

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

November 6th, 2018 1:00PM-4:30PM
710 Kipling, 3rd floor conference room

ATTENDEES:

TASK FORCE CHAIR

Stan Hilkey, Dept. of Public Safety

TASK FORCE MEMBERS

Bo Zeerip, District Attorney 21st Judicial District

Bill Kilpatrick, Golden Police Department

Monica Rotner, Boulder County Community Justice Services

Judge Shawn Day, Aurora Municipal Court

Mindy Masias, State Court Administrator's Offices

Maureen Cain, Criminal Defense Attorney

Valarie Finks, Victim Services, 18th Judicial District

Judge Chris Bachmeyer, 1st Judicial District

Steve Chin, Mesa County Pretrial Services

Tom Raynes, CDAC

Clifford Riedel, Larimer County District Attorney

Lucienne Ohanian, Public Defender's Office

Rick Kornfeld, Defense Attorney

STAFF

Richard Stroker/CCJJ consultant

Kim English/Division of Criminal Justice

Laurence Lucero/Division of Criminal Justice

Stephanie Waisanen/Division of Criminal Justice

ABSENT

Greg Mauro, Denver Community Corrections

Glenn Tapia, Judicial, Probation Services

Jennifer Bradford, Metro State University of Denver

Kirk Taylor, Pueblo County Sheriff

Joe Salazar, Representative, House District 31

Lang Sias, Representative, House District 27

ADDITIONAL ATTENDEES

Aubrey Cote, Denver County

Kelly Kissell, Division of Criminal Justice

Emily Tofte, Rocky Mountain Victim Law Center

Tim Lane, CDAC

Becca Curry, ACLU

Joe Thome, Division of Criminal Justice

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Chair Stan Hilkey opened the meeting and asked task force members and other attendees to introduce themselves. He reviewed the agenda and asked for a motion to approve the minutes. Shawn Day moved to approve the minutes and Mindy Masias seconded the motion. The minutes were approved unanimously.</p>
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<p>Issue/Topic: Recap of October meeting outcomes</p>	<p>Discussion: CCJJ Consultant Richard Stroker offered a recap of the October meeting. Richard explained that at the last meeting the task force agreed to adopt recommendation FY19 – PR#10 which came out of the working group led by Greg Mauro and Steve Chin and calls for the implementation of a court reminder system. That recommendation, along with the other three recommendations approved by the task force in October, will be presented to the CCJJ for a final vote this Friday. There was also a discussion to revive a former recommendation (FY19-PR#04 Ensure Proxy Services are available to Provide Pretrial Functions in Jurisdictions Lacking a Pretrial Program) that had previously been tabled. Greg and Glenn Tapia agreed to revisit the recommendation and return to the task force with an updated version in December. The bulk of the October meeting was spent discussing the draft recommendations from the Pretrial Release Detention Working Group and the Implementation of the 2013 Statute Working Group, and the myriad of amendments that would likely be coming forward regarding those recommendations.</p>
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<p>Issue/Topic: Report Out: Bail Blue Ribbon Commission</p>	<p>Discussion: Mindy Masias offered an update on the work of the Bail Blue Ribbon Commission. She explained that both Bo Zeerip and Maureen Cain were on the agenda at last week’s Commission meeting and presented details of the recommendations coming forward from both of their working groups. She believes everyone walked away from that meeting feeling that the Bail Blue Ribbon Commission and the CCJJ are far more aligned about the work from both groups on possible reform issues and goals. The next steps for the Blue Ribbon Commission are to start compiling recommendations that will be presented to the Supreme Court, and in so doing to ensure that the Judicial Branch has a unified voice. Those recommendations should be completed by the end of November or early December. Mindy closed by saying once those recommendations are finalized she will share them with this task force.</p>
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Issue/Topic:	Discussion:
<p>Working Groups - Report Out</p> <p>Recommendation Presentation</p> <p>Pretrial Release Detention</p> <p>Action:</p>	<p>Stan shared a couple of developments regarding the work of the Pretrial Release Detention Working Group. He explained that representatives from the defense and prosecution have met multiple times since the October meeting and that both Tom Raynes and Maureen Cain contacted him proposing the work be slowed down. Stan added, however, that Bo has a different perspective and would like to see the work move forward. Stan noted that regardless of which path the group decides to take his primary goal is to ensure that the work is done thoughtfully and thoroughly.</p> <p>Tom explained that there are concerns from both the defense and prosecution about the complexity of the proposal. Additionally, given that the proposal can't move forward until January 2021 regardless, both parties feel there is no need for an immediate push. Both parties also feel that pursuing a final recommendation through voting on amendments has the potential to divide stakeholders rather than build consensus. The parties aren't that far apart, but both sides do feel there are gaps that need to be addressed.</p> <p>Maureen added that before determining what a preventive detention system and preventive detention statute would like there are other foundational pieces that need to be addressed to ensure all stakeholders are on board. There's also a benefit to moving forward on some of the recommendations from her working group that address gaps from the 2013 statutory changes first. It's critical to develop and fund a statewide pretrial system during the upcoming legislative session before implementing a preventive detention system. Maureen said she also believes this group needs to get clearer about data and information on potential impacts of a preventive detention/non-monetary system.</p> <p>Bo Zeerip replied that moving away from money bail to a hold-or-release system would be a complete change and is not attainable through incremental pieces. He explained that his work group has spent more than a year developing their recommendation, debating issues and considering proposed amendments. He added there are only a handful of disagreements between the defense and prosecution and those won't be resolved by giving it more time. He believes the recommendations coming forward from both working groups could and should be addressed at the same time.</p> <p>Shawn Day replied that legislative members have expressed their frustration with the (slow) pace at which the CCJJ has addressed bail reform and that he believes the task force should take action now and move forward with Bo's proposal. Not doing so will result in piecemeal legislation. Tom and Maureen replied that it will carry weight with legislators if the defense and prosecution are on the same page about the pace at which proposals should be rolled-out.</p> <p>Lucy Ohanian expressed the impending legislative session creates a sense of urgency that in this case is unwise to succumb to. She also disagreed with Bo's assertion that the proposal for a preventive detention model was a consensus document from the working group, and that there are still areas of significant disagreement in some important areas such as the detention eligibility net.</p> <p>Bill Kilpatrick shared that as a member of the working group he felt they reached a lot</p>

of consensus in many areas. He was under the impression that it would be the role of the full task force to discuss and make the final decisions in the areas where there was disagreement. He agreed with Bo in doubting that the points of distinction between the defense and prosecutions would ever be resolved between the two parties simply with more discussion.

Cliff Riedel shared that just as of recently, the DA's are finally on board with moving toward a preventive detention system which is huge progress. The unresolved issues are about implementation rather than philosophy and both parties simply need more time to work through the details. It's critical to put out the best recommendation possible rather than just a recommendation.

Maureen reminded that group that when the CCJJ took on drug sentencing reform, they first ensured there was a funding mechanism in place one year for drug treatment, before returning the next year with the actual reform legislation. In this case a statewide pretrial system must be in place prior to implementation of a preventive detention model. Monica Rotner noted that it seems everyone agrees this is the right idea but it's really all about timing. Bo noted that he's concerned the legislature will be hesitant to take on preventive detention in 2020 because it's an election year. The group continued to discuss issues around the availability of pretrial services in rural areas and all Colorado jurisdictions. They also discussed fiscal implications and other Judicial issues.

Stan summarized the conversation and emphasized the tremendous amount of work that Bo and the other members of his working group have put into creating this very exciting public policy work, and that it will indeed be the basis for bail reform change in Colorado. However, the lack of consensus in the room about whether to move forward or slow down defaults to slowing down. He explained that the task force will offer 2/3rds of its work during this session (the recommendations from Greg's working group and hopefully the recommendations from Maureen's working group) – with the remaining recommendations from Bo's working group to follow. Stan added that it will also likely bode well with legislators that both the defense and prosecution are asking for more time to reach consensus.

The group discussed the timeline for moving forward with the work and putting structure around the process. The following guidelines were established:

- Working Group membership to include: Bo, Lucy, Bill, Colette (if she wants to remain on the group – or Rick Kornfeld if not), Tom, Maureen and Margie Enquist as a non-voting member. The group will keep Mindy/Judicial apprised of the work and any significant decision-making.
- The working group will report back to the task force at every meeting with the following information:
 - a list of what the issues are, what the group has discussed and the outcomes
 - a list of issues where the working group disagrees and would like a vote from the task force now (monthly)
 - a list of issues where there is disagreement and more information is needed, and whether the task force can help obtain that information
- The working group agreed to meet on Wednesday mornings after the monthly Pretrial Task Force Meeting. Richard offered to attend and help facilitate.
- The working group will aim to wrap up their effort within six months (by

	<p>May/June).</p> <ul style="list-style-type: none"> • Aubrey Cote from Denver will assist the group the writing of the proposal. • Stan asked the group to be sure to label all working documents as “Draft CCJJ working product”. <p>Stan noted the importance of the initiative and that it will likely represent the most significant work in the Commission’s history. Kim reminded working group members to let CCJJ staff know where and when the meetings would take place.</p>
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Issue/Topic:	Discussion:
<p>Working Groups - Report Out Recommendation Presentation</p> <p>Implementation of 2013 Statute</p> <p>Action:</p> <p>Maureen to make changes and add discussion verbiage to recommendation FY19-PR #06</p> <p>Maureen, Tom and Tim to meet and try to find consensus in areas of disagreement regarding in FY19-PR #07</p> <p>Maureen to add discussion verbiage to this recommendation</p> <p>Maureen to include statutory verbiage in recommendation FY19-PR #08</p> <p>Maureen, Tom and Tim to meet and try to find consensus in areas of disagreement regarding in FY19-PR #09</p>	<p style="text-align: center;">Implementation of 2013 Statute Working Group</p> <p>Maureen directed task force members to a PowerPoint and explained that it is similar to a presentation she offered to the Bail Blue Ribbon Commission last week, and that it contains data and information compiled by CCJJ staff. The full PowerPoint can be found here. Maureen then directed the group to copies of four recommendations in their handouts (FY19 – PR #06, #07, #08 and #09) and discussion points on each of the recommendations can be found below.</p> <p>FY19-PR #06. Establish a more Effective Pretrial Release Front End Process</p> <p><i>DISCUSSION</i></p> <p>This recommendation calls for each Judicial District to develop, by December 1, 2019, a screening process to assess a person upon arrival at the county jail for consideration of immediate release without financial conditions (on a PR bond or on a summons), without appearing before the court, pursuant to release criteria developed within the judicial district. The goal of this change is to provide for the release, as soon as possible, of those persons who would have been recommended for release at court hearing. Another goal is that decision-making remain local but provide certain state-wide standards guiding the decision-making that will incorporate best practices and research into locally developed criteria. The State Court Administrator’s Office (SCAO) will be involved in the development and implementation of the administrative criteria.</p> <p>A question was asked about whether the SCAO would have to go back and approve administrative orders that are already in place in judicial districts. Mindy replied that the SCAO will offer guidance, but where AO’s are already in place they probably won’t change very much. Maureen said she hopes all current AO’s would be reviewed to ensure they encompass best practices.</p> <p>A discussion was held about the fact that for this proposal to work, pretrial services would need to be available for the 215 municipal courts in Colorado, and there would have to be funding for it as well. A point was made that it also depends on whether charges are filed as municipal or state charges. Maureen pointed out that the proposal</p>

falls under 16-4-103 and as currently drafted it doesn't apply to municipal courts.

A question was asked about how the 24-hour assessment would work if someone is picked up in a different jurisdiction than where the warrant was issued. Maureen replied that this is addressed in recommendation FY19-PR#07 and if it's an out-of-county arrest the DA's have a different timeframe and the demanding jurisdiction should hear the case within 48-hours either via audio-visual or relocating the person. If that doesn't happen then it should take place the next business day. The JD that's holding the person should have a bond-setting hearing and criteria will be applied from the jurisdiction where the hearing is held. Risk assessment would be done by the holding jurisdiction. It was noted that it will be a problem if the two counties aren't using the same risk assessment tool.

A clarifying questions was asked about who exactly performs the risk assessment in that first 24-hours, the originating jurisdiction or the holding jurisdiction. Maureen replied that each individual jurisdiction would create their own administrative order describing how to deal with out-of-county holdings, and Judicial would come up with best practices on this issue.

Monica asked Maureen if this particular recommendation is simply about getting state uniformity around release authority for each judicial district under an administrative order, and that the next recommendations deal with the details. Maureen replied yes, and she added that it would be similar to the role the SCAO played when issuing guidance to each judicial district around the practice of juvenile shackling a few years back. Rick noted that in the federal system there is absolute consistency courtroom-to-courtroom everywhere in the country, and it's not like that across the state. It was noted that if the use of the CPAT was universal across the state it would eliminate problems with out-of-county holds.

Richard noted that the way the recommendation is currently written, the discussion portion of the recommendation is actually a continuation of the recommendation and that to strengthen the proposal the discussion section should look more like the PowerPoint, and establish what the problem is, what does the recommendation address, and why this change is needed.

Bo asked about the statutory verbiage that refers to bond commissioners setting monetary bond and asked that the language be clarified to indicate either a summons or PR bond. Mindy asked that item #5 in the statutory language section say a 'Chief Judge order' rather than an 'administrative order'.

Richard summarized that Maureen would make the changes noted above and the task force would vote on this proposal in December.

FY19-PR #07. Regarding Judicial Decision Making, Time Frames and Reconsideration of Monetary Conditions of Bond*DISCUSSION*

This recommendation refers to judicial decision making, time frames and reconsideration of monetary bond - it has five subsections as detailed below.

Section 7.1

This piece of the recommendation calls for an arrested person to be brought before a judicial officer for an initial court appearance, as soon as practicable, but not later than 48 hours after the person's booking into a detention facility. An in-person presence of the defendant and his/her attorney at the initial court appearance is preferable, however an audiovisual device may be used pursuant to the provisions of Rule 43.

It was also noted that in the Federal System calls for an individual to be brought before a judicial officer as soon as practicable, which is generally the next court day excluding weekends and holidays. Tom explained there will be a DA amendment calling for the "48-hours" be changed to "2 calendar days excluding Sundays and federal holidays".

Tim Lane noted that the DA's have concerns about all of the current provisions for out-of-county cases and operational issues regarding judicial decision making. Maureen replied that she will work with DA's before the December meeting to try to find consensus on the out the out-of-county issues.

Mindy pointed out that there could be significant pushback on the 48-hour issue, fiscal impact and the availability of staff to work weekends. Maureen agreed that this will be an issue both in her recommendations and in the preventive detention recommendation. Richard encouraged Maureen's working group to discuss details of a timeframe that would work for all stakeholders and return with more information at the December meeting.

Richard reiterated that (as with the previous recommendation) data and information about this recommendation needs to be present in the 'discussion' section of the recommendation.

Section 7.2

This part of the recommendation addresses what the court will consider at the initial court appearance. Maureen directed task force members to the statutory language on page 4 of the recommendation and explained that her group created a presumption of release with the least restrictive conditions and without the use of any monetary conditions of bond. The task force discussed the following four elements under section (1) of the proposal:

- (1) At the initial hearing, if the person is not released pursuant to the provisions of

16-4-103, the court shall determine the type of bond and the conditions of release. In making that determination, the court shall presume the release of the person with the least restrictive conditions and without the use of any monetary conditions of bond when the court finds:

- that the person poses a substantial risk of danger to the safety of another person or persons; *(CDAC alternative language reads: “that the person poses a substantial risk of danger to the safety of ~~another~~ ANY person or **THE COMMUNITY** persons)*
- that there is a substantial risk that the person will avoid prosecution through non-appearance; *(CDAC alternative language reads: there is a substantial risk that the person will ~~avoid prosecution through non-appearance~~ **NOT APPEAR IN COURT AS REQUIRED**)*
- that there is a substantial risk that the person will attempt to obstruct the criminal process; and
- there are no reasonable non-monetary conditions of release that will reasonably assure the safety of another person or persons, that the person will not avoid prosecution through non-appearance, and that the person will not obstruct or attempt to obstruct the criminal justice process. *(CDAC alternative language reads: there are no reasonable non-monetary conditions of release that will reasonably assure the safety of ~~another~~ ANY person or ~~persons~~ **THE COMMUNITY**, that the person will not ~~avoid prosecution through non-appearance~~ **APPEAR IN COURT AS REQUIRED**, and that the person will not attempt to obstruct the criminal justice process)*

Bo pointed out that in the first bullet point (above) which refers to “the safety of another person or persons”, the CDAC wants amended language that includes safety of the “community”. After some discussion Stan asked if the task force would like to vote on this verbiage now and asked for a motion. Cliff made a motion to use the current statutory language that reads “person or community”. The motion was seconded and a hand vote was held. A majority of the task force voted in favor of using the current language that includes “community”.

The task force discussed the original language and alternative language in the second and fourth bullet point (above). Stan asked if the task force would like to vote on this verbiage now and asked for a motion. Cliff made a motion, again, to use the current statutory language as noted in blue above. Tom seconded the motion and a hand vote was held. A majority of the task force voted in favor of retaining the current statutory language as proposed by the CDAC.

Maureen directed task force members to section (2) and (3) of 7.2 which lists court considerations in making determinations on bail and conditions of release. The group agreed that (2) and (3) should be combined.

Maureen directed task force members to section (4) regarding types of bond that may be set by the court. Bo requested striking the following verbiage:

~~(4)(d) If the bond has monetary conditions, the person shall be released from custody upon execution of bond in the full amount of money to be secured by any one of the following methods, as selected by the person to be released, unless the court makes factual findings on the record with respect to the person to be released that a certain method of bond, as selected by the court, is necessary to ensure the appearance of the person in court and the safety of any person or persons in the community:~~

- ~~(I) By a deposit with the clerk of the court of an amount of cash equal to the monetary condition of the bond;~~
- ~~(II) By real estate situated in this state with unencumbered equity not exempt from execution owned by the accused or any other person acting as surety on the bond, which unencumbered equity shall be at least one and one-half the amount of the security set in the bond;~~
- ~~(III) By sureties worth at least one and one-half of the security set in the bond; or~~
- (IV) By a bail bonding agent, as defined in section 16-1-104 (3.5).**

Representatives from the defense and prosecution agreed to meet about this issue and return to the group with revised language at the next meeting.

Section 7.3

This part of the recommendation refers to the timeframes for commencement of action to file felony charges. It requires filing within 3 working days, excluding Saturdays, and Sundays and legal holidays, unless good cause shown. The task force engaged in a discussion about the amount of time the DA has to file charges. The group agreed to keep the language as written.

Section 7.4

The language in this section replaces the 2013 language in 16-4-107 and merges this language with the existing language in 16-4-109. The recommendation reads:

Require a reconsideration of determination of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a second look) when good cause shown. This should protect against unnecessary detentions for long periods of time where court might think person was able to make a monetary bond and they cannot make. Reasonableness must always be reconsidered as it is constitutionally required. This will also give the court a chance to review the non-monetary conditions of bond to see if they are reasonable and necessary as well as the least restrictive.

Motions shall be in writing if the case is a VRA case.

The definition of bonding commissioner is expanded in order that

recommendation #6 can be implemented.

The task force discussed the recommendation and issues regarding out-of-county cases, appeals, and new information in cases. Representatives from the defense and prosecution agreed to meet about this issue and return to the group with revised language at the next meeting.

Section 7.5

This element of the recommendation calls for defendants in custody to have scheduling priority over all other matters for purposes of litigated hearings and trials.

Judge Bachmeyer asked Maureen to also consider VRA, child abuse and domestic violence cases in this proposal. Representatives from the defense and prosecution agreed to meet about this issue and return to the group with revised language at the next meeting.

FY19-PR #08. Require Best Practices Bail Training

DISCUSSION

Maureen reminded the task force that this recommendation was reviewed in detail during the October meeting and that it basically calls for the SCAO to develop a core curriculum on best practices bail training that will then be delivered by various stakeholders. The stakeholders include Pretrial Services, Colorado District Attorneys' Council, State Court Administrator, the State Public Defender, and law enforcement.

Bo pointed out that this should be a statutory recommendation and Richard asked Maureen to include a reference to the statute in next month's version of the recommendation.

FY19-PR #09. Regarding Public Defender Involvement.

This recommendation calls for clarification of the public defender's involvement in the initial bail setting hearing. It reads: *Clarify in statute that a person is entitled to counsel at the initial bail setting hearing. Clarify that counsel shall have adequate time to prepare for an individualized hearing on bail. Retain language that the DA has the right to appear and pretrial information shall be shared.*

The task force discussed issues such as eligibility requirements and timeframes. Representatives from the defense and prosecution agreed to meet about this issue and return to the group with revised language at the next meeting.

Issue/Topic:	Discussion:
<p data-bbox="138 212 418 243">Next Steps and Adjourn</p> <p data-bbox="233 281 321 312">Action:</p>	<p data-bbox="492 212 1325 243">Richard closed the meeting and summarized the next steps as follows:</p> <ul data-bbox="537 254 1520 653" style="list-style-type: none"> <li data-bbox="537 254 1458 365">• At the December meeting the task force will vote on the four recommendations from the Implementation of the 2013 Statute Working Group. <li data-bbox="537 380 1422 449">• Maureen, Tom and Tim agreed to meet and work through some of the unresolved issues and language clarification. <li data-bbox="537 464 1520 533">• The final versions of the recommendations will be distributed to the task force a week before the December 11th meeting. <li data-bbox="537 548 1487 617">• Richard asked Bo to provide an update on the progress of his working group next month as well. <li data-bbox="537 632 1292 653">• The December meeting will be held from 1:00pm – 4:30pm.

Next Meeting

December 11, 2018 1:00pm – 4:30pm 710 Kipling, 3rd floor conference room