

Policy Memo

Colorado Working Group On Transforming Criminal & Juvenile Justice

Executive Order 2023-002

VS

Diversity, Equity & Inclusion

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C O N T E N T S

POLICY MEMO

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POLICY MEMO

This Policy Memo was prepared in advance of and in opposition to upcoming legislation that would make permanent the new **Colorado Working Group On Transforming Criminal and Juvenile Justice**, created by **Governor Jared Polis** on October 9 of this year with Executive Order 2023-002. The Working Group is intended to replace the 20-year-old **Commission on Criminal and Juvenile Justice** sunsetted by the legislature (SB23-158). The legislature allowed the Commission to sunset due to “ineffectiveness,” not enough “racial or geographic diversity on the panel, nor enough people who had lived experience with the criminal justice system,” and had become “an extra obstacle for the legislature to do its job,” (Paul, Wenzler 2023).

I am a policy entrepreneur student in the Masters of Public Policy program at the **University of Colorado School of Public Affairs** who is a passionate advocate for the safe and equitable inclusion of affected-citizen input at the policy solutions and funding consideration tables — to include official task forces, commissions or subsets thereof.

Iron Triangle Policy Monopoly

The CCJJ, along with its network of interrelated task forces, are part of an Iron Triangle of power Policy Monopoly (Birkland 2020, Weible 2018) comprised of: 1. Law Enforcement and District Attorneys, 2. Legislators, their special interest donors and lobbyists, and 3. The Governor and his Executive branch. In fact, according to the **Colorado Secretary of State** Registered Lobbyist database, the *only* organizations that registered support for the old CCJJ were the **Colorado Association of Chiefs of Police**

and the **Colorado District Attorneys Council** (SOS 2023). Supporters of the CCJJ often point out their monopoly advantage over affected citizens as they highlight the 120 pieces of legislation the Commission developed and influenced over its 20 years of regular meetings, networking, strategizing, and influencing criminal and juvenile justice policies (Dougherty 2023).

Affected citizens get three minutes.

The Problem as Opportunity

In the spirit of Diversity, Equity and Inclusion, this policy memo details why the Governor's new CCJJ should *not* be made permanent during the next legislative session, so that more diverse voices — affected citizen voices — can be included in the solutions that directly impact families, peers, and communities. With the CCJJ out of the way, lawmakers have the opportunity to rethink their approaches to criminal justice solutions that are *inclusive* of affected citizen inputs rather than *exclusive* to the Iron Triangles and their Policy Monopolies.

The absence of affected citizens at the policy solutions tables not only feeds stigma but fosters it. If our leaders don't recognize affected families' input and value at the solutions tables, then why should our peers, coworkers, employers, neighbors? Rather, affected families are dubbed as *those* families, reinforced by our official task forces, commissions, and special working groups comprised of Iron Triangle monopolists and their allies, who omit us by design. Too often affected families are dismissed as if having no standing on the matters, relegated to Anonymous this and Anonymous that.

While the inequity of time and attention granted to affected citizens when measured against the generous state-sanctioned time and resources for Iron Triangle monopolists like the CCJJ and related task forces should sound the State's Diversity, Equity and Inclusion alarms, it also presents a transformative opportunity for those same monopolists to address this gross inequity — proactively and with transparency. An example of affected-citizen inclusion is noted in the Recommendations section of this policy memo.

Summary Back Story

Thanks to Punctuated Equilibrium Theory (Weible 2018), whether it was intentional on the part of the opposition to the CCJJ or coincidental, two seemingly unrelated bills, in two separate chambers, were revealed to not only be related, but surprisingly symbiotic inside the Iron Triangle Policy Monopoly (Birkland 2020).

1. *Senate Bill 23-158 Sunset Colorado Commission On Criminal And Juvenile Justice* concerning the continuation of the Colorado Commission On Criminal And Juvenile Justice. The bill was postponed indefinitely, resulting in the sunsetting of the CCJJ as of September this year.
2. *HB23-1258 Drug Crime Cost Task Force* concerning creating a task force to study the costs associated with drug crimes to be conducted by the **University of Colorado School of Public Health**. The bill passed, with amendments, but vetoed by the Governor.

According to his official statement immediately following the veto in June (Polis 2023), **Governor Polis** had expected the legislature to continue the CCJJ and wanted it,

not the **CU School of Public Health**, to conduct the actuarial study: "...the type of study contemplated by HB23-1258 would have been appropriately scoped and conducted by the soon-to-sunset Colorado Commission on Criminal and Juvenile Justice." (Goodland 2023). He announced in the same statement his plans to use Executive Action to create a new CCJJ to replace the old one. Four months later, in October, he created and announced his new **Working Group On Transforming Criminal & Juvenile Justice**, which he hopes the legislature will vote to make permanent so that the new group can "take up the work envisioned in the HB 1258" drug crimes enforcement costs study.

When the legislature allowed the CCJJ to sunset, they punctuated a long-time equilibrium of power taken for granted by the Iron Triangle and their Policy Monopoly. Supporters of the actuarial study, along with the **CU School of Public Health**, further punctuated the equilibrium with passage of the study to be conducted outside the state's criminal justice Iron Triangle of control.

The Governor's 1-2-3 strategic response to the breach in power equilibrium was a deft counter-mobilization strategy that could be tracked and further analyzed through Punctuated Equilibrium Theory (Weible 2018). 1. Veto the actuarial study HB23-1258. 2. Create a new CCJJ to replace the old one sunsetted by SB23-158. 3. Move the vetoed actuarial study to the new group, thereby restoring the Iron Triangle's policy monopoly equilibrium.

Rep. Lorena Garcia (Adams) told the *Colorado Sun* (Paul 2023) that she was "disappointed in the governor's order" to bring back the CCJJ. "I would like to see the focus of a criminal justice commission focus on innovative effective prevention

methods, not debunked sentencing motivators that cost the state tons of money that could be funneled to early childhood, K-12 education (and) transportation,” she said.

Policy Actors, Strategic Factors, and Controlling Interests

There are some interesting dynamics worth exploring among the various policy actors for and against both the Commission on Criminal and Juvenile Justice and the drug crime enforcement actuarial study.

SB23-158 Sunset of the Commission on Criminal and Juvenile Justice. Composition of the CCJJ was 30 members with 90% employed by or related to criminal justice, including lawmakers (CCJJ 2023). As noted earlier in this paper, the openly supportive groups for the CCJJ are Iron Triangle Policy Monopoly (Weible 2018) anchors: the Governor and his legislative allies, District Attorneys, and Police (CCJJ 2023). The new CCJJ has fewer members and a token attempt to lessen the criminal justice weight bias on the panel by adding one person who has been in and out of jail or prison, for example.

Supporters of the CCJJ argue that its ability to influence the passage of more than 120 pieces of legislation over the past 20 years (CCJJ 2023) is in and of itself evidence of its “effectiveness.” Official actor Boulder District Attorney **Michael Dougherty**, who is an enthusiastic supporter of the new CCJJ, granted me an engaging interview on why he supports the new Commission (Dougherty 2023). He discussed the collaborative benefits of leaders from the different, yet interrelated, agencies being able to compare notes and strategize policy solutions. He, like other proponents of the Commission, emphasized the 120 pieces of legislation that the CCJJ was instrumental in passing as a major point of its “effectiveness.” Supporters of the CCJJ — old and new — are not only

open about their Policy Monopoly (Weible 2018), but prioritize and promote it as a unique selling point.

Those opposed to the CCJJ, led by former CCJJ member **Sen. Gonzales**, and **Rep. Steve Woodrow** (Denver), cited lack of diversity and absence of citizens with lived experiences with the criminal justice system on the Commission and that it hindered much needed progress (Paul, Wenzler 2023).

“As well intentioned as CCJJ might have been at some point, it’s often used as sword and shield and as a filter blocking progress — and progress is needed,” **Woodrow** told the *Colorado Sun* (Paul, Wenzler 2023), summarizing, either wittingly or unwittingly, the Iron Triangle Policy Monopoly problem.

Rep. Bob Marshall (Highlands Ranch) added that “it was pretty clear it was becoming an extra obstacle for the legislature to do its job, rather than an assistant.” That the Iron Triangle actors have that much power over our legislature should itself be of concern — not only to our legislators, but to us citizens.

The bill was postponed indefinitely, thereby sunsetting the 20-year-old Commission on Criminal and Juvenile Justice.

HB23-1258 Concerning creating a task force to study the costs associated with drug crimes. The policy actors, official and unofficial, who supported the actuarial study HB23-1258 argued that the paucity of data, as well as worsening drug addiction crisis and Iron Triangle failures to solve it, necessitate release and study of the data.

The bill had four official actor sponsors: **Rep. Said Sharbini** (Adams), **Rep. Lorena Garcia** (Adams, Jefferson), **Sen. Lisa Cutter** (Jefferson), **Sen. Kevin Priola** (Adams, Weld). The act would've created "for evaluating the costs associated with enforcement of and incarceration for drug crimes task force." The act would've "required the **University of Colorado School of Public Health** to conduct an actuarial study to evaluate the costs associated with the enforcement of drug laws and incarceration in the state." Considering the study was to be conducted by **CU School of Public Health**, I count the University as a supporting unofficial actor.

Official actors openly opposed to the study were Breckinridge **Police Chief Jim Baird** and **Sen. Dylan Roberts** (Eagle), along with **Colorado Association of Chiefs of Police**, **Colorado Fraternal Order of Police**, and **County Sheriffs of Colorado** as registered in the state's lobbyist database for the bill (SOS 2023). After **Chief Baird's** testimony against the study to the Senate, **Sen. Roberts** surprised the bill's sponsors with a last minute amendment narrowing the scope of the study by omitting Drug Felonies 1 and 2 data, which include SWAT raids. All of these factors and more, individually and in total, beg two very key questions:

1. Why doesn't the Iron Triangle of criminal justice want the **University of Colorado School of Public Health** to conduct the actuarial study? Is there something they don't want the University team to find?
2. Why would **Sen. Roberts** and **Police Chief Baird** want to remove Drug Felony 1 and 2 costs from a drug crime enforcement study? Is there something they don't want the University team to find?

Need For Independent Study

Colorado has a history of keeping its law enforcement data secret and inside its Iron Triangle of power. For example, at the time I conducted this part of the research, Colorado remains one of only 15 states that keeps its comprehensive police officer data secret, even after the state's new requirement for the **"Peace Officer Standards & Training (POST)** board to publish a public database containing some basic disciplinary information about police officers." According to the **Colorado Freedom of Information Coalition**, keeping it secret prevents "the press and public from adequately monitoring the state's oversight of wandering or second-chance officers." (Stecklow 2023).

- Colorado ranks 7th in the nation for people killed by police (Woodruff 2023).
- 459 Coloradans have died from overdose as of December 1 this year, surpassing all of 2022's 453 overdose deaths (Arenas 2023).
 - 62% of Colorado inmates are struggling with substance use (Sharbini 2023)
 - in a prison system with a staffing shortage of at least 1,600, which puts staff and inmates at risk (Toomer 2023),
 - while 79% of our opioid treatment centers did not meet state and federal requirements (OIG 2021).

That said, and in fairness to Colorado relative to other states, the challenge in obtaining drug crime enforcement data is a long-standing problem in most states across the nation. Barely eight years ago, a hard fought **ACLU** public records lawsuit to obtain police **SWAT** data in Massachusetts revealed "the extent to which the militarization of the police is bound up with drug prohibition," and that the findings being made public, "demonstrate the importance of robust government transparency to effectively

addressing the narcotics crisis.... If we don't know what's broken, how can we fix it?" (ACLU 2015).

In 2022, eight **Colorado District Attorneys** "released detailed data about their operations... in an attempt to be more transparent with the public amid broader criticism racial disparities in and distrust of the U.S. criminal justice system," that revealed racial disparities across several districts, according to the *Denver Post* (Bradbury 2022). The **University of Denver Colorado Evaluation and Action Lab** and the **Prosecutorial Performance Indicators Project** conducted the research. The results surprised even the participating district attorneys.

"For too long and too often, the justice system feels like a black box of information," said **John Kellner, 18th Judicial District Attorney** (Bradbury 2022), adding to the mounting evidence for need of transparency in our criminal justice system.

Juveniles as Criminals

The old Commission on Criminal and Juvenile Justice and the new Working Group on Reforming Criminal and Juvenile Justice both position "juvenile" with the same title weight as "criminal," yet the dictionary definitions of juvenile have no criminal connotation whatsoever. The very CCJJ name implies that, in the eyes of our state's criminal justice system, all youth are suspected criminals to be monitored and managed by the state. Why? I asked **DA Dougherty** during the interview why the "and juvenile." He said he didn't know for sure, that he wasn't involved in that part of the decision, but did acknowledge actors who do want to see juvenile justice separate from the CCJJ. I have not found a clear answer on why "juveniles" are lumped in with the catch all

“criminal” in the old and new CCJJ names, but am reminded of the old adage that words have energy; they cast spells; that’s why we call it spelling.

According to the **National Institutes of Health**, “using appropriate language to describe mental illness and addiction can help to reduce stigma and improve how people with these conditions are treated in health care settings and through society” (NIH 2021). Considering that half of all US youth are living with adverse childhood experiences, perhaps dubbing them as criminals in official state language should be given renewed — trauma-informed — consideration, which brings us to the conclusion and recommendations.

Conclusion and Recommendations

The policy frameworks, analysis and investigative tools I had the opportunity to learn and study throughout this semester when applied to the Commission on Criminal and Juvenile Justice — old *and* new — supports the legislature’s recent decision to sunset it, and to *not* bring it back, as well as supports the need for a drug crime enforcement cost study by an independent research university such as our own **CU School of Public Health**. As a result of this policy memo researched and investigated over the course of this semester, I offer the following recommendations.

1. The concerns of youth advocacy groups who want the Juvenile aspects of the Commission to be its own entity, separate from the CCJJ, should be given thoughtful investigation so that alternatives can be considered before it gets too far into the legislative process.

2. The drug crime enforcement cost actuarial study is not only needed, but is long overdue. And such a study should be carried out by our independent world class **University of Colorado School of Public Health**, absent of Iron Triangle influencers and overlords. If there is an opportunity, the data will show it. If there is a problem, the data will show it. If there is nothing of significance, the data will show it.

3. In the spirit of Diversity, Equity and Inclusion, the Iron Triangle creators of commissions and task forces could also create affected-family work group subsets of the task forces that have representative seats at the bigger table. This would allow for affected-citizen inputs to develop in their own workgroups but then presented to and discussed with the task force chairs along with any other chair report. Iron Triangle directors have the opportunity to lead with the power of their examples of *inclusion*, rather than continue their powers to *exclude*.

Considerations

The strategic — and most delicate — challenge is how to punctuate or at least call out the Bounded Rationality (Weible 2018) of Criminal Justice as the strict disciplining patriotic “father” who dominates our healing nurturing science-based healthcare “mother.” It is no coincidence that “patriot” and “patriarch” share the same etymological root meaning “rule of fathers.” Our entire criminal justice system is founded on and accommodating “rule of fathers” patriotic control over people as property or we wouldn’t have the world’s largest population of incarcerated citizens. It’s not rocket science or even political science, it’s primitive domestic violence culture baked into our criminal justice system (Rosenfeld 2022, Wrangham 1996) with way too many of us DV survivors familiar with the whole coercive control “or else” we’ll hurt

you or kill you posturing thing. It's neither just nor civilized, it is state sanctioned domestic violence.

Even the lumping of Criminal and Juvenile into the CCJJ titles smacks of classic patriarchy: Adults and juveniles are all children of the patriarchal fathers who rule over us and who are expected to be met with reverence and obedient devotion a la "Father Knows Best." The Iron Triangles of power, which use coercive control, violence and threats of violence — with immunity — to overpower the citizenry as if we're all a bunch of insolent children in need of strict controlling parenting to keep us in line (Wrangham 1997), is not only traumatizing at times, but tiresome and predictable. Can't the Iron Triangle just talk with us as human beings? So many of us are exhausted by the domestic violence of patriarchal failures — evidenced by the 1400 battered women's shelters across the US to the SWAT raids on our unarmed service-related disabled military veteran daughters' homes (that **Sen. Dylan Roberts** wants omitted from the drug crimes enforcement study) to the barbaric wars and their requisite atrocities against women and children happening around the world. The Iron Triangles of well-armed prosecutorial patriotic fathers overseeing our lives, sacrificing us, not listening to us, lording over us, is constant, pervasive, exhausting and would be cartoonish if not so deadly. Maybe that's their intent, to just wear us down with their expectations and overpower us with their largess, their guns, their policy monopolies, until we go away, submit or suffocate from the constant pressure of their weighted presence.

I have to wonder if that's what **Attorney General Phil Weiser** meant when he boasted about "the Colorado Way in Policing" as part of his opening remarks to the **International Association of Directors of Law Enforcement Standards and Training** this past May (Weiser 2023). I'm still trying to understand what he meant by that

exactly, even after reading it several times, because it sounds like something that I as a Coloradan should know, that we should *all* know — or else?

The CCJJ represents more of the same alpha posturing that continues to overpower affected citizens, citizens who want to be part of the solutions but who are disregarded as somehow irrelevant or “insolent.” CCJJ and its interrelated task forces are like coffee in a tea room. Coffee overpowers everything, including the delicate nuances and health benefits of the tea. And because the coffee kings don’t like or appreciate tea, no one else gets to enjoy tea either.

Thank you for your consideration of this, my first policy memo.

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