

CCJJ Bail Subcommittee

June 1, 2012, 2:00PM-5:00PM
700 Kipling, 1st Floor Conference Room

ATTENDEES:**CO-CHAIRS**

Judge Margie Enquist/1st Judicial District
Doug Wilson/State Public Defender

SUBCOMMITTEE MEMBERS

Sharon Winfree/Colo. Association of Pretrial Services
Jason Armstrong/Bail Bondsman, Professional Bail Assoc. of Colorado
Kate Murphy/17 Judicial District, Victims representative
Sallie Clark/El Paso County Commissioner
Maureen Cain/Colorado Criminal Defense Bar
Scott Storey/Jefferson County DA
Michael Dougherty/Deputy Attorney General (by phone)

STAFF

Paul Herman/CCJJ consultant
Christine Adams/Division of Criminal Justice
Kim English/Division of Criminal Justice

Presenters

Mike Jones/Pretrial Justice Institute
Claire Brooker/Jefferson County Criminal Justice Planner

ABSENTEES

Bill Kilpatrick/Golden Police Chief
Greg Mauro/Denver Pre-trial services
John Marcucci/Denver County Court

ADDITIONAL ATTENDEES

John Clarke/Clarke Strategies
Jeff Clayton/ Judicial Department

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Changes to minutes –</p> <ul style="list-style-type: none"> Item changed from Claire Brooker’s presentation should say the following (see page 4 of the May minutes): <ul style="list-style-type: none"> Based on JeffCo’s study, 95% of defendants were eligible for PR bonds with the DA having the ability to object to some of them. The minutes were approved unanimously with this change.
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<p>Issue/Topic: General Assembly Update</p> <p>Action:</p>	<p>Discussion:</p> <p>Jason Armstrong (Professional Bail Assoc. of Colorado) provides the following update-</p> <p>DORA update: We are unsure at this time if HB 1266 has been signed by the governor. But the division of insurance (DOI) is doing emergency rule making which means there will be little if any public input. However, they were able to address some questions:</p> <ul style="list-style-type: none"> Bail recovery has been defined but it’s not regulated. The direct regulation of bail recovery has separate entities. There will be mandatory training. This will be post-officer training. Specifically, they have to complete this course but it is up to the person hiring them to ensure that they’ve done this training. Without this training their right to underwrite bonds could be jeopardized. <p>Looked into sun rising true bond recovery.</p> <ul style="list-style-type: none"> California has an excellent bail recovery regulation program that includes arrest and de-escalation of force techniques. <p>Licensing was clarified.</p> <ul style="list-style-type: none"> Most of this wasn’t of concern for public safety. Every bail agent will now receive casualty training. They will also have to complete bail specific training in order to underwrite bail bonds. This is basically the same training but it will be updated to reflect new law. The casualty training includes more extensive insurance law and ethics. There will be the same amount of training for bail recovery, causality agents (must also do insurance training), and ethics. There is also continuing education that is required as far as casualty training goes. We anticipate that there will be continuing education for regular bail as well. <p>Still have to have documented receipts.</p> <ul style="list-style-type: none"> All documentation was removed from HB 1266 by the House and then put back into the bill by the Senate. . There will be no daily bond registry and no annual reporting. The DOI
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said that this paperwork was never of any value to regulate the industry and that they would rather use resources to address consumer complaints.

- The reporting requirements are more about criminal justice.
- In a nutshell bail has been brought back into insurance (under title 10) for the most part. There are some concerns that some of the penalties in HB 1266 are not consistent with title 10. This will be addressed. Title 16, as it refers to bail, should not be affected by HB 1266. All of the criminal violations in title 12 were removed and put in title 18, under the miscellaneous crimes section. A couple “paper work” crimes were dropped. But crimes with criminal intent were moved to 18.

The DOI said that there were some bondsmen reporting that a 10% fee existed and that they could charge any fee as long as it doesn’t total more than 15% of the bond.

- It was clarified that it can’t be more than 15%.
- Some bondsmen were forcing people to do home detention and charging them to monitor their ankle bracelet. This is not acceptable. A lot of times it’s the parents wanting the kids (offender) to do certain things.
- A bondsman requiring in-home detention is a violation since this is a sanction. It’s different if the court orders GPS. If pre-trial can’t change conditions of bond how can private industry? Don’t think they have the authority to do this.
 - Pretrial is required by the court whereas they are agreeing to a contract with this bondsman. If they don’t like it they can seek someone else.
 - How many terms and conditions can a bonding agent put in a contract? It is a commercial contract. An individual can object. The bonding agent is given authority from the government. You’re not an insurance agent selling me home owners insurance. You can’t take away personal freedom. It’s a security issue, to secure the money put up by the bondsmen.
 - Bottom line is that a bondsman can’t charge more than 15% and specific fees. Bond fee is supposed to cover the cost of the required paperwork. The jail collects it but it goes to the court. The booking fee is charged to the individual. It’s not SUPPOSED to keep them in custody, although it does in many counties.

Reporting – pretrial reporting is covered in HB 1310, not HB 1266. The one thing that we (bondsmen) wanted to see included is what happens post-FTA.

Argument is that this can’t be covered.

- Did they consent to reinstate bond?
- Did we bring them back into custody or did law enforcement bring them

back in?

- Problem is creating something that is verifiable.
- Maureen met with Claire to determine, based on the literature, the important data points
 - FTA, public safety (new crime), and % kicked out of pretrial services for some other compliance issue (other than FTA and a new crime).
 - We (bondsmen and defense attorneys) butted heads over public safety. We (bondsmen) are not responsible for public safety. Don't know if they're committing more crimes and can't call every person every day. What was finally agreed to was that they would report any bonds revoked as well as any time a second bond was written for a different crime.
- Did you think about tracking whether there was a violation of bond that was then revoked from the court? Should we know if a bond has been revoked by the court? Sure. But often times a person has no reason to talk to us anymore if their bond has been revoked so we don't know. Many clerks don't know the difference between a bond being revoked or someone being released for forfeiture.
- What kinds of things can someone be revoked for that's not a forfeiture? Only the judge or bond agent can forfeit if they FTA. So everything else is revoked. Often they revoke a bond because they're releasing the bond (confused clerk/data entry?).
- Will get an annual report with these data points.
- This is good because I often hear that the bondsmen just don't bring people in. But there is obviously more to it.
- Will there be a report for those that are being surrendered into custody? That's what we're trying to develop. Not everyone does a body receipt. A few counties keep track of a bondsman arrest vs. law enforcement arrest. But it may still look like a law enforcement arrest because of the booking process. How would you capture it if the bonds person knows where they are and calls the police who are the one to actually arrest the person? We're working on this.
- Would be valuable for all of our groups to be trained on HB 1266. We could speak to any group about how things will be regulated and how they will report their information (and what needs to be reported). What is the consequence for not reporting? The DOI could enforce a sanction but it's not going on the board (fine and possible licensure issue) but nothing more because there would have been a fiscal note.
 - To be honest the DOI doesn't think we'll get these reports.

Issue/Topic:	Discussion:
<p>Data Clarification/Implications</p> <p>Action</p>	<p>Mike Jones addresses questions and issues from the previous meeting's presentation on the Jeffco study.</p> <p>The JeffCo study found that surety bonds held more people than cash only bonds.</p> <p>When it's a surety bond it takes the same amount of time to post as cash only. We can agree that Cash only is a detainer.</p> <p>Is the risk instrument ready? Yes, but this is up to each jurisdiction to implement. Some jurisdictions are further ahead than others. Working with their stake holders.</p> <ul style="list-style-type: none"> • Denver has permission to go live later this year. • Mesa County will probably do it sooner. • Most jurisdictions are at some stage of implementation. But there are various things that must be looked at. <p>- There is a debate about whether we should create a statewide database or would access to this information create more problems. - Will there be pre- and post- analysis? This would be a good idea, but the capability to do this varies across the state. What does the state look like pre and post implementation? Fewer high risk and more low risk defendants should be released on bond. - But the focus right now is on training. Any defendant should be able to go to any jurisdiction and come out with the same score. Implementation needs to have fidelity.</p> <p>What peer review process did you use?</p> <ul style="list-style-type: none"> • That is not normally a process that is used for the development of a risk assessment tool. • But we took the additional step of having a second person look at our methods. <p>How do we know how reliable some of the information is if the primary source of the information used is the accused? Could verify from the court records.</p> <ul style="list-style-type: none"> • Over and over the actuarial researchers have found that these factors are significant predictors. Keep in mind that we're talking in the aggregate not about any individual. • Other factors are not statistically significant predictors. <p>Why is it that the age of your first arrest is given so much weight? It is consistently found to be the strongest predictor in criminology.</p> <ul style="list-style-type: none"> - FTA is a predictor but it doesn't have the same power. That could be because we don't have good data.

Issue/Topic:	Discussion:
<p>Options and Next Steps</p> <p>Action</p>	<p>We need to go back to the original Commission recommendations.</p> <ul style="list-style-type: none"> - Our mandate is to come up with recommendations for the Commission to vote on this fall. - We have fulfilled our obligation to look at DORA recommendations (other than few things that still need work) and we have looked at preventive detention. We need to decide what we want to tackle next. <p>The original recommendations (08-L7, 08-L8 and 08-L9) were written with a lot of work put into them but we have much more statistical (and other) information now.</p> <p style="text-align: center;">L7 = bond to the court L8 = County retains some \$ for admin/recovery L9 = \$ (from L7 & L8) applied to fines, fees, etc.</p> <ul style="list-style-type: none"> - L7/L8 – were both part of SB11-186 which didn’t pass <p>L9 – passed as legislation (HB10-1215) This means that the system is set up but since L7 and L8 didn’t pass it can’t be implemented. These were written under the assumption that both bills would pass.</p> <ul style="list-style-type: none"> - Did something good come out of L9? Yes, but it can’t work completely without L7 and L8. <p>The last two recommendations (BP39 and BP40) were business practices:</p> <ul style="list-style-type: none"> - Develop a statewide bond schedule because the inconsistency across the state is huge. But this hasn’t happened. - Each judicial district should create bond commissioners to ensure that there was consistency across the state and who would regulate the Pretrial investigation and recommendations to the court. - These recommendations all came out before the 14 week study in JeffCo as well as before the development of the CPAT (presented at the May meeting). - These recommendations need to be reexamined based on what we’ve learned over the last 4 years. <p>So what is the priority of the recommendations that are left?</p> <ul style="list-style-type: none"> - L7 and L8 would have essentially gotten rid of private surety. <ul style="list-style-type: none"> o No, the bill specifically said that this does not eliminate any option to the court. If the person who benefits from the bond is who sets the bond you’re putting an industry out of business. - There is case law that says that it’s okay for the court (who is responsible for setting the bond) to benefit from the bond set. To address the conflict of interest the money goes back to the defendant once the fines and fees are paid. <p>Started from the perspective that there are too many people in county court</p>

who have not been convicted of anything. We didn't have a risk based system.

- What is the best way to protect the public while still making sure that people are still able to get out?
- What needs to be considered if we want to create a risk based system? This is not where the Commission started. It was solely about what it cost.
- We know that money is a detainer.

The argument for letting more people out is an increase in pretrial supervision which is also a cost. So we end up not supervising people adequately.

Have we increased the number of conditions over the last four years?

- We may place too many conditions that don't really relate to the issue.
- What about accountability.
- There is a lack of individualization, yet the majority of our discussion has been about making things less individualized by putting everything under government control.
- You're only going to get this through assessments. How can you increase conditions of bond without looking at risk assessment?

What else do we need to consider:

- Risk based system
- Data (re: monetary system)
 - o Didn't have the statistics that show that a money based system does not decrease FTAs or increase public safety (didn't have this info when SB 10-186 was being discussed).
 - o Where does the money come from for these pre-trial services? You're either paying for people to be incarcerated or you're paying for pre-trial services.
 - o Need to have a holistic system and ensure that we're all doing our jobs (public defenders, district attorneys and judges).
- Do we have any follow up data on the presumptive summons on F4, 5, and 6s (statutory change from CCJ recommendation)? I don't think data exists on how people bonded out.
 - o The risk information may also adjust how we look at this now.
- Conditions

When we were drafting SB 186, Grayson contacted all of the sheriffs across the state.

- We know that the pre-trial detention rate has stayed the same even though the crime rate has gone down.

We're talking about a moneyless bond system but nothing is moneyless. It just depends on who pays for it. It's cost for reallocation.

- Have to do a cost analysis and determine if the new system passes this test.
- The question is where the "break even" point is if we're letting more low risk people and more high risk people out.

If we move to a risk based system there are three groups:

- Some shouldn't have any supervision (we know it actually makes some people worse), released with conditions, and not getting out.
- If we're just letting them out somebody still has to track these people.

We don't have a complete cost analysis.

- We aren't accurately capturing the cost of what happens after someone FTAs. Not all are getting caught.

We don't necessarily know what the bed space issue is for county jails.

- JeffCo was 40% +/- 3% (pretty stable).
- CISPR data show that across the state, for all offenses, about 20% will have a new offense (arrested or charged) while on bond.

Do we know what the jail population is?

- Need a formulated template to look into this.

Targets for Change:

- How do we address risk?
- Conditions may become a double edged sword. May not be applying the correct conditions to the correct people. The jury is out on what conditions do the most for "protect and show." Maybe this can be addressed with a research recommendation.

So where are we going:

- Could bring 186 back (revisit L7 and L8)?
 - o We shouldn't offer this as an option to the commission since we now have data that shows this isn't the right way to go to increase "protect and show."
 - o We have to be realistic in our state and local balance/impact and what is politically feasible when we come up with a recommendation. Many things that are evidence based are killed in the political world. Also need to have a positive financial impact.
 - o We could be bold or take smaller steps with a pilot program.
 - o There is a culture shift happening here. We can present recommendations to the commission that address this shift but still present what is politically feasible. Not doing our jobs if we don't address the culture shift.
 - o Impact may go up and feasibility may go down, or vice versa. Have to decide on the cutoff point.
 - o Are there any concerns that more people will stay in jail with the preventative detention? Yes, it would be a shift in due process.
- Risk assessment recommendation.
 - o Can't just have a risk based tool. The political issues come in when you marry the risk assessment with the top charge. If you say that we should now have a risk based system and determine

what conditions will best lead to protect and show you can use a matrix (see slides from May presentations) where you can then measure public safety rates (with reoffending) and shift the grid from there.

- This is a way to do something instead of L7 and L8 as well as BP 39 and 40.

Staff will sit down and put some next step options together and talk to Grayson. Multiple members expressed concern that Grayson is no longer involved in this committee. But we will certainly get his input and buy-in before moving forward.

- We may need to get a replacement (as far as a Sheriff's representative) for him.

Next Meeting:

Due to the 5th of July holiday it was suggested that the next meeting date be changed to June 29 (instead of July 6). The group agreed unanimously on this change.

June 29th 2:00pm – 5:00pm 710 Kipling, 3rd Floor Conference Room

- If there is a change in the location subcommittee staff will let you know as soon as possible.