

CCJJ Bail Subcommittee

August 3, 2012, 2:00PM-5:00PM
710 Kipling, 1st Floor Conference Room

ATTENDEES:**CO-CHAIRS**

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

TASK FORCE MEMBERS

Jason Armstrong/Bail Bondsman, Professional Bail Assoc. of Colorado
Kate Murphy/17th Judicial District, Victims representative
Maureen Cain/Colorado Criminal Defense Bar (phone)
Greg Mauro/Denver Pre-trial services
John Marcucci/Denver County Court
Scott Storey/Jefferson County DA
Sallie Clark/El Paso County Commissioner
Michael Dougherty/Deputy Attorney General (phone)
Stan Hilkey/Mesa County Sheriff
Sharon Winfree/Colo. Association of Pretrial Services

STAFF

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

ABSENTEES

Bill Kilpatrick/Golden Police Chief

ADDITIONAL ATTENDEES

John Clarke/Clarke Strategies
Claire Brooker/Jefferson County Criminal Justice Planner
Candace Gonzalez/Doug Wilson's assistant
Jennifer Laslo/Metropolitan State University
Brian Taylor/PJI
Cherise Burdeen/PJI
Mike Jones/PJI
Tim Schnacke/Independent representative

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Judge Enquist welcomes the group, previews the agenda and asks for approval of minutes –</p> <ul style="list-style-type: none"> • Minutes approved
--	---

<p>Issue/Topic: Report Outs PJI and NACDL</p> <p>Action:</p>	<p>Discussion:</p> <p><u>PJI meeting</u> Judge Enquist reports that PJI held a meeting yesterday to discuss their pretrial reform efforts. A handful of the Bail Subcommittee members were in attendance.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Yesterday, Doug and Judge Enquist and a few others met with folks from PJI to discuss pretrial justice efforts including, but not limited to, bail in Colorado and other states as well. <p><u>NACDL meeting</u> Doug Wilson presented and discussed a press release and policy statement released by the NACDL (National Association of Criminal Defense Attorney’s) regarding pretrial release reform. NACDL held their annual convention last weekend.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • In your packet is a statement supporting a risk based/pretrial services program approach to release and conditions of release. • NACDL followed ACCD’s (American Council of Chief Defenders) lead but is stronger with their statement that monetary bonds should be used as a last resort. • Both organizations support the least restrictive conditions and presumption of release. • The National Sheriff’s Association is supporting similar action with a press release dated June 2012. • Judge Marcucci asks Doug if he’s looking for support of the resolutions from the three agencies. • Doug replied no, but he wants the group to be aware of the efforts being undertaken around the country.
--	--

Issue/Topic:	Discussion:
<p data-bbox="180 247 448 317">Current Issues under Consideration</p> <p data-bbox="272 363 355 390">Action</p>	<p data-bbox="561 247 618 275"><u>Data</u></p> <p data-bbox="561 289 802 317"><i>DISCUSSION POINTS</i></p> <ul data-bbox="662 331 1528 1906" style="list-style-type: none"> • The group has discussed the ongoing issues regarding accurate and ‘apples to apples’ data collection for many months. • What has been discovered in this process is that trying to gather this information is proving to be very difficult. • There is no centralized place for collection regarding jail data to help in overall state planning efforts. • Many other states have an agency, similar to DCJ, which collects this data on a standardized basis. • The various jails in Colorado do not consistently collect this data. • One possible alternative is to get a ‘snapshot’ of data collected by jails. • Any data gathered from a representative amount of jails would be limited at best. • The question to be asked is, “Is there a problem of jail overcrowding in this state”. • To answer that you need to know operating capacity and trends over time and the split. • The reality at the moment is that jails do not have consistent data and a mechanism to gather this over time is missing in this state. • Are there any state statutes that cover what jails are required to share as far as data collection? No - Jails are purely snapshot capable but not necessarily retrospective over time. • Mesa has gone farther than they’ve ever gone in the last couple years trying to collect more data. • Would the state sheriff’s be opposed to a standardized collection? • There is no consistent reporting system, no requirement for a data collection system. • Maybe as staff we could sit with IT folks in a jail to investigate more. • What questions do we want answered and why? • Maureen created a one page data collection form that could be used. • Still – the question is do we have the right people in custody? What will we do with the data once we get it? • One thing Denver does track is the proxy LSI upon booking – but there’s a question of how you even extract that • There’s so much that has to be considered with this issue. • Number one – there’s no consistent way to go about collecting good data, consistently, jail to jail in this state

- That could be a possible recommendation from this group
- The group needs to be clear about the questions they want answered and why, and how does this affect jail management
- How much time and effort should be expended to get what information, to make what decision? We need to answer this. What benefit will it give you in getting this data?
- What do the numbers tell us? This committee is about bail and not managing jail populations.
- More inmates means more money, but if we're lowering jail populations are we putting the public at risk.
- Are there people in jail pretrial across the state that shouldn't be in there?
- On average the pretrial jail population runs consistently higher than the sentenced population

Preventive Detention

DISCUSSION POINTS

- There are only two key concepts for the purposes of bail - public safety and court appearance.
- The best way to keep the bad guys locked up is not preventive detention, but a risk scale and due process.
- For our purposes the group should use the terminology 'Detention with due process' rather than 'Preventive Detention'
- In looking at the revised release matrix that this group has been working on - the current areas in red in the matrix are not risk number based but top charged base.
- We need to start with a validated risk assessment, combine that with a Detention with Due Process Hearing, and then we'll get the right results
- The Risk Assessment is the lynch pin to all of this
- We need to start with risk assessment as a tool – and go from there
- Can we take the risk assessment tool and write it into the bond schedule itself?
- You could have a robbery eligible for bond, but if he scores out as a "4" in the proposed classification scheme.. there needs to be a conversation about why
- The current bond schedule does not consider risk

CPAT

DISCUSSION POINTS

- DCJ conducted an independent review of the CPAT at the request of

the Bail Subcommittee.

- Kim wrote a letter to the Subcommittee members highlighting findings from the review.
- The analyst who reviewed the CPAT obtained the data from Mike (PJI) and familiarized himself with the data set then reran a large portion of the analysis.
- The data set is very comprehensive, very rich, and it was very time consuming to collect.
- There are findings of a couple weaknesses – even though the developers call this a validated instrument, the analyst who reviewed the project is not calling it ‘validated’ due to the fact it hasn’t been validated on a separate sample.
- The analyst, Marshall Constantino, developed new cut points for the CPAT, and is proposing a revised 5 cut points instead of 4.
- The reason for this is that the original cut points are false positive half of the time in the high risk category.
- The new cut points serve the questions about risk for misconduct better than the current cut points do.
- The scale is showing overreliance on self report data.
- For the stability of the scale over time it might be better to rely not only on self report data.
- Also, three of the items relate to socioeconomic conditions – do you own a home or rent, do you contribute to rent, do you own a cell phone.
- The question is whether those items discriminate against those in low socio-economic categories
- DCJ has been developing risk assessment tools for decades.
- One of the complaints about the CPAT is that it doesn’t factor FTA’s or prior misconduct
- Even though these things may not predict risk, we may want to figure out a way to include them anyway and load them into the scale so you’re structuring the use of the items, so they don’t come into play at other points in the process.
- If we’re going to develop a decision tree, and matrix, we need to have a scale that we feel confident about that has been validated on a separate sample.
- Failure is FTA or picking up a new charge while under supervision – it’s not necessarily tied to revocation
- Denver is going to go with the CPAT and just see where things fall out. They’re going to start there.
- The goal of the different cut points is to most accurately identify the different categories of folks

- One of the tough issues in trying to develop risk assessment tools and the policies behind them is the practical reality of differences across multiple jurisdictions. Jurisdictions vary in terms of their priorities. How much risk is each jurisdiction willing to tolerate? The deal breaker will often be the FTA's and it's hard to do that when you're talking about multiple jurisdictions.
- A lot of questions need to be about "Who is making the policy, what risk are you willing to tolerate".
- If this is different by jurisdictions – there's no consistency.
- Policy is being made here, this group is making decisions for Colorado – these are policy decisions. Often, while trying to make decisions statewide there will be pushback from individual jurisdictions.
- We have heard feedback from jurisdictions who have said they wouldn't use the tool without considering FTA
- The packaging, marketing and rollout is important for implementing this tool
- You can't usurp a local jurisdictions rights on how to charge and prosecute cases
- This group should promote consistency across the state but local opinion comes into play in release decision making and judicial discretion
- Discretion comes in when the bench decides to impose a decision after hearing from both sides
- If we don't all use the same assessment, it will be pretty hard five years down the road to evaluate numbers and data.
- We need to keep in mind the evaluation down the road
- Denver's big goal is to move the PR bond level up in the future
- We need to get away from judge's gut decisions that influence monetary bond
- The group agrees, everyone agrees that yes, there should be a risk assessment tool utilized
- **What this group is simply trying to do is add structure and guidance in the decision making process**
- The ideal would be the risk assessment combined with the application of a smart tool
- Plus – we need to discuss the preventive detention piece
- This group has identified core elements in this structured system that we want to create
- Kim and Mike to meet to review the data and information and develop amended cut points and recommendations (documents attached).

Smart Tools

DISCUSSION POINTS

- The Denver smart tool speaks to level of supervision as it relates to top charge
- Greg is working on a smart tool proposing bond type and conditions
- A risk assessment tool is critical on the front end and also on the back end
- Stan Hilkey - Over prescribing on the low risk makes people stay in the system longer
- Nationally 2/3rds of our jails are filled with low risk pretrial folks
- All agree on standardized risk assessment tool but how do you mandate local control?
- Risk assessment tools should follow through to supervision
- Let's study data, and implement a tool.
- But how do you do it and mandate it? Is it a suggestion or a recommendation?
- The importance of collecting data moving forward is to see if what we're prescribing is working.
- Mesa conducted an evaluation of their pretrial population and many were low risk, but just couldn't make bail
- The concept and recommendation from this group should be 'this is our state recommendation, it will be updated and is fluid – but let's adopt something as the state recognized adopted tool'

Issue/Topic:	Discussion:
<p>Present revised Options</p> <p>Action</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>DISCUSSION POINTS</p> <ul style="list-style-type: none"> • In your packet you'll see the decision tree and matrices materials • We don't want outliers to be ignored (DV and DUI). How can we make sure to include these? • Do we include the ODARA (Ontario Domestic Assault Risk Assessment)? • Do we want to look at mandatory arrest on domestic violence? No, this is beyond our scope.

	<ul style="list-style-type: none"> • When we start adding new offenses to a decision making tool, there will be boutique crimes added in. • DV needs to be built in somewhere • Pretrial must now supply number of new offenses committed while on bail • We’re not addressing recidivism reduction at pretrial, that is not the role of our group • Over prescribing and overdosing low risk guys will result in recidivism issues • A reason to track recidivism out of the jail is not to test the effectiveness of jail; it’s to test the effectiveness of programs after jail. • Incorporate evidence based decision making • Be careful about tracking and measuring recidivism as an indicator of jail success. • We do want to track FTA and new crime
--	---

Issue/Topic:	Discussion:
<p style="text-align: center;">Identify Recommendations to Move Forward</p> <p style="text-align: center;">Action</p>	<p>DISCUSSION POINTS</p> <ul style="list-style-type: none"> • Paul reminds the group of the Mission Statement created by the Bail Subcommittee in March and the original goals for the group. • Mission items included the following <ul style="list-style-type: none"> -Bail Subcommittee to conduct a comprehensive review and analysis of the Colorado Bail System -The review to include the purpose of bail, current practice, strengths and weaknesses, identification of emerging best practices locally and nationally and identification of gaps in the system. • The final step for this group is to take that information and develop recommendations • From today’s conversations the group is indeed ready to move forward with some recommendations • Recommendations <ol style="list-style-type: none"> 1. Standardized jail data collection – from jails or courts? 2. Implement Evidence Based decision making practices including: Risk Assessment tool (CPAT?) Smart tools 3. Creation of standardized bail release decision making processes (decision making tree and matrix)

4. Suggest expansion of pretrial services in Colorado and how to execute (is this a deal killer? Can you at least develop a pretrial *ethic* in smaller jails? There's a reality that this can occur without additional money). The Chief Judge sets up pretrial; if they set it up they can put it under another umbrella. Also pretrial can be privatized.

5. Consider the role of money in bail? Should it be used, ideally, as a last resort

NEXT STEPS

- CCJJ staff will prepare these 5 recommendations in draft format and present to the group at the next meeting for feedback, refinement and voting.

Next Meeting:

September 7th

2:00pm – 5:00pm

700 Kipling, 1st Floor Conference Room