

## U.S. Attorney's Law Enforcement Conference Remarks

It is an honor to be here at the Colorado US Attorney's Office Law Enforcement Conference. I often speak of our work as a "team sport," and that's particularly true in the law enforcement arena. I appreciate U.S. Attorney Jason Dunn's collaborative spirit, as we work together to address a range of challenges, including hate crimes and the opioid epidemic. Today, I would like to share a few thoughts on our approach to criminal justice issues, highlighting some of the priorities I have established for the Colorado Attorney General's Office.

### Promoting School Safety

Let me begin my remarks by discussing school safety. Almost exactly twenty years ago today, at Columbine High School, we were all awakened to the fact that we cannot be complacent about the safety of our children. In the wake of that tragedy, Colorado developed a national model for collecting information about threats to students—Safe2Tell. This model was developed with leadership from then-Attorney General Ken Salazar, and was supported and sustained by Attorneys General John Suthers and Cynthia Coffman. It now serves as a vital part of the Attorney General's Office, working with law enforcement and school partners to evaluate the serious threats that we receive—and we received over 16,000 during the 2017-2018 school year alone—that range from bullying to suicide attempts to planned school shootings.<sup>1</sup>

To further promote school safety, our office has developed a school safety guide that we re-released to coincide with the 20th anniversary of Columbine.<sup>2</sup> This guide focuses on three important steps to protect our schools. First, we need to remain vigilant about school culture and climate, stopping bullying and harassment at their root and before they can escalate to violence. Second, we need to collect and assess threats, using tools like Safe2Tell even more effectively. And, finally, we need to prepare and train for threats to and actual attacks on our schools, so that we can keep our teachers and students safe. As Attorney General, our office will

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<sup>1</sup> Chris Halsne, "Planned school attack' threats in Colorado rose 135 percent in one year," KDVR.com (February 20, 2019), *available at* <https://kdvr.com/2019/02/20/planned-school-attack-threats-in-colorado-rose-135-percent-in-one-year/>

<sup>2</sup> Colorado Department of Law, "Colorado School Safety Guide" (2019 ed.), *available at* [https://coag.gov/sites/default/files/ColoradoAG\\_SchoolSafetyGuide\\_2v4\\_ELECTRONIC.pdf](https://coag.gov/sites/default/files/ColoradoAG_SchoolSafetyGuide_2v4_ELECTRONIC.pdf).

continue to work tirelessly to help parents, educators, students, and law enforcement save lives by putting this vision into practice.

## **Our Law Enforcement Agenda**

Next, I want to highlight some of the work our office does directly in assisting law enforcement. At the Attorney General's Office, we view our role as collaborating with each of you, and getting you the tools you need to help you keep our communities safe.

I am proud of our office's long record of successful efforts to protect Coloradans. Our office, working with the agencies in this room, has conducted many wiretap investigations that develop through our work with the DEA, the High Intensity Drug Trafficking Task Force (HIDTA),<sup>3</sup> and the Organized Crime Drug Enforcement Task Force (OCDETF).<sup>4</sup> We have worked with the Rocky Mountain Innocence Lost Task Force to investigate and prosecute human trafficking.<sup>5</sup> We worked closely with the FBI to prosecute "sovereign citizens" who threatened local governmental officials and attempt to undermine the rule of law.<sup>6</sup> And we have worked with local law enforcement to obtain convictions in the deaths of nursing home patients at the hands of those paid to care for them and worked to secure justice for those who seek to financially exploit some of our most vulnerable citizens.

Our office has some critical tools that work with law enforcement agencies across our state. First off, let me discuss our office's Special Prosecutions Unit, which works on a range of matters, including cold cases that need another set of eyes, a no-body homicide that calls for specialized assistance, or, as happens more

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<sup>3</sup> See Office of National Drug Control Policy, "Rocky Mountain HIDTA," *available at* <https://www.ncjrs.gov/ondcppubs/publications/enforce/hidta2001/rocky-fs.html>.

<sup>4</sup> See Colorado Department of Law, "Colorado Attorney General's Office, the Drug Enforcement Administration and the West Metro Drug Task Force Dismantle International Cocaine Trafficking Ring," (Sept 5, 2018), *available at* <https://coag.gov/press-room/press-releases/09-05-18>.

<sup>5</sup> See, e.g., Tommy Simmons, "Man found guilty of human trafficking sentenced to 24 years in prison," Greeley Tribune (Oct. 31, 2016), *available at* <https://www.greeleytribune.com/news/crime/man-found-guilty-of-human-trafficking-sentenced-to-24-years-in-prison/>.

<sup>6</sup> See Allison Sherry, "Colorado Prosecutors Hope To Send A Message With 'Sovereign Citizen' Convictions," Colorado Public Radio (May 24, 2018), *available at* <https://www.cpr.org/news/story/with-three-sovereign-citizen-convictions-colorado-prosecutors-hope-to-send-a-message>.

and more, a matter that spills across multiple jurisdictions and requires access to the statewide grand jury. To appreciate the sorts of cases this unit handles, consider Operation Double Dippin'. After an extensive investigation, law enforcement officers arrested 65 people, seized \$1.25 million in monetary assets, seized 31 firearms, 126.6 pounds of methamphetamine, 56.2 pounds of heroin, and 33.7 pounds of cocaine that were taken off the streets. This is a pending matter so I won't offer any further comments at this time.

Second, our Medicaid Fraud Control Unit provides assistance on cases involving serious financial misconduct and health care fraud. This can include matters related to the opioid epidemic, including irresponsible actions by medical prescribers who have contributed to the epidemic. In particular, the Medicaid Fraud Control Unit has expertise in obtaining patient files from problem prescribers and from pharmacies that are filling these fraudulent prescriptions. On another important front, this unit acts as a watchdog for facilities and professionals that take care of older Coloradans, guarding against abuse and neglect and working in partnership with the AARP's Elder Watch program and other groups.<sup>7</sup>

Just last week, the unit obtained their second conviction in the death of 93-year-old nursing home resident. In that case, the victim suffered from severe dementia, was blind in one eye and had severe mobility issues. Because of this, notes were placed in her chart that when outside, her health and safety could be jeopardized. Two days prior to her death, she fell, and nursing home staff was told to keep an even closer eye on Ms. Gatewood. The day of her death, Ms. Gatewood, entered the back yard of the nursing home, where she tripped and fell into a rock bed. Security cameras captured her struggling to stand up and finally succumbing to heat stroke after three hours in that rock bed because her caretakers had failed to check on her during that time.

Third, our Financial Fraud Unit is staffed with experts that specialize in the investigation and prosecution of complex white collar crimes. For an example of this unit's important work, let me talk about a recent securities fraud case against Kelly Schnorenberg. He defrauded over 240 investors, and after a four-week jury trial, was convicted of 25 counts of securities fraud. The judge sentenced Schnorenberg to 76 years in prison, and ordered him to pay \$13.9 million in restitution.

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<sup>7</sup> The ElderWatch website is available at <http://www.aarpelderwatch.org/>.

## Restoring Trust in Law Enforcement

After attending a funeral for Colorado State Patrol officer Daniel Groves, who died while serving others during the bomb cyclone storm, I had the chance to talk with other officers about their reasons for serving. Like Daniel Groves, who left a high-paying IT job to serve in the state patrol, they had chosen to serve because of their sincere desire to keep their communities safe. These women and men, day in day out, show us the meaning of public service.

Unfortunately, for many, such stories are not the ones they are hearing about. Too often, the stories that people hear about law enforcement don't come from the stories of brave and service-minded officers like Officer Groves, but from a very few bad actors who have engaged in misconduct.

As Colorado Attorney General, I am committed to celebrating and recognizing the work that law enforcement does to protect our communities. As part of that mission, our office will work to ensure that those who do not share those core values don't undermine the public's trust in you. In short, it is important that a few bad actors don't give others in the law enforcement profession a bad name.

A crucial tool for developing trust in law enforcement is the Peace Officer Standards and Training program, or POST. The role of POST is to develop and oversee a curriculum that trains and certifies law enforcement as trustworthy and possessing the core competencies they need to be effective. To that end, we have worked with the legislature to obtain the authority so that, when an officer lies under oath in violation of the public trust, he or she will be decertified by POST and thereby unable to work in law enforcement.

POST provides guidance to law enforcement on how to address challenging issues, such as how to best work with individuals experiencing mental illness. POST has worked on and continues to work on developing guidance for such situations, developing tools and training that equip you to protect yourself and the public by preventing encounters from escalating and turning deadly. On this point, the AG's office is working to support pilot programs and best practices including one that uses a co-responder model whereby a mental health professional joins a police officer for encounters with mentally-ill individuals.<sup>8</sup>

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<sup>8</sup> For a description of one of these programs already in practice, see Conor McCormick-Cavanagh, "DPD's Co-Responder Unit Hopes to Get a Boost From Caring 4 Denver," Westword (November 5, 2018), *available at*

Finally, I should note that another important tool that law enforcement in Colorado will be using to address the risks presented by mentally ill individuals is the new Extreme Risk Protection Order law. When Governor Jared Polis signed Colorado’s Extreme Risk Protection Order law, he referenced the tragedy at Columbine and the threat of future school shootings as an important reason for enacting such a law. Just last week, we saw the devastating impact that a single unstable and armed individual—just the type of cases these protective orders can address—might have on all of us. Based on the experience in other states with similar laws, we are confident that this tool will save lives—approximately one per every ten or so protective orders issued<sup>9</sup>—while remaining fully consistent with due process. In addition to defending the law if challenged, our office (through POST) will provide guidance to law enforcement on how to use this new tool.

## **Our Criminal Justice Improvement Agenda**

Finally, let me discuss our efforts to improve our criminal justice system. On the federal level, the enactment of the First Step Act marks an important statement about our nation’s goals for our criminal justice system.<sup>10</sup> For too many years, the animating purpose of criminal justice policy was to be “tough on crime.” In Colorado, we recognize the importance of being tough where necessary, but of also being smart on crime and giving ex-offenders second chances when appropriate.

First off, we are working this legislative session to reform our system of cash bail. As U.S. Attorney General Robert F. Kennedy told Congress fifty years ago “bail has only one purpose . . . to insure that the person who is accused of a crime will appear in court for his trial.”<sup>11</sup> This point bears emphasis—the purpose of bail is to ensure that defendants appear in court, protecting the public safety while

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<https://www.westword.com/news/part-of-caring-4-denver-money-would-go-to-co-responder-unit-10935094>.

<sup>9</sup> See Aaron Kivisto and Peter Lee Phalen, National Psychiatric Services, 2018 Aug 1;69(8):855-862

, available at <https://www.ncbi.nlm.nih.gov/pubmed/29852823>.

<sup>10</sup> FIRST STEP Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

<sup>11</sup> Testimony by Attorney General Robert F. Kennedy on Bail Legislation Before the Subcommittees on Constitutional Rights and Improvements in Judicial Machinery of the S. Judiciary Comm.: Hearing on S. 2838, S. 2839, and S. 2840, 88th Cong. 1 (1964), *available at*

<https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf>.

defendants await trial.<sup>12</sup> At the core of this issue is the bedrock point that when we talk about bail, or other pre-trial services, we are referring to citizens who are not guilty (yet) of any crime – and who hold the presumption of innocent until proven guilty.<sup>13</sup> Unfortunately, cash bail has sometimes acted as a revenue-generating device, an ineffective alternative for individualized judgments about whether an individual is a risk (to society or to flee), and an instrument of criminalizing poverty.

Under our current system of bail, defendants are generally not evaluated for any risk of harm (or flight), but instead are detained solely due to their lack of financial resources.<sup>14</sup> This state of affairs is unacceptable. Consider, for example, that roughly 80% of Americans are living paycheck-to-paycheck<sup>15</sup> and half of all Americans have reported they would be unable to raise \$400 to address an emergency.<sup>16</sup> For the majority of Americans, in other words, cash bail means a *de facto* pre-trial sentence in jail. Moreover, in an insult on top of injury, individuals sitting in jail generally receive worse outcomes than those who are not detained pre-trial.<sup>17</sup> And, on top of this all, our current system, which leaves more people sitting

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<sup>12</sup> See, e.g., Shima Baradaran, *Restoring the Presumption of Innocence*, 72 Ohio St. L.J. 723, 754 (2011) (noting that the “original purpose of bail” was “to assure that a defendant appears at trial”); William F. Duker, *The Right to Bail: A Historical Inquiry*, 42 Alb. L. Rev. 33, 68-69 (1977) (“The function of bail is ... limited to insuring the presence of a defendant before the court.”); David J. McCarthy, Jr. & Jeanne J. Wahl, *The District of Columbia Bail Project: An Illustration of Experimentation and a Brief for Change*, 53 Geo. L.J. 675, 715 (1965) (“[T]he purpose of bail is to ensure that the accused will appear in court ... not to prevent the commission of crime.”).

<sup>13</sup> See Krista Ward & Todd R. Wright, *Pretrial Detention Based Solely on Community Danger: A Practical Dilemma*, 1999 Fed. Cts. L. Rev. 2, I.1 (“Because a defendant is presumed innocent until proven guilty, a judge may order pretrial detention only under limited circumstances.”).

<sup>14</sup> Cherise Fanno Burdeen, “The Dangerous Domino Effect of Not Making Bail,” *The Atlantic*, <https://www.theatlantic.com/politics/archive/2016/04/the-dangerous-domino-effect-of-not-making-bail/477906/>

<sup>15</sup> Zach Friedman, “78% Of Workers Live Paycheck To Paycheck,” *Forbes* (Jan. 11, 2019), available at <https://www.forbes.com/sites/zackfriedman/2019/01/11/live-paycheck-to-paycheck-government-shutdown/#236efcd54f10>.

<sup>16</sup> Board of Governors of the Federal Reserve System, *Report of the Economic Well Being of U.S. Households in 2015* (2015), available at <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.

<sup>17</sup> *Id.*; see also Juleyka Lantigua-Williams, “Why Poor, Low-Level Offenders Often Plead to Worse Crimes,” *The Atlantic* (July 24, 2016), available at

in jail, is costly to local governments; consider that, between 2010 and 2014, some 95% of the growth in our jail population stemmed from individuals who have not yet been found guilty of the charges against them.<sup>18</sup>

In Colorado, we are now reforming cash bail, following on the work of other states, such as California, New Jersey, and Washington, which have moved towards a risk assessment approach. And, closer to home, we are following the pioneering work of Mesa County, which has dramatically reformed its pre-trial services program. The early results from such experiences are very impressive: in New Jersey, for example, pre-trial reforms cut the jail population by 20% without creating any measurable rise in crime rates.<sup>19</sup>

Here in Colorado, we are in the process of enacting two bills, House Bill 19-1225<sup>20</sup> and House Bill 19-1226,<sup>21</sup> both of which passed on a bipartisan basis and which build on the work of our Commission on Criminal and Juvenile Justice (CCJJ). The first bill ends the use of monetary requirements for release for defendants charged with lower-level traffic, petty, or municipal offense – with exceptions for traffic offenses involving death or injury, eluding a law enforcement officer, tampering with an ignition interlock device, or similar municipal offenses. The second bill requires a move towards a risk assessment approach when determining a defendant’s bond and release conditions. Our office has supported both such efforts and looks forward to supporting the effective implementation of such bills.

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<https://www.theatlantic.com/politics/archive/2016/07/why-pretrial-jail-can-mean-pleading-to-worse-crimes/491975/>. For an especially heartbreaking example, see Josh Shaffer, “Without bail money, she pleaded guilty so she wouldn’t give birth in jail,” *Raleigh News & Observer* (Feb. 21, 2019), available at <https://www.newsobserver.com/news/state/north-carolina/article225516005.html>.

<sup>18</sup>Zhen Zeng, “Jail Inmates in 2016 (NCJ 251210),” Bureau of Justice Statistics (February 2018), *available at* <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

<sup>19</sup>Hon. Stuart Rabner, N.J. Sup. Court, “Criminal Justice Reform is About Fairness,” *Judges Journal* 13, 13-14 (Summer 2018), *available at* <https://www.njcourts.gov/courts/assets/criminal/cjrfairness.pdf?c=kZb>.

<sup>20</sup>Colorado Legislature, HB19-1225 (“No Monetary Bail For Certain Low-Level Offense), *available at* <https://leg.colorado.gov/bills/hb19-1225>.

<sup>21</sup>Colorado Legislature, HB19-1226 (“Bond Reform”), *available at* <https://leg.colorado.gov/bills/hb19-1226>.

## **Diversion and Anti-Recidivism Efforts**

Looking forward, we will continue to explore opportunities to improve our criminal justice system. One compelling opportunity is to develop appropriate diversion programs that are driven by data. After all, if managed appropriately, diversion programs can be more effective at addressing an underlying condition—say, drug addiction—and preventing future criminal activity.

There is a lot of important activity on this front, but let me begin with an issue I touched on briefly earlier: the impact of the opioid epidemic. Consider, for example, the case of Alamosa County, where Sheriff Robert Jackson reports that his jail is constantly full and that as many as 90% of those incarcerated are people addicted to opioids.<sup>22</sup> Sheriff Jackson recognizes that incarceration is not necessarily the best approach for many individuals in his jail, but the San Luis Valley simply lacks sufficient drug treatment options to provide treatment as an alternative to incarceration. To address that failing, Sheriff Jackson is working with the local District Attorney Krista Newmyer Olsen to implement a Law Enforcement Assisted Diversion program, seeking to provide alternatives to incarceration where appropriate.

One of my top priorities is to address the opioid epidemic. To do so, I want to encourage approaches like those in Canon City, where they are working to build drug treatment capacity as an alternative to incarceration. Also, our lawsuit against Purdue Pharma, the manufacturer of Oxycodone and OxyContin,<sup>23</sup> which focuses on their deceptive conduct that contributed to and profited from the crisis, is very likely to yield a settlement or litigated judgment. With the funds from this action, we will support the development of drug treatment centers across our state in areas hard-hit by the crisis.

I recognize that there are a number of successful diversion programs developing in other parts of our state. Consider, for example, the Teen Court initiative in Colorado Springs. The youth offenders who do not take part in this

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<sup>22</sup> See also Allison Sherry, “Colorado’s Opioid Crisis Fuels Alamosa’s Jail Overcrowding,” Colorado Public Radio (Mar. 29, 2018), *available at* <https://www.cpr.org/news/story/colorados-opioid-crisis-fuels-alamosas-jail-overcrowding>

<sup>23</sup> Kirk Mitchell, “Denver, 16 other Colorado communities sue Purdue Pharma and other opioid pill makers,” Denver Post (Jan. 14, 2019), *available at* <https://www.denverpost.com/2019/01/14/thornton-purdue-pharma-opioid-oxycontin-colorado-lawsuit/>.



initiative have a 50% recidivism rate. For those participating, they have a 7% recidivism rate, often reporting that they are better off for their involvement in this impactful program.<sup>24</sup> Similarly, there are efforts that lower recidivism through effective re-entry programs, such as the Second Chance Center in Aurora, which reports a dramatic lowering of recidivism rates.<sup>25</sup> In the years ahead, the AG's office will do our best to support and encourage the use of such models.

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In Colorado, we are collaborative problem solvers and pioneers. My goal is for Colorado to be a national model of effective law enforcement, promoting school safety, addressing the intersection of mental illness and law enforcement, protecting the public and victims through effective law enforcement and drug interdiction, and improving our criminal justice system. This goal will require cooperation and collaboration from a range of agencies and leaders. I look forward to working tirelessly to achieve this goal and build trust in our law enforcement system.

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<sup>24</sup> Josh White, "Luncheon celebrates success of 'Teen Court' Program," KOAA News5 (April 11, 2019), *available at* <https://koaa.com/news/covering-colorado/2019/04/11/luncheon-celebrates-success-of-teen-court-program/>.

<sup>25</sup> Jeff Todd, "Recovering Addict Says Felony Drug Charge Bill Would Help, Not Hurt," CBS4 Denver, (April 2, 2019), *available at* <https://denver.cbslocal.com/2019/04/02/recovering-addict-felony-charge-bill-help/> (noting Second Chance Center's recidivism rate of under 10%).