

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

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

ATTENDEES:

TASK FORCE CHAIR

TASK FORCE MEMBERS

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
Bill Kilpatrick, Golden Police Department
Monica Rotner, Boulder County Community Justice Services
Greg Mauro, Denver Community Corrections
Glenn Tapia, Judicial, Probation Services

STAFF

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

ABSENT

Mindy Masias, State Court Administrator's Offices
Maureen Cain, Criminal Defense Attorney
Jennifer Bradford, Metro State University of Denver
Stan Hilkey, Dept. of Public Safety
Doug Wilson, Public Defender's Office
Kirk Taylor, Pueblo County Sheriff
Joe Salazar, Representative, House District 31
Lang Sias, Representative, House District 27
Judge Chris Bachmeyer, 1st Judicial District

ADDITIONAL ATTENDEES

Judge Shawn Day, Aurora Municipal Court
Peg Flick, Division of Criminal Justice
Joe Thome, Division of Criminal Justice
Steve Allen, Joint Budget Committee
Becca Curry, ACLU

<p>Issue/Topic: Welcome and Introductions</p>	<p style="text-align: center;">Discussion:</p> <p>CCJJ consultant Richard Stroker welcomed the group on behalf of Task Force Chair Stan Hilkey. Richard reviewed the agenda and explained that two of the three working groups would provide updates on their work today. Four recommendations will be presented by the Assessment Tools and Pretrial Services Working Group. Additionally, the Pretrial Release Detention Working Group will present a more in-depth review of their work. Richard noted that working group studying the implementation of the 2013 statute will present their work at the August meeting.</p> <p>Richard asked if there were any additions or deletions to the June minutes and seeing none he asked for a motion to approve the minutes. Cliff Riedel made a motion and Steve Chin seconded the motion. The minutes were unanimously approved.</p>
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<p>Issue/Topic: Recap / June meeting outcomes</p>	<p style="text-align: center;">Discussion:</p> <p>Richard offered a summary of the June meeting outcomes as follows:</p> <ul style="list-style-type: none"> • Task Force members received an update on the CPAT validation project from Drs. Terranova and Ward from the University of Northern Colorado and concluded that the tool is indeed a valid predictor of risk. Work is now underway on Phase II of the project and the researchers will return for another update after that Phase is completed. <ul style="list-style-type: none"> -Bo Zeerip asked for clarification on ‘validation’ vs. ‘peer review. Kim English explained that assessment tools are validated and that a peer review would take place on the actual article or paper written by researchers. For example, a peer reviewed article would appear in a peer reviewed journal. -Kim added that validation happens when a risk assessment tools is developed on one population, then validated on a second population to insure consistency. When the CPAT was originally developed it wasn’t validated on a second population. The UNC researchers have now validated the CPAT on a different sample. -In the validation process tools are sometimes tweaked a little bit. -Greg added that one of the goals of Phase II is to develop a revised instrument. Researchers may be looking at modification to risk level designation to improve the tool. -Glenn Tapia said that assessment tools and professional judgement should never be used in isolation of each other. The optimal approach is to fuse professional judgement and an assessment tool. An instrument can’t weigh all the factors. • Richard explained that during the June meeting task force members also heard more about the Bail Blue Ribbon Commission. Both the Commission and this Task Force are working to stay up-to-date on the efforts of the other group. • In June the task force also received updates from all three working groups, and two of those groups are returning today with revised versions of their recommendations.
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Issue/Topic:	Discussion:
<p>Working Groups - Report Out</p> <p>Action:</p> <p><u>Recommendation #1 and #2</u></p> <ul style="list-style-type: none"> *Remove the specific reference to the CPAT *Move the 2nd paragraph in recommendation #1 to recommendation #2 *Glenn to enquire about possible support from Judicial. *Remove verbiage in red on recommendation #1 <p><u>Recommendation #3</u></p> <ul style="list-style-type: none"> *Include ballpark estimate on cost *Remove language calling for the inclusion of a bail bond industry representative on the advisory board. <p><u>Recommendation #4</u></p> <ul style="list-style-type: none"> *Add language identifying the value, promise, and potential of utilizing pretrial services. *If cost savings info if possible. 	<p>Richard introduced this segment of the agenda by saying that the group would review the updated recommendations presented today, then determine whether they would like to vote. If recommendations are voted on and approved they will be presented to the full CCJJ in the next couple of months. If a vote is not held on the recommendations today, they will likely be voted on during the August meeting.</p> <p>Members of the following working groups 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>Greg Mauro presented four preliminary recommendations on behalf of the two combined working groups.</p> <p>FY19-PR #01. Establish and Require the Use of Pretrial Risk Assessment Tools in all Colorado Counties</p> <p><i>DISCUSSION</i></p> <p>This recommendation calls for a Pretrial Risk Assessment to be available and utilized by judicial officers in all counties throughout Colorado for the purposes of setting bond and establishing conditions of release. Currently out of 64 counties roughly 13 to 14 are utilizing a risk assessment, however, those counties represent a significant number of cases (approximately 85%). Regardless, there’s still a need for this type of service in every county in the state.</p> <p>The recommendation goes on to identify the CPAT as the default tool, but it creates the option for a local entity to use an alternatively, empirically developed tool. The recommendation also specifies that a jurisdiction may use other instruments to enhance pretrial service delivery.</p> <p>A discussion was held about whether the CPAT (or any other risk instrument) should be specified in statute as the tool to be used. Arguments were made for and against specifically naming the CPAT in statute as follows:</p> <p>PROS</p> <ul style="list-style-type: none"> -The way the recommendation is written, if a jurisdiction doesn’t want to use CPAT they can use their own tool. -The advantage to naming one tool in statute is that it creates equity across the state and increases reliability between customers that are using it. -Colorado’s parole risk assessment tool, the CARAS, is also named in statute. -The benefit to the CPAT is that it’s developed on Colorado’s population and therefore has much more predictive confidence. - With a standardized tool there’s more consistency around training, curriculum and support. It would be challenging to provide support on a dozen of different instruments.

- The more jurisdictions use a common instrument, the more wins there are – especially with data collection.
- Naming the instrument in statute doesn't preclude the CPAT from being changed and updated over time.
- The most critical element is to instill the use of an assessment tool that has been developed and validated on a Colorado population.

CONS

- If the CPAT is named specifically it will be more difficult to get this recommendation passed into law with 22 jurisdictions and 16 counties.
- The more tools there are in play the more localized each tool would need to be. There would also be more issues with inter-rater reliability.
- Concern was expressed following last month's presentation from UNC researchers that while the CPAT tool is validated to be more predictive than 'chance', it didn't appear to be significantly more predictive than chance.
 - * *An argument was made against this point that the two tools the researchers named as more predictive than the CPAT were specific to domestic violence.*
 - * *Also, the CPAT was developed on a local population and any other tool (e.g. the Arnold Foundation tool) would have less predictive capability for the population in Colorado.*
 - * *Prior to the CPAT many jurisdictions were using the Virginia tool and different jurisdictions were using it differently with results varying widely.*
 - * *The Arnold Tool has its faults as well and other states name a specific risk assessment in their statutes, especially when it's validated on their population.*
- 80% of jurisdictions now use the CPAT but there is still significant concern in Jefferson and Weld Counties.

A suggestion was made that maybe the recommendation could direct the State Court Administrator's Office (SCAO) to develop criteria listing the predictive items to be included on a locally validated, alternative tool. Greg Mauro pointed out that Recommendation #2 calls for the SCAO to be the agency responsible for statewide training and the development of measures. The creation of a second tool would make that more difficult.

Kim English explained that in social sciences it's hard to get strong, predictive statistics. While the distance between chance and CPAT may not be very much, the difference between chance and human judgement is much greater.

Richard asked Greg to present the remaining three recommendations and then revisit this recommendation afterwards.

FY19-PR #02. Implement Training Standards for the Administration of Pretrial Risk Assessment Tools.

DISCUSSION

This recommendation calls for the SCAO to develop and provide standards for training and fidelity measurement of the Colorado Pretrial Assessment Tool. It adds that if another tool is approved for use by the Chief Judge of a judicial district that the SCAO shall review and approve any training protocol.

A discussion was held about the authority of the SCAO to do this without a statutory mandate. Glenn offered to ask Mindy and/or the Blue Ribbon Commission if this recommendation could be enabled with a Chief Judge's directive or whether statutory language would be more desirable. Glenn also emphasized the importance of training and fidelity support and that if the SCAO is tasked with this they will want to develop processes to make that happen.

Richard suggested rewriting Recommendation #1 and eliminating the reference to CPAT directly, but requiring the utilization of an assessment tool when pretrial decisions are being made. The second paragraph in Recommendation #1 could then move over to Recommendation #2. This will address the issue of neutrality in the third paragraph (banning prosecutors and criminal defense from administering the tool) because pretrial services would administer the tool. Glenn offered to enquire about support for the notion that Judicial embrace the responsibility associated with providing oversight. With these changes the verbiage in red in the last paragraph of Recommendation #1 would be removed.

A discussion was held about whether these recommendations would/could be geared toward municipal courts. Steve Chin replied that he thought it would be challenging to include municipalities. Judge Shawn Day said he would embrace the chance for his municipality to be part of this but that this goes back to the big picture of which charges are going to be eligible for this population. It was noted that there are municipal level DV charges that can be more serious than state charges. Additionally, it's not just a matter of resources but municipal courts aren't using pretrial services and there might be some consequences with over-supervising. Richard explained that the initial focus is on what is taking place now and how to expand that to all counties, The next logical step would be to enable and encourage municipalities or other jurisdictions to participate.

Richard summarized that the group agreed to eliminate the reference to the CPAT in Recommendation #1 and to move that language to this recommendation. Additionally, at the next meeting Glenn will provide feedback from Judicial about providing oversight and that language will be incorporated into Recommendation #2 as well.

FY19-PR #03. Establish a State Administered Grant Program to Assist in the Development of Pretrial Programs Statewide.

DISCUSSION

Greg explained that this recommendation is one where 'the rubber hits the road' as far as statewide pretrial and how to pay for it. Counties that have been able to pay for and implement pretrial services have already done so, leaving a gap of those who don't have the resources.

It was suggested the verbiage in the recommendation be as specific as possible and include a cost estimate along with a description of whether this would be a one-time or annual cost. It would be helpful for decision makers to know what amount of money is being considered.

Steve Allen, the Principal Legislative Analyst for the Joint Budget Committee was in attendance at the meeting and pointed to a similar issue during this year’s legislative session. In that case a bill was making its way through the legislature that called for the SCAO to administer text message reminders in order to get more attendance in court. However, the state would have paid for the program while counties would be the beneficiaries. There is often contention when an initiative carries a price tag for the state while benefiting counties. The problem also happens in reverse when the state mandates municipalities be responsible for an initiative but doesn’t provide funds.

Cliff reminded the group that the recommendation calls for the establishment of a grant program because everyone agrees if we’re moving toward a release/don’t release model, we won’t get there without a robust pretrial system to mitigate the risk. Therefore, there should be statewide pretrial services available to everyone.

Richard asked if the group if they were prepared to vote on this issue. Greg requested the task force first review the fourth and final recommendation before considering voting.

FY19-PR #04. Ensure Proxy Services are available to Provide Pretrial Functions in Jurisdictions Lacking a Pretrial Program.

DISCUSSION

This recommendation calls to establish the authority of a probation department to provide pretrial related functions in jurisdictions that are unable to develop and support a local pretrial program. The thought here is that if Recommendation #3 passes that would be the gold standard, but if not all counties could be funded or the recommendation fails, then Recommendation #4 would provide an infrastructure in smaller jurisdictions to have pretrial services available.

The group held a discussion about whether Probation should be involved in pretrial work. Glenn agreed with the concern around Probation providing interim services. It would be problematic for pretrial supervision to look like probation supervision. There would also be concern around absorbing Pretrial into Probation.

Richard, asked if PEN has done any work to show the benefit of pretrial services. Greg replied that Denver has a cost/benefit analysis that shows cost avoidance and anecdotally those with pretrial services can show impact on jail populations, but there is no formal sort of report. However, in jurisdictions with pretrial services there should be information available about the number of cases they have, how many would be on pretrial, and how many FTE would be needed.

Richard noted this recommendation needs more compelling language around why this

is needed and the resulting benefits because if there's no compelling language the recommendation likely won't go far.

The group discussed whether to include verbiage articulating the intent of the pretrial officer as different and distinct from the probation officer, however everyone agreed this is really just intended to be a stop-gap measure rather than a way to formally create pretrial services within Probation.

It was determined that Recommendation #3 needs additional language identifying the value, promise, and potential of utilizing pretrial services. There should also be some ballpark language in terms of 'respectfully requesting an amount of money sufficient for this to become a reality.' The group agreed that the timeframe of establishing pretrial programs statewide on or before July, 2021 was reasonable. Recommendation #3 calls for the creation of an advisory board when establishing pretrial services programs but the group agreed to remove language calling for the inclusion of a bail bond industry representative on that board. It will be important to show cost savings especially when it comes to FTA cases. Bo noted there is research that shows the cost difference between FTA and a warrant is approximately \$2000. He offered to look into the piece about savings.

Richard concluded this portion of the discussion by noting the group is closer to achieving consensus and will vote on all four recommendations at the August meeting.

Pretrial Release Detention

Bo Zeerip explained that the working group met yesterday with Bill, Collette, Lucienne and himself in attendance. They continue to revise their recommendation and created a PowerPoint which outlines a broad overview of the proposal. The PowerPoint can be found at <https://www.colorado.gov/ccij/ccij-cPRTF> and in short the proposal addresses the initial arrest/summons decision, the initial court hearing, the pretrial detention hearing, the review and modification of a prior decision and possible revocation of release along with an expedited appeal process. The proposal follows the example of a handful of other states and prohibits a defendant from being incarcerated due to the inability to pay money. It prohibits the use of monetary conditions of bond to address public safety but does not eliminate monetary conditions of bond or bondsmen.

Bo then directed task force members to a 34-page handout detailing elements of the proposal. The document includes feedback and input from both the CDAC and defense attorneys. The document also highlights areas where Bo would like input from task force members. Bo walked the group through the handout and discussion points can be found below.

DISCUSSION

Bo pointed out that the defense would like a longer version of constitutional provisions

while the District Attorneys prefer a shorter version.

As for Right to Release, the defense is committed to the standard being 'clear and convincing' and not probable cause. Bo noted this is one example where the Working Group may not be able to come to agreement. Richard asked Bo to prepare a document for the next meeting that would list the areas of substantive disagreement and highlight the two opinions. Task Force members could then take up all the disagreements at the same time.

The discussion continued on Right to Release and Bo said there needs to be a way to detain people if they commit the same crime again out on release. The CDAC needs some provision for detention of persons who commit additional crimes while released when such crimes are not otherwise detention eligible. He explained that there's a box on Page 4 which highlights alternative language. Bo noted that some places in the document have stronger disagreement than others.

Bo went on to describe other issues under the topic of detention eligible crimes and offered different viewpoints of the defense and prosecution. Richard said that what would be most helpful is if the Working Group can reconvene and try to work out a compromise and resolve differences on their own. In places where a compromise can't be reached Richard reiterated that it will be helpful for Bo to return next month with a list of the areas of substantive disagreement and options to address that disagreement. Bo agreed with Richard but implored task force members to thoroughly read and familiarize themselves with the document before the next meeting.

Bo went on to describe the next part of the proposal which is about replacing the current statute on summons in lieu of arrest. Richard asked the group if they thought this issue was beyond the original scope of the task force. It was noted that at least in some jurisdictions some DAs are choosing not to follow the current statutory direction, which is part of the reason for the work. Cliff disagreed noting there's a huge chunk of work to do on the charge net and process and that there's enough for the group to address already. Valarie said that this issue is important from a victim's standpoint and that if it's not addressed now it will need to be at some point. Monica said that if it fits with this body of work to get it done all at once, it's worth it to do that. Bo noted that there isn't much disagreement on this issue and it's basically completed if the group wants to adopt it. However, it is a bit of a stand-alone. Richard agreed that Bo should present it to the group since it is already completed and there isn't much contention, but to keep it separate.

Bo went on to review the portion of the proposal created as a Legislative Declaration and noted there was very little disagreement about it. He added that there was also little disagreement about the initial hearing and about factors to consider for release and detention decisions.

Bo went on to describe the non-monetary conditions of release and explained that the group separated conditions into monetary and non-monetary. Under non-monetary conditions there are categories of mandatory conditions of release, purpose and limitation of discretionary conditions of release and discretionary conditions of release. Under the category of monetary conditions of release there are subsections that address when a monetary condition of release is permitted, the types that are permitted, the fact that monetary conditions may not detain and a category about forfeiture of monetary security. He summarized there is no disagreement on monetary conditions.

The next section of the proposal outlines the pretrial detention hearing. Bo explained there was significant disagreement on subsection 2 (Prosecuting attorney at detention hearing: evidence, witnesses, discovery) in this section and pointed out that the differing opinions are highlighted in different colors on the handout.

Bo described the next section of the proposal which is about the definition of detention eligible crimes, or the charge based net. He described the list that the prosecution is proposing and highlighted the parts that the defense disagrees with. The contention is around VRA crimes, the defense doesn't object to most VRA crimes but doesn't want such a broad brush either. They would like to see the crimes listed. Valarie pointed out that DVs are currently a mandatory arrest and asked what the objection is to being detention eligible. Bo replied that the defense didn't want misdemeanor property crimes like criminal mischief and theft to be detention eligible. There's also an issue with DUI. The group would like to see the statute changed so a 3rd DUI is a class 1 misdemeanor, so it is detention eligible. The group also discussed the issue of harassment/domestic violence charges where someone doesn't have priors so scores low on the CPAT, but scores extremely high on the DVSI and may even threaten to kill his wife when released – but it's a mandatory release. Bo agreed that would be the case but that there could be a lot of conditions placed on someone's release. Bo explained that he prefers there would be no charge-based net similar to New Jersey but it's probably not politically viable in Colorado, and a line needs to be drawn somewhere when it comes to charges.

Richard thanked Bo and his working group for the significant amount of effort that has gone into the proposal. He explained the next step is for the working group to convene one more time, talk about their differences and see if they can come to any consensus. If not, the group should organize the 6-10 issues where there is no agreement and bring them back to this group next month.

Bo asked the task force members to take the proposal with them, read it, and respond with input and suggestions before next month.

Issue/Topic:	Discussion:
<p>Next Steps and Adjourn</p> <p>Action:</p>	<p>Richard closed the meeting and summarized the next steps as follows:</p> <ul style="list-style-type: none"> • Greg Mauro and Steve Chin’s working group will take the feedback from today and finalize their 4 recommendations in preparation for a vote at the August meeting. • Bo’s group will meet again and try to address the areas that need specific resolution and bring the proposal back to the task force. • Maureen’s working group will also present preliminary recommendations at the August meeting.

Next Meeting

August 7, 2018

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