice Office of Community Corrections defines successful completion of a Community Corrections program as having advanced through Level Four in the Progression Matrix or having advanced through the final phase/level of a program.

Achievement earned time: Inmates are eligible for Achievement Earned Time in accordance with C.R.S. 17-22.5-405 and DOC AR 550-12. DOC will communicate the Achievement Earned Time eligibility and process to all programs.

Discussion See discussion section in FY17-CC02.

Re-entry recommendations

FY16-RE01 Update the statutory conditions of parole to reflect contemporary and evidence based common practices

Update the statute governing parole conditions, C.R.S. 17-2-201, to give the parole board and community parole officers discretion to select individualized conditions of parole.

Discussion

In November 2015, the Colorado Commission on Criminal and Juvenile Justice adopted FY16-MP01, a recommendation to amend the statute governing the purposes of parole in Colorado, C.R.S. 17-22.5-102.5. If that recommendation becomes law, the purposes of parole will include “reducing the incidence of technical violations [,]” setting “individualized conditions of parole [,]” and addressing parolees’ “identified risks and needs [.]” This recommendation will build upon, and give substance to, FY16-MP #01.

Colorado’s current parole board statute mandates a list of eleven conditions, many of which have multiple sub-conditions that must be imposed on every Colorado parolee. Those conditions include a mandate that every parolee be tested for drugs and alcohol at specified intervals, not associate with other people who have a criminal record, and remain within a narrowly defined geographic area.

The Re-entry Task Force, the Department of Corrections, and the Parole Board all believe that many of the statutorily mandated conditions of parole are not evidence based when applied to all parolees. Conditions such as a substance testing regimen, association restrictions, and strict geographic boundaries, may be appropriate for some or most parolees. They are not, however, appropriate for all parolees. Imposing unnecessary conditions of parole is a burden on the State’s resources, presents enforcement difficulties,⁴ and can be detrimental to the recidivism prospects of individual parolees.⁵

This recommendation will not prohibit the Parole Board or community parole officers from placing any condition on any parolee; it will simply eliminate the requirement that some parole conditions must apply to all parolees. It will thus give the Parole Board and parole officers discretion to determine which conditions are appropriate for which parolees, in order to better leverage limited resources and address individual offenders’ criminogenic needs. The recommendation is consistent with, and necessary to give effect to, FY16-MP01.

Proposed statutory language

Please see Appendix D for the full recommendation details.

⁴ It is wholly impractical, for instance, to expect that parolees in community corrections placements will not associate with other people who have criminal records.

⁵ RKC Group & Roger Przybylski, What Works: Effective Recidivism Reduction and Risk-Focused Prevention Programs 30, 37 (Feb. 2008) (report prepared for the Colorado Division of Criminal Justice).

FY17-RE01 Allow orders of collateral relief after the time of sentencing

Update 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.

Encourage the judiciary to develop a mechanism that will allow the identification of instances when orders of collateral relief are requested, granted, or denied.

Discussion

The impact of a criminal conviction or adjudication can be far greater than the sentence imposed by the judge. Hundreds of federal, state, and local laws impose additional sanctions and disqualifications affecting employment, housing, public benefits, and other civil rights and privileges.⁶ These collateral consequences can be detrimental to individuals’ ability to lead a productive crime-free life,⁷ and can have a negative impact on society as a whole.⁸

Similar to many other states,⁹ Colorado allows judges to issue orders of collateral relief. The orders can relieve eligible individuals from most collateral consequences, when doing so will improve the individual’s likelihood of successful reintegration and is in the public’s interest.¹⁰ This mechanism should serve as a valuable tool for allowing society to punish and deter crime, while simultaneously allowing its members to remain productive citizens.¹¹

The current statutory mechanism for orders of collateral relief was enacted in 2013 and has since remained unchanged.¹² Although well-intentioned, it has several shortfalls that limit the use and effectiveness of the orders.

First, courts currently can issue orders of collateral relief only at the time an individual is sentenced.¹³ This can facilitate success for people who are required to serve their sentence in

⁶ See Mark Evans, Colo. State Public Defender’s Office, *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law* (2014 ed.), available at <http://www.coloradodefenders.us/consequences-of-conviction-2/consequences-of-conviction-2/>.

⁷ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also John H. Laub & Robert J. Sampson, *Understanding Desistance From Crime*, 28 *Crime & Just.* 1 (2001); National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration 23-24* (2008), available at <https://cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf>; Joy Radice, *Administering Justice: Removing Statutory Barriers to Reentry*, 83 *U. Colo. L. Rev.* 715, 719 (2012).

⁸ The National Employment Law Project, *Fact Sheet: Research Supports Fair-Chance Policies* (Aug. 2016); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 *U.C. Davis L. Rev.* 277, 300-01 (2011); John Schmitt & Kris Warner, Center for Econ. & Policy Research, *Ex-Offenders and the Labor Market* (Nov. 2010), available at <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

⁹ Conn. Gen. Stat. § 54-130e(b); 730 Ill. Comp. Stat. Ann. 5/5-5.5-15; N.Y. Correct. Law §§ 700 to 706; N.C. Gen. Stat. § 15A-173.2; Ohio. Rev. Code Ann. § 2953.25.

¹⁰ §§ 18-1.3-107, 18-1.3-213, 18-1.3-303, C.R.S. 2016.

¹¹ Margaret Colgate Love, *Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act*, 54 *How. L. J.* 753, 760-64 (Spring 2011); Radice, *supra* note 2, at 727-32.

¹² Ch. 289, sec. 11, § 18-1.3-107, 2013 Colo. Sess. Laws 1548; Ch. 289, sec. 12, § 18-1.3-213, 2013 Colo. Sess. Laws 1550; Ch. 289, sec. 13, § 18-1.3-303, 2013 Colo. Sess. Laws 1553.

¹³ §§ 18-1.3-107(1), 18-1.3-213(1), 18-1.3-303(1), C.R.S. 2016.

*the community. The orders can provide no assistance, however, for people who are attempting to better their lives and move beyond the collateral consequences of a conviction **after** their sentence has been completed.*

Second, the current statutory scheme excludes a successfully completed deferred judgment and sentence (DJS) from the definition of “conviction.”¹⁴ Hence, an individual who has successfully completed a DJS is ineligible for an order of collateral relief. A successfully completed DJS can, however, have long lasting collateral consequences in licensure, employment, and other areas.¹⁵

Third, orders of collateral relief are currently unavailable for juvenile adjudications. Adjudications can, however, still result in the imposition of collateral consequences.¹⁶

Finally, the judiciary does not consistently track when orders of collateral relief are requested or granted.¹⁷ This lack of data renders it virtually impossible to determine whether the orders are serving their intended purpose.

Proposed non-statutory and statutory language

See Appendix E for the full recommendation details.

¹⁴ §§ 18-1.3-107(8)(c), 18-1.3-213(8)(c), 18-1.3-303(8)(c), C.R.S. 2016.

¹⁵ See, e.g., § 24-5-101(3)(d), C.R.S. 2016.

¹⁶ See Mark Evans, Colo. State Public Defender’s Office, *The Consequences of Adjudication: Sanctions Beyond the Sentence for Juveniles Under Colorado Law* (2014), available at <http://www.coloradodefenders.us/consequences-of-conviction-2/consequences-of-juvenile-adjudication/>.

¹⁷ Sherri Hufford, Colorado Division of Probation Services, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016).

FY17-RE02 Prevent adverse private employment actions on the basis of non-conviction, sealed, and expunged records

Promote community safety and economic growth by preventing adverse employment action on the basis of arrests that did not result in a conviction, or criminal justice records that have been sealed or expunged.

Discussion *Obtaining employment is a lifelong challenge for those with a criminal record,¹⁸ and the single biggest hurdle facing individuals returning from incarceration.¹⁹ This is of widespread concern, as nearly one in three Americans of working age have some form of criminal record.²⁰ In Colorado alone, over 190,000 people were arrested in 2015.²¹*

The inability of large numbers of people to obtain employment adversely affects the public's safety and welfare. On an individual level, gainful employment is a key factor that enables people to avoid future arrests and incarceration.²² More broadly, the economy as a whole is negatively impacted by the reduction of employment rates for people with a criminal record.²³ Numerous studies have shown that the employment related consequences of a criminal record disparately impact individuals and communities of color.²⁴ It is thus necessary to ensure that Colorado's record-based restrictions on employment are both fair to individuals and productive to the safety and welfare of society.

Because criminal record exclusions have a disparate impact based on race and national origin, they are regulated under Title VII of the Civil Rights Act of 1964.²⁵ Employers face Title VII liability when their criminal record screening policy or practice disproportionately screens out members

¹⁸ The National Employment Law Project, *Fact Sheet: Research Supports Fair-Chance Policies* (Aug. 2016); Maureen Cain, Policy Director, Colorado Criminal Defense Institute, presentation to the CCJJ Collateral Consequences Working Group (Aug. 24, 2016).

¹⁹ The Piton Perspective, *Study Portrays Struggles People Face After Prison* (Spring 2007); Hassan Latif, Executive Director, Second Chance Center, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016); Richard Morales, Deputy Executive Director, Latino Coalition for Community Leadership, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016).

²⁰ Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012* 14 table 1 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>; Jo Craven McGinty, *How Many Americans Have a Police Record?*, *The Wall Street Journal*, Aug. 7, 2015, <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>.

²¹ Colo. Bureau of Investigation, *Crime in Colorado 2015*, http://crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 1, 2017).

²² Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also John H. Laub & Robert J. Sampson, *Understanding Desistance From Crime*, 28 *Crime & Just.* 1 (2001); National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration* 23-24 (2008), available at <https://cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf>; Joy Radice, *Administering Justice: Removing Statutory Barriers to Reentry*, 83 *U. Colo. L. Rev.* 715, 719 (2012).

²³ *Fact Sheet*, *supra* note 1; Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 *U.C. Davis L. Rev.* 277, 300-01 (2011); John Schmitt & Kris Warner, Center for Econ. & Policy Research, *Ex-Offenders and the Labor Market* (Nov. 2010), available at <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

²⁴ E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* 15 (Sept. 2015) (reporting 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), available at <http://www.bjs.gov/content/pub/pdf/p14.pdf>; U. S. Equal Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* 1 (April 25, 2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

²⁵ *Enforcement Guidance*, *supra* note 7, at 1.

of a protected group, and the employer cannot demonstrate that it is job related for the positions in question and consistent with business necessity.²⁶

Arrests alone are not proof of criminal activity.²⁷ Employment exclusions based solely on an arrest are therefore generally not job related and consistent with business necessity, and can give rise to Title VII liability.²⁸ Policies and practices that impose exclusions based on conviction records must link the specific criminal conduct with the risks inherent in the duties of a particular position.²⁹

Unlike several other states,³⁰ Colorado currently places no restrictions on private employers' ability to withhold or terminate employment based on an individual's criminal record. Employers are prohibited from asking individuals to disclose criminal records that have been sealed.³¹ The law currently has no mechanism, however, for enforcing that prohibition.³²

Proposed statutory language

See Appendix F for the full recommendation details.

²⁶ *Id.* at 9.

²⁷ *Id.* at 12.

²⁸ *Id.*

²⁹ *Id.* at 14-16.

³⁰ In Hawaii it is "unlawful discriminatory practice" for an employer to discriminate on the basis of an individual's "arrest and court record." Haw. Rev. Stat. § 378-2(a)(1). Employers may inquire about conviction records, but are generally only permitted to consider convictions within the last ten years excluding periods of incarceration. Haw. Rev. Stat. § 378-2.5(a), -2.5(c). The State of Massachusetts prohibits private employers from inquiring about or basing employment decisions on: (1) arrests that did not result in conviction, (2) first convictions for certain misdemeanors, and (3) misdemeanors for which the associated period of incarceration ended more than five years prior unless the individual has been convicted of another offense. Mass. Gen. Laws ch. 151B, §4(9). The State of New York prohibits private employers from inquiring about, or acting adversely on the basis of: (1) any arrest not then pending where the criminal action was terminated in favor of the individual, (2) youthful offender adjudications, and (3) certain sealed records. N.Y. Exec. Law § 296(16). It is unfair discrimination to deny or act adversely on employment based on a conviction unless there is a direct relationship between the conviction and the employment. N.Y. Correct. Law § 752. The State of Pennsylvania allows private employers to consider only convictions for felonies and misdemeanors, and requires that the convictions "relate to the applicant's suitability for employment in the position for which he has applied." 18 Pa. Cons. Stat. § 9125. The State of Wisconsin generally prohibits private employers from requesting information from applicants about arrest records except as to pending charges. Wis. Stat. § 111.335(1)(a). It also restricts employers' use of conviction records. Wis. Stat. §§ 111.321, 111.335(1)(c).

³¹ §§ 24-72-702(1)(f), 24-72-703(4)(d)(l), C.R.S. 2016.

³² 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).

FY17-RE03 Revise statutory guidance on state licensure and employment

Promote community safety and economic growth by:

- Preventing consideration of arrests that did not result in a conviction, and convictions that have been pardoned, sealed, or expunged, in state licensure and employment decisions;
- Empowering the Department of Regulatory Agencies to delist certain conditional licenses;
- Collecting data;
- Encouraging the elimination of mandatory collateral consequences;
- Incentivizing opportunity expansion by state contractors; and
- Increasing transparency of agency policies.

Discussion *Colorado government regulates the employment of, or directly employs, a substantial portion of the State's population. The Department of Regulatory Agencies (DORA) alone administers over 50 regulatory programs governing professions, occupations, and businesses comprising over 710,000 individual licensees.³³ The state directly employs over 95,000 people,³⁴ and many more are employed by local governments.*

A criminal record can adversely impact an individual's ability to obtain either a license necessary to work or direct employment with state or local governments.³⁵ This issue is of widespread concern, as it is estimated that nearly one in three Americans of working age have some form of criminal record.³⁶ In Colorado alone, over 190,000 people were arrested in 2015³⁷ and an estimated 1.5 million individuals in the U.S. have criminal records.³⁸

The inability of large numbers of people to obtain employment adversely affects the public's safety and welfare. On an individual level, gainful employment is a key factor that enables people to avoid future arrests and incarceration.³⁹ More broadly, the economy as a whole is negatively impacted by the reduction of employment rates for people with a criminal record.⁴⁰ Numerous

³³ DORA, *Department Performance Plan 6* (Oct. 2016), available at <https://www.colorado.gov/dora>.

³⁴ Colo. Div. of Human Res., *FY 2014-15 Workforce Report 3* (2015), available at <https://www.colorado.gov/dhr/fy2014-15workforcereport>.

³⁵ Mark Evans, Colo. State Public Defender's Office, *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law 14-15, 51-94* (2014 ed.), available at <http://www.coloradodefenders.us/consequences-of-conviction-2/consequences-of-conviction-2/>.

³⁶ Jo Craven McGinty, *How Many Americans Have a Police Record?*, *The Wall Street Journal*, Aug. 7, 2015, <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>.

³⁷ Colo. Bureau of Investigation, *Crime in Colorado 2015*, http://crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 2, 2017).

³⁸ Bureau of Justice Statistics, U.S. Department of Justice, *Survey of State Criminal History Information Systems, 2012 14 table 1* (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

³⁹ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also John H. Laub & Robert J. Sampson, *Understanding Desistance From Crime*, 28 *Crime & Just.* 1 (2001); National Research Council, Committee on Community Supervision and Desistance from Crime, *Parole, Desistance from Crime, and Community Integration 23-24* (2008), available at <https://cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf>; Joy Radice, *Administering Justice: Removing Statutory Barriers to Reentry*, 83 *U. Colo. L. Rev.* 715, 719 (2012).

⁴⁰ The National Employment Law Project, *Fact Sheet: Research Supports Fair-Chance Policies* (Aug. 2016); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 *U.C. Davis L. Rev.* 277, 300-01 (2011); John Schmitt & Kris Warner, Center for Econ. & Policy Research, *Ex-Offenders and the Labor Market* (Nov. 2010), available at <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>.

studies have shown that the employment related consequences of a criminal record disparately impact communities of color.⁴¹ It is thus necessary to ensure that Colorado's record-based restrictions on employment and licensing are both fair to individuals and productive to the safety and welfare of society.

When an individual with a criminal record applies for a state job, section 24-5-101, C.R.S. 2016, governs the effect of that record on his or her employment prospects. When an individual with a record applies for a state issued license to engage in most regulated professions, the licensing agency is governed by the same.⁴²

The statute purports to "expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society."⁴³ It provides little guidance, however, for the most frequent circumstances in which state agencies must consider a criminal record.

First, the only clear statutory guidance on how a criminal record should be considered does not apply to licensure decisions.⁴⁴ It applies only to actual employment by the State. The statutory provisions applicable to licensure decisions indicate that a prior conviction should be considered, but do not indicate how.⁴⁵

Second, the guidance provided for state employment decisions mandates that the same criteria for evaluating convictions which have been pardoned, expunged, or sealed applies to those that have not.⁴⁶ This defeats the express goal of a pardon,⁴⁷ and the implicit goals underlying the statutory scheme for expunging, sealing, or dismissing conviction records.⁴⁸ It also makes no mention of orders of collateral relief, which can be issued by courts to relieve eligible individuals of state imposed collateral consequences.⁴⁹

⁴¹ E. Ann Carson, Bureau of Justice Statistics, U.S. Department of Justice, *Prisoners in 2014* 15 (Sept. 2015) (reporting 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), available at <http://www.bjs.gov/content/pub/pdf/p14.pdf>; U.S. Equal Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* 1 (April 25, 2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

⁴² "[I]f a licensing entity in title 10 or 12, C.R.S., determines that an applicant for licensure has a criminal record, the licensing entity is governed by section 24-5-101 for purposes of granting or denying licensure or placing any conditions on licensure." § 24-34-102(8.7), C.R.S. 2016.

⁴³ § 24-5-101(2), C.R.S. 2016.

⁴⁴ § 24-5-101(3), -101(4), C.R.S. 2016.

⁴⁵ § 24-5-101(1), -101(2), C.R.S. 2016.

⁴⁶ § 24-5-101(3)(d), -101(4), C.R.S. 2016.

⁴⁷ "A pardon issued by the governor shall waive all collateral consequences associated with each conviction for which the person received a pardon unless the pardon limits the scope of the pardon regarding collateral consequences." § 16-17-103, C.R.S. 2016.

⁴⁸ State and local government agencies are generally forbidden from asking applicants to disclose information in records that were sealed due to non-prosecution, dismissal, or acquittal. § 24-72-702(1)(a), -702(1)(f), C.R.S. 2016. State and local government agencies are also generally forbidden from asking applicants to disclose information in sealed records relating to certain controlled substance, petty offense, and municipal offense convictions. § 24-72-703(4)(d)(I), C.R.S. 2016. 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.

⁴⁹ See §§ 18-1.3-107, 18-1.3-213, 18-1.3-303, C.R.S. 2016. The State of New York has long issued certificates similar to Colorado's orders of collateral relief. There, however, public agencies and private employers are required to give consideration to such certificates. N.Y. Correct. Law § 753(2). Other states have similar mechanisms. See Conn. Gen. Stat. § 54-130e(b); 730 Ill. Comp. Stat. Ann. 5/5-5.5-15; N.C. Gen. Stat. § 15A-173.2; Ohio. Rev. Code Ann. § 2953.25.

Third, the scant existing guidance for licensure decisions applies only when a state or local agency is required to make a finding that the applicant “is a person of good moral character as a condition to the issuance thereof ...”⁵⁰ Most of the statutes governing state licensure decisions do not require an evaluation of whether a person is of “good moral character.” They simply allow adverse licensure action to be taken on the basis of a prior offense.

Finally, the guidance for both employment and licensure applies only to discretionary agency decisions. It does not apply if there is a specific statutory prohibition that prevents an individual from obtaining employment or licensure.⁵¹

Information obtained from DORA indicates that its various regulatory programs do not have a widespread practice of denying licensure based on a past criminal history. Those programs will, however, regularly issue licenses on a conditional or probationary status based on such a history. This results in a record of the individual's criminal history being publicly accessible through DORA's website. DORA does not have the power to ever remove public access to that information.

Proposed non-statutory language

Please see Appendix G for the full recommendation details.

⁵⁰ § 24-5-101(2), C.R.S. 2016.

⁵¹ §§ 24-5-101(3)(a), 24-34-102(8.7), C.R.S. 2016.

Mental health/point of contact through jail release recommendations

FY17-MH01 Strengthen a community-based crisis response

Position the Colorado Crisis Services System as the comprehensive response to behavioral health emergencies in all Colorado communities by making the following reforms: a) Strengthen and enhance existing crisis services and resources; b) Amend C.R.S. 27-60-103 to clarify the intent of the crisis system; c) Undertake conforming regulatory changes to crisis system contracting; and d) Commit resources to incentivize the development and expansion of the crisis services provider network.

- Strengthen and enhance existing crisis services and provide resources to expand the system to ensure an appropriate health care response to behavioral health crises across Colorado.
- Amend statute (§27-60-103, C.R.S, enacted by SB13-266) to clarify the intent of the crisis system and formally introduce the responsibilities of being the preferred response to behavioral health crises across the state, and for engaging in community partnerships that facilitate such a response.
- Crisis System contracting and regulatory reform should specify the operational components necessary to achieve these responsibilities. *View Appendix A below.*
- The general assembly should commit resources to incentivize the development and expansion of an adequate crisis services provider network. *View Appendix B below.*

Discussion

Colorado's Crisis System was developed to create an appropriate response to behavioral health crises and thereby reduce utilization of the criminal justice system and emergency departments to house or treat individuals with mental illness. To ensure that this system is effective in achieving its intended purpose, resources must be dedicated to cross-system collaboration as well as independent expansion. By taking steps to strengthen and enhance the Crisis System, Colorado will ensure that peace officers and other first responders are equipped with a variety of options when encountering behavioral health crises in the community. Enhancing this system will ensure that Colorado citizens who experience mental health crises are cared for by healthcare professionals, in turn relieving the criminal justice system.

Appendix A

To ensure operational functionality of the crisis system in this proposed role, the following should be *pursued in contracting and regulation*.

Decriminalization of mental illness in all crisis regions

- Minimum of 1.0 FTE Justice Liaison/Community Coordinator per contractor (4.0 FTE total in the state) to oversee the contractors' engagement initiatives with key community partners, (criminal justice agencies, emergency departments (EDs), hospitals, primary care facilities, etc.)
 - To be fully effective, a community resource team should be considered, to include the following positions:
 - » Director/Program Oversight
 - » Marketing/Community Relations
 - » Training Director
 - » Peer Specialist Program Director
- Formalize relationships with all law-enforcement departments in region and continue pursuit of collaborative community programming.
- Ability to intervene in behavioral health crises in the community as soon as they are identified to prevent a criminalized experience and/or the potential for a criminalization trajectory.
 - Build close relationships with first responders/dispatch centers to facilitate this.

Management of M1 holds in all Colorado communities

- Specify that all Walk-in-Centers are prepared to take individuals on M1 holds and are 27-65 designated. Formalize partnerships to prioritize caring for high-acuity individuals in the least restrictive environment and without the use of law enforcement.
- Ensure all crisis services facilities, regardless of facility licensure, are able to adequately care for individuals on an M1 hold. Initiatives should focus on appropriate staff ratios, training of staff, and adequate reform to increase security.
 - Introduce a CSU facility licensure category and standardize expectations/involvement.
- Introduce regulations that formalize the expectation that rural crisis facilities engage with 24/7 facilities in their region (including but not limited to rural hospitals, EMS, medical labs, emergency clinics, primary care facilities, etc.) to form facility placement agreements and other local arrangements.
 - Regulations must be bi-directional to ensure engagement by both entities who are entering into agreements.
- Create a state-wide 27-65 web-based portal for data submission to support designated facilities by decreasing administrative workload and increasing capacity.
- Seek guidance from the 27-65 Board that allows providers to utilize telehealth for crisis services including emergency assessment and evaluation for treatment.

Appendix B

To ensure an adequate crisis response network in all Colorado communities, the following should be *prioritized for additional funding*.

- Expand existing facilities and operations to reach 24/7 capacity in all counties
 - Mobile Response Units – 24/7 capacity.
 - » Fiscal supports & incentives (both to the crisis contractor and community partners) to purchase, install, and use of tele-health for mobile crisis evaluations in partnership settings (e.g. hospitals, health clinics, law enforcement facilities, and other crisis service locations.)
 - Walk-in-Centers – 24/7 ability to manage high-acuity encounters.
 - » Fiscal supports & incentives (both to the crisis contractor and community partners) to purchase, install, and use of tele-health for walk-in crisis evaluations in partnership settings.
 - » Expand crisis services network in each crisis region by incentivizing the partnering with or designating of 24/7 and tele-health capable walk-in-centers at existing facilities in rural communities:
 - Allow crisis contractors to subcontract with rural providers.
 - » Target areas: Western Slope, NE region, SE region
 - Potential subcontracted providers may include:
 - » Existing Crisis Contractor facilities that are not currently crisis services (i.e. ATU, outpatient offices)
 - » Other CMHC outpatient facilities/clinics
 - » SUD treatment facilities
 - » Law enforcement substation with CMHC or crisis staff conducting services via tele-health
 - » Other primary care facilities
- Incentivize local partnerships between law enforcement, behavioral health, and other first responders.
 - Fund new and existing joint programs that match community need and density using the Bureau of Justice Assistance’s Police Mental Health Coordination Toolkit (<https://pmhctoolkit.bja.gov/>), state (e.g., EDGE, CRT) and national models.
 - » Embed crisis clinicians/consultants in first response systems (law enforcement ride-along, dispatch centers, etc.)
 - Provide resources to support crisis contractors’ employee (minimum 1 FTE) community coordinator to facilitate relationship building and program oversight.
- Develop and install additional tele-suites (equipment, training, other supports) to ensure 24/7 crisis tele-assessment capacity in every county. Funding to promote joint-utilization between systems (criminal justice agencies, hospitals, etc.)
 - Provide the crisis system with the capacity to install, market, and provide technical assistance for this capacity.

- Create a state-level coordinator position (e.g., Office of IT – *State Telehealth Coordinator*) to oversee piloting, utilization, and outcomes.
- Support crisis contractors to expand mobile capacity in rural areas as appropriate.
 - Allow for crisis clinicians to respond to more incidents independently or jointly with first responders.
 - These teams should have a primary role in outreach, dispatch, community-coordination, etc. to match the rural communities' needs.
- Develop, as needed, data collection and outcome evaluation systems.
 - Analysis to focus on clinical outcomes, cross-systemic cost-avoidance, best-practice development, contract compliance, etc.
- Explore development of new crisis facilities and services to ensure adequate capacity in all regions of Colorado.
 - Increase ATU, CSU, WIC, respite capacity where need is determined.
 - Expand resources for peer services and explore increasing the scope of work for peers.

FY17-MH02 Changes to the emergency mental health commitment statute

Amend Title 27 of Colorado Revised Statutes (C.R.S), section 65-105, to remove jails and correctional facilities as a placement option for individuals on an M1 (emergency mental health) hold. Introduce language that allows intervening professionals to transport individuals to an outpatient facility for immediate evaluation for treatment based on evidence of need.

Discussion

Colorado is one of only eight states in the nation that allows for individuals experiencing a mental health crisis to be held in a jail or correctional facility without charges. In order to ensure individual dignity and quality healthcare are provided, this practice must cease immediately. The evaluation and treatment of individuals experiencing behavioral health crises should be entrusted to healthcare providers and whenever possible individuals experiencing mental health crises should be shepherded into a health care system instead of a criminal justice system.

Therefore, language should be added in C.R.S. 27-65-105 that creates an opportunity for immediate evaluation for treatment at an outpatient facility. Allowing providers at outpatient facilities to conduct evaluations (face-to-face or via telehealth) reduces the burden on peace officers to assess for and initiate M-1 holds. By transferring individuals experiencing mental health crises into healthcare systems immediately, Colorado will reduce the burden on criminal justice systems at every intercept.

Proposed statutory language

C.R.S. 27-65-105. Emergency procedure

(1) Emergency procedure may be invoked under either one of the following two conditions:

(a)(I) When any person appears to have a mental illness and, as a result of such mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, then a person specified in subparagraph (III) of this paragraph (a), each of whom is referred to in this section as the “intervening professional”, upon probable cause and with such assistance as may be required, may take the person into custody, or cause the person to be taken into custody, and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation.

(II) WHEN ANY PERSON APPEARS TO HAVE A MENTAL ILLNESS AND, AS A RESULT OF SUCH MENTAL ILLNESS IS IN NEED OF IMMEDIATE EVALUATION FOR TREATMENT IN ORDER TO PREVENT PHYSICAL AND PSYCHIATRIC HARM TO HIMSELF, HERSELF OR OTHERS, THEN A PERSON SPECIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), EACH OF WHOM IS REFERRED TO IN THIS SECTION AS THE “INTERVENING PROFESSIONAL”, UPON PROBABLE CAUSE AND WITH SUCH ASSISTANCE AS MAY BE REQUIRED, MAY IMMEDIATELY TRANSPORT SUCH PERSON TO AN OUT PATIENT MENTAL HEALTH FACILITY DESIGNATED OR APPROVED BY THE EXECUTIVE DIRECTOR FOR A SEVENTY-TWO HOUR TREATMENT AND EVALUATION.

(III) The following persons may effect a seventy-two-hour hold as provided in subparagraph (I) **AND (II)** of this paragraph (a):

(A) A certified peace officer;

(B) A professional person;

(C) A registered professional nurse as defined in section 12-38-103(11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing;

(D) A licensed marriage and family therapist, licensed professional counselor, or addiction counselor licensed under part 5, 6, or 8 of article 43 of title 12, C.R.S., who by reason of postgraduate education and additional preparation has gained knowledge, judgment, and skill in psychiatric or clinical mental health therapy, forensic psychotherapy, or the evaluation of mental disorders; or

(E) A licensed clinical social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S.

(b) Upon an affidavit sworn to or affirmed before a judge that relates sufficient facts to establish that a person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, the court may order the person described in the affidavit to be taken into custody and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation. Whenever in this article a facility is to be designated or approved by the executive director, hospitals, if available, shall be approved or designated in each county before other facilities are approved or designated. Whenever in this article a facility is to be designated or approved by the executive director as a facility for a stated purpose and the facility to be designated or approved is a private facility, the consent of the private facility to the enforcement of standards set by the executive director shall be a prerequisite to the designation or approval.

(c) UPON AN AFFIDAVIT SWORN TO OR AFFIRMED BEFORE A JUDGE THAT RELATES SUFFICIENT FACTS TO ESTABLISH THAT A PERSON APPEARS TO HAVE A MENTAL ILLNESS AND, AS A RESULT OF THE MENTAL ILLNESS, IS IN NEED OF IMMEDIATE EVALUATION FOR TREATMENT IN ORDER TO PREVENT PHYSICAL AND PSYCHIATRIC HARM, THE COURT MAY ORDER THE PERSON DESCRIBED IN THE AFFIDAVIT TO BE TRANSPORTED TO AN OUTPATIENT MENTAL HEALTH FACILITY DESIGNATED OR APPROVED BY THE EXECUTIVE DIRECTOR FOR A SEVENTY-TWO HOUR TREATMENT AND EVALUATION.

(2) ~~(a)~~ When a person is taken into custody pursuant to subsection (1) of this section, such person shall not be detained in a jail, lockup, or other place used for the confinement of persons charged with or convicted of penal offenses. ~~;~~ ~~except that such place may be used if no other suitable place of confinement for treatment and evaluation is readily available.~~ In such situation the person shall be detained separately from those persons charged with or convicted of penal offenses and shall be held for a period not to exceed twenty-four hours, ~~excluding Saturdays, Sundays, and holidays, after which time he or she shall be transferred~~

to a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation. If the person being detained is a juvenile, as defined in section 19-1-103 (68), C.R.S., the juvenile shall be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders. When a person is taken into custody and confined pursuant to this subsection (2), such person shall be examined at least every twelve hours by a certified peace officer, nurse, or physician or by an appropriate staff professional of the nearest designated or approved mental health treatment facility to determine if the person is receiving appropriate care consistent with his or her mental condition.

(b) A sheriff or police chief who violates the provisions of paragraph (a) of this subsection (2), related to detaining juveniles may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of paragraph (a) of this subsection (2) by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with paragraph (a) of this subsection (2).

(3) Such facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the intervening professional and further stating sufficient facts, obtained from the personal observations of the intervening professional or obtained from others whom he or she reasonably believes to be reliable, to establish that the person has a mental illness and, as a result of the mental illness, is an imminent danger to others or to himself or herself, **or** is gravely disabled, **OR IN NEED OF IMMEDIATE EVALUATION FOR TREATMENT**. The application shall indicate when the person was taken into custody and who brought the person's condition to the attention of the intervening professional. A copy of the application shall be furnished to the person being evaluated, and the application shall be retained in accordance with the provisions of section 27-65-121(4).

(4) If the seventy-two-hour treatment and evaluation facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours, excluding Saturdays, Sundays, and holidays if evaluation and treatment services are not available on those days. For the purposes of this subsection (4), evaluation and treatment services are not deemed to be available merely because a professional person is on call during weekends or holidays. If, in the opinion of the professional person in charge of the evaluation, the person can be properly cared for without being detained, he or she shall be provided services on a voluntary basis.

(5) Each person admitted to a seventy-two-hour treatment and evaluation facility under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive such treatment and care as his or her condition requires for the full period that he or she is held. The person shall be released before seventy-two hours have elapsed if, in the opinion of the professional person in charge of the evaluation, the person no longer requires evaluation or treatment. Persons who have been detained for seventy-two-hour evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-65-107.

FY17-MH03 Include Mental Health First Aid® curriculum for peace officer in-service training through POST

Officials from the Colorado Peace Officer Standards and Training (POST) will work with staff from the Colorado Behavioral Healthcare Council (CBHC) to review and include Mental Health First Aid® training through POST for the purpose of training up to 200 officers per month on this topic with training beginning in the spring of 2017.

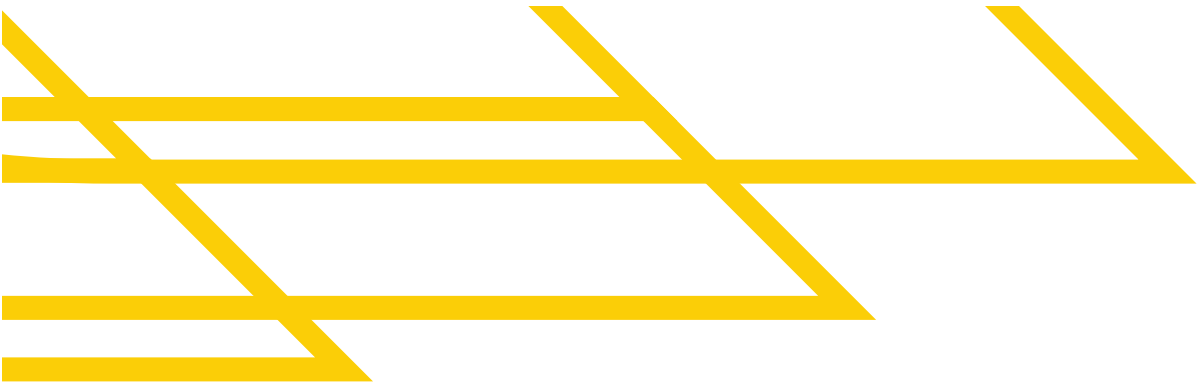
Discussion

Working with members of the Mental Health/Jail Task Force, POST has tentatively committed to providing approximately \$40,000 to fund classes in ten law enforcement training regions. Training will apply toward continuing education requirements for certified officers. If possible, training will apply toward requirements that mandate officers to take classes in de-escalation techniques. POST will find host agencies and pay for the attendance of certified officers. The program will be marketed to the state sheriffs' and chiefs' associations.

FY17-MH04 Include Mental Health First Aid® curriculum in the POST basic academy

Officials from the Colorado Peace Officer Standards and Training (POST) will work with staff from the Colorado Behavioral Healthcare Council (CBHC) to review the Mental Health First Aid® curriculum, and modify when possible, for inclusion in the POST basic academy standard curriculum.

Discussion *POST officials report that approximately 4,500 law enforcement officials in Colorado have received Crisis Intervention Team (CIT) training, a 40-hour training that includes information on signs and symptoms of mental illnesses, mental health treatment, co-occurring disorders, legal issues and de-escalation techniques. However, many law enforcement agencies, particularly smaller agencies, cannot send staff to participate in a week-long CIT training. Mental Health First Aid® (MHFA) is an eight hour training focused on risk factors and warning signs for mental health and addiction concerns, and strategies to help individuals in both crisis and non-crisis situations. Under the umbrella of the Commission's Mental Health/Jail Task Force, POST officials met with Task Force members and together the group developed the concepts described here regarding integrating MHFA training into the POST curriculum. CBHC may be able to assist with funding through grants and fund matching. The course is expected to be available in the spring of 2017.*



5

Next steps

Task forces and committees

At the close of Fiscal Year 2017 the Commission continued to support the ongoing work of the following task forces:

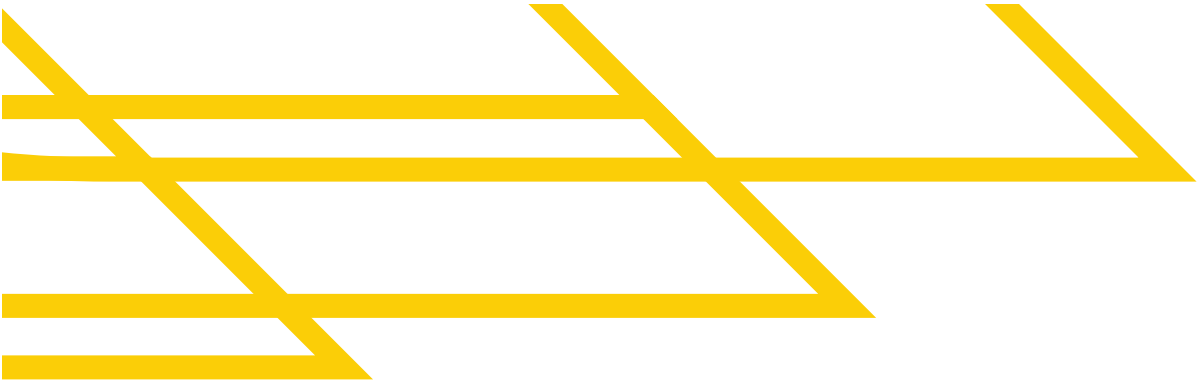
- Re-entry Task Force (Stan Hilkey, Chair)
- Mental Health/Point of Contact through Jail Release Task Force (Joe Pelle, Chair)
- Juvenile Continuity of Care Task Force (Robert Werthwein, Chair)
- Pretrial Release Task Force (Stan Hilkey, Chair)

As this report goes to press, recommendations are being prepared for presentation to the Commission by the Re-entry and Juvenile Continuity of Care Task Forces, which are both expected to complete

their scope of work and conclude by fall 2017. The Commission looks forward to supporting the work of the remaining two task forces through Fiscal Year 2018 and plans to launch two new task forces during that same time period.

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 2018.



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Appendices

Appendices table of contents

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Appendix A:
Disproportionate minority contact



History and Overview of CCJJ Minority Over-Representation Efforts and Accomplishments

Germaine Miera, DCJ
Colorado Commission on Criminal and Juvenile Justice
March 10, 2017

Background: CCJJ & MOR Efforts

2008

House Bill **08-1119**: The General Assembly directs the Commission to study the reduction of disparities within the criminal justice system

- DOC/Probation compiled a report on behalf of CCJJ in **2010**
- Summarized the literature on MOR in the **2010** CCJJ Annual Report

2011

- Four months of MOR study by the Commission (March – June)
- Seven policy and legislative recommendations approved in June **2011**
- MOR Committee created September **2011**
 - To study and further develop the seven recommendations
- MOR Committee convened October **2011**

Background: CCJJ & MOR Efforts

2011-2015

MOR Committee meets to study and further develop the seven recommendations

March 2015

- Action steps accomplished on 6 of 7 recommendations
- Significant barriers identified on Recommendation #3 (Race and ethnicity data collection)

History of MOR Recommendations

Recommendation #1 (Policy)

Require comprehensive cultural competency training for all justice agencies and for all treatment and service organizations used by justice system agencies.

Action: **Completed**

- The MOR Committee supported Denver's Crime Prevention and Control Commission (CPCC) in its effort to create a Cultural Responsivity Toolkit that could be used by state and local agencies.
- The toolkit was presented to commissioners twice over a two year period for feedback and edits.
- The toolkit and curriculum are currently available for use by Colorado agencies.

History of MOR Recommendations

Recommendation #2 (Policy)

All justice agencies should track the racial and ethnic diversity of their staff. Every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.

Action: **Recommendation only**

- It is difficult to know which agencies are actively recruiting minority candidates as there is no central clearing house for such information.
- Limiting recruitment to Colorado residents, as is required by State of Colorado, narrows the pool of all applicants and particularly impacts the diversity of potential employees.

History of MOR Recommendations

Recommendation #2 (cont'd) (Policy)

All justice agencies should track the racial and ethnic diversity of their staff. Every organization should actively recruit minority candidates for both job opportunities and as members of boards and commissions.

Action: **Recommendation only**

- Regarding recruitment, the MOR Subcommittee believes that POST (Peace Officer Standards and Training) may provide an opportunity to begin the process for defining a baseline measure of race and ethnicity regarding current hiring practices across the state for peace officers. POST currently tracks a variety of information and the Subcommittee recommends that POST include fields for race and ethnicity data collection in order to begin tracking these demographics for all peace officers.
- Second, state and local agencies that employ peace officers should (at a minimum) collect their jurisdiction-specific data through POST and make that information available to the public either via the website or upon request.

History of MOR Recommendations

Recommendation #3 (Agency policy/administrative rule/legislation)
 State and local justice agencies should collect race and ethnicity information on the populations they serve.

Action: **Recommendation only**

- In an effort to learn more about current practices regarding race and ethnicity data collection, the MOR Committee created and distributed a data capacity survey in 2013
- 78 state and local justice agencies responded
- Results showed that all of the reporting agencies collect race data, however, determination of that data varies widely and is not always mandatory
- Ethnicity data collection is varied and sporadic
- The Committee coordinated an 8-agency panel presentation for the CCJJ to outline barriers and issues

History of MOR Recommendations

Recommendation #3 (cont'd) (Agency policy/administrative rule/legislation)
 State and local justice agencies should collect race and ethnicity information on the populations they serve.

March 2015

- 8 agency panel presentation to CCJJ on Race and Ethnicity data collection practices and barriers

Panel presentation participants	
Point of Contact	Judicial Courts
Booking	Probation
CBI/NIBRS	Department of Corrections
District Attorney's Offices	Parole

History of MOR Recommendations

Recommendation #4 (Legislative)

Develop a mechanism that requires a specific review of proposed justice legislation to determine whether the legislation will have an adverse impact on minority over-representation. Some states refer to this as a Minority Impact Statement.

Action: **Completed**

- Minority Impact Statement legislation established through Senate Bill 13-229

History of MOR Recommendations

Recommendation #5 (Commission)

The Commission should develop and maintain a disproportionate minority representation web site to promote recognition and understanding of this problem. The site should have local, state and national data and link to educational resources.

Action: **Completed**

- The CCJJ created and maintains a Disproportionate Minority Contact page on its website which provides data and reflects the ongoing work of the MOR Committee. This information can be found at www.colorado.gov/ccjj

History of MOR Recommendations

Recommendation #6 (Commission)

To serve as a model for its expectations of criminal justice agencies, the Commission should develop and implement a Commission-specific mentoring program for minority juveniles and young adults who are interested in working in the criminal justice system.

Action: **Completed**

- This endeavor is accomplished by commissioners on an individual bases and through the CCJJ MOR website

History of MOR Recommendations

Recommendation #7 (Commission)

The Commission's Sentencing, Drug, and Juvenile Task Forces shall review recommendations to ensure those proposals do not have a negative impact on minority over representation.

Action: **Completed**

- When feasible Commission recommendations are analyzed by CCJJ research staff for minority impact.

Appendix B:
Community Law Enforcement Action Reporting Act



Overview: CY 2015 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
March 10, 2017



Colorado Commission on Criminal & Juvenile Justice

Presentation outline

- Background CLEAR Act
- Findings: race/ethnicity
 - Adult district court (violent offenses)
 - Juvenile district court
- Data dashboard demonstration
- Suggestions for reform from
 - President's Task Force on 21st Century Policing
 - Brennan Center for Justice



Colorado Commission on Criminal & Juvenile Justice

Background

In 2015, the General Assembly passed Senate Bill 185, the **Community Law Enforcement Action Reporting Act**, or the CLEAR Act, mandating that the Division of Criminal Justice (DCJ) annually analyze and report data 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.

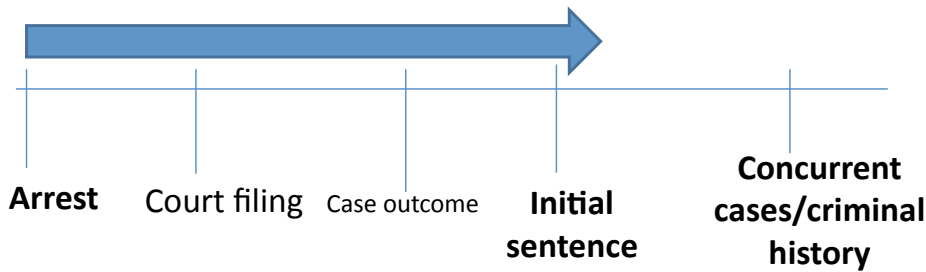
Links to the Full report and interactive Dashboard may be found at:

colorado.gov/dcj-ors/ors-SB185

This presentation reflects information for calendar year 2015.



Colorado Commission on Criminal & Juvenile Justice





Colorado Commission on Criminal & Juvenile Justice

2015 ARREST DATA

The arrest data were reduced to 17 categories of offenses (from more than 40; see Appendix A) that can be viewed on the interactive data dashboard and, for the summary report, further collapsed into four categories of

Drugs
Other
Property
Violent

Arrests can contain multiple charges. The arrest charge presented here represents the most serious charge on the arrest as selected by the law enforcement officer.

Overview: CY 2015 CLEAR Act Report

3/10/2017

5 of 40



Colorado Commission on Criminal & Juvenile Justice

2015 COURT DATA

The most serious filing or conviction charge was collapsed into 24 offense categories from more than 1500 criminal statutes.

These were further collapsed into four categories for the summary report

Drug
Other
Property
Violent

Note that all offense categories include attempts, solicitations, and conspiracies.

Overview: CY 2015 CLEAR Act Report

3/10/2017

6 of 40



Colorado Commission on Criminal & Juvenile Justice



Colorado Commission on Criminal & Juvenile Justice

Race/ethnicity of Colorado population, 2015

Race/ethnicity	Adult %	Juvenile %	Total %
Black	3.9	5.0	4.2
Hispanic	19.1	32.4	22.2
Other	4.4	5.0	4.5
White	72.6	57.6	69.1
Total	100.0%	100.0%	100.0%

Data Source: Colorado Department of Local Affairs, Office of the State Demographer.



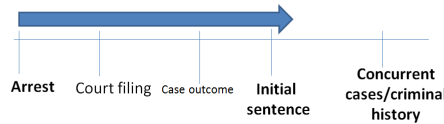
Colorado Commission on Criminal & Juvenile Justice

Arrest/summons by race/ethnicity 2015

Race/ethnicity	%	N
Black	12.4%	27,567
Hispanic	23.3%	51,904
Other	2.6%	5,723
White	61.8%	137,896
Total	100.0%	223,090

Data source: Colorado Bureau of Investigation, National Incident Based Reporting System (NIBRS) data.

- Blacks represented 4.2% of the state population in 2015, but accounted for 12.4% of arrests/summons
 - More likely to be arrested for robbery, agg assault, and homicide



Colorado Commission on Criminal & Juvenile Justice

2015 COURT DATA

The Judicial Department systematically collects information on race but not ethnicity.

This means that many Hispanic defendants are classified as White, and the Hispanic classification underrepresents the number of Hispanics involved in court cases.

Consequently, the race/ethnicity designation for all the court decision points must be interpreted with caution.

Court of case filing, by most serious filing charge

Court	%	N
County*	53%	55,819
Drugs	4%	2,509
Other	31%	17,430
Property	19%	10,613
Violent	45%	25,267
Adult District	39%	41,191
Drugs	24%	9,850
Other	22%	9,227
Property	32%	13,036
Violent	22%	9,078
Juvenile	8%	8,146
Drugs	7%	564
Other	18%	1,434
Property	43%	3,499
Violent	33%	2,649
Total	100%	105,156

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice.
Note these figures represent cases, not individuals.
 *Excludes Denver County Court cases.

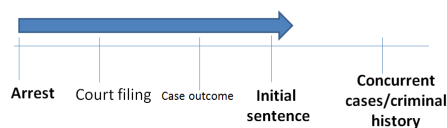


Overall court filings by race/ethnicity, 2015 (County, district, juvenile courts combined)

Race/ethnicity	%	N
Black	10.5%	10,046
Hispanic	6.1%	6,398
Other	2.9%	3,100
White	81.5%	85,612
Total	101%	105,156

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice.
 Note these figures represent cases, not individuals. Excludes Denver County Court cases.

- Blacks represented 4.2% of the state population in 2015
- In juvenile court, Blacks represented 16% of cases filed, compared to 5% of Black juveniles in the population



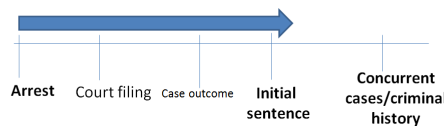


Colorado Commission on Criminal & Juvenile Justice

Regarding **case outcome**.....

- All charges dismissed
- All charges not guilty/acquitted
- Convicted as charged
- Convicted of other crime
- Dismissed/not guilty
- Not yet resolved

....there were few differences across race/ethnicity across the three court types



Adult/District Court/All Offenses

Initial Sentence for Adult District Court, by race/ethnicity* (N=31,981)

Initial Sentence	Black (n=)	Hispanic (n=)	Other (n=)	White (n=)
	%	%	%	%
Community Corrections				
Community Service				
Credit for Time Served				
Deferred Judgment				
Dept of Corrections				
Division of Youth Corrections				
Fines				
Jail				
Probation/Intensive Supervision				
Unsupervised Probation				
Youthful Offender System				
Total				

Tutorial on Table Layout

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

Adult/District Court/All Offenses

Initial Sentence for Adult District Court, by race/ethnicity* (N=31,981)

Initial Sentence	Black (n=3,654)	Hispanic (n= 2,119)	Other (n=774)	White (n=25,434)
	%	%	%	%
Community Corrections	4.8%	3.4%	3.0%	5.3%
Community Service	0.1%	0.1%	0.5%	0.3%
Credit for Time Served	0.6%	0.2%	0.6%	0.7%
Deferred Judgment	9.0%	10.8%	13.0%	10.7%
Dept of Corrections	24.9%	16.9%	19.6%	17.7%
Division of Youth Corrections	0.0%	0.0%	0.0%	<1%
Fines	1.3%	0.7%	1.4%	1.4%
Jail	8.3%	7.5%	7.1%	8.0%
Probation/Intensive Supervision	47.1%	58.0%	50.8%	52.3%
Unsupervised Probation	3.6%	2.0%	3.2%	3.4%
Youthful Offender System	0.4%	0.2%	0.6%	0.2%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

Blacks accounted for 20.9% of initial sentences in District Court in 2015



Adults/District Court/Violent Offenses

Initial Sentence for Violent as most serious conviction charge in Adult District Court, by race/ethnicity* (N=6,838)

Initial Sentence	Black (n=950)	Hispanic (n=486)	Other (n=234)	White (n=5168)
	%	%	%	%
Community Corrections	4.0%	2.3%	1.3%	3.7%
Community Service	0.0%	0.0%	0.0%	0.1%
Credit for Time Served	0.3%	0.2%	0.4%	0.4%
Deferred Judgment	6.8%	10.1%	11.1%	11.1%
Dept of Corrections	32.2%	21.4%	23.9%	21.7%
Fines	0.3%	0.8%	0.4%	0.7%
Jail	7.5%	9.3%	6.0%	7.8%
Probation/Intensive Supervision	45.1%	54.1%	51.7%	51.1%
Unsupervised Probation	3.1%	1.0%	3.0%	2.7%
Youthful Offender System	0.7%	0.8%	2.1%	0.7%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

27% of initial sentences for Blacks involved a violent crime compared to 22% overall





Colorado Commission on Criminal & Juvenile Justice

Many factors can influence the case outcome decision

- Concurrent cases*
- Prior cases (criminal history)**

* In 2015 18% of county court cases, 35% of district court cases, and 36% of juvenile court cases had other, concurrent cases mentioned in minute orders or sentencing notes

** In 2015 72% of district court cases had prior cases, and 42% of juvenile court cases had prior cases

Adults/District Court/Violent/NO CONCURRENT Cases

Initial Sentence for Violent as most serious charge in Adult District Court, by concurrent cases and race/ethnicity* (N=6,838)

	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
Count of concurrent cases								
None	66.5%	632	73.5%	357	72.2%	169	73.5%	3,800
Community Corrections	2.5%	16	2.5%	9	1.8%	3	3.3%	127
Community Service	0.0%	0	0.0%	0	0.0%	0	0.1%	5
Credit for Time Served	0.3%	2	0.3%	1	0.6%	1	0.5%	19
Deferred	8.2%	52	12.3%	44	12.4%	21	13.2%	503
DOC	26.1%	165	17.6%	63	21.3%	36	18.9%	717
Fines	0.5%	3	1.1%	4	0.6%	1	0.8%	30
Jail	6.6%	42	6.4%	23	4.7%	8	6.4%	244
Probation/Intensive Supervision	51.7%	327	58.3%	208	53.8%	91	53.1%	2,018
Unsupervised Probation	3.5%	22	0.8%	3	4.1%	7	3.2%	121
Youthful Offender System	0.5%	3	0.6%	2	0.6%	1	0.4%	16

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

33.5% of Blacks had concurrent cases compared to about 27% overall.



Adults/District Court/Violent/1-2 CONCURRENT Cases

Initial Sentence for Violent as most serious charge in Adult District Court, by concurrent cases and race/ethnicity* (N=6,838)

	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
# concurrent cases								
1-2	27.1%	257	22.0%	107	24.8%	58	22.0%	1,139
Community Corrections	6.6%	17	1.9%	2	0.0%	0	4.5%	51
Credit for Time Served	0.4%	1	0.0%	0	0.0%	0	0.1%	1
Deferred	4.3%	11	3.7%	4	8.6%	5	5.8%	66
DOC	43.6%	112	29.9%	32	31.0%	18	26.5%	302
Division of Youth Corrections	0.0%	0	0.0%	0	0.0%	0	0.1%	1
Fines	0.0%	0	0.0%	0	0.0%	0	0.5%	6
Jail	7.8%	20	17.8%	19	10.3%	6	11.0%	125
Probation/Intensive Supervision	33.9%	87	44.9%	48	46.6%	27	48.6%	554
Unsupervised Probation	2.3%	6	0.9%	1	0.0%	0	1.4%	16
Youthful Offender System	1.2%	3	0.9%	1	3.4%	2	1.5%	17

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Adults/District Court/Violent/ NO PRIOR Cases

Initial Sentence for Violent as most serious charge in Adult District Court, by prior cases and race/ethnicity* (N=6,838)

	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
# of prior cases								
None	23.4%	222	31.9%	155	41.0%	96	29.9%	1,543
Community Corrections	2.7%	6	1.3%	2	1.0%	1	1.6%	24
Community Service	0.0%	0	0.0%	0	0.0%	0	0.3%	4
Credit for Time Served	0.5%	1	0.0%	0	0.0%	0	0.2%	3
Deferred	13.5%	30	14.2%	22	16.7%	16	21.1%	326
DOC	17.6%	39	17.4%	27	18.8%	18	15.2%	235
Fines	0.0%	0	1.3%	2	1.0%	1	0.5%	8
Jail	2.7%	6	1.9%	3	5.2%	5	2.9%	44
Probation/Intensive Supervision	59.0%	131	62.6%	97	53.1%	51	54.5%	841
Unsupervised Probation	4.1%	9	0.6%	1	3.1%	3	3.5%	54
Youthful Offender System	0.0%	0	0.6%	1	1.0%	1	0.3%	4

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

73.6% of Blacks had prior cases compared to about 70% overall



Adults/District Court/Violent/1-4 PRIOR Cases

Initial Sentence for Violent as most serious charge in Adult District Court, by prior cases and race/ethnicity* (N=6,838)

	Black		Hispanic		Other		White	
1-4 Prior Cases	37.3%	354	34.0%	165	32.1%	75	36.7%	1,897
Community Corrections	4.5%	16	3.0%	5	1.3%	1	3.5%	67
Community Service	0.0%	0	0.0%	0	0.0%	0	0.1%	1
Credit for Time Served	0.6%	2	0.0%	0	0.0%	0	0.3%	5
Deferred	7.6%	27	13.9%	23	9.3%	7	10.6%	201
DOC	29.1%	103	16.4%	27	20.0%	15	16.9%	320
Division of Youth Corrections	0.0%	0	0.0%	0	0.0%	0	0.1%	1
Fines	0.8%	3	1.2%	2	0.0%	0	0.8%	16
Jail	6.2%	22	6.1%	10	6.7%	5	6.2%	118
Probation/Intensive Supervision	48.3%	171	57.0%	94	61.3%	46	57.8%	1,096
Unsupervised Probation	2.3%	8	2.4%	4	1.3%	1	2.7%	52
Youthful Offender System	0.6%	2	0.0%	0	0.0%	0	1.1%	20

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Adult/District Court/Drugs

Initial Sentence for Drugs as most serious conviction charge in Adult District Court, by race/ethnicity (N=8,073)

Initial Sentence	Black	Hispanic	Other	White
N	825	550	132	6,566
Community Corrections	5.0%	3.3%	1.5%	4.7%
Community Service	0.1%	0.0%	1.5%	0.4%
Credit for Time Served	1.0%	0.0%	0.0%	0.8%
Deferred Judgment	3.9%	5.6%	6.1%	6.5%
Dept of Corrections	15.0%	17.6%	13.6%	10.4%
Fines	1.3%	0.4%	1.5%	1.3%
Jail	9.7%	5.1%	7.6%	7.2%
Probation/Intensive Supervision	61.5%	66.5%	66.7%	66.2%
Unsupervised Probation	2.5%	1.3%	1.5%	2.5%
Youthful Offender System	0.0%	0.2%	0.0%	0.0%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Adult/District Court/Other

Initial Sentence for **Other** as most serious conviction charge in **Adult District Court**, by race/ethnicity (N=6,292)

Initial Sentence	Black	Hispanic	Other	White
N	808	391	174	4,919
Community Corrections	3.5%	3.3%	4.0%	4.8%
Community Service	0.4%	0.3%	1.1%	0.3%
Credit for Time Served	0.5%	0.8%	0.6%	1.2%
Deferred Judgment	7.9%	10.2%	13.8%	8.5%
Dept of Corrections	38.2%	23.3%	25.3%	29.2%
Fines	2.1%	1.3%	1.7%	2.4%
Jail	11.4%	9.5%	8.6%	11.1%
Probation/Intensive Supervision	32.4%	48.8%	42.0%	38.8%
Unsupervised Probation	3.2%	2.6%	2.9%	3.7%
Youthful Offender System	0.4%	0.0%	0.0%	0.0%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Juvenile/District Court/All Offenses

Initial Sentence for **Juvenile Court** by race/ethnicity* (N=5,338)

	Black (n=774)	Hispanic (n=654)	Other (n=219)	White (n=3,691)
Initial Sentence	%	%	%	%
Community Corrections	0.0%	0.0%	0.5%	0.0%
Community Service	0.4%	0.9%	0.9%	0.7%
Credit for Time Served	0.0%	0.2%	0.0%	0.1%
Deferred Judg.	16.0%	25.8%	40.2%	38.7%
Dept of Corrections ⁺	0.1%	0.0%	0.0%	0.0%
Division of Youth Corrections	13.4%	9.6%	8.7%	9.2%
Fines	1.9%	2.1%	3.2%	2.9%
Jail	2.6%	2.8%	1.8%	1.1%
Juvenile Detention	1.3%	0.6%	1.8%	1.4%
Probation/Intensive Supervision	63.2%	56.9%	42.0%	44.9%
Unsupervised Probation	0.9%	0.8%	0.9%	1.0%
Youthful Offender System	0.1%	0.3%	0.0%	0.0%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

*Felony menacing with a weapon. Offender was 18 on filing date.



Juvenile/District Court/Violent Offenses

Initial Sentence for Violent as most serious conviction charge in Juvenile Court, by race/ethnicity* (N=1,635)

Initial Sentence	Black	Hispanic	Other	White
N	256	189	71	1,119
Community Corrections	0.0%	0.0%	0.0%	0.1%
Community Service	0.0%	0.0%	0.0%	0.3%
Credit for Time Served	0.0%	0.0%	0.0%	0.1%
Deferred Judgment	14.8%	24.3%	45.1%	42.1%
Dept of Corrections*	0.4%	0.0%	0.0%	0.0%
DYC	16.0%	13.2%	12.7%	10.4%
Fines	1.6%	0.5%	1.4%	1.0%
Jail	1.2%	1.6%	0.0%	0.6%
Juvenile Detention	0.4%	0.5%	1.4%	0.8%
Probation/Intensive Supervision	65.2%	58.7%	39.4%	44.1%
Unsupervised Probation	0.0%	0.0%	0.0%	0.4%
Youthful Offender System	0.4%	1.1%	0.0%	0.1%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

*Felony menacing with a weapon. Offender was 18 on filing date.



Juvenile/District Court/Drug Offenses

Initial Sentence for Drugs as most serious conviction charge in Juvenile Court, by race/ethnicity* (N=385)

Initial Sentence	Black	Hispanic	Other	White
N	45	42	16	282
Community Service	2.2%	0.0%	0.0%	0.0%
Deferred Judgment	15.6%	38.1%	56.3%	41.8%
DYC	13.3%	2.4%	0.0%	4.3%
Fines	4.4%	4.8%	6.3%	8.9%
Jail	2.2%	4.8%	0.0%	2.1%
Juvenile Detention	0.0%	2.4%	0.0%	1.8%
Probation/Intensive Supervision	60.0%	47.6%	37.5%	39.7%
Unsupervised Probation	2.2%	0.0%	0.0%	1.4%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Juvenile/District Court/Property Offenses

Initial Sentence for Property as most serious conviction charge in Juvenile Court, by race/ethnicity* (N=2,359)

Initial Sentence	Black	Hispanic	Other	White
N	341	315	98	1,605
Community Service	0.6%	1.0%	2.0%	0.9%
Credit for Time Served	0.0%	0.0%	0.0%	0.1%
Deferred Judgment	17.9%	25.7%	36.7%	37.7%
Division of Youth Corrections	8.5%	9.5%	7.1%	8.7%
Fines	2.1%	2.2%	3.1%	2.4%
Jail	3.8%	3.8%	4.1%	1.1%
Juvenile Detention	0.9%	0.6%	3.1%	1.3%
Probation/Intensive Supervision	65.7%	55.9%	42.9%	46.5%
Unsupervised Probation	0.6%	1.3%	1.0%	1.4%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Juvenile/District Court/Other Offenses

Initial Sentence for Other as most serious conviction charge in Juvenile Court, by race/ethnicity* (N=959)

Initial Sentence	Black	Hispanic	Other	White
N	132	108	34	685
Community Corrections	0.0%	0.0%	2.9%	0.0%
Community Service	0.0%	2.8%	0.0%	1.5%
Credit for Time Served	0.0%	0.9%	0.0%	0.0%
Deferred Judgment	13.6%	24.1%	32.4%	34.2%
DYC	21.2%	6.5%	8.8%	10.5%
Fines	1.5%	3.7%	5.9%	4.5%
Jail	2.3%	0.9%	0.0%	1.6%
Juvenile Detention	4.5%	0.0%	0.0%	2.5%
Probation/Intensive Supervision	53.8%	60.2%	47.1%	44.4%
Unsupervised Probation	3.0%	0.9%	2.9%	0.9%
Total	100.0%	100.0%	100.0%	100.0%

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Juvenile/District Court/All offenses/NO CONCURRENT Cases

Initial Sentence in Juvenile Court, by concurrent cases and race/ethnicity* (N=5,338)

# Concurrent cases	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
None	53.5%	414	72.5%	474	67.1%	147	63.0%	2,325
Community Corrections	0.0%	0	0.0%	0	0.0%	0	0.0%	1
Community Service	0.7%	3	1.3%	6	0.7%	1	0.7%	17
Credit for Time Served	0.0%	0	0.2%	1	0.0%	0	0.1%	2
Deferred	22.0%	91	30.4%	144	52.4%	77	47.5%	1,105
Dept of Corrections	0.2%	1	0.0%	0	0.0%	0	0.0%	0
DYC	5.8%	24	5.1%	24	3.4%	5	4.3%	99
Fines	3.1%	13	2.1%	10	3.4%	5	3.5%	81
Jail	1.7%	7	1.9%	9	2.0%	3	1.0%	23
Juvenile Detention	1.2%	5	0.6%	3	1.4%	2	1.4%	33
Probation/Intensive Supervision	63.8%	264	57.6%	273	35.4%	52	40.1%	932
Unsupervised Probation	1.4%	6	0.8%	4	1.4%	2	1.3%	31
Youthful Offender System	0.0%	0	0.0%	0	0.0%	0	0.0%	1

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

46.5% of Black youth had concurrent cases compared to about 35% overall



Juvenile/District Court/All offenses/1-2 CONCURRENT Cases

Initial Sentence in Juvenile Court, by concurrent cases and race/ethnicity* (N=5,338)

1-2 concurrent cases	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
1-2 concurrent cases	34.8%	269	21.1%	138	25.6%	56	29.1%	1,074
Community Service	0.0%	0	0.0%	0	0.0%	0	0.9%	10
Deferred	8.9%	24	17.4%	24	14.3%	8	25.9%	278
DYC	20.4%	55	12.3%	17	12.5%	7	12.6%	135
Fines	0.7%	2	2.2%	3	3.6%	2	2.1%	23
Jail	3.3%	9	5.1%	7	1.8%	1	1.5%	16
Juvenile Detention	1.9%	5	0.7%	1	1.8%	1	1.4%	15
Probation/Intensive Supervision	63.9%	172	61.6%	85	66.1%	37	55.1%	592
Unsupervised Probation	0.4%	1	0.7%	1	0.0%	0	0.5%	5
Youthful Offender System	0.4%	1	0.0%	0	0.0%	0	0.0%	0

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CIASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.



Juvenile/District Court/All offenses/NO PRIOR Cases

Initial Sentence in Juvenile Court, by prior cases and race/ethnicity (N=5,338)

	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
# of prior cases								
None	28.9%	224	43.0%	281	47.0%	103	41.3%	1,526
Community Service	0.4%	1	2.1%	6	1.0%	1	0.5%	8
Credit for Time Served	0.0%	0	0.0%	0	0.0%	0	0.1%	2
Deferred	30.4%	68	43.8%	123	60.2%	62	59.3%	905
DYC	2.2%	5	1.8%	5	1.0%	1	1.4%	21
Fines	2.7%	6	1.8%	5	1.9%	2	3.0%	46
Jail	2.7%	6	0.0%	0	1.0%	1	0.4%	6
Juvenile Detention	2.2%	5	0.4%	1	1.9%	2	1.4%	21
Probation/intensive Supervision	57.6%	129	49.5%	139	31.1%	32	32.4%	495
Unsupervised Probation	1.3%	3	0.7%	2	1.9%	2	1.4%	22

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.

About 71% of Black youth had prior cases compared to about 58% overall



Juvenile/District Court/All offenses/1-2 PRIOR Cases

Initial Sentence in Juvenile Court, by prior cases and race/ethnicity (N=5,338)

	Black		Hispanic		Other		White	
	%	N	%	N	%	N	%	N
1-2 Prior Cases	34.8%	269	31.8%	208	32.9%	72	33.8%	1,246
Community Service	0.7%	2	0.0%	0	0.0%	0	1.2%	15
Credit for Time Served	0.0%	0	0.5%	1	0.0%	0	0.0%	0
Deferred	15.2%	41	17.3%	36	33.3%	24	34.8%	434
DYC	7.4%	20	7.7%	16	5.6%	4	5.9%	74
Fines	1.5%	4	2.9%	6	6.9%	5	2.5%	31
Jail	3.0%	8	2.4%	5	2.8%	2	1.4%	17
Juvenile Detention	0.7%	2	1.0%	2	0.0%	0	1.2%	15
Probation/intensive Supervision	70.6%	190	66.8%	139	51.4%	37	52.1%	649
Unsupervised Probation	0.7%	2	1.0%	2	0.0%	0	0.8%	10
Youthful Offender System	0.0%	0	0.5%	1	0.0%	0	0.1%	1

Data Source: Data extracted from the Colorado Judicial Branch's information management system (ICON) via the Colorado Justice Analytics Support System (CJASS) and analyzed by the Division of Criminal Justice. Note these figures represent cases, not individuals.





Colorado Commission on Criminal & Juvenile Justice

Summary

- Blacks more likely to get 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



Colorado Commission on Criminal & Juvenile Justice

Web site demonstration

colorado.gov/dcj-ors/ors-SB185



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

Overview: CY 2015 CLEAR Act Report 3/10/2017 35 of 40



Colorado Commission on Criminal & Juvenile Justice

From the Brennan Center for Justice

Reducing racial/ethnic disparities in jails (2015)

Roundtable participants included Commissioner Raemisch

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***

Overview: CY 2015 CLEAR Act Report 3/10/2017 36 of 40



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*

Overview: CY 2015 CLEAR Act Report 3/10/2017 37 of 40



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

Overview: CY 2015 CLEAR Act Report 3/10/2017 38 of 40



Colorado Commission on Criminal & Juvenile Justice

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

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

Overview: CY 2015 CLEAR Act Report 3/10/2017 39 of 40



Colorado Commission on Criminal & Juvenile Justice

Thank you for your attention today

Overview: CY 2015 CLEAR Act Report 3/10/2017 40 of 40

Appendix C:

Impact of Senate Bill 13-250 / Concerning changes to sentencing of persons convicted of drug crimes



The study of the impact of certain drug sentencing reforms, pursuant to Senate Bill 2013-250

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

Presented to the Commission on June 9, 2017



Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- **Overview**
 - Background of Commission work on drug policy
 - Overview of Senate Bill 13-250
(created new drug sentencing grid)
 - Study approach
 - Study findings



Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B.13-250 History

- Drug Policy Task Force worked from August 2009 to October 2013
- Membership...



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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

**Drug Policy
Task Force
Membership**

Grayson Robinson, Chair Arapahoe County Sheriff

Dean Conder, Vice Chair, Juvenile Parole Board
Bill Kilpatrick Chief, Golden Police Department
Don Quick District Attorney, 17th Judicial District
Reo Leslie, Jr. Colorado School for Family Therapy
Regina Huerter, Denver Crime Prevention and Control Commission
Greg Long, Deputy District Attorney, 2nd Judicial District
Maureen Cain, Colorado Criminal Defense Bar
Carmelita Muniz, Colorado Association of Alcohol and Drug Service Providers
Brian Connors, Public Defender's Office
Kathleen McGuire, Public Defender's Office
Tom Raynes Attorney, General's Office
Miles Madorin, Deputy District Attorney, 1st Judicial District
Nancy Feldman, Department of Public Safety
Doyle Forrestal, Colorado Behavioral Health Care Council
Christie Donner, Colorado Criminal Justice Reform Coalition
Evie Hudak, State Senator, District 19
Pat Steadman, State Senator, District 31
Paul Thompson, Peer 1, Addiction Research and Treatment Services
Dan Rubinstein, Deputy District Attorney, 21st Judicial District
Mark Hurlbert, District Attorney, 5th Judicial District
Jim Welton, Department of Corrections
Sean McAllister, Criminal Defense Attorney
Shane Bahr, Colorado Judicial Branch

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B.13-250 History

In May 2009, the Governor and Attorney General requested that the Commission investigate if

“there [are] evidence-based data to support changes in the length of sentence for those who use controlled substances, and should there be a focus on substituting treatment for punishment?”

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B.13-250 History

-- **Senate Bill 09-286** modified the duties of the Commission and mandated the study of, among other things, Title 18 drug crimes and sentences “and whether to change those sentences” and mandated a report by Nov. 30, 2009.

-- In the 2009 report, “Drug Policy Task Force determined that a primary omission from current law is a means of assuring prompt and effective treatment of drug offenders.” (p. 17)

-- and also: “...any significant departure from current law requires that resources for the treatment model be in place before changing to a new approach.” (p. 18)

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B.13-250 History

--Senate Bill 09-286 mandated the study of drug sentences and a Nov. 2009 report

The November 2009 report, its lengthy addendum, and the 2009, 2010, 2011, and 2012* annual Commission reports contain dozens of drug policy, philosophy, and sentencing recommendations that emphasize the need for treatment to reduce recidivism including this:

The Commission recommends that the Colorado General Assembly seek to improve public safety, reduce recidivism, and promote substance abuse treatment by implementing a system of evidence-based sentencing practices and community-based interventions that...will combine accountability, risk and needs assessments, criminal penalties, and appropriate treatment for individuals who are addicted to substances and convicted of criminal offenses.

*The 2012 report details the recommendations that led to SB13-250.

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- S.B.13-250 History

This system will differentiate among the following types of individuals:

- (a) a defendant who is an illegal drug user but is not addicted or involved in other criminal activity;
- (b) a defendant who is addicted but is not otherwise engaged in other criminal activity;
- (c) a defendant who is addicted and engaged in nonviolent crime to support their addiction;
- (d) a defendant who is addicted and engaged in violent crime; and
- (e) a defendant who is engaged in drug trafficking or manufacture for profit who is not addicted to illegal drugs.

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

DRUG LAW REFORMS 2009/2012

Increase treatment availability prior to restructuring drug laws (2009)

- Increase in Persistent Drunk Driver Surcharge (\$550,000/year) (HB 10-1347)
- Drug offender surcharge *assessed* doubled (HB10-1352)
- \$1,545,409 for community corrections treatment beds (HB10-1360)
- \$2,057,225 services for parolees (HB10-1360)
- First \$2M in medical marijuana sales/use tax fund substance abuse treatment programs (HB10-1284)



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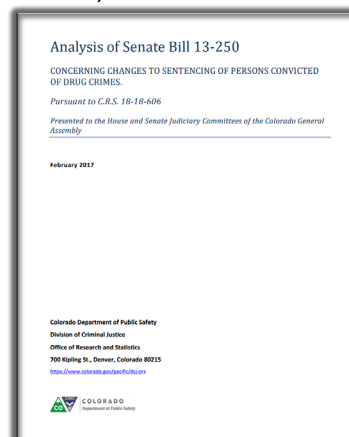
Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

• S.B. 13-250 History

With a strong, well-documented, empirically-based philosophical statement about the value of substance abuse treatment, the Commission’s work resulted in

- The expansion of treatment services in the community, and
- Senate Bill 13-250
 - which included a mandate to DCJ to study the impact of certain aspects of the drug law modifications



https://cdpsdocs.state.co.us/ors/docs/reports/2017_SB250-Rpt.pdf 6/9/2017 10



Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- **S.B.13-250 Highlights**
 - Created a new sentencing grid for drug offenses
 - Created a new option for drug offenders to avoid a felony conviction (“Wobbler”)
 - Instructed the court to exhaust all remedies before sentencing certain drug offenders to the Department of Corrections

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- **Study Methodology**
 - Compare sentences in the 3 years prior to SB13-250 to the 3 years post-SB13-250.
 - Cases in the pre-SB13-250 period had to all events occurring in the 3 year period:
 - Offense was committed
 - Case was filed
 - Offender convicted and sentenced
 - Exact match between pre- and post-SB13-250 statutes not always possible

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- New sentencing grid for drug offenders
 - Five felony classes collapsed to four
 - Except for the highest class DF1, sentence lengths in the presumptive range are all shorter

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

Pre-SB13-250					Post-SB13-250				
Felonies					Drug Felonies				
			Aggravated/Mitigated					Aggravated	
	Min	Max	Min	Max		Min	Max	Min	Max
F2	8	24	4	48	DF1	8	32		
F3	4	12	2	24					
F4	2	6	1	12	DF2	4	8	8	16
F5	1	3	0.5	6	DF3	2	4	4	6
F6	1	1.5	0.5	3					
					DF4	0.5	1	1	2

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- New sentencing grid for drug offenders
 - Average DOC sentence length for DF3 to DF1 convictions **5.8** years vs **7.1** years for comparable convictions in the prior 3 years
 - Average sentence length for DF4 convictions was **1.1** years vs **2.5** years for comparable convictions in the prior 3 years

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- New sentencing option to avoid a felony conviction (“Wobbler”)
 - Upon successful completion of sentence to the community the DF4 conviction is vacated and a misdemeanor conviction (DM1) is entered.

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- New sentencing option to avoid a felony conviction (“Wobbler”)
 - Alternative for offenders who don’t qualify for diversion or deferred sentence
 - Must have only minimal criminal history
 - Available to those being sentenced to a placement in the community
 - Available on four DF4 offenses

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- New sentencing option to avoid a felony conviction (“Wobbler”)
 - At the time of the report **160** cases successfully completed sentence and had felony conviction replaced with misdemeanor conviction
 - In comparison* to the pre-SB13-250 period the use of deferred judgments and diversion declined from **35%** to **20%** of convictions.
 - However the wobbler provision enabled an additional **73%** of cases in the post-S.B.13-250 period to potentially have the felony conviction reduced to a misdemeanor, provided they met quantity limits and successfully completed the sentence to the community.

*Criminal history was wobbler-eligible

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- Exhaustion of Remedies for DF4 Convictions
 - Instructs the court to exhaust all remedies before sentencing an offender to the DOC:
 - Taking into consideration the facts of the case,
 - Considering the defendant's willingness to participate in treatment,
 - Finding that all other sanctions have been tried and failed,
 - Finding that other sanctions are unlikely to work,
 - Finding that other sanctions present an unacceptable risk to public safety.

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

- Exhaustion of Remedies for DF4 Convictions
 - Sentences to DOC for DF4 convictions declined from **18%** to **14%** in the post-SB13-250 period
 - But sentences to DOC for DF1 through DF3 level convictions also declined in the post-SB13-250 period from **42%** to **38%**.

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Colorado Commission on Criminal & Juvenile Justice

Analysis of Senate Bill 13-250

Full report is on the CCJJ website

https://cdpsdocs.state.co.us/ors/docs/reports/2017_SB250-Rpt.pdf

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Appendix D:
Commission Recommendation FY16-RE01

[As approved]

RE-ENTRY TASK FORCE
 FINAL RECOMMENDATION PRESENTED TO THE
 COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
 June 10, 2016

FY16-RE #01. Update the Statutory Conditions of Parole to Reflect Contemporary and Evidence Based Common Practices

Recommendation FY16-RE #01

Update the statute governing parole conditions, C.R.S. 17-2-201, to give the parole board and community parole officers discretion to select individualized conditions of parole.

Discussion

In November 2015, the Colorado Commission on Criminal and Juvenile Justice adopted FY16-MP #01 (*Update and Rewrite the Statutory Purposes of Parole to Reflect Contemporary and Common Evidence-Based Practices*) to amend the statute governing the purposes of parole in Colorado (see C.R.S., §17-22.5-102.5). With the signing of House Bill 2016-1215, the purposes of parole include “reducing the incidence of technical violations[,]” setting “individualized conditions of parole[,]” and addressing parolees’ “identified risks and needs[.]” This recommendation will build upon, and give substance to, FY16-MP #01.

Colorado’s current parole board statute mandates a list of eleven conditions, many of which have multiple sub-conditions that must be imposed on every Colorado parolee. Those conditions include a mandate that every parolee be tested for drugs and alcohol at specified intervals, not associate with other people who have a criminal record, and remain within a narrowly defined geographic area.

The Re-entry Task Force, the Department of Corrections, and the Parole Board all believe that many of the statutorily mandated conditions of parole are not evidence based when applied to all parolees. Conditions such as a substance testing regimen, association restrictions, and strict geographic boundaries, may be appropriate for some or most parolees. They are not, however, appropriate for all parolees. Imposing unnecessary conditions of parole is a burden on the State’s resources, presents enforcement difficulties,¹ and can be detrimental to the recidivism prospects of individual parolees.²

This recommendation will not prohibit the Parole Board or community parole officers from placing any condition on any parolee; it will simply eliminate the requirement that some parole conditions must apply to all parolees. It will thus give the Parole Board and parole officers discretion to determine which conditions are appropriate for which parolees, in order to better leverage limited resources and address individual offenders’ criminogenic needs.

¹ It is wholly impractical, for instance, to expect that parolees in community corrections placements will not associate with other people who have criminal records.

² RKC Group & Roger Przybylski, *What Works: Effective Recidivism Reduction and Risk-Focused Prevention Programs* 30, 37 (Feb. 2008) (report prepared for the Colorado Division of Criminal Justice).

[As approved]

RE-ENTRY TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
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June 10, 2016

FY16-RE #01. Update the Statutory Conditions of Parole to Reflect Contemporary and Evidence Based Common Practices

Proposed Statutory Language

*(Deletions are indicated by ~~strikethroughs~~ and additions are indicated in **bold**.)*

§17-2-201. State board of parole--definitions

17-2-201(5)(c)(I). As a condition of ~~every~~ parole, the board shall order that the offender make restitution to the victim or victims of his or her conduct ~~if~~ ~~The amount of such restitution shall be determined~~ **has been ordered** by the court pursuant to article 18.5 of title 16, C.R.S. ~~The board shall fix the manner and time of payment of restitution as a condition of parole.~~ Such order shall require the offender to make restitution within the period of time that the offender is on parole as specified by the board. In the event that the defendant does not make full restitution by the date specified by the board, the restitution may be collected as provided for in article 18.5 of title 16, C.R.S.

17-2-201(5)(f)(I)(B). That the parolee shall establish a residence of record and shall not change it without **prior notification** ~~the knowledge and consent~~ of his or her community parole officer and that the parolee shall not leave ~~the area or~~ the state without the permission of his or her community parole officer;

17-2-201(5)(f)(I)(D). That the parolee shall make reports as directed by his or her community parole officer, permit residential visits by the community parole officer, ~~submit to urinalysis or other drug tests,~~ and allow the community parole officer to make searches of his or her person, residence, or vehicle;

17-2-201(5)(f)(I)(F) ~~That the parolee shall not associate with any other person on parole, on probation, or with a criminal record or with any inmate of a correctional facility without the permission of his or her community parole officer;~~

[Re-alphabetize 17-2-201(5)(f)(I)(G) through (J) to 17-2-201(5)(f)(I) (F) through (I)]

17-2-201(5.5)(a). As a condition of parole, the board ~~may~~ **shall** require every parolee at the parolee's own expense to submit to random chemical testing of a biological substance sample from the parolee to determine the presence of drugs or alcohol. ~~Such testing shall take place as follows:~~

- ~~(I) Immediately upon the parolee's release from incarceration in order to establish a baseline sample;~~
- ~~(II) Within the first thirty days from the date of parole;~~
- ~~(III) On or after sixty one days but not later than six months from the date of parole; and~~
- ~~(IV) Annually on or after one year from the date of parole for the duration of parole.~~

17-2-201(5.5)(c)(I). **If chemical testing is required as a condition of parole, the** ~~The~~ community parole officer shall be responsible for acquiring at random, ~~but within the time requirements of paragraph (a) of this subsection (5.5),~~ a biological substance sample from a parolee.

17-2-201(5.5)(e) ~~For the purposes of section 17-2-103, a parolee who refuses to submit to chemical testing of a sample of his or her biological substance pursuant to the requirements of this subsection (5.5) is deemed to have tested positive for the presence of drugs.~~

[Re-alphabetize 17-2-201(5.5)(f) and (g) to 17-2-201(5.5)(e) and (f)]

Appendix E:
Commission Recommendation FY17-RE01

[As Approved]

RE-ENTRY TASK FORCE
 FINAL RECOMMENDATION PRESENTED TO THE
 COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
 June 9, 2017

FY17-RE #01. Allow Orders of Collateral Relief after the time of sentencing.**Recommendation FY17-RE #01**

Update 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.

Encourage the judiciary to develop a mechanism that will allow the identification of instances when orders of collateral relief are requested, granted, or denied.

Discussion

The impact of a criminal conviction or adjudication can be far greater than the sentence imposed by the judge. Hundreds of federal, state, and local laws impose additional sanctions and disqualifications affecting employment, housing, public benefits, and other civil rights and privileges.¹ These collateral consequences can be detrimental to individuals' ability to lead a productive crime-free life,² and can have a negative impact on society as a whole.³

Similar to many other states,⁴ Colorado allows judges to issue orders of collateral relief. The orders can relieve eligible individuals from most collateral consequences, when doing so will improve the individual's likelihood of successful reintegration and is in the public's interest.⁵ This mechanism should serve as a valuable tool for allowing society to punish and deter crime, while simultaneously allowing its members to remain productive citizens.⁶

The current statutory mechanism for orders of collateral relief was enacted in 2013 and has since remained unchanged.⁷ Although well-intentioned, it has several shortfalls that limit the use and effectiveness of the orders.

¹ See Mark Evans, Colo. State Public Defender's Office, *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law* (2014 ed.), available at coloradodefenders.us/consequences-of-conviction-2/consequences-of-conviction-2/.

² Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also J.H. Laub & R.J. Sampson (2001). Understanding desistance from crime, *Crime and Justice*, 28(1), 1-69 (doi: [10.1086/652208](https://doi.org/10.1086/652208)); National Research Council (2008), *Parole, Desistance from Crime, and Community Integration*, Committee on Community Supervision and Desistance from Crime (see pp. 23-24 at cdpsdocs.state.co.us/ccij/Resources/Ref/NCR2007.pdf); and J. Radice (2012), Administering justice: Removing statutory barriers to reentry, *University of Colorado Law Review*, 83(3), 715-779 (see p. 719 at colorado.edu/law/sites/default/files/Vol.83.3.pdf).

³ A. Christman & M.N. Rodriguez (2016, August). *Fact Sheet: Research Supports Fair-Chance Policies*. The Nat'l Emp't Law Project (at nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf); J. Roberts (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); J. Schmitt & K. Warner (2010), *Ex-Offenders and the Labor Market*, Center for Econ. & Policy Research (at cepr.net/documents/publications/ex-offenders-2010-11.pdf).

⁴ Conn. Gen. Stat. § 54-130e(b); 730 Ill. Comp. Stat. Ann. 5/5-5.5-15; N.Y. Correct. Law §§ 700 to 706; N.C. Gen. Stat. § 15A-173.2; Ohio. Rev. Code Ann. § 2953.25.

⁵ §§ 18-1.3-107, 18-1.3-213, 18-1.3-303, C.R.S. 2016.

⁶ M. C. Love (2011, Spring), Paying their debt to society: Forgiveness, redemption, and the Uniform Collateral Consequences of Conviction Act, *Howard Law Journal*, 54(3), 753-793 (see p. 760-764, at law.howard.edu/sites/default/files/related-downloads/how_54_3.pdf#page=261); Radice, *supra* note 2, at pp. 727-732.

⁷ Ch. 289, sec. 11, § 18-1.3-107, 2013 Colo. Sess. Laws 1548; Ch. 289, sec. 12, § 18-1.3-213, 2013 Colo. Sess. Laws 1550; Ch. 289, sec. 13, § 18-1.3-303, 2013 Colo. Sess. Laws 1553.

[As Approved]

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First, courts currently can issue orders of collateral relief only at the time an individual is sentenced.⁸ This can facilitate success for people who are required to serve their sentence in the community. The orders can provide no assistance, however, for people who are attempting to better their lives and move beyond the collateral consequences of a conviction after their sentence has been completed.

Second, the current statutory scheme excludes a successfully completed deferred judgment and sentence (DJS) from the definition of “conviction.”⁹ Hence, an individual who has successfully completed a DJS is ineligible for an order of collateral relief. A successfully completed DJS can, however, have long lasting collateral consequences in licensure, employment, and other areas.¹⁰

Third, orders of collateral relief are currently unavailable for juvenile adjudications. Adjudications can, however, still result in the imposition of collateral consequences.¹¹

Finally, the judiciary does not consistently track when orders of collateral relief are requested or granted.¹² This lack of data renders it virtually impossible to determine whether the orders are serving their intended purpose.

This recommendation includes one non-statutory element:

1. Track orders of collateral relief.

There is currently sparse data on when orders of collateral relief are requested, granted, or denied. While a code currently exists in the judiciary’s case management system to capture when orders are granted (COLR), this code is not reliably used for its intended purpose. Additionally, applications for collateral relief are captured using the generic motion or petition codes. If no relief is granted, this is captured only in a minute order. It is thus difficult to measure how often orders of collateral relief are being used and the scope of their effectiveness. CCJJ recommends that the judiciary develop a mechanism that will allow it to easily identify when orders of collateral relief are requested, granted, or denied.

This recommendation includes three statutory elements (delineated below):

- 1. Amend section 18-1.3-107.**
- 2. Eliminate duplicative statutes.**
- 3. Establish an equivalent mechanism as section 19-2-927 of the Children’s Code.**

⁸ §§ 18-1.3-107(1), 18-1.3-213(1), 18-1.3-303(1), C.R.S. 2016.

⁹ §§ 18-1.3-107(8)(c), 18-1.3-213(8)(c), 18-1.3-303(8)(c), C.R.S. 2016.

¹⁰ See, e.g., § 24-5-101(3)(d), C.R.S. 2016.

¹¹ See Mark Evans, Colo. State Public Defender’s Office, *The Consequences of Adjudication: Sanctions Beyond the Sentence for Juveniles Under Colorado Law* (2014), available at coloradodefenders.us/consequences-of-conviction-2/consequences-of-juvenile-adjudication/.

¹² Sherri Hufford, Colorado Division of Probation Services, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016).

[As Approved]

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Proposed Statutory Language

These changes would allow courts to grant orders of collateral relief after the time of sentencing, when doing so would improve an individual's likelihood of successfully reintegrating into society and is in the public's interest. They would allow similar orders for people adjudicated for a juvenile offense. The changes would not alter currently-existing eligibility exclusions based on an individual's type of offense, do not expand the types of consequences to which an order of collateral relief can apply, and do not change the standard for granting relief. They simply make this tool available to eligible individuals who, after the time of sentencing, are attempting to obtain the jobs, housing, or benefits they need to be productive members of society.

1. Amend section 18-1.3-107 as follows.

(1) At the time a defendant enters into ~~an alternative to sentencing in this part 1,~~ **A SENTENCE OR AT ANY TIME THEREAFTER** upon the request of the defendant or upon the court's own motion, a court may enter an order of collateral relief **IN THE CRIMINAL CASE** for the purpose of preserving or enhancing the defendant's employment or employment prospects and to improve the defendant's likelihood of success in the **COMMUNITY.** ~~alternative to sentencing program.~~

(2) **Application contents.** (a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent ~~Colorado bureau of investigation fingerprint-based~~ criminal history records check. The state court administrator may produce an application form that an applicant may submit in application.

(b) The applicant shall provide a copy of the application to the district attorney and to the regulatory or licensing body that has jurisdiction over the collateral consequence from which the applicant is seeking relief, if any, by certified mail or personal service within ten days after filing the application with the court.

(C) ANY APPLICATION FILED AFTER A SENTENCE HAS BEEN IMPOSED SHALL INCLUDE A COPY OF A RECENT COLORADO BUREAU OF INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECK, THE FILING FEE REQUIRED BY LAW, AND AN ADDITIONAL FILING FEE OF [INSERT AMOUNT] DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE APPLICATION. FILING FEES ARE SUBJECT TO WAIVER UPON A FINDING THAT THE APPLICANT IS INDIGENT.

(3) An order of collateral relief may relieve a defendant of any collateral consequences of the conviction, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the defendant in **REINTEGRATING INTO THE COMMUNITY.** ~~successfully completing probation or a community corrections sentence.~~

[As Approved]

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(4)(a) Notwithstanding any other provision of law, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or any collateral consequences imposed by law for employment with the judicial branch, the department of corrections, division of youth corrections in the department of human services, or any other law enforcement agency in the state of Colorado.

(b) A court shall not issue an order of collateral relief if the defendant:

- (I) Has been convicted of a felony that included an element that requires a victim to suffer permanent disability;
- (II) Has been convicted of a crime of violence as described in section 18-1.3-406; or
- (III) Is required to register as a sex offender pursuant to section 16-22-103, C.R.S.

(5) **Hearing.** (a) The court may conduct a hearing **ON ANY MATTER RELEVANT TO THE GRANTING OR DENYING OF THE APPLICATION** or include a hearing on the matter at the defendant's sentencing hearing, ~~on the application or on any matter relevant to the granting or denying of the application~~ and may take testimony under oath.

(b) The court may hear testimony from victims or any proponent or opponent of the application and may hear argument from the petitioner and the district attorney.

(6) **Standard for granting relief.** (a) A court may issue an order of collateral relief if the court finds that:

- (I) The order of collateral relief is consistent with the applicant's rehabilitation; and
 - (II) Granting the application would improve the applicant's likelihood of success in reintegrating into society and is in the public's interest.
- (b) The court that previously issued an order of collateral relief, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may at any time issue a subsequent judgment to enlarge, limit, or circumscribe the relief previously granted.
- (c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or proof that the defendant is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications thereby relieved **MAY** ~~shall~~ be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the defendant noticed in his or her motion for relief.

(7) If the court issues an order of collateral relief, it shall send a copy of the order of collateral relief through the Colorado integrated criminal justice information system to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the applicant's record in the Colorado crime information center that the order of collateral relief was issued.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

- (a) "Collateral consequence" means a collateral sanction or a disqualification.

[As Approved]

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(b) "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

(c) **FOR PURPOSES OF THIS SECTION, "conviction" or "convicted" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or a conviction of a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a CRIME, felony or misdemeanor. "Conviction" or "convicted" also includes having received a deferred judgment and sentence. ; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence.**

(d) "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

2. Eliminate duplicative statutes.

When the General Assembly created orders of collateral relief, it enacted substantively duplicative statutes in parts 1, 2, and 3 of article 1.3 of title 18. Presumably the legislature's intent was to ensure the orders were available when eligible defendants were being sentenced to probation, community corrections, or another alternative in sentencing. If the changes proposed above are enacted by the legislature, otherwise eligible defendants will be able to obtain an order of collateral relief after the imposition of any type of sentence. CCJ recommends the repeal of sections 18-1.3-213 and 18-1.3-303, because these duplicative provisions will no longer be necessary.

3. Establish an equivalent mechanism as section 19-2-927 of the Children's Code.

Orders of collateral relief should be available to eligible individuals who are subject to collateral consequences resulting from a juvenile adjudication. CCJ recommends enacting section 19-2-927 to facilitate their availability. The proposed text of new section 19-2-927 was created by accepting all proposed changes to section 18-1.3-107, then modifying it to apply to juvenile adjudications.

(1) At the time an individual adjudicated as a juvenile enters into a sentence or at any time thereafter, upon the request of the adjudicated juvenile or upon the court's own motion, a court may enter an order of collateral relief in the juvenile case for the purpose of improving the adjudicated juvenile's likelihood of success in the community.

(2) **Application contents.** (a) An application for an order of collateral relief must cite the grounds for granting the relief, the type of relief sought, and the specific collateral consequence from which the applicant is seeking relief and must include a copy of a recent criminal history records check. The state court administrator may produce an application form that an applicant may submit in application.

[As Approved]

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(b) The applicant shall provide a copy of the application to the district attorney and to the regulatory or licensing body that has jurisdiction over the collateral consequence from which the applicant is seeking relief, if any, by certified mail or personal service within ten days after filing the application with the court.

(c) Any application filed after a sentence has been imposed shall include a copy of a recent Colorado bureau of investigation fingerprint-based criminal history records check, the filing fee required by law, and an additional filing fee of [insert amount] dollars to cover the actual costs related to the application. Filing fees are subject to waiver upon a finding that the applicant is indigent.

(3) An order of collateral relief may relieve an adjudicated juvenile of any collateral consequences of the adjudication, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify, including but not limited to statutory, regulatory, or other collateral consequences that the court may see fit to relieve that will assist the adjudicated juvenile in successfully reintegrating into the community.

(4)(a) Notwithstanding any other provision of law, an order of collateral relief cannot relieve any collateral consequences imposed by law for licensure by the department of education or any collateral consequences imposed by law for employment with the judicial branch, the department of corrections, division of youth corrections in the department of human services, or any other law enforcement agency in the state of Colorado.

(b) A court shall not issue an order of collateral relief if the adjudicated juvenile:

- (I) Has been adjudicated for a felony that included an element that requires a victim to suffer permanent disability;
- (II) Has been adjudicated for a crime of violence as described in section 18-1.3-406; or
- (III) Is required to register as a sex offender pursuant to section 16-22-103, C.R.S.

(5) **Hearing.** (a) The court may conduct a hearing on any matter relevant to the granting or denying of the application, or include a hearing on the matter at the juvenile's sentencing hearing, and may take testimony under oath.

(b) The court may hear testimony from victims or any proponent or opponent of the application and may hear argument from the petitioner and the district attorney.

(6) **Standard for granting relief.** (a) A court may issue an order of collateral relief if the court finds that:

- (I) The order of collateral relief is consistent with the applicant's rehabilitation; and
 - (II) Granting the application would improve the applicant's likelihood of success in reintegrating into society and is in the public's interest.
- (b) The court that previously issued an order of collateral relief, on its own motion or either by cause shown by the district attorney or on grounds offered by the applicant, may at any time issue a subsequent judgment to enlarge, limit, or circumscribe the relief previously granted.

[As Approved]

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(c) Upon the motion of the district attorney or probation officer or upon the court's own motion, a court may revoke an order of collateral relief upon evidence of a subsequent criminal conviction or adjudication or proof that the adjudicated juvenile is no longer entitled to relief. Any bars, prohibitions, sanctions, and disqualifications thereby relieved may be reinstated as of the date of the written order of revocation. The court shall provide a copy of the order of revocation to the holder and to any regulatory or licensing entity that the adjudicated juvenile noticed in his or her motion for relief.

(7) If the court issues an order of collateral relief, it shall send a copy of the order of collateral relief through the Colorado integrated criminal justice information system to the Colorado bureau of investigation, and the Colorado bureau of investigation shall note in the applicant's record in the Colorado crime information center that the order of collateral relief was issued.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Collateral consequence" means a collateral sanction or a disqualification.

(b) "Collateral sanction" means a penalty, prohibition, bar, or disadvantage, however denominated, imposed on an individual as a result of the individual's adjudication for an offense, which penalty, prohibition, bar, or disadvantage applies by operation of law regardless of whether the penalty, prohibition, bar, or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, costs of prosecution, or a restraint or sanction on an individual's driving privilege.

(c) For purposes of this section, "adjudication" or "adjudicated" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or an adjudication for a crime under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, which, if committed within this state, would be a crime. "Adjudication" or "adjudicated" also includes having received a deferred adjudication.

(d) "Disqualification" means a penalty, prohibition, bar, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's adjudication for an offense.

Appendix F:
Commission Recommendation FY17-RE02

[As Approved]

RE-ENTRY TASK FORCE
 FINAL RECOMMENDATION PRESENTED TO THE
 COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
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FY18-RE #02. Prevent adverse private employment actions on the basis of non-conviction, sealed, and expunged records.

Recommendation FY18-RE #02

Promote community safety and economic growth by preventing adverse employment action on the basis of arrests that did not result in a conviction, or criminal justice records that have been sealed or expunged.

Discussion

Obtaining employment is a lifelong challenge for those with a criminal record,¹ and the single biggest hurdle facing individuals returning from incarceration.² This is of widespread concern, as nearly one in three Americans of working age have some form of criminal record.³ In Colorado alone, over 190,000 people were arrested in 2015.⁴

The inability of large numbers of people to obtain employment adversely affects the public's safety and welfare. On an individual level, gainful employment is a key factor that enables people to avoid future arrests and incarceration.⁵ More broadly, the economy as a whole is negatively impacted by the reduction of employment rates for people with a criminal record.⁶ Numerous studies have shown that the employment related consequences of a criminal record disparately impact individuals and communities of color.⁷ It is thus necessary to ensure that Colorado's record-based restrictions on employment are both fair to individuals and productive to the safety and welfare of society.

¹ A. Christman & M.N. Rodriguez (2016, August), *Fact Sheet: Research Supports Fair-Chance Policies*, The Nat'l Emp't Law Project (at nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf); Maureen Cain, Policy Director, Colorado Criminal Defense Institute, presentation to the CCJJ Collateral Consequences Working Group (Aug. 24, 2016).

² The Piton Perspective (2007, Spring), *Study portrays struggles people face after prison* (at cdpsdocs.state.co.us/ccjj/Resources/Ref/PitonPerspective-Spr2007.pdf); Hassan Latif, Executive Director, Second Chance Center, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016); Richard Morales, Deputy Executive Director, Latino Coalition for Community Leadership, presentation to the CCJJ Collateral Consequences Working Group (Aug. 10, 2016).

³ Bureau of Justice Statistics (2014, January), *Survey of State Criminal History Information Systems*, U.S. Dept. of Justice (see Table 1 on p. 14 at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>); J.C. McGinty (2015, Aug. 7), How Many Americans Have a Police Record?, *The Wall Street Journal* (at <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>).

⁴ Colo. Bureau of Investigation, *Crime in Colorado 2015*, http://crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 1, 2017).

⁵ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also J.H. Laub & R.J. Sampson (2001), Understanding desistance from crime, *Crime and Justice*, 28(1), 1-69 (doi: [10.1086/652208](https://doi.org/10.1086/652208)); National Research Council (2008), *Parole, Desistance from Crime, and Community Integration*, Committee on Community Supervision and Desistance from Crime (see pp. 23-24 at cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf); and J. Radice (2012), Administering justice: Removing statutory barriers to reentry, *University of Colorado Law Review*, 83(3), 715-779 (see p. 719 at colorado.edu/law/sites/default/files/Vol.83.3.pdf).

⁶ *Fact Sheet*, supra note 1; J. Roberts (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); J. Schmitt & K. Warner (2010), *Ex-Offenders and the Labor Market*, Center for Econ. & Policy Research (at cepr.net/documents/publications/ex-offenders-2010-11.pdf).

⁷ E. A. Carson (2015, September), *Prisoners in 2014*, Bureau of Justice Statistics, U.S. Dept. of Justice (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 <http://www.bjs.gov/content/pub/pdf/p14.pdf>); and U. S. Equal Opportunity Commission (2012, April 25),

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Because criminal record exclusions have a disparate impact based on race and national origin, they are regulated under Title VII of the Civil Rights Act of 1964.⁸ Employers face Title VII liability when their criminal record screening policy or practice disproportionately screens out members of a protected group, and the employer cannot demonstrate that it is job related for the positions in question and consistent with business necessity.⁹

Arrests alone are not proof of criminal activity.¹⁰ Employment exclusions based solely on an arrest are therefore generally not job related and consistent with business necessity, and can give rise to Title VII liability.¹¹ Policies and practices that impose exclusions based on conviction records must link the specific criminal conduct with the risks inherent in the duties of a particular position.¹²

Unlike several other states,¹³ Colorado currently places no restrictions on private employers' ability to withhold or terminate employment based on an individual's criminal record. Employers are prohibited from asking individuals to disclose criminal records that have been sealed.¹⁴ The law currently has no mechanism, however, for enforcing that prohibition.¹⁵

Proposed Statutory Language

This recommendation gives meaning to Colorado's current record sealing laws, and applies existing EEOC guidance. It would prevent private employers from taking adverse action against an individual based on arrests that did not result in conviction, sealed records, and expunged records. Under all of

Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (see "I. Summary" at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

⁸ *Enforcement Guidance*, *supra* note 7, at 1.

⁹ *Id.* at 9.

¹⁰ *Id.* at 12.

¹¹ *Id.*

¹² *Id.* at 14-16.

¹³ In Hawaii it is "unlawful discriminatory practice" for an employer to discriminate on the basis of an individual's "arrest and court record." Haw. Rev. Stat. § 378-2(a)(1). Employers may inquire about conviction records, but are generally only permitted to consider convictions within the last ten years excluding periods of incarceration. Haw. Rev. Stat. § 378-2.5(a), -2.5(c). The State of Massachusetts prohibits private employers from inquiring about or basing employment decisions on: (1) arrests that did not result in conviction, (2) first convictions for certain misdemeanors, and (3) misdemeanors for which the associated period of incarceration ended more than five years prior unless the individual has been convicted of another offense. Mass. Gen. Laws ch. 151B, §4(9). The State of New York prohibits private employers from inquiring about, or acting adversely on the basis of: (1) any arrest not then pending where the criminal action was terminated in favor of the individual, (2) youthful offender adjudications, and (3) certain sealed records. N.Y. Exec. Law § 296(16). It is unfair discrimination to deny or act adversely on employment based on a conviction unless there is a direct relationship between the conviction and the employment. N.Y. Correct. Law § 752. The State of Pennsylvania allows private employers to consider only convictions for felonies and misdemeanors, and requires that the convictions "relate to the applicant's suitability for employment in the position for which he has applied." 18 Pa. Cons. Stat. § 9125. The State of Wisconsin generally prohibits private employers from requesting information from applicants about arrest records except as to pending charges. Wis. Stat. § 111.335(1)(a). It also restricts employers' use of conviction records. Wis. Stat. §§ 111.321, 111.335(1)(c).

¹⁴ §§ 24-72-702(1)(f), 24-72-703(4)(d)(I), C.R.S. 2016.

¹⁵ *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).

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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.¹⁶

The proposed provisions would be enforceable by the Colorado Department of Regulatory Agencies, Civil Rights Division.¹⁷ The civil rights commission could, after following existing notice and hearing procedures, issue a cease and desist order if it found an employer was engaging in prohibited practices.¹⁸ It could also order reinstatement or hiring, back or front pay, or other appropriate equitable relief.¹⁹ The recommendation would also allow aggrieved individuals to initiate a civil action seeking the same remedies and, under certain circumstances, compensatory and punitive damages.²⁰

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

1. Amend section 24-34-402 by adding the following.

(1) It shall be a discriminatory or unfair employment practice;

(j) For an employer, employment agency, or labor organization 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 and the criminal case is not actively pending, or any criminal justice record that has been sealed or expunged.

¹⁶ 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.

¹⁷ § 24-34-306, C.R.S. 2016.

¹⁸ § 24-34-306(9), C.R.S. 2016.

¹⁹ § 24-34-405(2), C.R.S. 2016.

²⁰ §§ 24-34-306(11), -306(14), -306(15), 24-34-405(3), C.R.S. 2016.

Appendix G:
Commission Recommendation FY17-RE03

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FY18-RE #03. Revise statutory guidance on state licensure and employment.**Recommendation FY18-RE #03**

Promote community safety and economic growth by:

- Preventing consideration of arrests that did not result in a conviction, and convictions that have been pardoned, sealed, or expunged, in state licensure and employment decisions;
- Empowering the Department of Regulatory Agencies to delist certain conditional licenses;
- Collecting data;
- Encouraging the elimination of mandatory collateral consequences;
- Incentivizing opportunity expansion by state contractors; and
- Increasing transparency of agency policies.

Discussion

Colorado government regulates the employment of, or directly employs, a substantial portion of the State's population. The Department of Regulatory Agencies (DORA) alone administers over 50 regulatory programs governing professions, occupations, and businesses comprising over 710,000 individual licensees.¹ The State directly employs over 95,000 people,² and many more are employed by local governments.

A criminal record can adversely impact an individual's ability to obtain either a license necessary to work or direct employment with state or local governments.³ This issue is of widespread concern, as it is estimated that nearly one in three Americans of working age have some form of criminal record.⁴ In Colorado alone, over 190,000 people were arrested in 2015⁵ and an estimated 1.5 million have criminal records.⁶

The inability of large numbers of people to obtain employment adversely affects the public's safety and welfare. On an individual level, gainful employment is a key factor that enables people to avoid future arrests and incarceration.⁷ More broadly, the economy as a whole is negatively impacted by the

¹ DORA (2016, Oct. 1), *2017-2018 Department Performance Plan*, (see p. 6 at colorado.gov/dora/dora-executive-directors-office).

² Colo. Div. of Human Res. (2015), *FY 2014-15 Workforce Report*, (see p. 3 at colorado.gov/dhr/fy2014-15workforcereport).

³ Mark Evans, Colo. State Public Defender's Office, *The Consequences of Conviction: Sanctions Beyond the Sentence Under Colorado Law 14-15, 51-94* (2014 ed.) (available at <http://www.coloradodefenders.us/consequences-of-conviction-2/consequences-of-conviction-2/>).

⁴ J.C. McGinty (2015, Aug. 7), How Many Americans Have a Police Record?, *The Wall Street Journal* (at <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>).

⁵ Colo. Bureau of Investigation, *Crime in Colorado 2015*, http://crimeinco.cbi.state.co.us/cic2k15/state_totals/statewide_adult_arrests.php (last visited Feb. 2, 2017).

⁶ Bureau of Justice Statistics (2014, January), *Survey of State Criminal History Information Systems*, U.S. Dept. of Justice (see Table 1 on p. 14 at <https://www.ncjrs.gov/pdffiles1/bis/grants/244563.pdf>).

⁷ Letter from United States Attorney General Eric Holder, Jr., to Colorado Attorney General John Suthers (April 18, 2011); see also J.H. Laub & R.J. Sampson (2001), Understanding desistance from crime, *Crime and Justice*, 28(1), 1-69 (doi: [10.1086/652208](https://doi.org/10.1086/652208)); National Research Council (2008), *Parole, Desistance from Crime, and Community Integration*, Committee on Community Supervision and Desistance from Crime (see pp. 23-24 at cdpsdocs.state.co.us/ccjj/Resources/Ref/NCR2007.pdf); and J. Radice (2012), Administering justice: Removing statutory barriers to reentry, *University of Colorado Law Review*, 83(3), 715-779 (see p. 719 at colorado.edu/law/sites/default/files/Vol.83.3.pdf).

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reduction of employment rates for people with a criminal record.⁸ Numerous studies have shown that the employment related consequences of a criminal record disparately impact communities of color.⁹ It is thus necessary to ensure that Colorado's record-based restrictions on employment and licensing are both fair to individuals and productive to the safety and welfare of society.

When an individual with a criminal record applies for a state job, section 24-5-101, C.R.S. 2016, governs the effect of that record on his or her employment prospects. When an individual with a record applies for a state issued license to engage in most regulated professions, the licensing agency is governed by the same.¹⁰

The statute purports to "expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society."¹¹ It provides little guidance, however, for the most frequent circumstances in which state agencies must consider a criminal record.

First, the only clear statutory guidance on how a criminal record should be considered does not apply to licensure decisions.¹² It applies only to actual employment by the State. The statutory provisions applicable to licensure decisions indicate that a prior conviction should be considered, but do not indicate how.¹³

Second, the guidance provided for state employment decisions mandates that the same criteria for evaluating convictions which have been pardoned, expunged, or sealed applies to those that have not.¹⁴ This defeats the express goal of a pardon,¹⁵ and the implicit goals underlying the statutory scheme for expunging, sealing, or dismissing conviction records.¹⁶ It also makes no mention of orders of collateral

⁸ A. Christman & M.N. Rodriguez (2016, August). *Fact Sheet: Research Supports Fair-Chance Policies*. The Nat'l Emp't Law Project (at nelp.org/content/uploads/Fair-Chance-Ban-the-Box-Research.pdf); J. Roberts (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); J. Schmitt & K. Warner (2010), *Ex-Offenders and the Labor Market*, Center for Econ. & Policy Research (at cepr.net/documents/publications/ex-offenders-2010-11.pdf).

⁹ E. A. Carson (2015, September), *Prisoners in 2014*, Bureau of Justice Statistics, U.S. Dept. of Justice (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 U. S. Equal Opportunity Commission (2012, April 25), *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (see "I. Summary" at eoc.gov/laws/guidance/arrest_conviction.cfm).

¹⁰ "[I]f a licensing entity in title 10 or 12, C.R.S., determines that an applicant for licensure has a criminal record, the licensing entity is governed by section 24-5-101 for purposes of granting or denying licensure or placing any conditions on licensure." § 24-34-102(8.7), C.R.S. 2016.

¹¹ § 24-5-101(2), C.R.S. 2016.

¹² § 24-5-101(3), -101(4), C.R.S. 2016.

¹³ § 24-5-101(1), -101(2), C.R.S. 2016.

¹⁴ § 24-5-101(3)(d), -101(4), C.R.S. 2016.

¹⁵ "A pardon issued by the governor shall waive all collateral consequences associated with each conviction for which the person received a pardon unless the pardon limits the scope of the pardon regarding collateral consequences." § 16-17-103, C.R.S. 2016.

¹⁶ State and local government agencies are generally forbidden from asking applicants to disclose information in records that were sealed due to non-prosecution, dismissal, or acquittal. § 24-72-702(1)(a), -702(1)(f), C.R.S. 2016. State and local government agencies are also generally forbidden from asking applicants to disclose information in sealed records relating to

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relief, which can be issued by courts to relieve eligible individuals of state imposed collateral consequences.¹⁷

Third, the scant existing guidance for licensure decisions applies only when a state or local agency is required to make a finding that the applicant “is a person of good moral character as a condition to the issuance thereof ...”¹⁸ Most of the statutes governing state licensure decisions do not require an evaluation of whether a person is of “good moral character.” They simply allow adverse licensure action to be taken on the basis of a prior offense.

Finally, the guidance for both employment and licensure applies only to discretionary agency decisions. It does not apply if there is a specific statutory prohibition that prevents an individual from obtaining employment or licensure.¹⁹

Information obtained from DORA indicates that its various regulatory programs do not have a widespread practice of denying licensure based on a past criminal history. Those programs will, however, regularly issue licenses on a conditional or probationary status based on such a history. This results in a record of the individual’s criminal history being publicly accessible through DORA’s website. DORA does not have the power to ever remove public access to that information.

This recommendation includes one non-statutory element:

1. Increase transparency of agency policies.

State employment and licensing decisions are made by hundreds of people who serve on various regulatory boards. To achieve consistent, fair, and productive results, they should have guidance on how to evaluate the impact of applicants’ criminal history.

CCJJ recommends that DORA develop a written policy on how state agencies should implement section 24-5-101 and section 24-32-102(8.7). The policy should provide clear guidance on how an applicant’s criminal record may impact state employment and licensure decisions, and should be available to the public on DORA’s website.

This recommendation includes five statutory elements:

1. Amend section 24-5-101.

2. Empower DORA to delist certain conditional licenses.

3. Collect data.

4. Encourage the elimination of unnecessary mandatory collateral consequences.

5. Incentivize opportunity expansion by state contractors.

certain controlled substance, petty offense, and municipal offense convictions. § 24-72-703(4)(d)(I), C.R.S. 2016. 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)(III)(B), -704(1)(c), -705, -706, -708(3), C.R.S. 2016.

¹⁷ See §§ 18-1.3-107, 18-1.3-213, 18-1.3-303, C.R.S. 2016. The State of New York has long issued certificates similar to Colorado’s orders of collateral relief. There, however, public agencies and private employers are required to give consideration to such certificates. N.Y. Correct. Law § 753(2). Other states have similar mechanisms. See Conn. Gen. Stat. § 54-130e(b); 730 Ill. Comp. Stat. Ann. 5/5-5.5-15; N.C. Gen. Stat. § 15A-173.2; Ohio. Rev. Code Ann. § 2953.25.

¹⁸ § 24-5-101(2), C.R.S. 2016.

¹⁹ §§ 24-5-101(3)(a), 24-34-102(8.7), C.R.S. 2016.

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Proposed Statutory Language

These proposed changes address and rectify the issues delineated above. They make clear that the same standards govern an agency's evaluation of an applicant's criminal record, whether that application is for state employment or state licensure. They also give meaning to Colorado's existing statutory provisions for record sealing, expungement, pardons, and orders of collateral relief.

The changes would also give DORA the ability to issue a conditional license due to an applicant's criminal history, but later grant the full benefits of licensure by delisting the conditional licensure after a period of time has elapsed. Additionally, they would create an incentive for employers who contract with the State to provide a fair chance to individuals with a record. Together, these changes aim to ensure that record-based restrictions on state employment and licensing are both fair to individuals and productive to the safety and welfare of Colorado society.

1. Amend section 24-5-101 as follows. (Entire section is included for reference.)

(1)(a) Except as otherwise provided in paragraph (b) of this subsection (1), the fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent the person from applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession.

(b) This subsection (1) shall not apply to:

(I) The offices and convictions described in section 4 of article XII of the state constitution;

(II) The certification and revocation of certification of peace officers as provided in section 24-31-305;

(III) The employment of personnel in positions involving direct contact with vulnerable persons as specified in section 27-90-111, C.R.S.;

(IV) The licensure or authorization of educators prohibited pursuant to section 22-60.5-107(2), (2.5), or (2.6), C.R.S.;

(V) The employment of persons in public or private correctional facilities pursuant to the provisions of sections 17-1-109.5 and 17-1-202(1)(a)(I) and (1.5), C.R.S., and the employment of persons in public or private juvenile facilities pursuant to the provisions of sections 19-2-403.3 and 19-2-410(4), C.R.S.;

(VI) The employment of persons by the public employees' retirement association created pursuant to section 24-51-201 who, upon the commencement of that employment, will have access to association investment information, association assets, or financial, demographic, or other information relating to association members or beneficiaries; and

(VII) The employment of persons by the department of public safety and the department of corrections.

(2)(A) Whenever any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, **OR EVALUATE THE IMPACT OF AN**

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APPLICANT'S CRIMINAL RECORD, the fact that such applicant has, at some time prior thereto, been convicted of a felony or other offense involving moral turpitude, and pertinent circumstances connected with such conviction, shall be given consideration in determining whether, in fact, the applicant is **QUALIFIED**. ~~a person of good moral character at the time of the application.~~ The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

(B) IF THE AGENCY DETERMINES THAT THE APPLICANT HAS BEEN ARRESTED OR CHARGED BUT NOT CONVICTED OF A CRIMINAL OFFENSE AND THE CRIMINAL CASE IS NOT ACTIVELY PENDING, THAT THE APPLICANT HAS BEEN CONVICTED BUT PARDONED, THAT THE APPLICANT HAS BEEN CONVICTED BUT RECORDS OF THE CONVICTION HAVE BEEN SEALED OR EXPUNGED, OR THAT A COURT HAS ISSUED AN ORDER OF COLLATERAL RELIEF SPECIFIC TO THE CREDENTIAL SOUGHT, THE AGENCY SHALL NOT USE THAT INFORMATION AS A BASIS FOR DENIAL OR FOR TAKING ANY ADVERSE ACTION AGAINST THE APPLICANT.

(C) IF THE AGENCY DETERMINES THAT THE APPLICANT HAS HAD ANY OTHER CRIMINAL CONVICTION, IT SHALL BE GOVERNED BY SUBSECTION (4) OF THIS SECTION.

(3)(a) Unless statute prohibits the employment of a person with a specific criminal conviction for a particular position, an agency shall not advertise the position with a statement that a person with a criminal record may not apply for the position or place on the application a statement that a person with a criminal record may not apply for the position.

(b) With the exception of the department of corrections and the department of public safety, the agency shall not perform a background check until the agency determines that an applicant is a finalist or makes a conditional offer of employment to the applicant.

(c) If, after determining that an applicant is a finalist or after making a conditional offer of employment to an applicant, the agency determines that the applicant has been arrested or charged but not convicted of a criminal offense and the criminal case is not actively pending, **THAT THE APPLICANT HAS BEEN CONVICTED BUT PARDONED, THAT THE APPLICANT HAS BEEN CONVICTED BUT RECORDS OF THE CONVICTION HAVE BEEN SEALED OR EXPUNGED, OR THAT A COURT HAS ISSUED AN ORDER OF COLLATERAL RELIEF SPECIFIC TO THE EMPLOYMENT SOUGHT**, the agency shall not use that information as a basis for not making an offer of employment or for withdrawing the conditional offer of employment.

(d) If, after determining that an applicant is a finalist or making a conditional offer of employment to an applicant, the agency determines that the applicant has had **ANY OTHER CRIMINAL CONVICTION, IT SHALL BE GOVERNED BY SUBSECTION (4) OF THIS SECTION**. ~~a criminal conviction expunged or sealed from his or her record, received a pardon, or that charges were dismissed pursuant to successfully completing a deferred judgment or sentence, the agency shall not use that information as a basis for not making an offer of employment or for withdrawing the conditional offer of employment~~

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~~unless, after reviewing the factors in subsection (4) of this section, the agency determines that the applicant should be disqualified for the position.~~

~~(e) Nothing in this section prevents an agency from considering criminal history information that the applicant voluntarily provides.~~

(4) Except as provided in subsection (6) of this section, if ~~after determining that an applicant is a finalist or making a conditional offer of employment to an applicant,~~ the agency determines that the applicant has been convicted of a crime **OTHER THAN AS DESCRIBED IN PARAGRAPHS (2)(B) OR (3)(C) OF THIS SECTION**, the agency shall consider the following factors when determining whether the conviction disqualifies the applicant: ~~for the position:~~

- (a) The nature of the conviction;
- (b) Whether there is a direct relationship between the conviction and the position's duties and responsibilities and the bearing, if any, the conviction may have on the applicant's fitness or ability to perform one or more such duties and responsibilities, including whether the conviction was for unlawful sexual behavior as listed in section 16-22-102(9), C.R.S., and whether the duties of employment would place a co-worker or the public in a vulnerable position;
- (c) Any information produced by the applicant or produced on his or her behalf regarding his or her rehabilitation and good conduct; and
- (d) The time that has elapsed since the conviction.

(5) Notwithstanding any other provision of law to the contrary, the provisions of this section apply to the office of the governor.

(6) If, at any stage in the hiring process, the department of corrections or the department of public safety determines that the applicant has been convicted of a crime, the department must consider the factors listed in paragraphs (a) to (d) of subsection (4) of this section when determining whether the conviction disqualifies the applicant for the position.

2. Empower DORA to delist certain conditional licenses.

When an individual with a criminal history applies for licensure to practice a profession, regulatory agencies may sometimes have concerns about the impact of that history on the individual's ability to do so. Once those concerns have been proven unfounded, however, the individual should be permitted a full opportunity to succeed in his or her chosen profession. CCJJ thus recommends adding a new subsection (5) to the following section 24-34-107, C.R.S. 2016:²⁰

(5) When any division, board, or agency of the department of regulatory agencies determines that an individual applying for a license has been convicted of a crime prior

²⁰ Section 24-34-107, C.R.S. 2016 is titled "Applications for licenses – authority to suspend licenses – rules." It prescribes lawful presence as a condition of licensure, and gives DORA the power to deny or revoke a license on the basis of unpaid child support.

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to the application being submitted it may, subject to the provisions of section 24-5-101, C.R.S., issue a conditional license to that individual. If the individual remains free of any criminal conviction or licensing sanction either until the individual applies for a renewal of licensure or for two years, whichever is sooner, the individual can request that the conditional designation or any related adverse action be removed. The division, board, or agency shall grant the request unless it determines that, under the provisions of section 24-5-101, C.R.S., the conditional designation remains necessary. If the division, board, or agency removes the conditional designation, it shall make the original conditional designation confidential, and shall remove from the individual's professional history any reference to crimes committed before the application for licensure was submitted.

3. Collect data.

DORA's regulatory agencies are required to collect and report data on "the number of licenses or certifications that the agency denied, revoked, or suspended based on a disqualification and the basis for the disqualification."²¹ Information from DORA has revealed that agencies are not separating that data based on whether an application for licensure was denied on the basis of a past criminal history, or whether existing licensure was penalized due to criminal behavior by a licensed person. Agencies are also not collecting data on the number of conditional licenses issued on the basis of a criminal history. This data is critical for evaluating whether the intent of the legislature is being realized. CCJJ thus recommends amending the statute governing DORA's sunset review process, as further explained in statutory element #4.

4. Encourage the elimination of unnecessary mandatory collateral consequences.

DORA's regulatory agencies are subject to sunset review on a ten-year cycle.²² During the sunset review process, one factor in determining whether the current degree of regulation should continue is: "Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests."²³

CCJJ recognizes that criminal history based restrictions on state licensing are sometimes necessary, but believes they should be imposed on a case-by-case basis. Mandatory licensure sanctions, which apply automatically regardless of an individual's circumstances, are rarely if ever appropriate. CCJJ thus recommends amending subsection 24-34-104(6)(b)(IX) as follows:

(IX) Whether the agency through its licensing or certification process imposes any **SANCTIONS OR** disqualifications on applicants based on past criminal history and, if so, whether the **SANCTIONS OR** disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared

²¹ § 24-34-104(6)(b)(IX), C.R.S. 2016.

²² § 24-34-104(10) to -104(27), C.R.S. 2016.

²³ § 24-34-104(6)(b)(IX), C.R.S. 2016.

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pursuant to paragraph (a) of subsection (5) of this section must include data on the number of licenses or certifications that the agency denied **BASED ON THE APPLICANT'S CRIMINAL HISTORY, THE NUMBER OF CONDITIONAL LICENSES OR CERTIFICATIONS ISSUED ON THE BASIS OF THE APPLICANT'S CRIMINAL HISTORY, AND THE NUMBER OF LICENSES OR CERTIFICATIONS** revoked or suspended based on **AN INDIVIDUAL'S CRIMINAL CONDUCT. ~~a disqualification and the basis for the disqualification.~~ FOR EACH SET OF DATA, THE ANALYSIS MUST INCLUDE THE CRIMINAL OFFENSES THAT LED TO THE SANCTION OR DISQUALIFICATION. THE ANALYSIS MUST ADDRESS WHETHER ANY MANDATORY COLLATERAL SANCTIONS IMPOSED CAN BE CONVERTED TO DISCRETIONARY DISQUALIFICATIONS, AS DEFINED IN SECTION 18-1.3-107, C.R.S.**

5. Incentivize opportunity expansion by state contractors.

Colorado's statutory guidance concerning criminal histories applies only to state licensure and employment decisions. Although that guidance does not apply to private industry, private employers should be incentivized to use similar practices. CCJJ recommends establishing an incentive modeled after Colorado's currently-existing purchasing preference for environmentally preferable products.²⁴ This incentive would not require private employers to take any action. It would simply establish a state purchasing preference for products and services sold by employers whose hiring and retention policies are substantively equivalent to the State's policies for licensure and employment of people with a criminal history, as described in subsections (3) and (4) of section 24-5-101.

²⁴ § 24-103-207.5, C.R.S. 2016.



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