

CCJJ Bail Subcommittee

March 2, 2012, 2:00PM-5:00PM
710 Kipling, 1st Floor Conference Room

ATTENDEES:**CHAIR**

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

SUBCOMMITTEE MEMBERS

Doug Wilson/State Public Defender
Sharon Winfree/Colo. Association of Pretrial Services
Bill Kilpatrick/Golden Police Chief
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
Sallie Clark/El Paso County Commissioner (phone)
Maureen Cain/Colorado Criminal Defense Bar

STAFF

Paul Herman/CCJJ consultant
Christine Adams/Division of Criminal Justice
Germaine Miera/Division of Criminal Justice
Claire Booker/Jefferson County Criminal Justice Planner

ABSENTEES

Scott Storey/Jefferson County DA
Grayson Robinson/Arapahoe County Sheriff, co-chair
Michael Dougherty/Deputy Attorney General

ADDITIONAL ATTENDEES

Mike Jones/Jefferson County Criminal Justice Planner
Stephanie Clark/Colorado Criminal Defense Bar
Jeff Clayton/Judicial Department
John Clarke/Clarke Strategies
Jason Armstrong/Bail Bondsman
Mike Taylor/Bail Bondsman

<p>Issue/Topic: Welcome and Introductions</p>	<p style="text-align: center;">Discussion:</p> <p>Judge Enquist welcomes the group and previews the meeting agenda. Judge Enquist also presents the new draft of the Mission Statement and asks for approval on the minutes from the prior three meetings (Dec. 2011-Feb 2012).</p> <p>Draft Mission Statement</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 (policy and/or legislative) for submission to the Commission by September 30, 2012, that will enhance the efficiency and effectiveness of the Colorado bail system.</p> <p><u>Mission Statement Discussion</u></p> <ul style="list-style-type: none"> • The mission statement has been amended to include the statement of ‘policy and legislative’ recommendations and a hard date of Sept. 2012. • The Commission may sunset next year and therefore we want to have a timeframe for ‘action’ • Motion to accept mission statement, seconded and approved. <p><u>Minute approval</u></p> <ul style="list-style-type: none"> • December minutes – approved • January minutes – approved • February minutes – approved • In the future, let’s site sources on statistics in the minutes
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<p>Issue/Topic: Bail Issues by Agency Public Defender</p> <p>Action: Chrissy and Jeff Clayton to provide updated chart and data by next meeting (see page 4)</p>	<p style="text-align: center;">Discussion:</p> <p>Doug Wilson addresses the ‘Bail Issues by Agency’ questions posed to the stakeholders of the group.</p> <p><i>DISCUSSION POINTS</i></p> <p>Statute background</p> <ul style="list-style-type: none"> • Title 21 states that anyone in custody, on a felony, is automatically eligible for Public Defender services. This essentially means even the wealthy are eligible. • Title 16 also states that if someone is indigent and charged with a misdemeanor or traffic offense, the defendants appointment with court
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appointed council must be delayed until after meeting with DA.

- The application process is set by Colorado Supreme Court.
- There was a time when Colo. had a 'partial indigence' process, however now it's a fairly black and white system of indigent or not indigent
- About 50% of folks in jails across the state are pretrial detainees
- If someone is in custody on a felony charge they're on the Public Defender's caseload
- **The purpose of bail is to make sure people appear.** It is a contract with the court that the individual who is charged will come to the court and show up
- The purpose of bail has been amended to include public safety
- What drives the Public Defender's system is the inability to get out of jail
- There were 100,000 cases across the state last year. The PD handles 53% of the misdemeanor work. 15-20,000 people per year go through the per se process without representation. The PD also handles 75-80% of the felony work (depending on jurisdiction)
- **Unique roles of the PD's office –**
 - The current system gets a rating of about a 2
 - In some jurisdictions, especially smaller ones, the PD's closest office is 2-3 hours away. Because of this PD's are often not in attendance on advisements.
 - There are other jurisdictions, like Jeffco, where being involved at that early stage is a significant benefit to PD clients
 - There is data that shows if counsel is present when bail is set, the likelihood of release goes up significantly
 - However, PD's are often not present during bail setting
 - Doug states that the reason the system gets a 2 is because the state's process is extremely discriminatory and has a disproportionate affect on the poor. This is due to money bail and even the PR bail system due to lack of employment, lack of family ties, and so on.
 - it is significantly harder to prepare a case when someone is sitting in custody then it is when they are out and able to help (re witnesses, mental health issues, etc.)
 - From a purely defense perspective, the time a defendant spends locked up in jail negatively affects a case
 - Doug feels this does have an impact on the presumption of innocence, Not only due to being locked up but due to the inability to work with the client
 - Access to a client is built around security checks, counts, feedings, institutional movements, etc.
 - If the bail schedule is driven from the perspective of law enforcement's charge, that is problematic
 - Discretion built into a bail schedule does not meet the constitutional charge of 'individual focused'

DISCUSSION

- Primary purpose – ensure people show up
- Unique roles re title 21 and title 16 – with the logical extension that it is the PD’s unique role and responsibility
- Part of the responsibility of a PD is to ask for reconsiderations regarding bail if bail is unattainable by a defendant
- The number one driving reason for problems in the current system is resources. Again, there’s often a failure on the PD’s part because the PD’s office can’t send a PD every day to remote areas
- There are ongoing resource driven and volume driven problems.
- Colorado Springs has the most filings currently.
- In some jurisdictions bail setting is done in county court. In Pueblo, Monday’s are docket days. All six courts meet Monday for docket day.
- The system is resource driven, this is a problem
- Currently the courts operate under a system of ‘file a motion and we’ll try to get to it in a month or so’
- Judge Marcucci asks ‘How can we make schedules fairer’. The bond schedule only serves a purpose between arrest and first appearance
- Inconsistencies in bond schedules across the state are vast
- There are also built in biases in bond schedules across the state
- F4’s with \$1500 vs. F4 with \$25000 – not looking at individualization of the offender – it’s just the charge that drives this – this is unfair and burdensome
- Do we expect money to detain? Or do we expect money to protect the public? Money can detain but do nothing for public safety.
- Maureen goes over data and information
 - CCJJ put together some info back in 2008 (a data analysis by Christine Adams)
 - Data shows far and away that the largest number of bonds is surety bonds. These bonds also have the biggest number of FTA rates
 - Can we replicate this with more current numbers?
 - The second highest FTA rate is straight PR bonds
 - We don’t know offense or risk levels on these numbers
 - There is a big discrepancy by jurisdictions
 - Chrissy and Jeff Clayton** to have updated chart by next meeting
 - Are we over-supervising folks on bond? Mandated they can’t have a beer, etc. Even if they don’t have alcohol issues.
 - The 6th judicial district filed 90 felony bond violations and 89 misdemeanor violations In 2011, with only 676 cases a year. On the opposite end only one was filed in Denver, a handful in Jeffco. Smaller counties are filing bond violations, the ones that don’t have pretrial services. Is it the DA?

	<p>-There are vast inconsistency in what’s happening around the state</p> <p>-It would also be good to capture data on what percentage of the indigent total number of PD and ADC cases are people making bond vs. not making bond.</p> <p>-There are more people staying longer in jail on misdemeanors than felonies. What is this discrepancy about?</p> <p>-How can we not overload jails with people too poor to make bond?</p> <p>-If someone violates the bond condition for something in and of itself that is not a new crime (drinking beer) that counts toward mandatory consecutive.</p>
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<p>Issue/Topic:</p> <p>Bail Issues by Agency Jails</p> <p>Action</p>	<p style="text-align: center;">Discussion:</p> <p>Judge Enquist and Chief Bill Kilpatrick report to the group on feedback provided by the undersheriff of Jefferson County regarding how bail issues affect jails.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ There is an obligation to thoroughly investigate all crimes so appropriate charges can be made and bond set with good information ○ On a scale of 1-5 the system would be rated at a 3 (from a police perspective) ○ Most people make bond, those with higher supervision are less likely to offend ○ There are a significant number of folks on \$100 cash bond that can’t make bond ○ When you add on anything extra to the folks in jail, medical, psychotropic drugs, etc. it increases the daily cost significantly. ○ Conditions are often attached to bond that have nothing to do with underlying crime
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<p>Issue/Topic:</p> <p>Bail Issues by Agency Law Enforcement</p> <p>Action</p>	<p style="text-align: center;">Discussion:</p> <p>Chief Bill Kilpatrick reports to the group on the ‘Bail Issues by Agency’ questions posed to the stakeholders of the group in regards to law enforcement.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ Bail bondsmen and cops don’t work together ○ Bail agents will show up to post bond at Jeffco on cases that have no nexus to the city of Golden or even Jeffco. Bail agents have been
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knows to say to Bill, 'Chief, two things – when we come here with our clients they're treated with dignity and respect and the system works on a timely manner. At Denver or Arapahoe County, we could be there all day'.

- Jefferson County is known to be extremely fast and that's the case in Glendale as well.
- The vast majority of people that law enforcement arrests, charged on misdemeanors or felonies, are never booked into the county jail. They sign a ticket and are released pending charges. People arrested on DUI charges are sent to detox or sent home with family member. Lots of people get released and don't go to jail at all.
- 1st, 2nd, and 3rd degree felonies are going to get arrested and booked. However with 4's, 5's and 6's officers use a lot of discretion
- This is where it will vary agency to agency
- People get booked into jail because often the cop knows the only 'time' they're going to do is pretrial jail – and they want to make sure there are some consequences
- Generally speaking, in this day and age, cops look at the purpose of bond for law enforcement is to ensure they show up
- Public safety on the other hand is a term more hard to define
- For example, if a spouse shoots another spouse due to years of domestic violence, what's the risk of reoffending? The risk to the public is very small, but the spouse will likely get an incredibly high bond or no bond. They won't be a flight risk, they're not a public safety risk, and they'll get an incredible bond.
- When someone is released pending charges or investigation and the request is made for a bond, there's discussion with the judge about what the bond should be. The bond schedule is often not even followed. It's often a conversation with the judge to determine where the bond is set.
- When bond is being sought, when an offender is arrested and taken to jail, it may or may not be correlated with any sort of public safety risk.
- Law enforcement would put the current system at a 3 or 4
- Also, the use of jail beds for treatment purposes or to leverage people into treatment happens a lot.

DISCUSSION

-From Steve Mares:

When bail is posted by a professional bail agent, they don't just post bond, there are also weekly check-ins with clients.

-From Bill Kilpatrck:

Whether it's a high dollar or low dollar amount, either way, if we're talking about public safety, how does that somehow make us 'safer' if

	<p>the bond is set and made at 50 thousand dollars?</p> <p>-If someone is being supervised, does it really matter how much money the bond is?</p> <p>-Whether a person posts cash or signs their house over, it doesn't matter.</p> <p>-We're dealing with a public perception.</p> <p>-The money puts 'skin in the game' – it puts a family in the game, which is true for FTA but NOT public safety. There's a disconnect.</p> <p>-The thought of going to prison should put enough skin in the game</p> <p>-The reality of the client is that they've done something because they don't have the ability to recognize that it's harmful.</p> <p>-Offenders don't say 'How do I get out of here and not commit a new crime?'.. it's 'How do I get out of here?'</p> <p>-This is not an attack on bail bondsmen, the fundamental question is while money may ensure appearance, no amount of money will prevent someone from committing a new crime</p> <p>-No amount of money ensures anybody at any given time not to commit a new crime</p> <p>-Paul offers a summary: Everyone agrees the purpose is to make sure people appear in court. But when we say public safety we define that in different ways.</p> <p>-A Serial burglar needs to be under severe supervision to make sure they don't do it again.</p> <p>-Without a preventive detention statute there's no way to detain</p> <p>-The likelihood of a potential prison sentence moves a bond up higher</p> <p>-Public safety is ill defined</p>
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<p>Issue/Topic:</p> <p>Bail Issues by Agency Victims</p> <p>Action</p>	<p>Discussion:</p> <p>Kate Murphy addresses the 'Bail Issues by Agency' questions posed to the stakeholders of the group regarding victims.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ Victim's have a different perspective than providers ○ For victim's bail is insurance that the perpetrator gets back to court
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- For the victim, **'victim safety' is more important than 'public safety'**
- Victims like to see bond conditions that enhance a safety perspective
- The VRA (Victims Rights Act) in Colorado is intended to create balance in the system and give victims an opportunity to be heard and informed
- Pre-VRA it was difficult for victims to get info about bond
- The VRA has created a systematic flow of information
- **Victim service providers rate the system at about a 3**
- When victims show up at bond hearings they often say "I want them out"
- The more info the victim has, the better the system can work
- The goal of the VRA is to help victims make the best decisions for themselves at the time
- The bond schedule is often used as something other than it was intended
- We're using bond often now for safety issues. Right or wrong.
- The amount of bond does not ensure there will not be commission of a further crime
- **The problem over the years is we've gotten completely away from individualization.**
- We don't look at individual offender, victim or case. The **cookie cutter approach is what has put us in this situation**
- Oftentimes in jurisdictions, the VRA has become a shield and the sword as far as setting bail, disposition, and trial. You can have a weak case with an expressive victim. You can have a strong case with a victim who doesn't want it tried.
- **The system should be set up to give judges as much info as possible about the individual case.**
- The VRA was meant to provide info to victims, not represent victims
- There are jurisdictions where prosecutors do believe they represent the victims
- There is a difference – a lot of public safety doesn't necessarily equate to victims
- System advocates do not have confidentiality. Non system advocates do have confidentiality.
- A prosecutor based advocate has limited access to resources because they are system based.
- Non-system advocates have greater access to resources
- Prosecution-based advocates see 20-30 percent of victims
- Non-reporting victims never even come across the system advocate radar
- The largest non-system victim advocacy group in Colorado would be the Colo. Coalition against Sexual Assault, or COVA (largest statewide groups)

	<ul style="list-style-type: none"> ○ DA victim advocates files are very factual (e.g., called victim on Dec. 10th, etc. Called victim about, etc.). There are not notes about ‘the victim feels this, the victim has concerns that.. ‘ ○ If you have a repeat victim, repeat – puts DA’s office in a tough position. DA’s sometimes feel that someone needs to do something to keep this person from being seriously hurt or killed. ○ This goes to the complexity of domestic violence situations – this is beyond what the criminal justice system can address. ○ Victims advocates are facilitators only,
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<p>Issue/Topic:</p> <p>Bail Issues by Agency Pretrial Services</p> <p>Action</p>	<p style="text-align: center;">Discussion:</p> <p>Sharon Winfree addresses the ‘Bail Issues by Agency’ questions posed to the stakeholders of the group regarding Pretrial Services (see handout).</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ Primary purposes – Public Safety and reduction of FTA’s ○ What bail is NOT? Bail is not supposed to be punishment or setting amounts that are oppressive. There are often stiffer conditions during pretrial that are punishing in nature, etc. ○ Unique roles and responsibilities. Bond interviews, preparing paperwork. Also, there’s a supervision piece for those ordered to bond. Almost all of the programs provide those two pieces. ○ Interview for bond hearing provides verified information to the courts to provide consideration to the courts. ○ As far as the third question regarding how the current system is working on a scale of 1-5. The average score is a 3.8 across various jurisdictions. ○ Denver’s current system is rated as a 3 due to continued and heavy reliance on money bail. It doesn’t seem to be tied to the money piece. Denver relies too heavily on the bond schedule. ○ The good work being done is around individualized risk assessment scales. And work needs to be done around preventive detention. Some people DO need to be detained. ○ Colorado’s first pretrial risk assessment tool will be ready next week.
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Issue/Topic:	Discussion:
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<p>Bail Issues by Agency Bail Industry</p> <p>Action</p>	<p>Steve Mares addresses the 'Bail Issues by Agency' questions posed to the stakeholders of the group regarding the Bail Industry.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ The purpose of bail is to guarantee the defendant will appear all court hearings ○ The bail industry's role is to Reduce jail populations and recidivism ○ Another goal is to ensure the defendant will be brought back to justice in the event they were to disappear ○ Unique roles – Service provided to defendant ○ Bail agents look to develop business relationship with family members and friends ○ In the event the defendant fails to appear, bail agents try to give the defendant the opportunity to get bond back on track. ○ If all else fails with the defendant, bail agents have the option of apprehending the defendant. The worst case scenario is that they pay the full amount of bond ○ Current system is a 2.5 = due to the fact there seems to be different ways of doing things county to county ○ Some counties are setting small cash only bonds on felony charges and repeat offenders and this is not good for public safety. ○ Don't believe everyone should be released on surety bonds. ○ A lot of tension being put toward which side is better (professional bail agents vs. pretrial detention). Both should be utilized and we should move forward utilizing all options. ○ Question – regarding recovery service. Law enforcement is not funded to bring people back. There's a difference of opinion on how often, how frequently, etc. This would be valuable to talk about. ○ Regardless of how this is being done, if there's a successful way of doing this it could be informative to the system as a whole ○ Do we have numbers on how many people are actually brought in by bondsmen? ○ How are people being recovered? How quickly? The goal of the bondsman is to help individuals get back on track. How often do people surrender to court and get back on bond. ○ With new direction on the sunset bill – there's now no annual report with the new system being adopted. How can we get all licensed bail agents to comply with a report, how do we do that? Don't know but it would be nice to have.
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Issue/Topic:	Discussion:
<p>Meeting wrap-up and Next Steps</p> <p>Action</p>	<p>Paul offers a recap of the meeting.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ What does public safety mean, what should it mean and how best to achieve what it should mean ○ Adding in individual victim safety is an important piece /VRA victim or any victim? ○ Define what the purpose of bail is and what it ISN'T – sometimes the default is to be clear about what it is not. ○ Let's be careful about how jails are being used for treatment purposes ○ The Preventive Detention issue needs to be on the table ○ The new Risk Assessment tool is going to be ready to go statewide soon. How does this fit with everything else? ○ Recovery services <p>Sunset bill Update-</p> <p>The whole bill was just discarded for putting bail agents under the Casualty Agent provision in title 10.</p> <p>HB 1266 – it's a very confusing bill to follow.</p>

Future Meeting Dates:

Meeting Schedule

April 6 th	2:00pm – 5:00pm	710 Kipling, 3 rd Floor Conference Room
May 4 th	2:00pm – 5:00pm	710 Kipling, 3 rd Floor Conference Room
June 1 st	2:00pm – 5:00pm	700 Kipling, 1 st Floor Conference Room