

# Working Group Chair's Report to CCJJ Pretrial Release Task Force

## RE: CCJJ Pretrial Release/Detention Working Group

*[Staff Notation: This report refers to the final draft Pretrial Release/Detention Proposal developed by the Working Group as of 6/11/2019. The Task Force accepted the Report and Proposal and chose to table the Proposal until an unspecified later date.]*

Date: Tuesday, June 11, 2019

From: Bo Zeerip, Chair of the CCJJ Pretrial Release/Detention Working Group

As Chair of the Pretrial Release/Detention Working Group (the Work Group) of the CCJJ Pretrial Release Task Force (the Task Force), I am submitting this report to the Task Force regarding the work of the Work Group, and specifically regarding the proposal for a hold and release system for Colorado. This report has not been disseminated to, or approved by, the other members and participants of the Work Group, and thus the other members and participants may have additional or differing information or opinions.

The Work Group was formed and commissioned by the Task Force, and began to meet and work on this project in August 2017. We have met now for approximately 20 meetings, the last one being on May 28, 2019. When we began this project back in August 2017 it was my understanding that the Work Group was tasked by the Task Force with creating a proposal and drafting statutory language for pretrial reform in Colorado that would accomplish the goals of:

- 1) Eliminating the use of financial conditions of bond, or at a minimum creating a system where no person was denied their pretrial liberty due to inability to pay a monetary condition of release;
- 2) Significantly increasing the rate of efficient pretrial release without the use of money;
- 3) Creating a transparent and constitutionally sound pretrial system that would allow judges to detain certain defendants who were accused of serious crimes and were a high risk to flee prosecution, or commit another serious crime if released, and also to detain those who were initially released and demonstrated by their pretrial behavior that their continued pretrial release was inappropriate;
- 4) Addressing all of the various policies and procedures necessary to accomplish the above.

Essentially the Work Group was trying to develop a pretrial system proposal that would answer the question; "If Judges in Colorado were no longer allowed to detain criminal defendants through the use of monetary conditions of bond, what would such a hold and release system look like?"

The initial Work Group consisted of: myself (Chief Deputy District Attorney, 21<sup>st</sup> Judicial District), Lucy Ohanian (Chief Deputy Public Defender), Colette Tvedt (private defense attorney), Bill Kilpatrick (Chief of Police for City of Golden), and input and advice from the Honorable Margie Enquist (District Court Judge, 1<sup>st</sup> Judicial District). We met monthly for approximately 14 months and developed an initial proposal that was distributed to the full Task Force in November 2018. Admittedly there was not 100% consensus on all of the provisions of the initial proposal, and the current draft proposal reflects many of those differences of opinions.

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In November and December 2018 the Public Defender's Office, through Maureen Cain, and Colorado District Attorneys, through Tom Raynes from CDAC, requested that they be added to the Work Group and that we take another 6 months to attempt to arrive at more consensus. This second Work Group consisted of all of the prior members and also included Maureen Cain, Tom Raynes, Aubree Cotee (representing a pretrial services perspective), Rick Kornfeld (private defense attorney), and Janet Drake (representing the Attorney General). Additional participants in the meetings who brought important input and ideas included Rebekah Wallace (ACLU), Rebecca Curry (ACLU), Tim Lane (CDAC), and Elisabeth Epps (Colorado Freedom Fund). I will note that we did not take actual votes in the Work Group, but rather worked collaboratively to reach consensus.

During the past 6 months the Work Group has made significant progress toward some compromises that are reflected in the final draft proposal submitted to the Task Force. However, while few in number, some remaining disagreements are significant and were not able to be resolved prior to the last meeting on May 28.

At the May 28 meeting Ms. Megan Ring (Colorado Public Defender) was present to confirm that the Public Defenders' Office no longer wished to continue discussions within the Work Group in an attempt to reach further consensus. Mr. Tom Raynes from CDAC then also expressed a similar perspective. Both Ms. Ring and Mr. Raynes expressed that the failure of HB 19-1226 in the 2019 legislative session was the primary cause for their desire to discontinue the discussions in the Work Group, and that the political viability of the release / detention proposal was questionable in light of the failure of the lesser reforms contained in HB 19-1226. There was a consensus among the participants in the Work Group, though not unanimous, that the release / detention proposal had reached a point where additional progress and consensus was unlikely until some of the foundational reforms found in HB 19-1226 were passed and implemented.

The current form of the release / detention proposal is the result of approximately 20 Work Group meetings, and hundreds of hours of other meetings, discussions, drafting, editing, etc. The proposal has also been disbursed to and vetted by many other individuals and stakeholders beyond the Work Group such as law enforcement and victims' organizations. I am personally very grateful and indebted to the individuals named in this report, and others unnamed, who gave of their time and efforts to produce what I believe to be the best release / detention proposal currently in existence.

There was also consensus within the Work Group that additional pretrial reforms are desirable and necessary. There was discussion within the Work Group regarding some of the possible additional reforms such as state-wide pretrial services with a dedicated funding source, an increase in the use of summons instead of arrest, an initial hearing with 48 hours, and additional data gathering. These and other ideas will be brought to the Task Force to consider for the next legislative session.

My personal hope is that we can make sufficient pretrial reform progress in the 2020 legislative session such that this release / detention proposal can then be finished and submitted through CCJJ to the legislature in 2021.