

**CCJJ Bail Subcommittee**

November 2, 2012, 2:00PM-4:00PM  
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**

Jason Armstrong/Bail Bondsman, Professional Bail Assoc. of Colorado  
Kate Murphy/17<sup>th</sup> Judicial District, Victims representative  
Maureen Cain/Colorado Criminal Defense Bar  
Greg Mauro/Denver Pre-trial services  
John Marcucci/Denver County Court  
Scott Storey/Jefferson County DA  
Sallie Clark/El Paso County Commissioner (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**

Michael Dougherty/Deputy Attorney General  
Bill Kilpatrick/Golden Police Chief

**ADDITIONAL ATTENDEES**

John Clarke/Clarke Strategies  
Mike Jones/PJI

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>Discussion:</b> Judge Enquist welcomes the group, previews the agenda and asks for approval of minutes –</p> <ul style="list-style-type: none"> <li>• Due to a computer virus – the minutes from last month’s (October) meeting are irretrievable at this point.</li> </ul>
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<p><b>Issue/Topic:</b> Update on CCJJ Recommendation Outcomes</p>	<p><b>Discussion:</b> <u>Update on CCJJ Recommendation Outcomes</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• All four recommendations approved by this subcommittee in September were presented to the Commission in October for a final vote. All four were approved by the Commission during the meeting. The recommendations that are legislative in nature are being forwarded to the CCJJ legislative committee to shepherd through the drafting process.</li> </ul>
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<p><b>Issue/Topic:</b> Remaining Issues</p> <p><b>Action</b></p>	<p><b>Discussion:</b> <u>Remaining Issue / 18-8-212</u></p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> <li>• During Sentencing Task Force meetings last year the group looked at walkaway escapes and proposed a legislative recommendation that was approved by the Commission</li> <li>• Along those same lines, and in light of the 4 bail recommendations approved by the CCJJ last month, there is interest in having this group, or a similar group, explore issues surrounding 18-8-212 (Violation of bail bond conditions)</li> <li>• The escape issue was similar to the issues in 18-8-212 in regards to mandatories</li> <li>• The concept here is that of opening up judicial discretion with this statute in order to allow people to make an argument to the court</li> <li>• Doug reviews the stats put together by Peg regarding violation of bail bond conditions (handout)</li> <li>• The number of charges by jurisdiction for 2009-2012 is on the front page with each jurisdictions total in the far right column</li> <li>• The table on page 5 shows where people were sentenced and how much time they received</li> <li>• 4.9% of offenders charged with 18-8-212 in cases filed from FY09-12</li> </ul>
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actually received a bail bond violation conviction as their top charge

- This low conviction rate indicates that Bail Bond Violation charges are used primarily as bargaining tools
- When the Sentencing Task Force did this work regarding Escape Walkaways – the issue was less clear cut
- With walkaway escapes, there was only a 10% conviction rate
- Info from walkaways and info from this data shows that the charges are used primarily for negotiations
- In Jeffco, the DA's don't use violation of bond condition to push for a plea
- The perception that DA's use this as leverage for pleas is erroneous
- The data shows 7000 charged and 4.9% convicted – is this a direct correlation?
- The charge is much more frequently dismissed than is pled to
- The defense does consider the charge in a plea, therefore it does impact plea bargaining
- These numbers show that 95% of the time the case is dismissed, so why even charge it?
- Scott says he files cases in Jeffco and that yes, they have been accused with over-charging
- He says oftentimes the highest charge is dismissed
- Doug says that the point is that 7,000 cases of 18-8-212 are charged with less than 5% convicted
- It is a policy question
- People are calling for more transparency with charging and sentencing and this isn't doing it.
- When we charge people for having a drink in violation of bond, but it's not risky or illegal behavior, do we want to have that as a mandatory sentence?
- If someone is charged with a felony, they can go to prison on that charge anyway, why do we need a consecutive mandatory?
- New charges are not normally filed for FTA
- Oftentimes, a no contact order is a condition of bond
- There are prosecutors who will always abuse and overcharge
- From a policy perspective, is bond violation worthy of a mandatory sentence?
- The policy around this was reactive – that if we threaten people we will get them to comply – which research shows is ineffective
- This is so broad, and is such a problem, and can be used improperly
- If you're acquitted of the underlying charge, and then sentenced for the violation, that's a problem
- If the problem is mandatory sentencing, why isn't the Sentencing

Task Force dealing with this issue?

- Is this really in the Bail Subcommittee's purview?
- This is a clear policy question. It is believed a lot of people use this to coerce pleas.
- This group doesn't seem to be the place for this conversation –it should be moved into the Sentencing Task Force
- There's often crossover in the Commission's subgroups. Other task forces may look at something directly related to their task force (e.g. JV is looking at JV sentencing). However in the Drug Task Force – they study sentencing, but in how it relates to drugs. This issue could be covered in the Bail group or in Sentencing.
- It's not completely unusual for a subcommittee or task force, in the course of their work, to identify different policy issues that should be discussed by another group.
- Are there other charges like this with such a low conviction rate? This one and walkaway escapes for sure. Not sure about other crimes.
- If there's such a low conviction rate, why are we doing this?
- If the CDAC says we need this as a tool, clearly it's being used only as a tool.
- The data on the conviction rate doesn't support the importance of this law
- This is like habitual, why file it if you're going to plea it.
- This data is based on top charge data
- The question we're asking is should this be mandatory consecutive.
- We could probably live with getting rid of mandatory if there was more judicial accountability
- There needs to be a mechanism put in place similar to that in the drug proposal
- With the drug recommendations, a post enactment review is being put in place. It's a statutory revision that requires analysis of the impact of the change 3 years down the road. This is great so when we make a change we can get outcome data.
- Judicial data will be collected –what's charged, what's pled to – what's the stipulation, it's all being tracked
- We need a better system regarding judicial discretion
- If there's a 4 percent conviction rate, it doesn't make sense to have this be mandatory
- If pretrial expands, we will be seeing more bond violations
- So for this group, at this moment in time – the question here is, when we look at mandatory sentences across the board – you look at the purpose. The purpose of mandatory minimums may or may

not be the purpose we want to use them for today.

- They are different. There are cases we want to ensure are mandatory and there are cases that fell into that category that may not belong there. Does a 4% conviction rate demonstrate that that should be a mandatory?
- Do we want mandatory minimums for a sentence such as this, or do we want it for violent and persistent offenders?
- When we're looking at mandatories today, under what criteria should mandatory be applied?
- This should move to a mandatory sentences group
- Scott makes a motion to move this issue to the Sentencing Task Force. Seconded by Judge Marcucci.
- This fits with sentencing more than it does with our mission.
- This is something that you could go to Jeanne Smith and say, this really belongs in your arena, take a look at it.
- The group votes to forward this issue to the Sentencing Task Force - 5 in favor / 3 opposed – This issue moves to the Sentencing TF

**Remaining Issues / 18-1-1001 (protection order form)**

- Denver does not use this form at all
- Fixing this form today is impossible
- This form talks about weapons but doesn't clarify what is a weapon? A kitchen knife is a weapon if used as a weapon. A beer bottle could be used as a weapon.
- This is the state's form
- Who checks the boxes on this? Does the sheriff check the boxes?
- The bond can be revoked but not forfeited
- The judge sets bond, designates conditions, the person at the jail marks the form with the judge's conditions
- Are there a lot of charges with mandatory conditions of bond?
- The bench, prosecution and defense all agree that this form is a mess
- We all need to be on the same page
- The better way of doing this is to have the court articulate the conditions of the bond. In a better world, you have certain conditions of bond based on the information the judge has (that is followed up in writing specific to those conditions). Filed with the court, on the same page. Should be thoughtful and some intelligent connection.

- This is not an easy fix regardless. If you don't have universal screening you're never going to all be on the same page
- This needs to not be a cookie cutter form
- In Denver there's a separate court order on bond conditions
- It's a whole system wide change
- If we do away with a bond schedule everyone needs to see a judge before they bond.
- Do we want to take this on? Do we want to create a better form? Do we want to do away with this form completely and call for a narrative form?
- This form represents systematic overdosing of conditions
- We need to make the judge's job a little more thoughtful
- Do we make recommendations to state judicial as opposed to the legislature when it comes to form revisions?
- Is the low hanging fruit on this issue just the alcohol? Do we want to just address that? Make a tiny statement with that?
- Are we clarifying language or making substantive changes?
- Kate could check with CCDAB on whether they're addressing verbiage changes, too
- Conditions 4 and 5 are the biggest issues
- Should we advise CCJJ of our form critiques?
- Can we say there are some problems with the form and substantive changes need to be made?
- Should we send a letter to justice Bender?
- Should we meet with whoever authored these forms?
- The next Commission meeting is next Friday (November 9<sup>th</sup>).
- We can't do this before the next Commission meeting.
- In lieu of that, Doug will write a letter, Germaine to send to the group for comment. Doug will present to the CCJJ for action as an official recommendation.
- This group will not meet again but will communicate via email.

<p><b>Issue/Topic:</b></p> <p>Next Steps</p> <p><b>Action</b></p>	<p><b>Discussion:</b></p> <p>The group members agree that their targeted area of work is complete. The subcommittee has followed its Mission Statement and the group members agree to conclude the Bail Subcommittee</p>
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