

NCSL Opioid Policy Fellows: Recent CO Experience

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Roadmap

- Context
- Diversion
- Sentencing
- Collateral Consequences Reduction
- Treatment / Medication
- Re-entry – Community Partnerships
- Attorney General / Opioid Settlement

Context

- 74% of CO justice-involved population has an SUD ([OBH](#) 8/18/21)
- 35% has a mental health condition ([id.](#))
- 70% of CO DOC population has an SUD ([DOC](#) 6/30/21)
- 36% of CO DOC population has a mental health condition ([id.](#))
- Personal opinion – *we need to treat addiction like a public health problem and not a public safety problem*

Diversion / Deferral

- CO has relatively broad (DA) discretion for (pre charge) diversionary dispositions or (pre sentence) deferred adjudication dispositions (CRS 18-1.3-101; 18-1.3-102)
- Problem solving courts
 - Adult drug courts – 19 of 22 judicial districts
 - Juvenile drug courts – 2 of 22 judicial districts
 - Also: mental health court; veterans court; DUI court
 - <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=prbsolcrt>
- Potential paradox / problem – charges needing to be filed in order to access funding / services?

Diversion

- “**Legislative intent.** The intent of this section is to facilitate and encourage diversion of defendants from the criminal justice system when diversion may prevent defendants from committing additional criminal acts, restore victims of crime, facilitate the defendant’s ability to pay restitution to victims of crime, and reduce the number of cases in the criminal justice system.” 18-1.3-101(1)
- Max time period: 2 years
- Exclusions: certain sex offenses; no drug charge exclusions

Deferred Adjudication

- “In any case in which the defendant has entered a plea of guilty, the court accepting the plea has the power, with the written consent of the defendant and his or her attorney of record and the district attorney, to continue the case for the purpose of entering judgment and sentence upon the plea of guilty for a period not to exceed four years for a felony or two years for a misdemeanor or petty offense or traffic offense.” 18-1.3-102(1)
- “Prior to entry of a plea of guilty to be followed by deferred judgment and sentence, the district attorney, in the course of plea discussion as provided in sections 16-7-301 and 16-7-302, C.R.S., is authorized to enter into a written stipulation, to be signed by the defendant, the defendant’s attorney of record, and the district attorney, under which the defendant is obligated to adhere to such stipulation. The conditions imposed in the stipulation shall be similar in all respects to conditions permitted as part of probation.” 18-1.3-102(2)

Co-Responder Models - Examples

- Denver Support Team Assisted Response (“STAR”)
 - <https://www.denvergov.org/Government/Departments/Public-Health-Environment/Community-Behavioral-Health/Behavioral-Health-Strategies/Support-Team-Assisted-Response-STAR-Program>
- Aurora Mobile Response Team (pilot)
 - https://www.auroragov.org/news/whats_new/New_crisis_intervention_pilot_program
 - “The team pairs a licensed mental health clinician from Aurora Mental Health with a paramedic from Falck to provide trauma-informed crisis intervention and de-escalation services on the scene to individuals experiencing a behavioral health crisis related to mental health, depression, homelessness, poverty and/or substance use issues.”
- Montrose County **
- Full list: <https://cdhs.colorado.gov/behavioral-health/co-responder>
- State Grant Funding – [HB21-1030](#)
- OBH may contract with cities & counties for diversion programs ([HB20-1017](#))

Sentencing I

- 2013 drug sentencing reform ([SB13-250](#))
 - separate drug “grid” with 4 DF classes, 2 DM classes
 - DF1 – higher-level distribution
 - DF2 – mid-level distribution
 - DF3 – lower-level distribution (Kaile’s story)
 - DF4 – possession
 - “wobbler” – community-based sentence for certain (limited) DF4 vacated & replaced with DM1 upon successful completion
 - 2017 review: https://cdpsdocs.state.co.us/ors/docs/reports/2017_SB250-Rpt.pdf

Sentencing II

- 2019 drug sentencing reform ([HB19-1263](#))
 - [Political note on sponsorship & votes]
 - De-felonization (NOT decriminalization) of most possession \leq 4 grams
 - “It is the intention of the general assembly to classify most drug possession on and after March 1, 2020, as a misdemeanor offense with different sentencing options and limited incarceration penalties...this sentencing scheme recognizes that drug use and possession is primarily a health concern and should be treated as such by Colorado courts.” 18-1.3-501(1)(d.5)(I)
 - Preference for probation dispositions for DM offenses
 - No charging for residual amounts in paraphernalia
 - “Savings” provision re: distribution or possession with intent

Collateral Consequences Reduction

- Pre-2013 – sealing for drug conviction records – relatively long wait periods ([SB14-206](#))
- 2016 – “streamlined process” for dismissal, acquittal, diversion, deferred - inside criminal docket cf. docketing a new CIVIL action ([SB16-116](#))
- 2019 – overhaul of sealing statutes; greater utilization of streamlined process; reduced waiting periods; single offenses only ([HB19-1275](#))
- 2021 – multiple-prior eligibility; automation of sealing of non-charge arrest records; automation of sealing of eligible (single) drug conviction records ([HB21-1214](#))

Treatment / Medication

- JBBS program created in CDHS-OBH ([SB18-250](#))
- DOC “shall” allow MAT to inmates who were receiving MAT in county jail prior to DOC custody ([SB19-008](#))
- JBBS recipients must offer MAT ([SB19-008](#))
- CDPHE harm reduction grant program ([SB19-008](#))
 - <https://cdphe.colorado.gov/overdose-prevention-grants>
- Opioid antagonists / agonists may be dispensed in DOC, jails, DHS facilities ([HB20-1017](#))
- Continuity of care upon DOC & jail release ([HB20-1017](#))
- Interim study committee - <https://leg.colorado.gov/committees/opioid-and-other-substance-use-disorders-study-committee/>

Re-entry – community partnerships

- WAGEES – Work & Gain Education & Employment Skills
 - <https://wageesco.org>
 - Grantmaking intermediary – LCCL - <https://latinocoalition.org>
- Grant program under DOC to support community-based organizations that work with DOC on successful re-entry
 - Origin - pilot status ([HB14-1355](#))
 - Extension (sunset) – expand to rural areas & women offenders ([HB18-1176](#)) **
- Grantee organizations partner with SUD service providers
- Overall (3 year cohort) DOC recidivism – 44.9% ([DOC](#))
- WAGEES recidivism (new charges while in program) – 4.8% (LCCL)
- 2/2018 [Urban Institute “lessons learned” report](#)

Attorney General / Opioid Settlement

- CO AG Opioid Crisis Response Plan -
<https://coag.gov/app/uploads/2021/08/Colorado-Department-of-Law-Opioid-Crisis-Response-Plan.pdf>
- CO opioid settlement joint framework -
<https://coag.gov/app/uploads/2021/08/Opioid-Joint-Framework.pdf>

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