

**CCJJ Bail Subcommittee**

June 29, 2012, 2:00PM-5:00PM  
710 Kipling, 1st Floor Conference Room

**ATTENDEES:****CO-CHAIRS**

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

**TASK FORCE MEMBERS**

Sharon Winfree/Colo. Association of Pretrial Services  
Jason Armstrong/Bail Bondsman, Professional Bail Assoc. of Colorado  
Kate Murphy/17 Judicial District, Victims representative  
Maureen Cain/Colorado Criminal Defense Bar  
Greg Mauro/Denver Pre-trial services  
John Marcucci/Denver County Court

**STAFF**

Paul Herman/CCJJ consultant (phone)  
Kim English/Division of Criminal Justice  
Germaine Miera/Division of Criminal Justice

**ABSENTEES**

Scott Storey/Jefferson County DA  
Sallie Clark/El Paso County Commissioner  
Bill Kilpatrick/Golden Police Chief  
Michael Dougherty/Deputy Attorney General

**ADDITIONAL ATTENDEES**

John Clarke/Clarke Strategies  
Claire Brooker/Jefferson County Criminal Justice Planner  
Stephanie Clarke/Virgo Communications

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b></p> <p>Judge Enquist welcomes the group, previews the agenda and asks for approval of minutes –</p> <ul style="list-style-type: none"> <li>• Page 4 of the June 1<sup>st</sup> minutes, second paragraph “we bondsmen are not responsible for public safety”. Sharon Winfree asks for clarification. Jason Armstrong replies that his point was that the point of bond is appearance, not necessarily public safety.</li> <li>• Minutes approved</li> </ul>
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<p><b>Issue/Topic:</b></p> <p>Prior meeting wrap-up</p> <p><b>Action:</b></p> <p>Maureen to contact Peg Ackerman to try to get jail data and numbers from various county jails.</p>	<p><b>Discussion:</b></p> <p>Judge Enquist discusses the request made to Grayson Robinson for jail data and the request for a new representative on the subcommittee from the Sheriff’s community.</p> <p>DISCUSSION POINTS</p> <ul style="list-style-type: none"> <li>• Sheriff Robinson provided the group with Arapahoe County’s jail release report</li> <li>• One of the big changes is that they’re detaining more people pretrial than post sentence than they ever have before</li> <li>• Grayson is still working to get data from other counties</li> <li>• Without data across all counties, it’s hard to say if all counties are seeing an increase in pretrial detainees</li> <li>• Maureen reports that she has data from Mesa, too, and that she will go over the data during her upcoming presentation</li> <li>• Can we try again to get this info from other counties?</li> <li>• Can Peg Ackerman (lobbyist for the Sheriff’s Assoc.) get this info for us? Yes, Maureen will talk to her to get the numbers from the various counties</li> <li>• Can we get a breakdown of detainees who have holds, those who are serving a sentence for another county, those with an ICE hold, multiple county charges, etc.? Is it tracked? Is it relevant?</li> <li>• The data is likely collected differently jail to jail</li> <li>• The bottom line is we can’t get apples to apples data from the jails</li> <li>• <b>Maureen will effort this data collection</b></li> <li>• Also, it is still in the works but we will hopefully have a new Sheriff’s representative by the next meeting</li> </ul>
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Issue/Topic:	Discussion:
<p data-bbox="110 247 521 317">Data by Judicial District/Pretrial Detainees</p> <p data-bbox="272 363 358 390"><b>Action</b></p> <p data-bbox="110 396 521 466">Maureen to send electronic copies to the group</p> <p data-bbox="94 506 532 657">Maureen is going to fix the chart and break it out by percentages and ask Denver for numbers (from the Denver jail report).</p> <p data-bbox="118 703 513 772">Maureen to also supply the bond filings info to the group</p>	<p data-bbox="560 247 1422 317">Maureen Cain presents preliminary data regarding pretrial detainees by jurisdiction</p> <p data-bbox="560 373 1049 401">DISCUSSION POINTS - Mesa Pretrial data</p> <ul data-bbox="662 415 1520 1031" style="list-style-type: none"> <li>• Maureen discusses data from Grand Junction</li> <li>• She also has data from 2006 thru Feb 2012</li> <li>• Mesa's data is less complex and cleaner than Arapahoe County's info</li> <li>• If you look at the numbers in Mesa, the average daily population for 2006 was 381 with pretrial being 232</li> <li>• At the end of 2011 the average daily population was 281 (went down 100 beds), with a significant decrease to 162 pretrial felons</li> <li>• Pretrial, post-trial, felony, misdemeanor – it's great to have this information broken down, which they do in Mesa County</li> <li>• Interestingly, felony filings in Mesa were increasing over this five year period, even though the jail population was decreasing</li> <li>• Maureen to send electronic copies to the group</li> <li>• Mesa's pretrial program also supervises Diversion which is interesting</li> </ul> <p data-bbox="560 1083 1159 1110">DISCUSSION POINTS – Numbers by Judicial District</p> <ul data-bbox="662 1125 1528 1906" style="list-style-type: none"> <li>• Maureen submitted a data request to Judicial, with the goal of trying to see how many people never made bond and were represented by court appointed council</li> <li>• She requested data from 2007-2011</li> <li>• Maureen reviews various numbers in the handout</li> <li>• The median and mean amount of bonds posted is indicative of districts and how high and low the bonds are</li> <li>• Jason states he believes that Judges in Pueblo often set bond based on bondsmen's fees?</li> <li>• In Denver, the standard is 10%. In Pueblo, they'll write bonds for 3%</li> <li>• Pueblo's bond schedule is one of the jurisdictions where the bench won't give you a reduction hearing until the preliminary hearing</li> <li>• Maureen is trying to collect data to show how many of the indigent are staying in jail. It would be great to have a statute that addresses getting those folks back to court sooner, for a bond setting review</li> <li>• This data is really preliminary, just a start,</li> <li>• In 2009, \$33M worth of bonds posted in Pueblo – these numbers are extremely disproportionate</li> <li>• Maureen is going to work on the chart and break it out by</li> </ul>

percentages and ask Denver for numbers (from the Denver jail report).

- Denver has a great deal of jail data
- We need to refocus on the top largest county, and figure out a strategy to go about gathering data, possibly through individuals. Regi and Judge Marcucci can help with this.
- If we could narrow down the 6 key questions we're asking and set up individual eyes in 10 counties to target those questions, we might be successful
- Maureen would like to eventually plug in some FTA information in the data, how long it takes to get back to court, etc.
- Judge Marcucci – the biggest reason cases are continued is that the public defender holds the case over
- Doug - What the PD does wrong is we ask our clients "What's is the amount of bail you can make?". The client gives a number they THINK they can make, when they really can't.
- The PD has a faulty process currently of concluding how much the offender can make
- A bondsman will focus on those people with a higher bond and prioritize them because it means more money for them down the road. A small bond may actually end up hurting a defendant more because the bondsmen won't focus on getting those cases out. The people with small bonds won't get the help from the bondsmen that others will get.
- If you have counsel with you, you are significantly more likely to get out.
- We need to look again at the low level offenders who are crowding the jail and can't make any sort of bond. They come back around over and over. The guy with 72 offenses, and 71 are FTA's, we can't get them out.
- A 90 day sentence for a guy with 82 tickets for urinating in the park is overkill
- The homeless are the same as the frequent flyers.
- If the police dept. developed alternative resources for the homeless, that would be the same population as the frequent flyers.
- A lot of the small bonds are people we would love to get out of jail if we could just assure they would come back.
- Doug agrees to bring back up the low level issue (the bail bondsmen issue) at a future meeting

	<p><b>DISCUSSION POINTS – Bond filings</b></p> <ul style="list-style-type: none"> <li>• Maureen says she also has more information regarding felony bail bond cases filed</li> <li>• The numbers show the inconsistencies regarding bond setting and violations, etc.</li> <li>• A lot of counties without pretrial services show the highest numbers</li> <li>• The question was “Is pretrial turning people into felons?” And the answer is that it’s not true – those jurisdictions are not the ones piling on more charges, it appears to be the opposite.</li> <li>• Maureen to supply the bond filings info – forward it to Germaine who will get it to the group</li> <li>• Can Maureen also get numbers on pretrial overall FTA’s and link it to the people who made bond?</li> </ul>
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<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Present and Discuss Possible Bail Options</p> <p style="text-align: center;"><b>Action</b></p> <p>Germaine to send electronic decision tree to the group</p> <p>Subcommittee members to edit the tree and the matrices how they see fit</p> <p>Look at Denver and Mesa’s Smart Tool</p>	<p>The ORS took the feedback from the last few sets of minutes and began work on sample release decision making trees and matrices. Kim English describes the decision tree and matrices handouts.</p> <p><b>DISCUSSION POINTS</b></p> <ul style="list-style-type: none"> <li>• In your packet you’ll see the decision tree and matrices materials</li> <li>• We Started with a working document, trying to identify what factors are important in the decision making process around bail</li> <li>• The working document is a quick and dirty summary from the statute and from our meeting minutes</li> <li>• We compiled the goals, the strategy, the new knowledge, the desired outcomes, etc.</li> <li>• We have new knowledge, we know that money bonds detain people</li> <li>• We know there’s a 20% increase in new filing rate of bondees across the state</li> <li>• As far as outcomes, we talked about different options</li> <li>• We took those items and placed them in the sample decision tree</li> <li>• We Tried to lay out what the decision points are in the process of bail now and how do we move from the current decision points to make this decision tree the IDEAL way to move people out of prison</li> <li>• The tree shows the current practices (above the dotted line)</li> <li>• When we go below the bottom line, we’re looking at how we might want to change things up in the future</li> </ul>

- The three proposed matrices consider top charge and risk assessment
- The folks in the red are the more serious folks, the greens are the ones to be released one way or another, and the whites would be out on recognizance
- We looked at this in three ways, with money bond only, with pretrial only, and with a combination of money and pretrial
- We want to get your feedback on thoughts of the current process and possible best practices in the future

#### DISCUSSION POINTS

- Is the 4, 5, 6 statute being looked at as a guideline? Rather than statute? Was this statute a 'shall' or a 'may'
- What about the third matrix, the money and pre-trial combination. How does that address areas of concern of public safety, and is it an either/or, how would the bond address public safety
- If the matrix is indicating you can have either pretrial supervision, OR a bond with no supervision, if they're falling into the yellow category how is that being addressed by money bond?
- Kim - The goal was to give examples of possible ways to go so we can have this kind of conversation
- We're looking at the elements and intertwining relationships to prompt this discussion
- From the victim's community, all three of these matrices have a problem as far as domestic violence and ROR in the misdemeanor person to person crime categories
- The white areas would be more common for 5 and 6 property crimes
- An M1 person crime cannot be presumptive ROR – this is DV
- Also, we need to look at the DUI charges and where they fall
- There are some glitches with DV's and DUI's with all these matrices.
- A bond schedule adds another axis to this, you can go with top charge and risk assessment outcomes, but how do you factor in a bond schedule, it adds another layer
- Some first time DV's would greatly benefit from pretrial supervision, the cookie cutter approach doesn't benefit the victim or the offender
- The assessment tool is key and then the options come after that, ROR or cash/property, etc.
- In Adams County there is no standardized pretrial assessment, each judge does whatever they want to do
- The risk assessment is critical

- There's a DV specific assessment tool, the ODARA?
- Judge Marcucci – everything is done by stipulation. The assessment is a critical piece and it has to happen
- The release decision needs to be about risk, this is why we need a validated instrument
- There are decisions made early on in 20 to 30,000 misdemeanor cases where there is no counsel
- So, if the public defender can't be there, it would at least be good to have a risk assessment tool for the judge to utilize
- There are a lot of state misdemeanants that don't ever have the opportunity to have council
- Denver municipal court is Rothgery compliant – but our state statute denies access to representation
- We need to look at DV's that went municipal vs. state and looked at bail
- The other complicating factor is that municipalities are not bound by the VRA
- The culture needs to shift away from money equals severity
- We are currently not looking at risk, we are looking at top charge and it is not right to tie money to that top charge
- The cultural shift will be challenging
- Are we moving toward a recommendation of a statutory change requiring a risk assessment? Is that where we're headed?
- That's what California has done
- A recommendation would take the old factors on the statute list and address them through the CPAT
- Denver is going to use the CPAT starting this year
- CCJJ asked us to reduce pretrial detention and protect the public at the same time – this is about reducing the pretrial population
- If we start with the assumption that there are too many people locked up who shouldn't be, how do we move forward
- The risk assessment correlates to public safety and FTA
- There's an underlying presumption that conditions of bond make FTA and public safety better. The truth is there is no research that says more conditions or even ANY conditions are better
- There's some research that if you individualize the conditions and don't do too many, you actually will affect change.
- When we over-supervised it is a negative, and if you don't put the right conditions together that's a problem, too.
- The blanket 'nobody drinks on bond' is not what we're about – it's cookie cutter and not effective
- If you take the CPAT, do you look at where the points come from?

- If it comes from alcohol do you focus on that?
- There's still the professional judgment piece as far as matching conditions after the CPAT score.
- We're talking in the Sentencing TF about developing a Diversion program and using the CPAT for assessment, but it doesn't address needs
- If we're looking at the full picture we need a needs assessment along with a risk assessment when making the bail decision conditions
- ODARA is a risk assessment specific to DV
- The fear is the judge will take the ODARA number and decide conditions based on that
- The evaluation tools are proven to be so much better than professional judgment in terms of assessing risk
- We have tons of evidence in terms of decision making involving the use of actuarial tools. It's all around us and it's clear from the research that an actuarial tool out performs professional judgment.
- The literature also tells us that the combination of starting with an actuarial tool, and then adding the application of professional judgment with guidelines, can increase the power. But without the guidelines AND the structure, you're better off going back to just the actuarial tool.
- You do make policy decision to come up with your actuarial tool, then you do make structured decisions to supplement that tool, then you come with a better decision
- Professional judgment needs to be defined carefully when using it in conjunction with an actuarial scale
- The research is clear today in the criminal justice system about the effectiveness of an actuarial tool
- Maureen – the matrices are good but let's change them a bit.

#### NEXT STEPS

- Homework
  - We know we need to figure out the summons statute for felony 4, 5,6
  - Judge enquist suggests we might need a decision tree box that includes the bench, somewhere we need a judge box
  - Doug and Margie ask everyone to take your decision tree home, work on it, then send it back to Kim by July 13th
  - For example, with DUI's there has to be monitored supervision
  - You would want DA approval on ROR, etc
- We're going to have to pick up the exceptions at some point, the



outliers

- In the tree and in the matrices Preventive Detention is now referred to as Detention with Due Process
- It's a constitutional prohibition and not just statutory to detain without due process
- We know preventive detention occurs just by setting bonds too high
- The reds on the matrix are constitutionally and statutorily matched
- Maybe there should be some half red/half green boxes
- If this group forwards any recommendation around a risk instrument the preventive detention issue must be linked
- Under the constitution and the statute there are only certain people who can be detained
- Keep in mind, the whole concept of this was a starting point. We're asking subcommittee members to look at it and provide feedback, then give us some input so we can have a better discussion at the next meeting.
- Let's also look at Denver and Mesa's smart tool
- We can also take things one step further to define conditions
- Greg Mauro to provide smart tools to Germaine – Germaine to distribute
- Denver's tool is not going to get rid of the bond schedule; it's just going to help pretrial make a recommendation to the judge.
- Let's talk about the matrix concept as a whole and pick up the outliers later on (the DV, DUI, etc.)
- If we start picking this apart and nitpicking it's going to get too complicated too fast
- The matrix is to be a guideline, not a mandate
- The matrix should vary jurisdiction to jurisdiction a little bit
- You cannot have preventive detention out of sync with what's in the constitution
- Keep in mind some of the F5s and F6s may be less of a public risk than a misdemeanor DV case
- We have to play around with these boxes because there are many misdemeanants that are far more dangerous than our felons

**Next Meeting:**

**Homework to Kim in two weeks, July 13<sup>th</sup>**

**Greg will have Mesa send their smart tool to Germaine electronically**

**August 3rd    2:00pm – 5:00pm    710 Kipling, 3<sup>rd</sup> Floor Conference Room**