Mental Health/Jails Task Force
Colorado Commission on Criminal and Juvenile Justice
Minutes

March 9,2017 1:30PM-4:30PM
700 Kipling, 4th Floor Conference room

ATTENDEES:

TASK FORCE MEMBERS

Joe Pelle, Boulder County Sheriff
Jamison Brown, Colorado Jail Association
Frank Cornelia, Colorado Behavioral Healthcare Council
Patrick Fox, Officer of Behavioral Health
Evelyn Leslie, Private Mental Health Providers
Norm Mueller, Defense Bar
Lenya Robinson, Healthcare Policy and Financing
Abigail Tucker, Community Reach Centers
Doug Wilson, State Public Defender
Dave Weaver, County Commissioner
Joe Morales, Parole Board
Matthew Meyer, Mental Health Partners
Charles Smith, Substance Abuse and Mental Health Services Administration

ABSENT

Tina Gonzales, Colorado Health Partnerships
John Cooke, State Senator, District 13
Charles Garcia, CCJJ Member At-Large
Michael Vallejos, 2nd Judicial District

STAFF

Richard Stroker, CCJJ consultant
Kim English, Division of Criminal Justice
Germaine Miera, Division of Criminal Justice

GUESTS:

Moses Gur, CBHC
Gina Shimeall, Criminal Defense Attorney
Jennifer Gafford, Denver County Sheriff's Office
Terri Hurst, CCJRC
Reo Leslie, Colorado School for Family Therapy
James Pinkney, Colorado School for Family Therapy intern

Issue/Topic:	Discussion:
Welcome and Introductions	Mental Health/Jails Task Force Chair Joe Pelle welcomed the group and reviewed the agenda. He then asked Task Force members and attendees to introduce themselves. Sheriff Pelle went on to explain that Senate Bill 17-207 which is the result of the work of this Task Force is gaining broad support in the legislature. He thanked Task Force members for their work on the proposal and said he will provide updates as they are available. The meeting began at 1:34 p.m.

Issue/Topic:	Discussion:
Mental Health/Jails Task Force: Work area #2 **Action:**	Commission consultant Richard Stroker began this section of the agenda by reminding the group that they have agreed that the next work area would be focused on diversion from jail for people who have mental health issues. He explained that the goal for today's discussion would be to identify areas of interest within this topic, examine issues and determine core components to be addressed. He noted that documents and materials had been emailed to everyone in advance of the meeting and that Dr. Patrick Fox agreed to share some insights on Connecticut's Criminal Justice Diversion Program. Dr. Fox explained that he was involved in diversion in Connecticut before moving to Colorado five years ago. He noted that he had distributed two handouts to each of the Task Force members about the diversionary program and went on to explain it in further detail. *DISCUSSION* • It's important to note that geographically Connecticut is significantly smaller than Colorado but also fairly populous with 2.8 million people. • Connecticut also doesn't have rural counties like Colorado. The most rural area is similar to Highlands Ranch. • Another difference is that Connecticut has one correctional system, there's no distinction between jails and prisons. One Commissioner oversees the whole system. • Most people on pretrial are in community corrections centers rather than institutions. • If jails are under-resourced there's an ability to move populations. • There are no municipal courts - one state penal code covers everything from low level offenses to murder. • GA court deals with misdemeanors while JD court is the superior court for things that get mandated 'up'. • There is easier coordination with one penal code. • The diversion program started as a pilot after a number of people were being ordered for competency issue. • The pilot started in New Haven with the Connecticut Community Health

	Center where a mental health clinician was embedded in the court. • The way it works is that the clinician gets the arraignment list from day before, runs that list against the Connecticut Mental Health Center (CMHC) list and works with CMHC to identify a potential treatment plan. That plan is then presented to the judge, prosecutor and public defender collectively prior to the arraignment. • Additionally, one of the public defenders had a concentration in mental health issues and was more informed and familiar with those cases. • There was also a consistent relationship between the prosecutor, public defender and judge and if everyone was in agreement with the treatment plan the charges would be put on hold. The offender would then go to mental health court and the mental health provider would provide the court with updates. • Additionally, services to the client would not extinguish even when the case was completed. • Someone was assigned as an arraignment person to assist in diversion and it worked similar to Colorado's Jail Based Behavioral Health Services (JBBS) system. • The initial assessment would take place when the offender was first locked-up. The court liaison would go into lockup, perform a cursory assessment to find out how they're doing, along with symptoms and needs. The liaison would then start the conversation with the mental health center to determine capacity regarding the number of available intake slots that day. • Basically, the person can plead not guilty and go to trial, or agree to go to treatment. • If the person agrees, adheres, and completes successfully the charges are dismissed. • Each individual is allowed two chances at the program. • Doug asked if both programs require arrest and if neither program requires conviction. • Patrick answered yes and went on to say that Connecticut also does CIT, emergency room work and pre-arrest diversion as well. Connecticut also has specialty courts for those who are convicted, but the diversion program fits in between. • For people who are convicted they may get a court appointed probation officer with specialty training in mental health issues. A specialist PO can be supervising people in both the diversionary program and in adult probation. • Sheriff Pelle stated that Colorado has the PACE program for people on probation, but it would be beneficial to have a pre-arrest diversion program as well. Most people in the PACE program are there for theft and trespassing. • The sheriff pointed out that there may be some VRA issues with those arrested for assault, etc. Patrick replied that in Connecticut the program is limited by category of offenses. • A court liaison will use his or her discretion to determine if they want to make a pitch for the diversion program. Some offenses can, on the surface, be a low level charge - but a person's actions could be

concerning. The liaison can say if they think someone is appropriate or not but the judge makes the ultimate determination.

- Challenges in Colorado include not only decentralized county jails, but also the fact that a lot of offenders are arrested on municipal charges and are therefore not part of the county system. Decentralization makes pretrial efforts much more complicated.
- Connecticut is not only NOT decentralized but it also has a lot of money. 90% of the state's income tax comes from 5% of the people. It's very rich.
- The state also has affordable housing and good transportation.
- In 2003 Connecticut also amended the competency-to-stand-trial statute.
- If an offender agrees, they can be sent to the state hospital, or if someone meets civil commitment or is agreeable to treatment they can be involuntarily hospitalized. If someone complies for up to 18 months their charges are dismissed.
- If a defendant refuses to go to the state hospital they would then be admitted to one of the local regional hospitals or one of the scattered state mental health hospital beds. Then they can be stepped down to day treatment and/or community and mental health providers' end up tracking that person.
- Patrick noted that if someone is going to come to the state hospital anyway for restoration, the state doesn't want to prosecute for lower level state court cases. It would be better to send someone to Pueblo or Ft. Morgan rather than restore to competency.
- The question is do we want to spend effort and money to restore someone to competency to face charges, or do we want to manage that person clinically in the most appropriate clinical setting. This is the concept.
- Another advantage in Connecticut is that it's not hard to get psychiatrists to work there.
- In Colorado there are no pretrial or pre-arraignment programs with a mental health focus. Here we require the mentally ill to plead guilty in order to get treatment – which makes no sense.
- Abigail asked if a pretrial diversion model would be similar to what the Juvenile Assessment Centers do in Colorado. JAC's here operate as a 24/7 drop off facility for law enforcement and provide assessments.
- Boulder has a pretrial diversion program but many prosecutors are not utilizing them and turning the money back in.
- A diversion program in the prosecutor's office doesn't feel very diversionary.
- A post-arrest, pre-arraignment program is critical.
- There are 62 VRA crimes and if someone is arrested for a VRA crime and arraigned there are all kinds of steps the state must go through to notify the victims of case actions. It's difficult to expeditiously divert someone from the criminal justice system if there are VRA issues. It can but done but it's all about timing.
- The VRA notification isn't mandatory until there is a change or modification in the bail or conditions. If would work if diversion could

take place prior to bond setting, then notification is not implicated.
- However, any legislation that impacts victims will be problematic.
- Charlie explained that Denver had a pre-arraignment diversion program in the 90s. The Chief Forensic Officer ran the program and individuals were evaluated first thing in the morning, then they could be diverted immediately into the Mental Health Center of Denver and avoid charges.
- The only investment was a full time nurse and part-time psych intern (who was Charlie).
- The investment is low, but it has to be very clear who the target audience is and how to procedurally operate.
- Richard pointed out that the next study area identified by the CCJJ is on pretrial release, so it's important that this group stay focused on the intersection of criminal justice and mental health rather than pretrial release.
- It's important to find ways to move people from criminal justice to behavioral health, and to intervene early.

<u>GUIDING PRINCIPLES OF THE WORK</u>

Richard walked the group through a discussion exercise to clarify the guiding principles for the work. The goal is to get clear about the part of the system under consideration and the components the group wants to address.

DISCUSSION
Richard asked Task Force members for input on essentials to consider regarding critical principles:
- Effective assessment and screening
- Opportunity to remove the arrest or the charge and remove people getting extensive rap sheets
- The earlier the better – pre-arraignment and pre-trial are better
- Need to narrow the focus in order to accomplish anything - look at those arrested and/or prior to conviction, or even hopefully prior to arraignment.
- Matt noted that there are certain 'gates' to get to ahead of in the process and it's critical to understand these diversion points. He noted that the EDGE program has even struggled with how to divert people 'on the sidewalk.' There are times where diverting on the sidewalk isn't an option.
- On the receiving end of the proposal is engagement in the program (by customers) and an assurance that everybody is working in the same direction. Courts, law enforcement and mental health all need to be on the same page with a collaborative agreement.
- It will be hard to engage someone who is in for stealing a sandwich, who will get convicted and sentenced for time served. There's no incentive to be engaged in that scenario.
- Abigail noted that the timing of wrap-around services is critical.
- There's a need for low level engagement from criminal justice system and a high level of engagement from the mental health system.
- Engagement is *not* about holding something coercive over someone.

It's not about requiring someone to make it to a clinic for services, but instead doing whatever it takes to help the person.

- There's also a need for leadership commitment. This won't work if it's just between mental health and jails. Prosecution, defenders, jails and judges all need to be involved.
- The gatekeeper for all specialty courts is the prosecution, not the bench. Someone only gets in if they get thumbs up from the DA. Someone needs to be coordinating with the bench but the DA's are the gatekeeper.
- This model gets at people's comfort, it's not about conviction. Diversion happens every day in municipal courts.
- Interventions should be primarily clinically driven, not by jurisprudence.
- The court takes its hands off in the Connecticut model and let's clinical professionals drive the treatment course.
- The person doesn't even have to go back into court to wrap up their case after 18 months. It's a clinical landscape rather than a criminal justice landscape.
- Richard summarized that the group needs to examine different kinds of models and system elements. He added that the group could work together as a whole or break into working groups.
- Charlie shared that David Morrissette with SAMHSA in D.C. is a good resource. He added that the group could possibly pull in someone from the GAINS Center, SAMHSA's TA provider.
- In Boulder the assessment in pretrial supervision includes a mental health component.
- It's important to keep in mind that Boulder is an outlier and that there are only 12 pretrial services in the state.
- Frank said the group should probably have a closer look at the different stages specific to the criminal justice system and that it would be helpful to identify the different gates or windows of opportunity.

Summarization of Guiding Principles
➢ Remove arrest/charge ➢ Early is better – pre-arraignment/pre-trial ➢ Diverting 'river' at different points ➢ Collaborative engagement of all parties ➢ Strong leadership ➢ Timing of action/services → appropriate responses and service match ➢ Wrap-around services ➢ Clinically driven program ➢ Don't rely on coercion

The group agreed that step one in the intercept is to map the criminal justice system. Richard walked them through the mapping exercise with outcomes as follows:

After a crime the intercepts start at zero

0 – summons or not arrested (decision made by LE at the scene) 37% of people are summonsed instead of arrested. We don't have data on the outcomes and many summons are for a municipal ordinance
1 – Arrest
2 – Booking: mental health screening, jail personnel interaction
3 – Pretrial screening: focused on risk info, this is mandatory
4 – Bond interview
5 – First appearance: defendant informed of their rights and given the opportunity to ask for counsel, bond is set
6 – Filing of charges
7 - Pretrial conference: an opportunity to discuss disposition
****this is the ripest opportunity for diversion, at that point there will be a risk assessment and public defender involvement. After this point it's a different game. A pretrial counselor is involved. Opportunities for alternative dispositions are contemplated*
8 – Trial date set: opportunities for diversion are lost at this point

DISCUSSION

- It would be great to eventually tip municipal courts into the mix.
- Avoid VRA crimes; it's too big of a battle to take on right now.
- CCJJ could offer a model but can't require municipalities to do anything.
- Judges often say 'someone is so mentally ill we're not going to let them out.'
- People doing the screenings usually know who they're talking to.
- Need a stage before someone goes to court to have an evaluation.
- Only half of judicial districts have pretrial services program.
- There are counties that don't have jails and the judge holds court three days a week.
- A program won't work everywhere but a model should be developed that could be adopted.
- The volume of cases and people on pretrial day is overwhelming – it will be a challenge to have someone at every pretrial conference.
- Screening could be an issue, there's a lot of substance abuse in Denver and sometimes someone is high so it's a waiting game to talk to them.
- Smaller counties often don't have resources or even a nurse.
- In Adams County the initial screen at book in is pretty much risk based. People can be put in an infirmary and are reevaluated after 72 hours if they're having an issue.
- CPAT is used between the booking and first appearance, but places like Adams and Arapahoe Counties have tweaked the CPAT.
- Pretrial conference is the best place for a diversion program.

Issue/Topic:	Discussion:
NEXT STEPS AND ADJOURN **Action:** • Patrick to provide SAMHSA info • Kim to check with Adams and Arapahoe on numbers • Jamison will outreach to the Colorado Jail Association • Bring in an expert to talk about applications, what works well, best ways to build collaboration (Douglas Co. mental health diversion)	Richard summarized that the group has made two initial decision: 1. The population to focus on is misdemeanor and municipal court cases 2. The best time for a program is at/between booking and a trial date Next steps include: A. Gather info – How/Who B. Share info – with whom, when C. Coordinate with those outside of the criminal justice world → mental health providers, community mental health services, wrap-around and others D. Action → how does it work, what does it look like E. Data *DISCUSSION* • Abigail said it would be helpful to have volume data →are we looking at 50 times a day or 5 times a day where pretrial diversion would be an option. Kim replied that the data may be hard to come by. • 14% of people in the Denver jail are on mental health meds. • Richard asked that for next time it would be helpful for anyone to bring data if they have it. • At the next meeting the task force will tackle some of the other issues and determine the best path to move forward. • Matt said who, why, when and where make sense, but that the what and how are still fuzzy. • Richard commented that any proposals that come from this group would be presented during the 2018 legislature and not this year. • Sheriff Pelle suggested looking at existing statutes around pretrial diversion. • The work could take four or five months, then proposals will need to be developed and presented to CCJJ around September. • The last piece of work for this group will get underway sometime around October. • After that final piece of work this group could wrap-up a year from now. • Matt suggested that it would be good to think about a proof-of-concept demo. • There's time for this and Denver and Boulder might both be interested. • Kim offered to check in with Adams and Arapahoe Counties to try to get numbers. • Arapahoe County just approved a pretrial navigator for this kind of thing. The more counties we can involve now the better. • Jamison offered to reach out to the Colorado Jail Association. • Douglas County also has a mental health diversion program starting up. • It would be good to bring in an expert to talk about practical applications, look at what works well, who is screening and the best ways to build collaboration. • After that the group will come up with thoughts on an ideal model, and then come up with opportunities to possibly try a pilot.

Next Meeting

ROOM CHANGE!!

April 13, 2017 1:30pm – 4:30pm 710 Kipling, 3rd floor conference room