

**Colorado Commission on Criminal and Juvenile Justice**

**Pretrial Release Task Force**

**Minutes**

March 6, 2018 1:30PM-3:30PM  
710 Kipling, 3<sup>rd</sup> floor conference room

**ATTENDEES:**

**TASK FORCE CHAIR**

Stan Hilkey, Dept. of Public Safety

**TASK FORCE MEMBERS**

Doug Wilson, Public Defender's Office

Jennifer Bradford, Metro State University of Denver (phone)

Steve Chin, Mesa County Pretrial Services

Bo Zeerip, District Attorney 21<sup>st</sup> Judicial District

Clifford Riedel, Larimer County District Attorney

Valarie Finks, Victim Services, 18<sup>th</sup> Judicial District

Greg Mauro, Denver Community Corrections

Monica Rotner, Boulder County Community Justice Services

Mike Garcia, Division of Probation Services

Mindy Masias, State Court Administrator's Offices

Charles Garcia, CCJJ At-large representative

Maureen Cain, Criminal Defense Attorney

**STAFF**

Richard Stroker/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

**ABSENT**

Kirk Taylor, Pueblo County Sheriff

Bill Kilpatrick, Golden Police Department

Joe Salazar, Representative, House District 31

Lang Sias, Representative, House District 27

**ADDITIONAL ATTENDEES**

Kathy Livornese, 4<sup>th</sup> Judicial District

Joe Thome, Division of Criminal Justice

Judge Shawn Day, Aurora

Becky Bui, Division of Criminal Justice

Jack Reed, Division of Criminal Justice

Doug Erler, Weld County Justice Services

Judge Margie Enquist, 1<sup>st</sup> Judicial District

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b></p> <p>Task Force Chair Stan Hilkey welcomed the group and reviewed the agenda. He asked for any additions or corrections to the minutes and seeing none he asked for a motion to approve the January minutes. A motion was made and seconded and the minutes were approved.</p>
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<p><b>Issue/Topic:</b> Recap / February meeting outcomes</p>	<p><b>Discussion:</b></p> <p>Richard summarized the February meeting outcomes as follows:</p> <ul style="list-style-type: none"> <li>• The group continued to learn about developments around the country and in Colorado regarding pretrial issues. Doug talked about a recent opinion by the California Court of Appeals in the Humphrey case and Bo explained NAPSA’s Black Letter Standards. Mindy also updated the group on the work of Judicial’s Bail and Pretrial Committee.</li> <li>• The group discussed House Bill 18-1089 that calls for no monetary conditions of bond for misdemeanors. The bill has seen several amendments and is still working its way through the legislature.</li> <li>• During the February meeting the Task Force also received an update from the four working groups and those groups agreed to come back with some preliminary recommendation to present to the full Task Force today.</li> </ul>
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<p><b>Issue/Topic:</b> Report outs / Recent decisions and updates</p>	<p><b>Discussion:</b></p> <p>Stan explained that various pretrial initiatives continue to take place at the local, state and national level and that he, Doug Wilson and Bo Zeerip have updates on recent pretrial efforts and decisions.</p> <p><b>Bail Blue Ribbon</b></p> <p>Stan directed Task Force members to a news release in their packets from Judicial announcing the creation of a Bail Blue Ribbon Commission. Mindy added that a meeting was held with all 22 Chief Justices where they were briefed on the newly created Commission and its purpose to study bail and pretrial reform efforts and make recommendations back to the Supreme Court. The Chief Justice is retiring in June and created the Commission as a way to send a message to the current court about the importance of addressing bail and pretrial issues. The Commission will be involving relevant stakeholders and engaging experts to help create ideas. The Commission will be reaching out to CCJJ specifically to assist with these efforts and the intention is for the two commissions to work collaboratively and find a balance in the efforts of both groups.</p> <p>The news release lists the members of the Blue Ribbon Commission and Maureen Cain pointed out that there are no judges on the Commission from the</p>
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two jurisdictions who have engaged in the most reform in the state (Mesa and Denver). Mindy replied that even though the Chief Judges from Mesa and Denver are not official members of the Commission they will be able to provide input.

Stan added that he was surprised to see the press release and hopes the two commissions can find a way to work in concert rather than against each other. He asked to whom and where the Blue Ribbon Commission will be directing their recommendations. Mindy replied that the Commission will be making recommendations to the Supreme Court and that the Court will need to be on board with recommendations in order to move forward.

Doug expressed his displeasure with the creation of the Commission and the fact that the Commission is made up almost entirely of judges and representatives from the Judicial Branch. He countered that the Pretrial Release Task Force is representative of a blue ribbon panel with its balanced mix of district attorneys (including an elected DA), pretrial specialists, criminal defense attorneys, law enforcement, legislators, municipal court representatives and a victim's representative, among others. Doug made a motion that the Task Force write a letter to the Chief Justice objecting the formation of the Commission. Judge Margie Enquist from the 1<sup>st</sup> JD was in attendance at the meeting and replied that it would be ill-advised to write such a letter.

Bo Zeerip pointed out that it appears the Commission will include stakeholders in the discussion. Doug replied that stakeholders do not get to vote. Stan reminded the group there is a motion on the floor to write a letter as it relates to the composition of the Bail Blue Ribbon Commission. Maureen Cain seconded the motion.

Cliff Riedel said he opposes the proposal to send a letter and that it is presumptuous to tell the Supreme Court what to do in the same way they can't tell this Task Force what to do. Doug clarified that he doesn't suggest telling them what to do but that he objects to the composition of the Commission.

Charley Garcia raised a question about the timing of the formation of the Commission, especially since there will be a new Chief Justice within the next few months. He added his concerns about the role of the Pretrial Release Task Force in light of this new development and the duplication of efforts. He said it will be frustrating to spend months or years working on reform efforts in this Task Force if the Blue Ribbon Commission will be coming up with their own ideas.

Mindy replied that the Supreme Court is fully aware of the CCJJ's efforts and wants the CCJJ to continue to make statutory and constitutional recommendations if that's what's needed. She pointed out that one of the major complaints of this Task Force has been in regards to the implementation of the 2013 statute. Judicial wants to be in a position to respond to any proposed legislative changes because Chief Judges are the ones to be able to effectuate changes.

Judge Enquist added that in defense of the judges, there has been a group of

judges looking at this issue informally for a while and that she is encouraged the Supreme Court is interested in studying best practices. She added that she and Bo met with representatives from the Blue Ribbon Commission to brief them on the work of this Task Force and she did not get the impression they want to work independently. Both groups want to engage stakeholders, study best practices and work toward positive change.

Stan said that while he was surprised to learn about the Commission, if there are two groups discussing the same issues then there is a chance both groups could end up aligned in some way. He added that while he does not support the motion by Doug he shares some of the initial feelings and noted that the work can be challenging when judges are prohibited from participating or having an option on the work.

Kim asked if the Blue Ribbon Commission will have access to data or if it will be relying mostly on testimony. Mindy replied that the group has some of its own data but that information from the Task Force would be very helpful. Kim offered to pull material together for Mindy and Judicial's Commission.

Greg Mauro said he is also concerned about the lack of diversity on the Commission but that this is an opportunity for Judicial to pursue some of the issues that have been harder for other groups to tackle. Greg pointed out the two groups are out of sync as far as timing with Judicial likely several years out on any decision making and this Task Force already deep into the work on recommendations. Stan encouraged the Task Force members to continue with its work as planned and that if this group has recommendations before the Commission, alignment will be addressed at that time.

Bo noted that he is encouraged because he believes everyone is going to get educated in this process. If some of the judges on Judicial's Commission aren't currently using best practices then this is a good opportunity to educate them. The establishment of this Commission indicates that Judicial is actually getting involved.

Stan called for a vote on Doug's motion. Doug and Maureen were in favor but the rest of the group was opposed. The motion failed but Stan noted the discussion provided an opportunity to see the spirit of the group, and hopefully that will be useful to Judicial's Commission in determining stakeholder participation.

#### **NCJA pretrial justice position statement**

Stan directed the group to a handout in their packets outlining an updated position statement from NCJA on pretrial justice procedures as follows:

Pretrial Justice Pretrial justice procedures should recognize and balance an individual's constitutionally- based liberty interests and society's interests in public safety and the orderly process of its courts. These interests are not served by ~~over~~-reliance on cash bonds or bail schedules which result in the unnecessary

	<p>detention of low risk individuals and the imprudent release of high risk individuals. There should be a presumption in favor of release pending trial unless no set of conditions are adequate to ensure the individual’s appearance in court and protect public safety. In determining the appropriateness of pretrial release and the conditions of release, a validated risk assessment tool should be used to produce the best results for public safety and the individual.</p> <p>Stan noted that the removal of the word “over” is favorable and demonstrates that reliance on cash bail is not an acceptable practice.</p> <p><b>New Jersey Criminal Justice Reform Law Report</b></p> <p>Bo directed Task Force members to a handout in their packet titled “2017 Report to the Governor and the Legislature” and explained that it is a copy of the executive summary of the New Jersey Judiciary’s Annual Report.</p> <p>The report outlines that state’s new preventive detention law and Bo highlighted the following statistics:</p> <ul style="list-style-type: none"> <li>• In 2017 New Jersey detained approximately 18% of detention eligible defendants (based on <u>arrested</u> defendants) and only 5.6% of all defendants.</li> <li>• Of <u>arrested</u> defendants Prosecutors asked for detention about 44% of the time, and Judges went along with that request about 42% of the time.</li> <li>• Also their pretrial population decreased by 20% in one year, and 35 % in 3 years.</li> </ul>
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<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Working Groups - Report Out</p> <p><b>Action:</b> The Assessment Tools Working Group and the Pretrial Services Working Group will join and collaborate on recommendations</p> <p>Working groups will return with more detailed recommendations and ideas at the April meeting.</p>	<p>Members of each of the Working Groups reported out on their progress and presented a first look at preliminary recommendations.</p> <p><b>Assessment Tools/CPAT/Decision making/Bond schedules/Conditions</b> <i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• Greg Mauro explained that the working group has two preliminary recommendations (Recommendation 1A and Recommendation 1B) that go hand-in-hand.</li> <li>• The problem statement for recommendation 1A is: Current statute encourages, however falls short of requiring the use of risk assessment in all counties in Colorado.</li> <li>• Recommendation 1A reads: Pretrial Risk Assessment shall be available to Judges in all counties in Colorado for purposes of setting bond and establishing conditions of release. The Colorado Pretrial Assessment Tool (CPAT) shall be the recommended assessment tool, however if a jurisdiction wishes to utilize an optional tool, the identified risk assessment shall be empirically developed and validated for a pretrial population. All instruments utilized are subject to the approval of the</li> </ul>

	<p>Chief Judge of each Judicial District.</p> <ul style="list-style-type: none"> <li>• The recommendation goes on to identify national best practices and organizations that support the use of risk assessments.</li> <li>• The most operative word in the recommendation is that a tool SHALL be available to judges, and that the CPAT should be the default tool.</li> <li>• If the CPAT is not used the Chief Judge would have to approve an alternative tool.</li> <li>• There is an attachment on the recommendation that lists the counties currently using risk assessments and those that are not.</li> <li>• Judge Enquist from Jefferson County has agreed to start providing Gilpin County with assessments.</li> <li>• Richard noted that the use of an assessment tool is considered best practice around the country.</li> <li>• Mindy replied that part of the problem with requiring an assessment tool is that Colorado doesn't have pretrial programs in every county, which is a huge barrier to getting assessments completed.</li> <li>• She added if this recommendation goes forward the group should explore pretrial program alternatives.</li> <li>• It was suggested that Bonding Commissioners could perform risk assessments.</li> <li>• The CPAT contains 12 questions and it doesn't take much training, anyone would be able to administer it.</li> <li>• Mindy noted that the CPAT is a great tool if it is completed consistently but that the recommendation should outline who is responsible for the administration and that it be administered by a credible source.</li> <li>• Greg said that the working group believes the administration should fall to a neutral party but that consistency and training are key.</li> <li>• Steve Chin explained that in Mesa County, from the sheriff at the booking desk all the way through the system, everyone is aware of the CPAT and knows how to administer it.</li> <li>• The recommendation should contain both a 'should' statement and also a 'how' statement.</li> <li>• Greg explained that the group feels it is important to have the infrastructure to mitigate risk and they want to be careful of unintended consequences from all sides.</li> <li>• The group thought it would be best to establish Probation as the agency to perform risk assessments in jurisdictions that don't have established pretrial.</li> <li>• However, the group is concerned about creating a disincentive for counties to invest their own dollars, so there needs to be a balanced approach to create incentives.</li> <li>• Bo asked if the group is talking about statewide pretrial services. Steve Chin replied that his group is working on that issue.</li> <li>• An idea was raised that perhaps a grant program could be established in counties that don't have pretrial.</li> <li>• Greg explained that Probation seems like a natural fit because it exists in all jurisdictions. There is concern, however, about mandatory assessments resulting in over-conditioning and restrictions on release.</li> <li>• Stan pointed out that Probation is as good as anyone at doing risk</li> </ul>
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assessments and recognizing low risk offenders.

- Monica clarified that Probation would be more of a stopgap than an end result.
- Greg went on to explain that Recommendation 1B calls for all counties to be required to develop a system, but that they have the option of using Probation in the short term.

**Pretrial Services/Supervision/Violations/Resources/Behavioral Health**  
*DISCUSSION*

- Steve Chin outlined the recommendation coming forth from this working group and explained that it calls for the establishment of pretrial services in every county. He noted that functionally this recommendation goes hand in hand with the assessment recommendation.
- One of the problems with establishing one statewide system is that jurisdictions that already have a functioning system will likely not want to give their system up.
- There may be a possibility for a blended model which would bring funding to those jurisdictions that don't have it.
- The group wants to avoid undermining jurisdictions already doing the work.
- Cliff offered that perhaps there could be an option for smaller counties to contract for pretrial services rather than develop their own.
- Steve noted that pretrial services would have to meet minimum standards and provide basic elements.
- There should also be minimum reporting requirements in order to track outcomes consistently.
- Oversight and ongoing training would be a 'must'.
- Stan asked if there is something to be learned from the way rural counties are working with telemedicine now. Perhaps tele-assessment is an option in the future.
- Currently, Pitkin County contracts with Garfield County to perform their assessment and it's an effective model.
- There is a tele-justice bill in the legislature this session and there is some money around these types of initiatives.
- Assessments can be done without an interview but the hard part is unpacking a very complicated criminal history, sometimes across multiple states.
- Richard summarized that the working group is considering six main issues:
  1. A pretrial services system of some sort should be in place - county system vs. state system, or some combo or a blend
  2. incorporate minimum standards or best practices to fulfill the pretrial system requirement (identify what that means)
  3. Funding should be in place somehow. Do jurisdictions need help funding this because they're creating something new or does judicial need additional resources?
  4. Probation will have a role but that role may be temporary until jurisdictions/counties are able to meet the standards.
  5. What is the implementation date

	<p>6. How much flexibility should there be to create different methods such as tele-justice, etc.</p> <ul style="list-style-type: none"> <li>• Richard asked for the will of the group as to whether the recommendation should focus on state or local pretrial services.</li> <li>• Charley offered that an individual system with statewide oversight, sort of like community corrections, might work.</li> <li>• Monica brought up two additional pieces → the concept of incentivizing county jails because cost/benefit occurs when a pretrial population is managed effectively, and the possibility of jurisdictions with established pretrial programs to become training hubs to provide services to those who don't have them developed yet.</li> <li>• Ricard summarized that there seems to be consensus for a hybrid system where a state entity may be responsible for ensuring certain standards are met or to assist with training and other activities, but individual jurisdictions have the flexibility to create their approach as long as it is consistent with individual standards.</li> </ul> <p><b>Pretrial Release Detention</b></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> <li>• Bo Zeerip presented a PowerPoint outlining the direction of this working group.</li> <li>• The group has met five times, established its purpose and goals, reviewed efforts nationally and has begun initial work on proposed statutory language.</li> <li>• During this process the group has looked at NAPSA's Black Letter Standards and ABA recommendations.</li> <li>• The group's purpose and goals include proposing statutory language for Colorado that reforms the pretrial decision making process including:             <ul style="list-style-type: none"> <li>-Judicial officers determine the pretrial status of a defendant and not money or a bail bondsmen</li> <li>-Pretrial decisions made based on evidence and a defendant's individual pretrial risk</li> <li>-Resulting in 80-90+% of all defendants being release without money conditions</li> <li>-Allows judges to detain defendants charged with serious, dangerous, violent offenses when evidence shows substantial risk to public safety of court appearance.</li> </ul> </li> <li>• Reform is necessary for the following reasons:             <ul style="list-style-type: none"> <li>-A majority of people being held in jail are pretrial defendants, costing the state significant resources</li> <li>-Thousands of defendants are either low risk, charged with low stake crimes, or both</li> <li>-Current detention practices are unjust, inequitable, ineffective and constitutionally suspect</li> </ul> </li> <li>• This work is in-line with similar reforms taking place around the country including the Harris and Humphreys cases.</li> <li>• Components of the recommendation for a release/detention system may include but are not limited to:             <ul style="list-style-type: none"> <li>-Presumption of release without money for a large majority of</li> </ul> </li> </ul>
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- defendants
- Pretrial services and risk assessments
  - Short-term deadlines for hearings
  - A charge based detention eligibility net
  - Well defined due process detention hearing
- Bo reiterated the information he presented earlier from New Jersey’s 2017 report on criminal justice reform.
  - Bo also outlined procedures and outcomes from Washington, D.C. which operates a similar release/detention system.
  - Bo then detailed the operations and outcomes of yet another similar process in New Mexico.
  - Bo explained that the group started by studying these other states and jurisdictions because they served as the template for the work, and the group wanted to be aware of other initiatives taking place around the country.
  - Bo then outlined what a Colorado proposal could look like including details on a charge-based net, time deadlines for hearings, presumptions, detention findings, and the prohibition of the use of money to detain. He added that the working group has not agreed upon a proposal yet and is still in discussions.
  - Maureen pointed out that other states that are doing this work are still in flux and that in New Mexico there is a bill pending asking the Supreme Court to rescind the bail rules. There’s a lot of political activity around new preventive detention schemes.
  - She added that the Harris and Humphreys cases say money can’t be used to detain and can only be used to release.
  - In DC they just have a statute and not a constitutional amendment. They also have a very liberal bench there.
  - Bo added that he has compiled 14 pages of proposed statutory language already and has started a spread sheet comparing jurisdictions.
  - Judge Margie Enquist explained that she’s on the working group but due to her position she does not have the ability to vote or comment on the merits of the proposed legislation.
  - Greg asked if the group has discussed detention eligible crimes and low risk offenders. Bo replied that currently the risk issue isn’t addressed until the hearing and if someone has committed a detention eligible crime they can be detained until hearing.
  - Maureen asked if a prosecutor could consider not only the crime but also risk assessment when making detention decisions. Bo replied that some low risk people will be held because of a high risk crime and some high risk people will be released because of a low stakes crime.
  - Bo wrapped up by noting that Lucy, Collette and Bill have all worked extremely hard on this working group.

**Implementation of 2013 Statute**

*DISCUSSION*

- Maureen is the lead for this working group and requested that their presentation be pushed forward to the next meeting.

	<p>Richard thanked all the working groups for their presentations and asked Steve and Greg if they thought their two groups should combine efforts to come up with more finalized recommendations since their study areas are touching on similar topics. Greg and Steve agreed and offered to work together to address some of the issues raised here today at the next meeting in April.</p>
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<p><b>Issue/Topic:</b></p> <p>Next Steps and Adjourn</p> <p><b>Action:</b></p>	<p><b>Discussion:</b></p> <p>Richard wrapped up the meeting by noting that the Working Groups would return to the April meeting with more detailed recommendations for further discussion by the Task Force.</p>
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**Next Meeting**

April 10, 2018 1:30pm – 4:00pm      710 Kipling, 3<sup>rd</sup> floor conference room