

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

April 10th, 2018 1:30PM-3:30PM
710 Kipling, 3rd floor conference room

ATTENDEES:

TASK FORCE CHAIR

TASK FORCE MEMBERS

Doug Wilson, Public Defender's Office
Jennifer Bradford, Metro State University of Denver
Steve Chin, Mesa County Pretrial Services
Bo Zeerip, District Attorney 21st Judicial District
Clifford Riedel, Larimer County District Attorney
Valarie Finks, Victim Services, 18th Judicial District
Greg Mauro, Denver Community Corrections
Mindy Masias, State Court Administrator's Offices
Maureen Cain, Criminal Defense Attorney
Bill Kilpatrick, Golden Police Department

STAFF

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

ABSENT

Mike Garcia, Division of Probation Services
Charles Garcia, CCJJ At-large representative
Monica Rotner, Boulder County Community Justice Services
Stan Hilkey, Dept. of Public Safety
Kirk Taylor, Pueblo County Sheriff
Joe Salazar, Representative, House District 31
Lang Sias, Representative, House District 27

ADDITIONAL ATTENDEES

Peg Flick, Division of Criminal Justice
Joe Thome, Division of Criminal Justice

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Commission consultant Richard Stroker welcomed the group and explained that he would be filling in for Task Force Chair Stan Hilkey who is unavailable to attend. Richard reviewed the agenda and asked for any additions or corrections to the minutes. Seeing none he asked for a motion to approve the March minutes. A motion was made and seconded and the minutes were approved.</p>
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<p>Issue/Topic: Recap / March meeting outcomes</p>	<p>Discussion:</p> <p>Richard summarized the March meeting outcomes as follows:</p> <ul style="list-style-type: none"> • The Task Force discussed the announcement from Judicial about the formation of a Bail Blue Ribbon Commission. • The Task Force heard an update from the working groups and decided that the Assessment Working Group and Supervision Working Group were coming to similar conclusions about the necessity for an overarching state vision regarding assessments and supervision. It was determined the two groups should join forces and work together on recommendations. • The other two Working Groups (Pretrial Release Detention and Implementation of the 2013 Statute) are on a different timeline and will report out today on their progress to date.
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<p>Issue/Topic: Report outs / Recent decisions and updates</p>	<p>Discussion:</p> <p>Richard explained that various pretrial initiatives continue to take place at the local, state and national level and that he, Mindy Masias and Bo Zeerip have updates on recent pretrial efforts and decisions.</p> <p>Bail Blue Ribbon</p> <p>Mindy said she hopes to have an ongoing spot on the agenda moving forward to provide updates on the progress of the Bail Blue Ribbon Commission. Also, after the March meeting Kim provided data to the Commission which was helpful to the group as it begins its work. Since the March meeting Judicial also requested a meeting with herself, Doug Wilson, Judge Boatright, Judge Samour, Maureen Cain and Tom Raynes to talk in-depth about the intent of the Commission and the intention to work collaboratively with all stakeholders.</p> <p>Preliminary feedback from judges shows that many of them are nervous about not having pretrial services in all 64 counties. With that in mind the Blue Ribbon Commission hopes to create a small subcommittee to assess how pretrial services look currently and how to possibly expand pretrial services if it were to become more of a statewide system. That would include exploring grant programs to establish programs without pretrial and how that would work in terms of staffing and policies. The Commission also hopes to work collaboratively with CCJJ so neither Commission is surprised by recommendations, particularly when it comes to the financial impact of recommendations. The Bail Blue Ribbon Commission will meet at least monthly.</p>
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Maureen asked if the Commission's meetings would be open to the public. Mindy replied that at least a portion of the meetings will be open to the public. Kim asked if Judicial is subject to the Sunshine Law and Mindy replied that Judicial will go into closed executive session to maintain confidentiality when things may need to be discussed internally.

Richard noted that there will be a recurring spot on the agenda for Mindy to provide updates on the Blue Ribbon Commission.

CPAT Survey

Richard reminded that group that in December they heard from researchers at the University of Northern Colorado about their work on a validation study of the CPAT. As part of that study the researchers created a survey that has since been distributed to multiple agencies.

The researchers asked that the survey be mentioned during this Task Force meeting to remind people that it is out there and circulating, and to find out if anyone has received the survey or had a chance to take it.

Cliff Riedel, Greg Mauro and Bo Zeerip all replied that they have seen the survey. Jen Bradford also mentioned that she has connected with the UNC researchers. From what she understands the researchers aren't getting the number of responses and information they had hoped for and have met some resistance.

Doug explained there was a problem with the initial distribution to the public defender offices because the survey went directly to those offices without an introduction or explanation from the state office – so the individual offices may not have responded since they didn't have more context around the survey. He added that one of his public defenders, Lucy Ohanian, redistributed it to 500 lawyers and encouraged them to respond to the survey to the best of their ability.

Greg replied that it was distributed in Denver and Mesa, and that he will get with Kyle from UNC to check on the response rate by judicial district. He reminded the group that the intent of the survey is to look for information to help direct focus groups.

Jen expressed that she's concerned the jurisdictions that are opting out are the same ones that usually opt out (Jefferson County, Adams, etc.) Greg replied that some may be opting out because they don't have the data to provide. The survey is more of a hands-off process but there is more structure in the validation piece of the project. Greg offered to check in with the researchers at UNC to see if they can offer an update at the May Task Force meeting.

New Jersey Pretrial Reform Panel Discussion

Bo reminded that group that New Jersey has been actively working on bail reforms and that the key stakeholders in their process participated in a videotaped panel discussion recently. Bo played portions of the video for Task Force members. The full panel discussion can be found at:

https://m.facebook.com/story.php?story_fbid=10155185438811080&id=38723076079

	<p><i>DISCUSSION</i></p> <p>Maureen pointed out that in New Jersey they were not allowed to consider public safety prior to their recent reforms - which is different than here in Colorado where our statute provides for Judges to consider public safety. Currently Colorado Judges just use money as a "placeholder" if a person is dangerous because we don't have preventative detention like New Jersey. Richard pointed out that since public safety was specifically added in 2013 as a pretrial consideration in Colorado we do not need to address that issue.</p> <p>Bo noted it's important <u>not</u> to make policy decisions based on one case but that good, broad data must always be considered. The video included advice from peers in other states to start small and look at bail. For example, for the population of low risk individuals with minimum bail, changes can be made in the system today.</p>
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Issue/Topic:	Discussion:
<p>Working Groups - Report Out</p> <p>Action:</p> <p>Greg Mauro's group to revise recommendations with input from the meeting and present revisions at the next meeting</p> <p>Task Force members to review the handout provided by Maureen and offer feedback</p>	<p>Members of each Working Group reported on their progress and the status of preliminary recommendations.</p> <p><u>Assessment Tools/CPAT/Decision making/Bond schedules/Conditions *AND* Pretrial Services/Supervision/Violations/Resources/Behavioral Health</u></p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Greg Mauro reviewed the recommendations that were distributed last month with the inclusion of edits that were made this morning. • The first set of recommendations are packaged as 1A and 1AA. • The revised recommendation 1A now reads "Pretrial Risk Assessments shall be available and UTILIZED (rather than considered) by Judicial Officers in all counties in Colorado for purposes of setting bond and establishing conditions of release. • The verbiage in the recommendation captures the conversation from last month about a possible statewide pretrial system and how that could include a local model of service delivery (possibly modeled after Colorado's community corrections system). • Language in the second paragraph directs the Division of Criminal Justice to be the coordinator of a statewide supported system and calls for DCJ to distribute state funding to local pretrial services programs, produce a report to the legislature annually on pretrial measures, and provide ongoing training and fidelity measures to the risk assessment. • The next paragraph calls for the CPAT to be the recommended assessment tool with a caveat for jurisdictions to utilize an optional tool if it is empirically developed and validated for a pretrial population. • The revised Recommendation 1AA captures the conversation last month about who should perform risk assessment and specifies that there should be training and fidelity measures in place.

- To maintain neutrality around the administration of the tool the recommendation includes a sentence that reads “To avoid the appearance of impropriety and to maintain objectivity, offices of defense council and the prosecutor’s office shall not be used to administer the risk assessment”.
- Bo asked if law enforcement should be included on that list for purposes of an appearance of neutrality. Cliff replied that this issue was discussed but in some smaller jurisdictions the sheriff’s office might be the only option for administration of the tool.
- Maureen noted that ideally evaluators would be available 24/7. One goal is not to book people just so they can get an assessment.
- Steve replied that in Mesa officers on the street use the 3 question proxy tool and that evaluations like that can be done very well.
- Maureen added that there are statutes in many states clarifying that statements given for risk assessments are not admissible in court.
- In Colorado the general rule is that they are not admissible unless for impeachment. In other states the information can only be used for purposes of bail setting.
- Joe Thome noted that juvenile justice faces the same dilemma. In the juvenile realm there is a memorandum of understanding with 24-hour agencies to perform telescreens which seems to work well.
- There are other ways of addressing this to ensure neutrality in a very cost effective way.
- Greg reviewed recommendation 1B which reads that Pretrial Services shall exist in all Colorado counties. It calls for incentivizing local jurisdictions through some type of state funding, either General Fund or cash fund appropriation.
- There was a discussion about establishing something similar to the Underfunded Courthouse Facility fund.
- There was also a discussion about how to address the transition period for establishing programs and what that would look like.
- The last paragraph of the recommendation addresses minimum requirements and calls for all jurisdictions to use an empirically developed and validated pretrial risk assessment which aligns with the legal and evidence informed practices found in the Colorado Association of Pretrial Services Agencies professional standards.
- Richard asked about recommendation 1A which calls for DCJ to have the authority to administer/distribute any state funding to local pretrial services programs. He asked Greg if he also anticipates an authority to be able to review the activities of local pretrial agencies and review whether they’re in compliance. Greg and Cliff replied that there was discussion and some concern about the state coming in and taking over and adding another layer of bureaucracy.
- Greg replied that it’s challenging to try to thread a needle of consistency and conformity.
- Mindy expressed concern about reporting moving from Judicial to DCJ. Cliff replied that at some point the reporting requirements would need to be revisited.
- Maureen added that the original reporting requirements were written by the bail bond industry and they were written to make pretrial look bad. There was an effort in 2013 to look at data points and correlate them to valid data points

	<p>from PJI.</p> <ul style="list-style-type: none"> • Greg explained that it would be a benefit to statewide pretrial to establish more robust data recording. Maybe this group could tackle the issue of creating some parameters for a data report. • Mindy added that she currently takes all the reports from pretrial programs and provides it to the General Assembly. • Greg added that the oversight authority would need to be determined first, followed by who authorizes pretrial risk assessments. He reiterated that the Working Group felt strongly that prosecutors, defense attorneys and staff should not perform risk assessment. • There are also concerns about Probation conducting assessments in the interim before pretrial can be established statewide. • Mindy noted that some judges are not in favor of pretrial assessment. • Maureen said that if a court wanted to do something about this they have the statutory authority to designate a bonding commissioner. If the court designates that person to do the assessment the bonding commissioner has authority to issue a release decision. This is how Denver does it. Mesa doesn't do it this way and Larimer and Boulder have limited release ability. • Mindy replied that she doesn't see why the court would have no say in this, because the credibility will get diminished in that process. Judges will need to feel comfortable with what we come up with. • Greg clarified that the Working Group is throwing out ideas only. • Mindy added that if Judicial were to take on pretrial functions they would want to create a separate entity that would be different than probation. It would need to be a bifurcated system. • Cliff noted that Recommendation 1A includes the directive that "all instruments utilized are subject to the approval of the Chief Judge of each Judicial District." Maureen said she thought everyone operated under the directive of the Chief Judge. Bo replied that it isn't really the case in Mesa. • Doug agreed that this should fall under Judicial but should be in a separate and distinct agency from Probation. • Cliff asked if the inclusion of DCJ as the administer of state funds would bring in a little more oversight for the judges that don't utilize it. • Doug added that Judicial doesn't have a top down organization and there has to be some authority. Perhaps this could be included in the judicial performance process since this is procedural due process. • Judicial decision making should always be independent, but it's important for judges to get on board and follow the law. If there was an agency that said "follow this process" it would work better. • Mindy asked how to track whether a judge used this process. Greg replied he hopes it would be a report out on data collection which could be accomplished by looking at congruence rates between where the person falls in the matrix and what % of time the judge followed that. Denver has a strong congruence rate. • Greg reminded the group that this comes back to local decision making. If tools are developed locally there is more buy-in because they are home grown. <p>Richard offered a recap of the recommendations and asked for any edits on verbiage. The group discussed the word 'considered' in the first paragraph and agreed that it is</p>
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too soft and should be replaced with 'followed' or 'utilized'. A suggestion was also made to move the third paragraph up under the first paragraph and that it should include verbiage about developing a team to if a jurisdiction want to create an alternate tool.

Richard pointed out that the recommendation includes a mandate for the Division of Criminal Justice to administer state funds and asked Joe his thoughts about that piece of the recommendation. Joe noted DCJ would pursue something like this less as a regulatory matter and more from an advisory perspective. He believes the approach would be to provide things like training and technical assistance. Perhaps a state-level advisory group including Judicial, a DA and DCJ representatives that could review the report and makes recommendations. Mindy added that a model that has worked effectively is the under-funded facilities commission which is made up of different stakeholders that helps distribute the Underfunded Courthouse Facility Commission. If the group were to move in that direction a Commission could include DCJ, public defenders, district attorneys and judicial.

Joe agreed than an advisory group makes good sense and that currently reports produced by DCJ (e.g. the Officer-Involved Shootings report) generate a lot of attention from media and localities and that support from an advisory group can be very beneficial. One entity will own and be responsible for pretrial services but an interdepartmental agency would be created for advisory purposes.

Cliff noted that since every judicial district has a chief judge that would help build and support new programs through local control. Mindy added a multi-agency commission would also be helpful with grant funding. Joe explained that DCJ is well versed in managing grants and sub-grantees and would be a great asset.

Greg asked about the creation of a pretrial unit outside of Probation and the details of Probation's involvement. Mindy explained that the State Court Administrators Office could assist in implementation and fidelity to program models but that Pretrial would need to be a separate philosophical unit since it's Pretrial.

Mindy explained that as for offender services one branch could be probation and one branch could be pretrial with staff trained in both models. Greg replied that would take away from local decision making and that jail-reduction practices are less important to Judicial than to local agencies. Pretrial as a state function would be a disservice. The state should help those who don't have pretrial but not takeover local pretrial.

Richard asked Greg to take this feedback and come back with a revision for the group at the next meeting.

Pretrial Release Detention

DISCUSSION

- Bo Zeerip explained that the group is still discussing many issues including expanding the use of summonses in lieu of arrest.
- The group has a lot of work yet to accomplish but is making good progress. The plan is to rewrite the bail laws and the group has 22 pages of proposed statutory language with approximately 80% agreement among group

members.

- Yesterday the group tackled the charge-based net discussion and it wasn't as controversial as originally thought. It would capture less than 15% of the defendant population.
- The group has also started discussing constitutional language and will have a good solid preliminary recommendation at the June Task Force meeting.
- Cliff asked if the group should have a representative from the Supreme Court Rules committee. Bo replied that if the Task Force approves of proposed statutory changes there will be time to conform to Supreme Court rules.

Implementation of 2013 Statute

DISCUSSION

- Maureen Cain is the lead for this Working Group and she explained that the group has essentially dissolved with the retirement of Mike Garcia, the resignation of Charles Garcia and the unavailability of Sheriff Spurlock due to his workload in Douglas County. Currently the membership is just Maureen and Ryan Brackley.
- With that in mind Maureen distributed and reviewed a handout with some ideas that have been brain-stormed and recommendations for each judicial district and recommendations for legislative changes.
- One big push is to get people reviewed in a timely fashion when monetary bond is set.
- There has also been a significant amount of discussion about mandatory training.
- Maureen explained that Mindy may join the group which would help a great deal.
- She asked the Task Force members to review her initial document and offer feedback to the Working Group.

Richard explained that if the Task Force can finalize the discussion out of Greg's group and review preliminary recommendations at the next meeting – it will help inform the work of Maureen's group. After that, Maureen's group should be able to come back in a couple months with recommendation(s). Maureen agreed but said there likely won't be much consensus and they may only be able to agree on a training recommendation.

Maureen added that she appreciated the video Bo presented at the last meeting which re-emphasized the whole money issue and people languishing in jail.

Bill Kilpatrick asked if there has been any discussion about bondsmen and the role of money. Bo explained the best practice is to get rid of money altogether but the problem is political. He explained that Illinois has a fairly robust bond-to-the-court system where people get all their money back, which offers a real incentive for people to show up.

Issue/Topic:	Discussion:
<p>Next Steps and Adjourn</p> <p>Action:</p>	<p>Richard wrapped up the meeting saying that at the next meeting the Task Force will review the preliminary recommendations from Greg Mauro’s Working Group. The Task Force will then turn its attention to Maureen’s Working group and any recommendations they may have to share. After that, the Task Force will look to Bo’s Working Group for some specific recommendations.</p> <p>Also at the next meeting there will be an update from the UNC researchers about their progress on the CPAT study.</p>

Next Meeting

May 8, 2018 1:30pm – 4:00pm 710 Kipling, 3rd floor conference room