

CCJJ Bail Subcommittee

September 7, 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

TASK FORCE MEMBERS

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
Sallie Clark/El Paso County Commissioner
Michael Dougherty/Deputy Attorney General (phone)
Sharon Winfree/Colo. Association of Pretrial Services
Bill Kilpatrick/Golden Police Chief
John Clarke for Jason Armstrong/Professional Bail Assoc. of Colorado
Scott Storey/Jefferson County DA

STAFF

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

ABSENTEES

Stan Hilkey/Mesa County Sheriff
Jason Armstrong/Bail Bondsman, Professional Bail Assoc. of Colorado

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:</p> <p>Welcome and Introductions</p>	<p>Discussion:</p> <p>Judge Enquist welcomes the group, previews the agenda and asks for approval of minutes –</p> <ul style="list-style-type: none"> • Minutes approved
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<p>Issue/Topic:</p> <p>Report Outs / CPAT Update</p> <p>Action:</p>	<p>Discussion:</p> <p><u>CPAT Update</u></p> <p>Kim English updates the group on what's happened with the CPAT since the last meeting.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • Mike and Kim send out a joint email • Discussed the issues around self-report data, which may be more reliable than what's in files • Cut points have been revised • The original study took the whole population and divided it by 25%, which is one way to do it but doesn't always give you the best accuracy • With the original CPAT – the highest risk category had a lot of people that didn't reoffend • Wanted to put forth revised groupings that were as accurate as possible • Now, the highest group is much more serious than it was before • The cut points increases our ability to say the high risk are truly high risk , the low risk truly low risk • Both Mike and Kim had independent reviews of the CPAT done • With the revisions, the highest risk group is the one most likely to fail – keep in mind, pretrial failure is not like recidivism from prison • Even only the worst of the worst will fail less than 50% of the time • The higher risk have better chance of failing both ways, the low risk usually only fail one way • What about page 20 of the CPAT – regarding self reporting. Is self reporting data the only things verified by a third party? Typically done on residency and employment. • Self-report data and official data – both always come with a grain of salt
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Issue/Topic:	Discussion:
<p>Recommendation Review and Potential Voting</p> <p>Action</p>	<p>Doug proposes the group go through all recommendations as a package then go back and vote individually</p> <p><u>Recommendation 1 / Evidence Based Decision Making</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • The second page of the matrix is partially based on the CPAT and input from group members • The goal is a risk based assessment up front, in order to give the court what it needs to make evidence based decisions • The research indicates what we need in this state is more risk based information to make standardized evidence based decisions across the state. • The committee has been going in this direction since day one. • This is the recommendation but without direct reference to the matrix • At the bottom of the second paragraph it references the matrix. • This recommendation sets up local jurisdictions to have leeway with the matrix to change it as needed per each jurisdiction • Can we add that verbiage at the end to say jurisdictions should use EBDM based on local considerations. • Kim – we'll tweak the recommendation to add verbiage about local control as needed. We'll also, mention that the recommendation is referring to the matrix. Also get rid of 3rd page. • Do we want to address money bail or give that option specifically? • How can we address money in here? That's up to local jurisdictions to decide if they want to include money and how. The matrix is an example • The matrix was a group effort • The objection is that this could be interpreted as the only conditions of bail release • Posting an amount of money can be a condition. • To use an empirically derived assessment tool is always better than using nothing. • This is a tool, provides a good starting point for risk. • The recommendation doesn't say 'you shall implement CPAT' – the recommendation says jurisdictions should use evidence based release decision making • 50% of Jeffco is pre-trial

- We should use every tool available
- This is about pretrial release supervision and conditions, and risk assessments. This is saying it's better to assess using some tool than having a judge make the decision without anything
- Can we clarify that this is a recommendation as a guide, and local control always has their input
- Make sure we provide the matrix as a guide and say that.
- Use a tool, which one, how – that's what jurisdictions need to decide. That's what we're recommending to jurisdictions.
- This is about using a risk assessment to decide terms and conditions. The second part is 'and don't use money'.
- Denver is using the assessment to make risk decisions, but still relying on money bail.
- The four are separate, but then there are some intertwining
- Risk assessment, how are the conditions, does that include money or not money, provide more pretrial, and what does the data tell us.
- Each district needs to have authority over the tool they deem appropriate
- The intent all along, get a tool, use a tool, you control it as a jurisdiction
- It's a matrix that can be utilized but doesn't have to be used the same across jurisdictions.
- Can we put an 'for example, conditions are.. "? If we start giving concepts. Whatever the local jurisdiction thinks is appropriate
- Want to make sure the conditions are what it says.
- This is a sample matrix.
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Recommendation 2 / Financial Conditions

DISCUSSION POINTS

- The specific verbiage is 'Discourage the use of financial bond'
- With this revision everyone would be presumed to be releasable, unless there is a due process hearing to detain that person.
- We have releasable folks and we have non-releasable folks
- Class one felonies fall into the non-releasable category
- Class three don't currently fall into that category
- We would have a proof evident, presumption great hearing, plus you would have to articulate a good reason not to follow the risk assessment.
- If you wanted to say no bond on an F4, then you would do a proof evident presumption great

- We could have more people in jail held without bond if we go this route.
- Does the risk assessment play into this? You can ask for it if they meet the statutory criteria.
- We're already doing this, just with high money bond
- There will be a higher release rate on the low felonies
- With this you will see more proof of presumption hearings
- The offset is you have more people at the lower end getting out with low conditions and the higher riskier people stay in
- One of the goals of this committee was to decide the purpose of bail and the best ways to improve the system
- More and more research is coming out that shows money complicates release decisions.
- What money does is cast a wider net for people we don't intend to keep in jail
- It's about making that pretrial decision about risk
- Can we use 'and reducing the bonding schedules' verbiage – it leaves some flexibility
- The line that says arbitrary and inflexible, can we throw that out or wordsmith that?
- The monetary bonds prevent flexibility based on risk, that's why you're trying to reduce it.
- Are monetary bonds always arbitrary and inflexible? It doesn't get us to eliminating but perhaps it's reducing the use.
- Does that get us closer to what we want?
- Can we say something, upon further study, monetary bond schedules do not consider risk.
- What makes bond schedules inflexible is the victim's rights act.
- Whether you're talking about any form of release you're talking about financial conditions. Every aspect of this involves money. The question is who is paying it. Is it the tax payer, the individual defendant or someone else?
- If a defendant can't pay bond, how are they going to pay for supervision
- One of the purposes of money bail is that it is an investment
- The monetary investment
- I don't care about research.. It's not common sense – (Storey)
- It defeats the purpose and the concept to soften the verbiage.
- The evidence shows us that money does not increase court appearance.
- This is black and white – we either make risk based, or not risk based decision making.

- Financial bond is any bond that has any sort of money attached to them
- Can we say research shows upon further study monetary bonds do not assure court appearance and take out arbitrary?
- In the case of a bail agent who has a lot of money to use if that person doesn't come back, they go look for them, it's an active process.
- Bail agents will go get those people and bring them back.
- Clarification on financial bond - does that mean PR bonds?
- PR bond does not relate to pretrial fees
- Financial bond is different than pretrial fee or conditions.
- In Jeffco asked all the court clerks to keep records of how much contact they had with bondsmen and – very little evidence of bond recovery agents being active in Jefferson County

Recommendation 3 / Pretrial Services

DISCUSSION POINTS

- Is this going to be recommended to the Commission? What about funding? From the discussion, do we want all the jurisdictions to have the same pretrial program?
- The intent and concept is local control and local decision making.
- The second sentence says even among established programs there's a lack of consistency.
- Again, local control, no unfunded mandates
- We can change this verbiage
- The second paragraph talks about jail staff being trained. How do we train them to do risk assessments
- This is not saying you have to have a program and train your folks. It's saying if your
- Can we train the 'should' to a 'could', jail staff could be changed. No, should is okay.
- This would be local implementation
- What we're talking about is less unnecessary supervision for low level people
- It does seem inherently unfair that pretrial release people are managed differently jurisdiction to jurisdiction.
- We want to encourage the legislature to fund poorer counties, encourage jurisdictions to manage resources wisely.
- How can we get state dollars to fund local initiatives? Maureen and Christie Donner are working with the legislature on this.

- CCJJ can make recommendations that eventually may be funded.

Recommendation 4 / Data Collection

DISCUSSION POINTS

- The data collection we're trying to do is based on mesa counties jail data collection processes.
- Mesa's data addresses jail overcrowding and asks the question are we keeping the right people in
- Mesa's data shows you that they decreased their population by 100 ADP, and decreased it substantially in pretrial for the number of felons, misdemeanants, and municipal cases.
- You can look at these numbers and get an idea of what kind of data we're going to try to get with the data collection instrument.
- Where are the stats on the treatment center folks?
- Larimer County ran a ballot issue to let the local taxpayers fund this kind of a process. You've got people in jail whose problem is not the crime they committed but addiction.
- This is admirable but it's expensive.
- Obviously there's money attached. There are 1000 empty prison beds in this state. We have so much money in our capitol construction fund because we're not building prisons.
- There are ways to find money in the state system.
- Add something in data collection piece about bail agents and performance, etc. but how would the sheriff collect that info?
- Not sure how jails can increase data collection for bail agents
- We just don't know how to make that happen in a verifiable way. How could that happen? It's data the bail agents want to have, but the bail agents need to come forward with a process on how to do this in an honest verifiable way
- Have sheriffs weighed in on this?
- We're really trying to track what's happening with the pretrial and post-trial populations – that's the main goal of the data collection
- How can we track recidivism
- One of the issues about data collection, if we could get it based on felony level – we can plug it into this chart and see if we're holding the right people.
- It shouldn't be hard to measure how many people on PR bonds don't come to court and commit new offenses.

Issue/Topic:	Discussion:
<p>Identify Recommendations to Move Forward</p> <p>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 <i>ethic</i> 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 <p>NEXT STEPS</p> <ul style="list-style-type: none"> 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:

October 5th 2:00pm – 5:00pm

700 Kipling, 1st Floor Conference Room