

CCJJ Bail Subcommittee

April 6, 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
Scott Storey/Jefferson County DA
Michael Dougherty/Deputy Attorney General

STAFF

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

ABSENTEES

Grayson Robinson/Arapahoe County Sheriff, co-chair
Maureen Cain/Colorado Criminal Defense Bar

ADDITIONAL ATTENDEES

Mike Jones/Pretrial Justice Institute
Stephanie Clark/Colorado Criminal Defense Bar (on phone)
Jeff Clayton/Judicial Department
John Clarke/Clarke Strategies
Jason Armstrong/Bail Bondsman
Mike Taylor/Bail Bondsman
Ken Plotz/Division of Criminal Justice
Jennifer Lasswell/Metro State College

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Judge Enquist welcomes the group and previews the meeting agenda. Judge Enquist informs the group that Grayson Robinson has resigned as co-chair due to time constraints. The appointment of a new co-chair is in the works. The new co-chair will be a current CCJJ member.</p> <p>The subcommittee approves the minutes from the March meeting.</p>
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<p>Issue/Topic: Bail Issues by Agency</p> <p>Action:</p>	<p>Discussion:</p> <p>Paul Herman reviews the Bail Issues by Agency grid that was compiled through stakeholder feedback during the last two meetings.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • The goal with putting the grid together was to see if something would jump out after looking at everyone's input • However, in looking at the completed grid nothing in particular stands out or seems to raise any red flags • Does anything jump out to any members of this group as far as unexpected or unusual feedback? • The feedback from all the stakeholders is that the consensus on the purpose of bail is basically for the accused to show up in court and not commit a new crime • As far as the 'purposes' of bail there's a lot of commonality – but when we delve into responsibilities of individual agencies the issues diverge • We want to be mindful to keep our eye on the mission statement and the group's purpose as we move forward through these issues.
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Issue/Topic:	Discussion:
Data Update	Christine Adams presents the bail data requested at the March meeting.
Action	<p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ The data was provided by judicial and is an update on data originally compiled 2008. ○ CCJJ's incarceration task force put this data together in 2008 when they were studying bail/bond issues at that time ○ This data was used to compile the original bail/bond recommendations put forth by the Commission in 2008 ○ The first chart shows the number of bonds by crime class from 2002-2011 (the total number of bond cases for each year) ○ The 2nd chart is the total amount posted for each crime class ○ The third chart shows the frequency of bonds posted by felony crime ○ The fourth chart shows the same info for misdemeanor crimes ○ Keep in mind these are numbers (frequencies) not percentages ○ Page 7 shows the dollar amount by bond type – these are bonds posted and not forfeited ○ Let's strike the last sentence on page 7 ○ The data shows that bonds are down but filings are down as well ○ PR bonds are going down but PR bonds with co-obligor is going up, so these may actually coincide with each other ○ Steve Mares asks if this data accurate ○ It's difficult to say any data is 100% accurate, but Judicial doesn't see any problems with this data ○ What about possible clerical errors when the clerk is entering data in the individual judicial districts? ○ No, when the data is entered at the jail it is correct ○ Page 8 shows average bond amount by district ○ Page 9 shows frequency of bonds by year ○ Page 10 shows FTA by bond type ○ Page 11 and 12 both address frequency of FTA's by charge ○ Sureties show a lot of FTA's but that likely correlates with the fact that they post a lot of bonds ○ Question - Page 8 shows cash bonds.. but the 'cash alone category' shows nothing. Why? They probably combined them and put them all in the 'cash' category. The cash surety could've been cash posted by private surety not commercial surety ○ We want to look at percentage of people who FTA'd on surety bonds vs. those that FTA'd on PR bonds. ○ This is the million dollar question ○ The data out of Jeffco compares one way of doing bonds to another way of doing bonds ○ When we look at how PR bond failures compare to surety bond

failures, we want to examine this jurisdiction to jurisdiction because these simply aren't comparable groups

- The frequency of FTA's by charge makes sense
- Keep in mind that when we're asking questions about data, we always want to think about 'What will the answer tell us?'
- The charts showing cash and cash only represents an issue that isn't very clear
- As far as the cash bonds posted, were those posted at full bail amount? At penalty amount? That's not defined very well. Can we define what each of these 17 categories mean?
- Are there duplications in this data?
- The cash surety data isn't very clear, is that posted specifically by a professional cash agent or is it the representative of a bail insurance company?
- The surety category shows a significant number of bonds. Is that posted through a company or a professional cash qualified agent?
- Can we combine the surety and the cash surety to show the number of bonds provided by a professional surety agent?
- Were all of the PR and PR bonds supervised by pretrial? Can't answer that question – that is not available in the state system
- The categories regarding this data need to be defined further
- Maureen Cain is amending the Bail/Bond Sunset Bill to be able to capture much more data
- There are counties without pretrial services, so could we compare those with and those without to see which has better outcomes?
- Can you compare counties with or without?
- Can we look at El Paso County since they used to have pretrial services and don't anymore? Sallie Clark to look at the data.
- We can use our current data, we can look at the data from El Paso before vs. data after
- In El Paso county, Pre-trial supervised ONLY PR bonds – keep this in mind
- Let's look at El Paso county before and after
- From El Paso's standpoint, the job is to keep people out of jail, we want to reduce the cost in jail and not have people in there who aren't high risk.
- Can we track revocation for new offense vs. technical violation revocation?
- The pretrial in El Paso used to fall under the commissioner, now it's under the sheriff
- It's more defensible for a county to put this under the sheriff's dept (public safety) rather than the county commissioner
- El Paso has 1 FTE who works on this – it is not coming out of general fund

- The county charges a \$60 flat fee – and there’s a bond amount as well.
- If they don’t pay the \$60 they go to jail
- Question for Jeff Clayton/Judicial – what data is available vs. not available? This depends, there’s data that’s available at the touch of a button, and there’s data sitting in individual files. We can talk about this further. Judicial is open to working on this.
- The researchers from Jefferson County will also provide data at the next meeting from the more comprehensive CISPR (Colorado Improving Supervised Pretrial Release).

Issue/Topic:	Discussion:
<p>Public Safety Discussion</p> <p>Action</p>	<p>Paul leads the group in a discussion regarding how this group wants to define ‘Public Safety’.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ What definition are we going to use for Public Safety as the group moves forward? What specifically are we talking about? ○ This shouldn’t be complicated unless we choose to make it complicated ○ Let’s go with ‘No new offense committed (allegedly) while on bond’ ○ If we say this, but the offense committed while out on bond is minor, is that a public safety risk? If someone shoplifted? ○ How do we define ‘no new offense’ – a speeding ticket? Driving under suspension? Is this a ‘public safety’ issue?

- Why do we need to define this? Do we need to?
- If we're looking at what we can do better to improve the way we do bond, we need to know what it is (exactly) that we're talking about
- The new omnibus bill defines a new offense as anything that is punishable by jail or prison. This would include most traffic offenses.
- If someone is out on bond and steals a candy bar from a 7-11, that is a new offense, period. Ultimately we may care less about a candy bar, but that's not the issue here.
- It isn't so much about what the offense IS, but rather the point is 'No new crimes while on bond'.
- Why are we asking this for the purposes of setting bail?
- It is not uncommon for a bond NOT to be revoked for the commission of a new crime
- Why are we trying to outline this? Because for our purposes.. public safety means 'X' – if we can't define one of the purposes of bail (Public Safety) how can we come up with recommendations regarding that?
- For performance measures monitoring we have to be able to define a measure and agree on how to measure outcomes.
- Many jurisdictions across the country define public safety as something like 'No new filing for an offense that was allegedly committed during the pretrial period'.
- But what 'kind' of offenses?
- The discussion regarding once the offense happens and what you do about it afterwards, is a whole different discussion.
- FTA, Public Safety and Compliance with other technical conditions are the three things that are measured in the pretrial field – these three items count as success rate in the pretrial world.
- For some pretrial agencies the words 'law abiding' equals success.
- 'Offense' is still too broad of a word
- If a prosecutor files a charge against you, and it shows up in the state's data system, it's counted as an offense.
- Municipal DV assaults count in Denver, but not Aurora or Alamosa. Denver will be negatively impacted because of different data entry standards
- What if we use the verbiage of 'State level offenses, CRS offenses'?
- Can we use CRS verbiage here?
- No new filing for state level criminal (CRS) offenses allegedly committed during pretrial period.
- By next meeting, let's look at whether we should include municipal offenses.

<p>Preventive Detention Discussion</p> <p>Action</p>	<p>Judge Enquist leads the group in a discussion regarding Preventive Detention.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ Tim Schnacke produced a preventive detention memo for the group ○ How do we want to address the issue of Preventive Detention as a committee? ○ As far as Preventive Detention, everyone should be bailable except those charged with a capital offense ○ Preventive detention is used every day ○ There are some people too dangerous to be out there ○ We agree that some people should be detained, the question is should the detention be a 'money' detention? ○ Maybe there shouldn't be a bond available for a 20 count pedophile ○ But, if we take a homeless guy who can't make \$250 bail, he will cost the county \$65/day because he can't make it ○ There has to be a way to incarcerate and use preventive detention minus a cash system. If we're going to move to a risk system there has to be a way to detain. ○ Two variables are very hard to capture with setting bail ○ When setting bail, it is assumed the prosecutor knows the value of the case and what the evidence is. But the case changes over time ○ Should bail be directly proportionate to what we believe the persons' financial status to be? We assume that we know exactly and accurately what the person's financial standing is and could be ○ 16-4-105 requires a judge to know certain things, the problem is this isn't an exact science and it's really hard to know. ○ Judges say "Is this person dangerous and do they need to be detained?" Or what amount allows someone to get out? ○ There should be a presumption of release. Everyone should be releasable if they're not under preventative detention supervision ○ There should be a presumption that you get to go home, but 50-60% of the people in jail right now are convicted of NOTHING – this should be reversed. ○ Part of this is we have a preventive detention statute in this state – other than for an F1 it's not utilized. A lot of preventive detention occurs because of a high bail amount. These are system conflicts that make 'the system' look strange from the outside. ○ We detain a lot of people who aren't charged with crime of violence, we detain through cash amounts ○ A lot of people don't understand the offender charged with sex assault who gets out on what appears to be a minimal bond ○ We need to figure out how to do this without tying it so closely to money ○ The bottom line is whether we should examine our preventive
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detention provisions both constitutionally and statutorily as part of our task at hand

- We need to add something that says money should not be used as a preventive detention tool.

Issue/Topic:	Discussion:
<p>Meeting wrap-up and Next Steps</p> <p>Action</p>	<p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> ○ What is happening with the Bail/Bond Sunset bill? The whole bill was just discarded for putting bail agents under the Casualty Agent provision in title 10. HB 1266 – it's a very confusing bill to follow. ○ The group will meet again on May 4th. ○ The group will continue to work on the definition of Public Safety ○ The group will decide where to go as far as the issue of Preventive Detention ○ Also in May, the group will decide the scope of work for the Subcommittee with a timeline and deliverables. ○ We also need to go back and look at the original 2008 CCJJ recommendations which were the basis for forming this subcommittee ○ Statewide data to be provided by Jefferson County researchers regarding CISPR ○ The subcommittee to look at the new CPAT (Colorado Pretrial Assessment Tool).

Future Meeting Dates:

Meeting Schedule

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