

**CCJJ Bail Subcommittee**

February 10, 2012, 2:00PM-5:00PM  
Jefferson County DA's Office  
500 Jefferson County Parkway, Golden, CO

**ATTENDEES:****CHAIR**

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

**SUBCOMMITTEE 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**

Paul Herman/CCJJ consultant (on phone)  
Kim English/Division of Criminal Justice  
Germaine Miera/Division of Criminal Justice  
Claire Booker/Jefferson County Criminal Justice Planner

**ADDITIONAL ATTENDEES**

Stephanie Clark/Colorado Criminal Defense Bar  
John Clarke/Clarke Strategies  
Jeff Clayton/Colorado Judicial Department  
Mike Jones/Pretrial Justice Institute

**ABSENT**

Grayson Robinson/Arapahoe County Sheriff, co-chair  
Michael Dougherty/Deputy Attorney General

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Judge Enquist and Paul Herman welcome the group in place of Grayson Robinson. Judge Enquist previews the meeting agenda. Claire Booker, a Jefferson County Planner is introduced to the group and will be assisting with future staffing duties.</p>
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<p><b>Issue/Topic:</b> Mission Statement Discussion</p> <p><b>Action</b> Paul and Germaine to finalize the mission statement and include a statement about the fact that recommendations can be either legislative or policy based. Bring this statement back for subcommittee approval in March</p>	<p><b>Discussion:</b> During the January meeting, subcommittee members asked that a draft mission statement be created and presented to the group from the initial discussions surrounding the group’s purpose. Paul Herman reviewed the following proposed draft mission statement.</p> <p><u>Draft Mission Statement</u></p> <p>The mission of the Bail Subcommittee is to conduct a comprehensive review and analysis of the Colorado bail system. This review and analysis should include, but not be limited to: the purpose of bail: current practice; strengths and weaknesses; evidence based practice/emerging best practice locally and nationally; and, identifying gaps between the current system and the preferred system for Colorado. Upon the completion of the analysis develop recommendations for the commission by September 30, 2012 that will enhance the efficiency and effectiveness of the Colorado bail system.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>○ What is it we want to do?</li> <li>○ What process do we want to use?</li> <li>○ What exactly is it we need to do to lead to certain recommendations, etc.?</li> <li>○ The mission statement was created by taking all the previous conversations, along with the directives of the Commission, and compiling the two.</li> <li>○ The first part is about what the CCJJ has asked the Bail Subcommittee to do, review and analysis.</li> <li>○ The purpose of a mission statement is to help the group stay focused as it moves through issues. The group should continually check back in with the statement and ask ‘Are we achieving our mission’?</li> <li>○ Question – Is one of our directives to develop legislative recommendations? The Commission has a track record of developing</li> </ul>
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both legislative and policy recommendations

- The CCJJ as a whole looks at particular topical areas in regards to both policy and legislative recommendations. This intention should be made clear in the minutes.
- Question - What about ground rules? The way the task forces and subcommittees have been operating is to suggest both policy and legislative recommendations to the Commission; the CCJJ then decides what to do with them.
- Question - Are our recommendations going to have an impact on DORA? They possibly could in the future.
- The work of the Commission, Task Forces and Subcommittees is often ongoing work.
- Question - Should we include a hard end date on the mission statement? Other task forces have been ongoing, but this is more of a limited standing committee.

Next steps

- Finalize the mission statement and bring it back for subcommittee approval next time

**Issue/Topic:**

DORA 2011 Sunset Review

**Action**

Maureen Cain to talk to legislators and attempt to stay the senate judiciary hearing until after the March 9<sup>th</sup> CCJJ meeting

Jeff Clayton from Judicial will look into recommendation #9 as far as a fiscal note is concerned

**Discussion:**

Paul goes over the 11 recommendations produced in the 2011 DORA sunset review.

*DISCUSSION*

- The subcommittee’s intent today is to look at the recommendations from DORA and come up with feedback from this group regarding the proposals. Specifically, is the subcommittee in support of the proposed changes, why or why not?
- At this point, only 3 of the 11 recommendations are going to be in the bill
- The group talks about what made it into the bill, what didn’t, and why
- The bill is drafted and set for hearing next Friday (February 17<sup>th</sup>)

**Recommendation #1/Included in the legislation**

- It’s interesting that the number of commercial bonds show a pattern of reductions
- That’s due to the fact that arrests are down

- Maureen Cain is working on a chart of bond amounts county to county
- Generally, the lower the bond amount, the less likely the bond is to be a cash bond
- Commercial bonds are far and away the largest amount of bonds posted
- The biggest driver is the filing decrease
- There are usually multiple factors

**Recommendation #2/Included in the legislation but in a different form**

- This recommendation would require that a bail agent would have to have two licenses, a bail license and an agency license
- Currently a bail agency does not hold a license
- An insurance company is licensed, an agent is licensed, but currently the Agency is NOT licensed
- Can this group recommend that we support this DORA recommendation?
- This recommendation would streamline this process
- professional cash bail agents put up 50K with the state to write an unlimited amount of bail, without an insurance company
- You have to be a licensed agent, under the DOI for four years to be a cash bail agent. This regulation currently applies to 38 agents in Colorado hold the professional cash bail agent license
- Some agents are licensed, some are not
- The bail agency concept is in the bill, but not in the same way as the DORA recommendation
- The recommendation of licensure to own a bail agency was gutted
- The agency will be accountable to DORA
- There will be an agency, but it won't be licensed. This defines what a bail agency is but has nothing to do with licensure
- what is left simply defines what an agency 'is'

**Recommendation #3/this is NOT part of the legislation**

- page 37 of the DORA report shows the proposed membership changes for the Bail Bond Advisory Committee
- the advisory board and the current statute is set to expire and the bill did not extend the committee, or the board
- The role of the board was to advise the division of insurance of ongoing issues and complaints, etc.
- The DORA recommendation could have given the group more to work towards
- Question - Why did this get pulled? There seemed to be a lot of confusion when this was introduced. The drafter may not have

captured the final discussion. Is this drafter error?

-One of the primary concerns the committee had was “too much government involvement”

-By setting educational standards and having the public and pretrial involved, a lot could be done with the committee

-This particular recommendation outlines a lot of guidelines around training and education.

-Who is on the senate judiciary and why did they take this out of the bill? The legislative motion was that recommendation 1,2 and 4 stay in, but recommendation #3 (this recommendation) was not included

#### **Recommendation #4/Included in the legislation**

-Recommendation #2 and #4 go together here

-This eliminates the daily bond register

-This recommendation is in the bill as it is written in the DORA report.

#### **Recommendation #5/This is NOT included in the bill**

-This recommendation calls for agents to pay an annual nonrefundable fee that would help pay for a market conduct examination of those licensees.

-This would have set it up to where each and everyone paid into a fund and every year one or two would've been audited

-The DOI can audit at any point if they like

-With this recommendation the PCBA's (professional cash bail agents) would have contributed to a fund

-PCBA's are glad this recommendation is NOT included in the bill

#### **Recommendation #6/Not included in the legislation**

-This recommendation would have leveled the playing field between PCBA's and CBA's (cash bail agents) by subjecting both equally to the statutes governing Unfair Competition – Deceptive Practices

#### **Recommendation #7/Not included in the bill**

-This recommendation would've allowed the Bail Act to follow suit with the Producer Act and direct the DOI to promulgate a schedule of fines for violations.

#### **Recommendation #8/Not included in the bill**

-This recommendation would have repealed the requirement that prior to compensating a bail recovery agent, a bail agent must reconfirm that the recovery agent is qualified.

-This recommendation would have required a double check – when

recovery agent is hired and again when they recover the person  
 -Right now, there's a double dose of this and it's redundant  
 -the recommendation would have required two checks

**Recommendation #9/This recommendation is not included in the bill**

-This recommendation would have required the Judicial Branch to keep a comprehensive historical record of bail transactions and the board system.  
 -This probably died to the concern over fiscal note

**Recommendation #10/This recommendation is not in bill**

-This recommendation would have removed 'knowingly' as a standard for discipline.  
 -This would have evened the playing field with all other lines of insurance

**Recommendation #11/Not included in the bill**

-This recommendation would have required the DOI to set license renewal dates and annual report dates administratively

**Administrative Recommendation #1**

-This AR recommendation would simplify reporting, recordkeeping and encourage compliance by requiring that the DOI approve all reporting forms prior to use.

Sunset Review Issues/*DISCUSSION*

- Steve Mares reports that his group, the Professional Bail Agents Association, didn't have push back with the recommendations and actually supported the DORA recommendations
- A few players in the bail industry are against the report and the bill
- There may be pushback because people don't want industries to be regulated
- The PCBA's are not as supportive of the recommendations (there are 38 PCBA's, similar to Dog the Bounty Hunter)
- The hearing is scheduled for next Friday, February 17th
- Question - Is there a rural vs. urban perspective on this? Yes, probably some concern around this. The bail agency concept scares some people. 'Mom and Pop' shops may have pushback.
- A Bail Agency would get rid of the daily report

- The DORA analyst worked and researched these same concepts in other states
- He also spoke with other people outside the agencies
- The trend is not to regulate, but according to many folks this is an agency that needs regulation
- The DORA report provided an opportunity to improve the system, but the legislators are dismantling the recommendations
- The timing is bad on this
- The current situation is really different than it was two weeks ago
- Question - Is there any way to stay the senate hearing until after March 9<sup>th</sup> so the CCJJ could weigh in on these issues?
- Maureen Cain has a proposed amendment regarding data collection on this bill
- Maureen will talk to the sponsors to see about staying the hearing
- Maureen to go back with the bond folks, talk to the sponsors, Set the senate judiciary committee hearing until after the 9<sup>th</sup> of March if possible
- This is an opportunity to have an impact
- The goal of the DORA report is to improve the industry and this subcommittee and the CCJJ should back these recommendations
- DORA produced a well researched report.
- Recommendation #2 was an attempt to make bail bonding agencies more responsible to DORA so instead of dealing with 500 areas of non-compliance (by individual agents), they could deal with an agency instead. It also put the responsibility back on the insurance companies and the agencies to take the responsibility. From that viewpoint it has value.
- This also adds value to the criminal justice system as it will give greater accountability to bail agents who are dealing with many issues in the CJ system.
- Recommendation #3 is important (continue the advisory committee) as is #8 and #11 and # 10
- Do we want to fight the battle of #10 (Removing “knowingly” as a standard for discipline)?
- What about #9? Jeff Clayton from Judicial will look into this as far as a fiscal note
- This subcommittee should focus its concerns around those issues related to the betterment of justice

<p><b>Issue/Topic:</b></p>	<p><b>Discussion:</b></p>
<p>Agency feedback</p> <p><b>Action:</b></p>	<p>The group begins the process of looking at issues surrounding bail according to individual agencies and stakeholders. Subcommittee members were asked to report back to the group on the following topics-</p> <ul style="list-style-type: none"> <li>- From your perspective, what are the primary purposes/functions of bail?</li> <li>- What are your unique roles and responsibilities relative to bail?</li> <li>- On a scale of 1-5, how well is the current system meeting YOUR view of the purposes of bail?</li> </ul> <p>The first to report back to the group is Judge Marcucci representing the Judicial Department.</p> <p><i>Judge Marcucci presentation</i></p> <ul style="list-style-type: none"> <li>o The primary purpose of bail is to get people to come back to court</li> <li>o Another purpose is to protect public/victims while the accused is on bail and while we're getting to know the defendant</li> <li>o The best way to protect the public is to hold them all in jail, but that's not legal or fiscally practical</li> <li>o The role and functions of a judge are to look at probable cause statements, look at the pretrial report, consider harm to the community, and the seriousness of the offense</li> <li>o The bail setting judge wants to be as educated as possible before making a decision</li> <li>o In Denver, there is a pretrial point system that includes items such as connections to the community, seriousness of offense, drug and alcohol involvement, employment. These factors give the judge a score and recommendation</li> <li>o That info is balanced against the bond schedule.</li> <li>o The Judge of county court sets the bond schedule</li> <li>o Things are the way they are because they are historic</li> <li>o Is it cheaper, more effective, to have pretrial supervise folks rather than have the bail folks take the money?</li> <li>o Who is better at watching these people? The bondsmen or pretrial?</li> <li>o The risk is that if we go more with the county model, there's going to be more harm to the public</li> <li>o We're trying to assess the risk of harm, see the benefits of getting people to court. Are we willing as a society to make this policy decision</li> <li>o The ordinary and customary bond is the bond schedule (in Denver)</li> <li>o Can we incorporate pretrial into the bond schedule?</li> </ul>



- On a scale of 1-5, the Denver system is at a 4. It's not broken. Can we afford it, is it fair? The system is not broken in Denver.
- FTA rate is not that high.

#### *DISCUSSION*

- The question in Jeffco has been what does money really accomplish?
- What does a money amount do?
- Question - When you say the bond schedule is 50,000 but you bump it up to 100,000 for a bad guy. Why is that?
- The bond schedule is not about risk – it's about whose got the financial ability to get out of jail
- 50% of public defender clients make bail and about 50% don't
- Keeping someone out of jail when they're not a high risk is extremely important
- Question - What is the reference to a VRA? Once the bail is set, the notification process kicks in. Filing notion to modify bail is where the VRA comes in.
- The judge's key areas center on the issue of what's the threshold of risk as a policy issue?
- The issue of risk is huge, and there are different perceptions of what that ought to be? Can we afford it? Is it fair? What about VRA?
- The system is working at a 4 out of 5
- The judge agrees at the concept in general of moving away from monetary bond amounts and toward more supervision.
- The varied policies around the state can be disturbing – there's no consistency. While this is a DA's decision to make, the CCJJ has raised concerns.

The next to report back to the group is Scott Storey representing the District Attorneys.

#### *Scott Storey presentation*

- The primary purpose of bail is to make sure people go to court and don't commit a crime while on bond
- DA's set conditions for that very purpose, to make sure people come back to court
- The DA's roles and responsibilities include – making recommendations based upon thorough information. Making recommendations to what the bond should be based on information on hand at the time
- The new (Jeffco) system is rated at a 1 on a scale of 5; should go

back to the old system with a bond schedule

- There's a distinction between the presumption of innocence and what bond does
- The presumption of innocence is there during the prosecution stage
- Scott believes in a system, a total system
- Scott adamantly opposed Prop 102 – because the system should operate as a system. When you take something out of a system it skews the system and there are unintended consequences
- Scott says his first question on the bond project is this – jail is not overcrowded. The bond schedule is historic and has been worked on and tweaked over time.
- Scott says he doesn't buy into the notion that it's 'not fair' if someone can't afford bail
- The more serious the charge, the higher the bond. The bond schedule system doesn't individualize the person's risk but looks at the crime
- One of the flaws in the prior system was that we didn't have a quick turnaround to get them back in court to look at conditions.
- Washington D.C. has a \$58 million dollar pretrial services budget, so they have a lot of resources to manage a big pretrial services system
- Jeffco would need 17 more pretrial people
- Jeffco doesn't have enough resources to adequately do this job
- Verifications are not always adequate. The Denver data issue has been resolved so that information is (hopefully) available
- There are supervision issues with pretrial services
- Validated risk assessment tool needed
- There's a role for the bonding industry
- The Public Defender always files a motion to reduce bond
- Scott wants to see the research on how offenders are being supervised, who's being supervised

#### *DISCUSSION*

- The pilot program in Jeffco showed no increased failure to appear rates and there's no significant difference in FTA's and public safety data; that is still holding true under the new system
- The new system looks at individual risk for failure to appear and new offense and judges impose appropriate conditions
- Pretrial supervision is being overused for low risk offenders, taxing the system

<b>Issue/Topic:</b>	<b>Discussion:</b>
Next meeting	The group ran out of time before getting to the agency issues for the Public Defender.
<b>Action:</b>	The group will wrap up the remainder of the presentations at the March meeting

**Future Meeting Dates:****Meeting Schedule**

March 2 <sup>nd</sup>	2:00pm – 5:00pm	710 Kipling, 3 <sup>rd</sup> Floor Conference Room
April 6 <sup>th</sup>	2:00pm – 5:00pm	710 Kipling, 3 <sup>rd</sup> Floor Conference Room
May 4 <sup>th</sup>	2:00pm – 5:00pm	710 Kipling, 3 <sup>rd</sup> Floor Conference Room
June 1 <sup>st</sup>	2:00pm – 5:00pm	700 Kipling, 1 <sup>st</sup> Floor Conference Room