

CCJJ Bail Subcommittee

December 2, 2011, 10:00AM-4:30PM
690 Kipling, 1st Floor Conference Room

ATTENDEES:

CHAIR

Judge Margie Enquist/1st Judicial District, co-chair

TASK FORCE MEMBERS

Doug Wilson/State Public Defender

Scott Storey/Jefferson County DA

Sharon Winfree/Colo. Association of Pretrial Services

Bill Kilpatrick/Golden Police Chief

Maureen Cain/Colorado Criminal Defense Bar

Sallie Clark/El Paso County Commissioner

John Marcucci/Denver County Court

Steve Mares/Professional Bail Assoc. of Colorado

Greg Mauro/Denver Pre-trial services

Kate Murphy/17 Judicial District, Victims representative

STAFF

Germaine Miera/Division of Criminal Justice

Paul Herman/CCJJ consultant

Mike Jones/Jefferson County Criminal Justice Planner

Tim Schnacke/Jefferson County Criminal Justice Planner

ADDITIONAL ATTENDEES

Jana Locke/Department of Public Safety

Stephanie Clark/Colorado Criminal Defense Bar

Jeff Clayton/Judicial Department

Jan Emry/Rocky Mountain Bail Association

Vicki Marble/Rocky Mountain Bail Association

Corky Kyle/the Kyle Group/Rocky Mountain Bail Association

Jason Armstrong /Professional Bail Association of Colorado (Bail agent)

John Clark/Professional Bail Association of Colorado

ABSENT

Grayson Robinson/Arapahoe County Sheriff, co-chair

Michael Dougherty/Deputy Attorney General

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Judge Enquist welcomes the group on behalf of both herself and Grayson Robinson, who is also co-chair but is unable to attend this meeting.</p> <p>As part of the purposes and goals of this meeting and the group’s work in general, the Judge requests members bring no agenda and no preconceived outcomes to the table. This group will be following up on the CCJJ 2008 recommendations along with addressing other issues and recommendations.</p>
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<p>Issue/Topic: CCJJ Processes and Protocols</p> <p>Action</p>	<p>Discussion:</p> <p>Paul Herman reviews the processes and protocols for the Commission and this group in particular.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ 6 months ago, a group of Commission members came together and looked at all the recommendations from 2008 ○ The group decided that some of the recommendations needed to be followed up on (five bail/bond recommendations in particular) ○ The CCJJ organization chart is distributed to the Bail Subcommittee members and lays out the current structure of the Commission including task forces, working groups and subcommittees. ○ In 2008 The Commission developed its guiding principles. It’s important for this group to follow these principles including questioning our assumptions, looking to experts for help, and taking all parts of Colorado into consideration, decisions should be simple and made with a sense of urgency. Evidence based practice is important but it’s sometimes hard to find EBP’s in the criminal justice system ○ The Commission process is about getting smart first, identifying common ground and working out from that center ○ We aim for open and honest discussion in all task forces, working groups, subcommittees. We aim for open and honest communication in all CCJJ activities. <p>Paul asks all attendees what they see as preliminary goals for this group’s work</p> <p><u>Goals (input from the group)</u></p> <ul style="list-style-type: none"> ○ Bail agents want to provide as much info as possible about their industry to the group ○ From a county perspective it’s about the money, funding jails, court houses and safety of the community. ○ Want to understand the system better, how did we get where we are today
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	<ul style="list-style-type: none"> ○ Numbers from last year showed about 50% of detainees in county jails are pre-trial, haven't been convicted yet, need to look at the impact on the poor, and inconsistencies across judicial districts (some have standardized bail, some don't, some high and some low, no statewide jail schedule no consistencies). We need to address the pretrial detainee populations in the jails. The goal would be some modifications, statewide standards, look at amounts across the state and see if we can't have a significant reduction in pre-trial detainees in jails). ○ A monetarily driven system has an unavoidable impact on the poor ○ Let's balance the interests of the people around the table, let's thread the needle ○ Let's have accurate information come to the table, decisions based on accurate data, avoid unintended consequences ○ Specialty courts and sheriff's office, how do we stop the revolving door? How do we reduce costs across the system and how does the bail piece fit into other components of the system? ○ How do we get the good data to make sure things are working at the back end? We need to start collecting the data to know the impact and work at local, state and national levels. ○ Let's revisit the original concept and purpose of bail. Why are we doing what we're doing? ○ Think outside the box, public/private partnerships?
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<p>Issue/Topic:</p> <p>Definition of Terms</p> <p>Action</p>	<p>Discussion:</p> <p>Tim Schnacke reviews a "Definitions of Terms" document produced by the Pretrial Justice Institute and distributed to the group.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ Bail – a process of releasing defendants with conditions set to reasonably assure public safety and court appearance. ○ The right to bail is a right to freedom before conviction, a process. ○ The first question is, is there a right to bail? Or no right to bail. Or a right to release, or no right to release. A decision has to be made between release and detention. ○ In other areas, release comes first, and then conditions follow. When it comes to being released conditionally on finances that's a different decision. ○ The supreme court says detention is to be used sparingly ○ Preventative detention – Colo. has a preventative detention system (when this is financial based you always run the risk that the
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extremely wealthy can be released simply due to funds)

<p>Issue/Topic:</p>	<p>Discussion:</p>
<p>History of Bail and Pretrial Release</p> <p>Action:</p>	<p>Tim Schnacke reviews the History of Bail and Pretrial Release</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ International pretrial issues ○ Colorado is the first state to really get together and look at this issue ○ Crime rates are down, crime rate remains low, but fear of crime is on the rise ○ U.S. detention rate is the highest in the world ○ What about the common response that ‘crime rate is down because incarceration is up’. Yes, but this is not a one-to-one relationship. How much of the decrease can you account for by the increase in incarceration? It’s 25% correlation. The other 75% is due to better policing and other issues. The other main question is, is this the most cost-effective way to deal with this issue? Need to make better decisions about WHO to incarcerate. If you impact certain people you don’t necessarily impact the decrease in crime. ○ Among those detained until adjudication, 85% had a bail amount set but did not post the financial condition required for release (BJS, 2007) ○ Bond amounts not being met are often ‘low’ ○ If you over supervise lower risk defendants, they’ll actually do worse ○ The more time spent in pretrial detention, the more likely it is you’ll be convicted and the more severe the sentence. It’s much more difficult to prepare your defense when your client is sitting in jail and unable to help prepare their defense. They are more likely to take a plea. (Scott wants to know where this info comes from). ○ Bail is about prediction ○ Three generations of bail reform in this country ○ 1st generation began in the 20’s and peaked in the 60’s this was to find alternatives. ○ The 2nd generation of bail reform 80’s and beyond was to tie in public safety ○ The current generation (now) is this concept of taking evidence based practices and using those to guide future bail decisions ○ The VERA experiment helped create release on own recognizance. ○ Four states have abolished commercial bail bonding. ○ Attitudes have changed, budgets are huge.

- Last few years, flurry of activity in Colorado.

- National Symposium on Pretrial justice Conference
- The second conference only since 1964

Issue/Topic:
National Standards and Best Practices

Discussion:

Tim Schnacke and Mike Jones go over National Standards and Best Practices.

DISCUSSION POINTS

- ABA standards have been created with all actors in the criminal justice association
- These standards are preeminent in their use across the country
- Must balance between public safety and constitutional rights
- ABA standards call for ‘release under least restrictive conditions’
- Setting money for public safety goes against the research
- Primary functions of pretrial services agencies and programs should include three parts; Assessment, information gathering, supervision
- Non profit and for profit agencies can also perform pretrial services (this is along the same lines of public/private prisons, etc.) – there are different ways to operate pretrial services programs
- Money bail schedules - This deals with judicial discretion
- Conditions of probation, parole are being looked at nationally and recently the conditions of pretrial release are being discussed as well.
- The ‘conditions’ issue is being looked at in the Commission regarding probation and parole

Issues

- What about the ‘other’ terms and conditions of bond?
- What about a condition that may be breached that wouldn’t constitute a new crime or prevent you from showing up for your court appearance, what do you do with that?
- The way we set conditions of bond currently is often under the presumption of guilt
- Is it appropriate to set conditions that don’t have anything to do with the facts of the case?

Tim Schnacke and Mike Jones review Pre-trial risk assessments

DISCUSSION POINTS

- Risk assessment instruments all use basically the same info; current charge, other pending cases, criminal history, failure to appear history, residence, employment and history of drug abuse or mental illness.
- Jeffco is currently putting together their own pretrial risk assessment instrument in conjunction with ten other Colorado counties
- Risk assessment instruments need to be state specific – because the same items don’t always appear as predictive across the board
- All predictive instruments have some glitches, false positives, false negatives, etc.
- A validated tool means it’s not left up to guess work, at least there’s some data behind it
- With a pretrial risk assessment tool you would say “this person looks just like the people who FTA 84% of the time” or “this person looks just like the other people who were charged with new crimes 54%of the time) – but this doesn’t tell you who to detain and who to release. It does, however, give a better picture and is a little less subjective
- The state-of-the-art method in criminal justice is to have a risk assessment tool
- Subjective decision making gives poorer outcomes than objective decision making
- Pretrial risk assessments look at a broad range of factors
- In the pretrial arena the focus is on risk and not needs
- The closest you will find to EBP in pretrial supervision is the fact that court date notification works to reduce FTA’s.
- Research is being done to determine for whom does the type of bond matter (cash bond, etc.) on outcomes, and how does that differ for different subgroups of defendants
- Same research being done on conditions, for whom is it more effective to come into the office and have a ‘face to face’ and for who isn’t it

<p>Issue/Topic:</p> <p>Current Co Practices and Issues</p> <p>Next Steps</p>	<p>Discussion:</p> <p>Mike Jones reviews Current Colorado Practices and Issues</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • There’s a lot of activity legislatively on this topic in Colorado and around the country • In 2010 – Proposition 102 required secured money bail holds • Pretrial services programs in Colorado are a county government function. • The jurisdictions in Colorado who have, have had or are in the process of forming pretrial functions – Adams, Arapahoe, Boulder, Denver, Douglas,
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	<p>El Paso, Larimer, Jefferson, Mesa, Montezuma, Pueblo, Weld</p> <ul style="list-style-type: none"> • A Colorado validated pretrial risk assessment instrument tool is forthcoming • In the future, the goal is to match bond and supervision conditions to each defendant’s individual risk profile • The main goal of a solid pretrial system is to maximize public safety and court appearance while minimizing pretrial detention • What are each jurisdictions values and expectations – this needs to be taken into consideration • A big question for this committee is what conditions do we want to impose and why? Are we accomplishing what we’re hoping to accomplish? • The point of pretrial conditions is to get people to court and to stay out of trouble • With pretrial conditions, you’re limited on what you can and can’t do when people violate. <p>Issues</p> <ul style="list-style-type: none"> ○ <i>Scott wants to know</i> what percentage of bonds are pr bonds and what percentage are felony summons, surety. <i>Maureen to bring next time by judicial district.</i>
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<p>Issue/Topic:</p> <p>Future Topics, Questions and Tasks</p> <p>Next Steps</p>	<p style="text-align: center;">Discussion:</p> <p>Paul leads the group in a discussion around future topics, questions and tasks-</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Important to keep in mind the following • We talk a lot about risk, what risk scales do and don’t do. When talking about risk assessment one thinks of prediction, probability is a much better description • Say you have a risk assessment tool for the state of Colo., you must understand what the limitations are. Most of the items have to do with past behavior • Post trial is combination of risk/needs and emphasis is on needs, but should you put your toe in that water in pretrial • The impact of reducing recidivism lies in the ‘needs’ arena • A risk scale on pretrial can do a lot for us, but not everything that a needs assessment can do • Pretrial is more difficult than post trial as far as needs assessment and knowing what to do to affect outcomes. • Paul talks about the importance of meta-analysis studies • We need to answer the question of ‘What are we trying to achieve’ – what is the purpose of our group
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- We need to look at purpose
- Current statute
- What’s the gap, what else should we be doing to achieve the purpose
- Then we come back with recommendations and strategies
- We need to refine our purpose, we don’t need the road map right now but we really need to know where we’re going

<p>Issue/Topic:</p> <p>Next steps</p> <p>Next Steps</p>	<p style="text-align: center;">Discussion:</p> <p>Paul leads the group in a discussion around Next Steps.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Look at some data, local data, jails are full – need to have all options of release for those in custody to be considered (let’s look at how this can happen) • Let’s find out what the pretrial population is in each jail – how would we find this out? Are the jails full? What are they full of? How many beds do you have, what are the sentenced versus pretrial versus ICE, etc. People doing county jail sentence vs. pretrial detainees. • Give us a snapshot of who is in jail now and for what – Maureen and Doug to provide • Also look at length of stay for pretrial and why • What is classifying a defendant as pretrial vs. post summons • Are we looking at a new way to do business, can we quantify that in a mission statement so we can stay on task. • What’s our mission statement, purpose, etc.. • A day in the life of PD, DA, statewide perspective, pretrial, bonds people, judge Marcucci, Greg Mauro – Q&A session – address misconceptions • Data collection that should be mandated, data gaps • Conditions • Clarity of the terms we’re using in this group, bail, bond, etc. among our group • Who has the data and where does it sit • Look at pretrial system, analyze it, what can we do to improve each component – we need a system map to do this. • 1. Pretrial trainee percentages and what their bonds are. Are we talking about \$250 bonds for F3’s? 2. Pretrial detention and conviction rates, how do we show correlation? 3. More tools available prior to pre-filing, consistent adult diversion programs statewide we would probably have pretrial detainees, 4. 15 to 20,000 misdemeanants not represented at trial by PD’s (so, if people were out of custody, they would not be pleading, therefore a smaller conviction rate) – people are less likely to plead if they’re ‘out’. • Get bonding schedules for each judicial district • Meet the first Friday of every month approx. 1:30-4:30
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Future Meeting Dates:

Meeting Schedule

January 6 th	2:00pm – 5:00pm	710 Kipling St., 3 rd floor conference room
February 3 rd	2:00pm – 5:00pm	690 Kipling St., 1 st floor conference room