MINUTES
Criminal Justice Oversight Council
Zoom Meeting, May 13, 2020

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Attendance:
8:35 Call to order, roll call. Members present:
- Chair Kurt Krueger, District Judge
- Representative Barry Usher
- Representative Ryan Lynch
- Senator Keith Regier
- Reg Michael, Director, Department of Corrections (DOC)
- Ross Canen, Dawson County Sheriff
- Marty Lambert, Gallatin County Attorney
- Annette Carter, Executive Director, Board of Pardons & Parole
- Peter Ohman, Office of the Public Defender
- Kelsey Young, Montana Coalition Against Domestic & Sexual Violence
- SK Rossi, Montana ACLU
- Melissa Kelly, Gallatin County Re-Entry
- Amy Tenney, Boyd Andrew Community Services
- Andy Huff, Native American Representative
- Cynthia Wolken, Deputy Director, DOC

Members absent:
- Senator Nate McConnell

Council Support:
- Kathy Ralston, Project Manager, Department of Corrections
- Mark Piskolich, Justice Reinvestment Coordinator

January 29, 2020 was the last meeting and continued to April 1, 2020. April 1, 2020 meeting was cancelled due to Covid-19.

Minutes unanimously approved on motion of Mr. Ohman, second by Rep. Usher.
Chair Krueger advised that the Interim committee had a meeting on May 12, 2020. He asked DOC to give update on Covid-19. Chair Krueger asked Director to give same presentation on what DOC is doing during Covid-19 process that he gave to the Law and Justice Interim Committee.

Reg Michael - We stopped visitation. We began screening of inmates who come into the facility. Began screening on staff. Necessary to slow down within those facilities. Don’t think it is safe for mass transportation and back to business as usual. Listening to medical professionals and those directions that they are trying to follow. Stay at home order by Governor. Phasing back in operation of the State of Montana. Somethings won’t go back to normal. Transportation will slowly be phased in. Unfortunately, won’t be able to come to MSP – it’s not possible, won’t happen. We’ll phase in transportation – get people moved around the facilities. Think what to do when they come in mass. Don’t have capacity. Won’t be able to get there overnight. EPE supply and EPE products to staff, inmates and outside providers. Request is funding and focusing on medical staff and DPHHS is advising to use products and services. MDOC is working hard to make it happen in a reasonable manner. Focusing to keep everyone healthy and safe. Staff should be wearing masks.

Chair Krueger asked about quarantine plan.

Reg Michael - The question is right now when someone comes into the facility 14 days quarantine. Monitoring and treatment of the individual from there.

Chair Krueger - What does community supervision look like under Covid-19.

Reg Michael - Little bit different. It is probation and parole with offenders – not like it normally is. See offenders as needed. Probation and parole will go to offenders that need contact. Not bringing offenders into office unless necessary.

Kathy Ralston - Deputy Director Cynthia Wolken is in the meeting.

8:50 a.m.

First presentation Erika Wimmer/Kurt Augney (DOC)

Erika Wimmer - DOC Strategic Plan has changed due to pandemic. Need to implement training before July but it will depend on the comfort of trainer. 16 audits, train up to 30 people. Look at what can be done remotely. Once the initial training is completed more DOC staff can be trained at all the facilities. We don’t have anything in place for dates and timelines due to COVID and University of Cincinnati will only train in person. Questions regarding training?

Chair Krueger - Previous presentation from University of Cincinnati advised that training would take up to 5 years. I understand difficulty of Covid-19. Establish deadlines.

Erika Wimmer - University of Cincinnati is limited on what they offer online. Not comfortable in doing remotely. Did not know what training was going to take 5 years.
Chair Krueger - Notes discussion 2 to 4 years and 3 to 5 years to see any results. Asking if those are 2 to 4 years. I am asking when we are going to have some training so that we can do some implementation. Reported to Legislature what DOC’s planning.

Erika Wimmer - Up to someone from Department.

Kurt Aughney - Overall planning reaches into planning 2 to 5 years through CPC’s. DOC going onsite doing full checklist, write report and roadmap for 2 to 4 years process. Checklist to help with skills of staff to reduce risk to reoffend. Individual program and training. Have contact remotely. We can continue to train ourselves for July of this year but on hold indefinitely.

Chair Krueger - CPC evaluations. Do we have an action plan? What will be the completed evaluations on those?

Kurt Aughney - Full list is available through University of Cincinnati and do not meet ZOOM CPCGA at Montana Women’s program and Billings Prerelease only reports do not since last time we met - do have a plan. Met with CPC auditors to group assessment to have staff and resource assessments only 12 evaluators and two people met to do it. Each facility gets 30 days notice process and the time schedule is not public information. We have a list and would work with contracts for them to come and present their programs. DOC policy 5.4.1?

Representative Lynch - Chair Krueger and Mr. Aughney talked about differences between OSAS and MORRA and the differences of 2 was requested last meeting.

Kurt Aughney - Correct. The MORRA use of high risk assessment tests ORAS and MORRA that we are doing correct assessments and staff are doing correctly. Don’t know difference between ORAS and MORRA.

Representative Lynch - Update Committee on a summary of assessments being used.

Melissa Kelly - So what are some specific steps staff are taking on working on the MORRA and WRNA?

Kurt Aughney - Some standards use static factors. Is like staff work around state working up MORRA’S and completed reports compiling notes and accurately. We haven’t been able to work with U of C during this time.

Erika Wimmer - I am really impressed that there is a deadline to complete MORRA training before July 31". If staff doesn’t score well, required to do more one on one training.

9:14 a.m.

Next presentation from John Daugherty.

John Daugherty - Went to grant people going back and getting list of every grant over $100,000.00 discussed last time and in and in the minutes. Grant in 2012 within community corrections.
SMART grant – a portion of that grant in training. Probation and parole only training under that grant is not million dollar grant going back to 2009. Any questions about that?

Representative Lynch – Recollection of SMART grant – was risk needs assessment.

John Daugherty – SMART Grant Community Corrections Intervention Plan in 2009 hired probation and parole officers for specialized caseloads to determine supervision outcomes.

John Daugherty – Same definition of recidivism since 1998. Gave definition – don’t count recidivism twice. Calculate on three-year rate. Start July 1st will restart at 2017 gives the three years. There is not a standard national definition.

Chair Krueger – You have a formal written policy on recidivism and how it is calculated?

John Daugherty – Definition is calculated based upon that but no policy.

Chair Krueger – Formal return definition.

John Daugherty – As you will see in the report and other documents.

Chair Krueger – Further questions from Council? Next are questions on population report.

John Daugherty – The Department used to have a daily population report but the decision was made to take it down. Proposed on internet and update by MSP – delay in meeting held last month and will do follow-up meeting for next week and will staff to automate the report and get published.

Chair Krueger – When will it be back up online?

John Daugherty – Can’t give a date because doesn’t know what requested changes will be.

Chair Krueger – Online as long as we have added online and available to public for over 25 years. I would hope by next meeting it will be up online.

Chair Krueger – Questions from Council members. Seeing no questions thank you for your presentation Mr. Daugherty and I look forward to the publication. Mr. Olson?

9:29 a.m.

Kevin Olson – CDFS timeline – CDFS continues to work as of date. Offenders get their notice of eligibility and notices to county attorney and court. 426 conditional discharge to court jurisdiction. 25 from Board of Pardons and Parole. Second cycle – 9 months determined or shows in to submit will get another letter of eligibility. In the process to see how process should work. I’m not really in a position to say how the process should work. Relied on Council of State Governments. Agree offenders have pro se process – isn’t good and makes it difficult for legal counsel not set into the realm of reality. Once we give the offender is given the paperwork we are left in the dark. There is a quirk in the process of CDFS between probation and parole, Board of Pardons and Parole to petition the Court for CDFS.
Representative Lynch - The committee needs to work on that policy. We can change that within administration of DOC, BOPP, and probation and parole. Issue between the IT systems - we need to address resources - need allocated.

Kevin Olson - We will definitely run back the issue to address that.

SK Rossi - Ongoing list of policy recommendations to be considered to come out of this Committee. Brainstorming to rework the pro se issues getting through Judiciary.

Kelsey Young - Wanted to make the same point that Council addresses further.

Annette Carter - Mr. Olson has talked about CDFS and making sure people will advise in coming back to supervision. Interstate compact and how that statute would apply for supervision to Court then Parole Board. The old process goes through the Courts first and would give the BOPP a good indication for the Board.

Marty Lambert - Conditional discharge from supervision. We need to review that efficiency given to legislative process that would give DOC more discretion. They want those folks off their caseloads because they want to count that as a success. Have to be looked at carefully with a great deal of scrutiny. Looking forward to numbers of prisoners and probation and parole but I would like to see those. I would like to see numbers that Mr. Olson sent through before. I would request a standing order that DOC provide spreadsheet prior to every Council meeting.

Chair Krueger - Mr. Olson or Mr. Daugherty would you be able to provide us with those?

John Daugherty - Big spreadsheet that Mr. Lambert is requesting is provided quarterly. No issues to provide.

Chair Krueger - We would appreciate that to be provided before the next meeting.

SK Rossi - I think the goal of this Council to find real systems and solutions would be one of those and decided on by this group. We have to have recognize and listen to those that have interacted with offenders for quite some time.

Representative Usher - Mr. Daugherty to follow-up on reports before meeting. Request that it be done monthly for us and get most monthly. We should be able to ask for more recent information.

John Daugherty - Certainly I will. We do it quarterly because it takes time.

Chair Krueger - Other questions of Council? Move back to program inventory Ms. Wimmer and Mr. Aughney.

Erika Wimmer - Going through facilities and brief summary of programs.

Chair Krueger - We should get a brief overview of types of programs available and you might want to pick two or three. Programs available in person and community.
Erika Wimmer - Important things to take a look at. Look at population and MASC - very fluid. Trying to motivate offenders to change. MSP offering 1) co-occurring by mental health professional; 2) interactive journal programs; 3) general anger management program; 4) skills group; 5) courage to change; 6) substance abuse program, etc. In-depth long programs.

Melissa Kelly - Make sure that the University of Cincinnati online is being taught and that these programs are all encompassing.

Erika Wimmer - Very important to look at the depth of the programs. Work to review programs but we are not through a lot of facilities.

Chair Krueger - Timeline?

Erika Wimmer. Working with facilities and meeting coordinators quarterly and as provided.

Chair Krueger - Questions from Council members. May continue with the discussion of implementation of plan and public access.

Erika Wimmer - I’m not sure what you are looking for with an implementation plan?

Chair Krueger - We would like a more concrete date line on how these are going. Timeline implemented and when and overall deadline when these will occur.

Erika Wimmer - Group format implementation for facility workers. According to what populations that are housed. Up to facilities to choose what they want to offer. Up to each entity what they want to take on and what they want to fund.

Chair Krueger - It would be useful to have a timeframe. Those should be part of your request to formulate the plans so that when we look into next legislature for implementation.

Kurt Aughney - Programs that are criminal thinking therapy in looking at one issue. All work together. Needs a quarterly - 10 programs at a time and look at capacity that you do the programs relatively time consuming. Completion an ongoing process.

Andy Huff - During Covid-19 - how these programs are functioning in our facilities.

Erika Wimmer - MSP running Thinking for Change group up to 12. Reduced number to 5 or 6 and distancing them.

Melissa Kelly - CCCS facilities - we are also doing similar strategies and also wearing masks.

Chair Krueger - Further questions or comments? Council member Young wrote note regarding Kevin Olson and follow-up on last presentation by Ben Halvorson.

Kevin Olson - Chris Evans staffed the cases with Ben Halvorson.
Mark Piskolich - Spoke with Mr. Halvorson.

10:15 a.m. 15-minute break.

DOC readjustment program.

Mark Piskolich - Summary of OJIR bills.

Chair Krueger - Council members have any questions for Mark. With no further questions we will move to Kevin Olson.

Kevin Olson - Probation and parole and DOC engages in reentry efforts - smaller reentry. Reentry is strong except for sex offenders in a lot of Tier III sex offenders.

Chair Krueger - Often pre-release and providers in relation to reentry.

Kevin Olson - The case manager conditional release plan document what their prior was in pre-release and plan for reentry into community.

Chair Krueger - Questions or comments from Council members? In terms of utilization of pre-release facilities. Progress of pre-releases doesn’t seem to be utilizing pre-releases being released from MSP.

Kevin Olson - 6 – 8 weeks no movement. We now use our pre-release providers. Sometimes offenders pose to great a risk.

Annette Carter - Starting a monthly meeting with facilities to see if there is further information with pre-release. Will work on it, will have statistics for next meeting.

10:56 a.m. Move onto the reentry programs for Indigenous people.

Harlan Trombley - Reentry programs for Native American offenders - working with Tribal leaders on the reservations. Meet with council members and what can do with DOC. Community management meeting every month. Courts to start reentry program. 2015 Flathead reentry program by Federal grants. 2018 another grant. Further met with Crowe and Little Shell. Little Shell very often work with department.

Andy Huff - State contract programs or tribal programs?

Harlan Trombley - Active one is on the Flathead Reservation. Reservation is just federal not state.

Andy Huff - Are federal offenders or new state offenders participate as well?

Harlan Trombley - Meeting with offenders that come up for release to the Flathead Reservation.

SK Rossi - Is there any plan for the DOC to start legislation for Indigenous ... Programming on ... and on reservation?
Harlan Trombley – Has been talked about, doesn’t have any information regarding that.

Annette Carter – The Parole Board does receive a lot of information from the Flathead Reservation.

Chair Krueger – further questions for Mr. Trombley. Next presenter is Megan Coy.

Megan Coy – DOC housing assistance – two funds to help efforts with offender housing with housing costs. TA has $400,000.00 to give them with housing on community supervision. $354,000.00 approved as of today. Rental voucher fund. Codified 2017 legislation. 2019 session were provided $200,000 for rental vouchers. Expended $107,000.00 this fiscal year. 125 offenders have been approved for rental vouchers. 78 offenders approved for Covid-19. $35,000.00 of the total expended for the year.

11:13 a.m. Offenders Risk/Needs Assessment for DOC

John Daugherty – Gave a history of previous risk/needs assessment developed by Dr. Hardyman. Reentry task force was in a past bill. Current assessment tool will be used in University of Cincinnati. Second side effect federal government left out state and offer technical support assistance. August 2011 had first meeting with technical provider develop and obtain a consistent and validated assessment. Subcommittee was formed. Meetings were scheduled to get access to tools and to see how that worked. Quality assurance was implemented when received another grant. All offenders didn’t receive risk assessment. 2017 Legislature started doing all offenders, subsection B put funds on hold. Revalidation in 2017 in three years out of their recidivism rate.

11:34 a.m. CD Evaluations/Prescreening/Court Recommendations

Kevin Olson – Prescreening stopped when PSI was to be done in 30 days. Prescreening can take up to eight weeks. Prescreened in order relieves 30-day requirement in statute. Have violent and sexual offenders until director signs off. Policy has been modified. PSI could be submitted in 30-day requirement and 3 – 4 weeks for prescreening requirements.

Chair Krueger – Questions on prescreening. Your suggestion in terms of both ways. You can submit the PSI in 30 days and indicate that prescreening will come at a later date and the Judge will determine when sentencing will take place. You may ask for additional time to present the PSI. This is the current policy in place. The March 2016 policy addresses prescreening. I do not formally see a change in your policy. This still applies in relation to prescreening and going through the process and your duty. Again, I do not see a formal change in your policy.

Kevin Olson – Will get policy.

Chair Krueger – Get flow chart with timelines and compliance with MCA. How many people are prescreened and is that going to facilitate when Judges make recommendations – like to see numbers on how often it is followed and rejected, going to facilities.

Kevin Olson – Contained in Judge’s recommendations made and data set not available in OMAS information process informing the Court to formulate the judge’s request.
Chair Krueger - A District Judge would like to make a sentence with a recommendation. The Judge has no idea whether that was carried out or followed through. The Judge should get some kind of notification on what occurred with that since whether offender was sent to pre-release and why. I assume we know where a person is going.

John Daugherty - Could certainly do. Judgments are just sentenced and uploaded into the system. It would certainly be doable in a couple of ways. Person has information for probation and parole.

Chair Krueger - Likes both suggestions - assume DOC could continue to formulate how that could occur.

Chair Krueger - Questions from other Council members?

Kevin Olson - We will not be able to provide any data report as to why Judge's recommendation was not adhered to.

Chair Krueger - If you will provide us with how many are going to prison and treatment facility?

Kevin Olson - Megan will get report.

Representative Barry Usher - Did I hear that DOC will not be able to give back specifics on basis of Judge's recommendations? We only want an overview when there are 49 other states. Why is this not possible or difficult?

Kevin Olson - We may be able to notify the Court what placement and DOC commit.

Colleen Ambrose - DOC commits are very unique in the U.S. Gives the attorney to DOC to make determination about placement. Our Department policy gives the Courts recommendations the highest priority and attempts to ensure that they are carried out. What data is the Court asking for?

Chair Krueger - The reason we established a DOC commit in the 80's was to help regulate the population. The Legislature wanted the Court to recognize the Judges' ability to sentence. DOC was given some discretion in that to help management of two years recommendations for placement at a five years DOC and placement at various facilities. The Department is not screening individuals - DOC is making determination. There are policies and should be data where I sentence a person and where recommendation was placed. There is no reason when a Judge makes a recommendation someone from DOC screened not eligible or prescreened available and make their own determination - no communication. Should be able to provide information when offender is sentenced, paroled and where they can be placed. We can find this information out that would actually after the sentence - that a report be sent to the Court - placed or not for following reasons.

Kevin Olson - We will start immediately summarizing as to particular placements.
Kevin Olson - No data with length of stay. No information on CD evaluations time but often takes three to six weeks. Sometimes we have CD evaluations in particular places like MASC or other facility. CD evaluation $152.26.

Chair Krueger - Public Defenders have to ask to have the individual prescreened for a facility by their own means. DOC needs CD evaluations and would have to figure that out. They are never getting screened - being denied by DOC. If we are asking for prescreening the offender has to have CD evaluation available to make it to the facility.

Kevin Olson - Out on bond, community placement or different scenario. Can obtain CD evaluations during prescreening process. If they are in jail DOC has little authority in working with offenders and when prescreening comes from the DOC.

Ambrose - DOC doesn’t have the authority and ability to work with the offender until the offender has been sentenced. The responsibility, the cost are either on the county or until that time the Department doesn’t have authority or responsibility to pay for the CD evaluations.

Chair Krueger - The Court sentences 5 years DOC - recommendation for placement at treatment facility. Significant numbers of offenders not given CD evaluations that are sentenced to facility. No court CD evaluation and don’t obtain one. Even after sentencing, you are not obtaining CD evaluations. You are now making policy decisions that they don’t need treatment. DOC override Judge’s decision. Not statutorily correct. You have an obligation to try to place offenders at treatment facility. You want Judge saying he doesn’t have a CD evaluation. Reports will be addressing these issues.

Colleen Ambrose - DOC opinion differs from the Judge’s assessment. CD evaluations do not always require placement unless it scores a 3.5. Would be detrimental to them that you are asking that they go into placement 3.5 and may be better served in accepted treatment in the community. We may defer to make sure that they are properly evaluated. That we can provide in the data you are asking for the problem is how to translate that to you.

Kevin Olsen - If you can provide specific offenders, we can make a determination on what happened.

Chair Krueger - This has been occurring for a number of years. Discussed at the Judge’s meetings. Tell me how many CD evaluations you have done as these occurred. I am not taking the responsibility away from the DOC.

Megan Coy - We frequently are having trouble getting them done. Will work with assessment/sanction facilities for numbers.

Representative Barry Usher - Mr. Olson will do audit and percentage of what has been done on Chair Krueger’s orders. Legislative intent has been lost and need to look at that legislation so intent is still adhered to.

Kevin Olson - Not his intention to present the responsibility of the Court, just if you have anything from recent memory an offender came to mind in responsibility of you to get data.
Megan Coy - Revision of procedure is screening of adult screening not updated since 2016. Revision is necessary. Waiting on suggestions to the revisions through April 1st. We will incorporate notification to courts on placements.

Chair Krueger - Provide to all Council members before next meeting. Placement rates no data to Council.

Megan Coy - Ran into issue with data on OMAS. Working to correct and get to Council.

Chair Krueger - Would appreciate it broken down by facility and location, which treatment center or facility.

12:23 a.m. ASAM

Megan Coy - Stephanie Turner. We use assessment to identify individual offenders' risks needs - eight domains for higher risk or needs to determine placement.

Stephanie - Surveying what they have been doing for substance abuse evaluations, they vary greatly - need for comparable and objective evaluation assessment. We are working with UCCI to develop appropriate screening for treatment and will develop a focus group.

Kelsen Young - General discussion about all of this with DOC staff needs to happen. Have Judges already considered some sort of legislation? Is DOC proposing removing of DOC commit and what happens in the meantime?

Chair Krueger - Judges generally have been discussed this by restructuring this committee and support this establishment working and follow-up. Judges want some accountability.

Stephanie - The ASAM is just one part of the entire assessment. We don't want to just make determination on one assessment but the entire tool to determine placement.

Senator Keith Regier - Recommendations and once in a while an order - one in the same?

Chair Krueger - Statutorily the courts make a recommendation and they are asking DOC to follow that recommendation and implement that recommendation as soon as possible. Sometimes we have gone and ordered the placement. For the most part, placements are following the recommendation. We underutilize that all of these treatment facilities for the past year and treatment facilities are underutilized.

Senator Keith Regier - Would you say generally Judges refrain from orders?

Chair Krueger - Yes.

Melissa Kelly - The last three years that we have been taking residents in our center, the ASAM criteria been the only way they have been referred to treatment programs. Needs have to be addressed. It's frustrating to see offenders have a need for treatment and they don't qualify in ASAM.
SK Rossi - There are many options that these inpatient treatment facilities and outpatient treatment offer and I think we need to look at a middle group of what the person needs that isn’t available right now.

Chair Krueger - We also need to have different levels of treatment that judges can make recommendations and are not being followed as well. Legislatively we do need better community-based treatment programs that we have adequate treatment and probation officers have the ability in making those assessments and requiring community-based treatment.

Representative Barry Usher - A bigger discussion needs to occur and intent of DOC versus whether this Council is set to do legislative change - like to see that on future agenda.

Chair Krueger - At this time we are going to discuss where we are going in terms of future minutes and final Council recommendations following that with a public comment. We going to go to the April 1, 2020 meeting is what we did today but we’ve lost two months in terms of process. The next meeting is scheduled July 14, 2020. At that point doing combination days with Law and Justice in person meeting. I would hope that we could do something similar and having a full day of discussion at July 14th meeting - scheduled for September 15, 2020 at which time is our final meeting. Since we are an Interim Committee, we could have an additional meeting in November. I would hope that this next meeting on July 14th we would have that request agenda items by June 10th. Agenda should also include recommendations of our final report. Other comments to provide on this matter?

Kelsen Young - On the same page. The agendas have been stacked. Moving into recommendations in July we will need more time for conversation before recommendations.

Representative Barry Usher - Law and Justice - we were thinking a hybrid meeting in June, then a meeting in July.

Chair Krueger - Unfortunately my trial and court calendar - each are backed up. I don’t think I can find the time in June for another meeting. Hopefully, July would be an in-person meeting. If we need more presentations in morning we can meet in the afternoon.

Peter Ohman - A few issues. Prescreening discussion on getting process in place for prescreening, securing how CD evaluations can get done. Communication as to why it didn’t or did happen. CDFS look at same. Look into more at the next meeting.

Mary Lambert - I agree with Peter that we should start doing some drafting. Section 46-18-208 and Section 46-18-203 could use some work. State v. Gardy, 220 MT 81 issue with credit for time served. June 10th is Agenda items - drafting statutory changes so group can look at them and Council can look at them and discuss in July.

Chair Krueger - Hopefully, July 14th will be an in-person meeting. I am going to set a date of June 10, 2020 for Agenda items or also proposals.
Public Comment

Annett Gilbertson, Montana County Attorney and Peace Officers’ Association - Talked about many of the same issues. Looked at some public safety has been lost in conversation - perspective of victims is lost.

Representative Barry Usher - Motion to adjourn.

Marty Lambert - Seconded

Meeting adjourned.