Mental Health/Point of Contact Through Jail Release Task Force Colorado Commission on Criminal and Juvenile Justice

Minutes

August 11, 2016 1:30PM-4:30PM 700 Kipling, 4th floor Training Room

ATTENDEES: <u>Chair</u>

Joe Pelle, Boulder County Sheriff

TASK FORCE MEMBERS

John Cooke, State Senator, District 13 Frank Cornelia, Colorado Behavioral Healthcare Council Patrick Fox, Officer of Behavioral Health Jeff Goetz, Colorado Jail Association Tina Gonzales, Colorado Health Partnerships Evelyn Leslie, Private Mental Health Provider` Beth McCann, State Representative, District 8 Matthew Meyer, Mental Health Partners Charles Smith, Substance Abuse and Mental Health Services Administration Abigail Tucker, Community Reach Centers Dave Weaver, County Commissioner Doug Wilson, State Public Defender Lenya Robinson, Healthcare Policy and Financing

ABSENT

Charlie Garcia, CCJJ Member At-Large Norm Mueller, Defense Bar Joe Morales, Parole Board Michael Vallejos, 2nd Judicial District

Staff

Richard Stroker, CCJJ consultant Christine Adams, Division of Criminal Justice Kim English, Division of Criminal Justice

	Discussion:
Issue/Topic: Welcome/Introductions	Sheriff Pelle opened the meeting by asking members and the audience to introduce themselves and who they represent. Sheriff Pelle announced that a segment at the end of the meeting has been reserved for public comment.
Action:	

Issue/Topic:	Discussion:
Senate Bill 169 Task Force Update	Sheriff Pelle stated that Mr. Wilson would update the group on the Senate Bill 169 Task Force to make sure that that task force and our own are not working on the same topics or are in conflict with one another as it seems some issues overlap. Mr. Wilson noted
Action:	that at this week's first meeting of the SB 169 Task Force there were 100 attendees even though there are only 30 members. He believes that there will be significant crossover on the topic of M1 holds for jails and civil mental health holds. He stated that they were asking some of the same questions that have been asked in our meetings and will be trying to collect the same data. That task force has a pretty aggressive agenda for the next 6 months; they will be meeting every other week and they must provide a report by January, 2017. Mr. Wilson wants everyone to realize that there is a crossover and that
	both groups are having similar conversations. He hopes to not duplicate efforts. A handout was provided from the website for the Senate Bill 169 group that shows their 6 focus points. Half of these points are the same as items being talked about here. Fred McKee (Delta County Sheriff) and Chris Johnson (County Sheriffs of Colorado) are there representing sheriffs, and David Krause (Fuita Police Department) is there representing law enforcement. Sheriff Pelle Stated that Delta County was actually where the Senate Bill 169 issues arose because of people who are high risk to themselves.
	Mr. Wilson stated that if you go to this website there is a tremendous amount of data available from across the country including programs and definitions.Sheriff Pelle stated that this group will need toclarify our specific areas of focus. Some things may need to be comingled with the other group at some point given the existence of two groups that are looking at similar topics.

	Discussion:
Issue/Topic:	Mr. Goetz stated that he has only received survey data from 5 colleagues so far. He has reached out to determine why he is not receiving the data and has learned that some have
Research and Survey Update	to go through their health contractor to obtain the information for the survey but it still should not be this delayed. He will continue to push nicely. It should be noted though that the 5 responses he has received are not complete.
Action:	
	Mr. Stroker asked Mr. Goetz to remind the group about the type of questions included on the survey. He stated that the survey is asking for what type of mental health needs inmates have and how they are being addressed (inside or outside a facility), how acute

needs really are, how many Axis I and Axis II inmates, and how many M1 holds a jail
may have.
Mr. Goetz noted that Peggy Heil had sent out a request last year to determine what
providers were at each facility so he is piggy backing on that effort to make sure he is
sending these requests to people that are actually at facilities or who actually visits them.
Ma English stated that at the last meeting it was requested that she find information on
Ms. English stated that at the last meeting it was requested that she find information on "frequent flyers," or individuals who cycle through the system frequently. The handout
in your packet includes information on Larimer, Arapahoe and Denver Counties.
The Larimer County data shows that those with co-occurring substance abuse disorder
and mental illness had an 81% recidivism rate while those with substance use disorder
only had a recidivism rate of 69%, those with mental illness only had a recidivism rate
of 56% and those with neither substance use disorder nor mental illness had a recidivism rate of 44%.
The Arapahoe County study looked at 2011 bookings. From this we know that 27% had
an Axis I diagnosis and 34% had a substance abuse disorder. They found that 72% of the Frequent Flyer population were male vs. 76% of the general release population. In
Arapahoe County the most common booking was fugitive from justice which is a failure
to appear in another jurisdiction. Overall, frequent flyers are likely to have low level offenses.
ononses.
The frequent flyers in Denver equaled 108 people. So it is a small number of people
with a great deal of activity.
Mr. Wilson asked if we may be double counting people in the metro area because they
are "frequent flying" in multiple counties? Yes, frequent flyers do make their way around the metro area. But these were studies that were done during different time
periods so that issue does not apply here.
Ms. English also discussed an article related to homelessness, which is endemic to this group (the frequent flyers). This New York study found that 89% of the group had a top
charge that was a misdemeanor and the majority of frequent flyers had mental health,
substance abuse and homelessness issues.
In another study Ms. English referred to, it was found in King County (Seattle) that 94%
of the frequent flyers (they called them Familiar Faces) had at least 1 medical issue and
disorders, and homelessness.
 over 50% were homeless. This supports the idea that frequent flyers tend to have low level offenses and a variety of mental and medical health issues, substance abuse

	Discussion:
Issue/Topic: Discuss and Clarify Primary Areas of Focus Action:	Sheriff Pelle stated that at the last meeting the group discussed narrowing its focus. His concern is services for people who are incarcerated. Specifically, the people in the jails who are acutely mentally ill. When someone is acutely medically ill in a jail we take them to the hospital and post a guard but this does not exist for the mentally ill. We do not have secure places to take these people and we need alternatives. We need places to go or contract with.
	Sheriff Pelle stated that the need for secure beds may overlap with the interests of the Senate Bill 169 Task Force, but it may not. Mr. Wilson responded that the Senate Bill 169 group has only had one meeting but that there were similar discussions about beds.
	Mr. Stroker stated that the official name of this group is Mental Health / Point of Contact Through Release from Jail Task Force, and after listening to presentations about the system he feels there are diversion issues that relate to the point of contact through intake to jail and then a group of issues that relate to the time of commitment through release. He would like to discuss these broader issues of diversion and jail/mental health issues to see if the group can agree on a few specific areas to focus on. If these are the right topics, Mr. Stroker thought the group could break into work groups and use task force time to maximum work group progress.
	But first, understanding that there is overlap, do these seem like the correct areas of focus? Or is there a need for a third group such as M1 holds?
	Mr. Cornelia stated that he had a process question because he thought work groups would include other members of the public? Mr. Stroker asked the group if they wanted to use task force time to meet as work groups but stated that they would absolutely be encouraged to meet outside of this meeting time with other people.
	Dr. Tucker stated that it appears the group will have two areas in which to make recommendations and she is concerned that if the group does not work as whole it will lose the diverse expertise that exists among the members and actually lose time because we would have to rehash information because people cannot be in both groups simultaneously. Mr. Stroker stated that at the end of each task force meeting he would like the groups to come back together and report back to one another and provide feedback. He does not want the task force to become two groups but rather to be able to work on more than one thing at a time. Dr. Tucker was still concerned that 15 minutes at the end of each task force meeting may create an artificial harmony and risk creating less developed recommendations.
	Mr. Wilson stated that M1 holds are not only relevant to the mental health/jail topics but that they straddle both categories of interest. It depends on whether we divert them away from jail or not.
	Mr. Wilson also asked, if work groups do meet outside of task force time how would they be staffed, if at all? Mr. Stroker stated that typically work group meetings are not staffed, however, if there is information they are looking for they should ask for it and efforts will be made to help.
	Dr. Fox stated that for the Jail to Release category, it should actually be <i>Jail to Release and Beyond</i> , to ensure follow-up because that is where recidivism occurs.
	Dr. Fox also noted that we should add having a 27-65 designation as a topic within the <i>Jail to Release and Beyond</i> category because jails cannot involuntarily medicate (they can emergently medicate) without being a 27-65 facility (see Colorado Revised Statute, Title

27, Article 65). This designation has hampered the ability for jails that are appropriately equipped to deliver the necessary treatment when needed. He feels this Task Force should explore in what way the language of 27-65 or other rules could be changed to affect this.
Diversion from Criminal Justice System
 Mr. Stroker stated that he would like to go through the list of topics within each category and determine if anything needs to be added to each list. The group began by discussing <i>Point of Contact to Jail.</i> Mr. Stroker noted that the following issues that have been discussed: Exploring promising initiatives and what a law enforcement officer might do to initiate diversion from the criminal justice system. Other means to divert people from the criminal justice system. These options could be pre or post-plea. Options that could be utilized that would be allow the person to avoid going to the jail. Arrest options that might include the use of citations or summons or other community options. Use or expand existing system responses (e.g., something that may exist in another county). Sheriff Pelle feels that we cannot expand an existing system but must create something new. He feels that the police should focus on public safety, not mental health. Need to better match people with the services they require. Data has been mentioned multiple times, including understanding how many individuals we're talking about, if they are frequent jail utilizers, if they are being arrested for certain crimes.
Mr. Cornelia asked Sheriff Pelle how mentally ill individuals are typically handled. Sheriff Pelle stated that Boulder County is fortunate to have a relationship with the Mental Health Partners where mental health professionals respond to scenes. But that this is in Boulder, it is not the standard response across the state. Boulder has had 1600 contacts with the EDGE program, many of which have had follow-up care but crisis interventions are not consistent across the state. He feels that there has to be a better way to handle these cases than calling 911 and having the police handle them.
Representative McCann asked if Mesa County is doing something with the mental health court? Sheriff Pelle is not familiar with that but knows that they have had a system-wide revamp due to the funding it is receiving from the MacArthur Foundation. He stated that Boulder has the PACE program for people with co-occurring problems. But he stated that even with this program 30% of his jail still has a mental health diagnosis.
Dr. Meyer added that he appreciates the Sheriff calling out these great programs but stated that everyone is simply pulling pieces together rather than having a robust continuum of care. Dr. Meyer stated that what they've learned with the EDGE program is that frequently it is only mental health going out on those calls which is a significant cost benefit to the system because that is the appropriate response level. On the PACE side, which is a post-release program, it is similar in that the results are positive but it is a small program and not large enough to address the whole problem.
Dr. Fox asked what proportion of the EDGE program clients are thought to be e Medicaid recipients? Dr. Meyer stated that it is difficult to tell because they are not doing Medicaid checks when they go out on the street for these crisis calls. It would not be an appropriate thing for them to ask. But it is presumably a high percentage.
Dr. Tucker stated that for her Adams County program approximately 50-60% have Medicaid ; many have private pay followed by no insurance. Many are ineligible for

1	Medicaid for various reasons.
	Dr. Fox stated that he is thinking about a funding stream and if there is a cost avoidance possibility. If there is a savings stream it is incumbent on a BHO, even if it is uncompensated, to avoid a larger expense later. Dr. Smith mentioned that New York has presumed eligibility that can be used where funds are set aside for that reason. Sheriff Pelle noted that when you call 911 and it requires an ambulance, a fire truck and an officer it can be an incredible waste of resources.
	Dr. Tucker would like to look at what the systemic barriers are to the best practices that are currently happening? For example, crisis stabilization units can accept M1 cases across the state, and law enforcement in some locations do use that but there is a statewide inability for paramedics or other individuals to be able to bring M1s to these facilities. She stated that this is a missed opportunity very early on to divert people from the system that is not specific to a funding stream. Dr. Fox responded that his understanding, from the One Year Crisis Follow-Up Task Force, is that the ambulance transport companies are instructing the ambulance staff to go to hospitals rather than crisis stabilization facilities to limit liability. Mr. Wilson stated that this is not a statutory barrier but a misperception of liability. Dr. Tucker and Dr. Smith stated that this is a surmountable barrier.
	Mr. Wilson asked if, while ignoring the jail mental health issues for a moment, we are looking to make it easier to move people from street to the civil side (assuming we have the bed space). Sheriff Pelle agreed that yes, frequently what we are talking about is bed space. But frequently what we are dealing with is public safety and the only way to do that is to jail someone. He feels that the lack of secure places to take people is what often drives the need to call law enforcement.
	Mr. Wilson then asked if the word <i>imminent</i> in the M1 statutes causes the problems. Sheriff Pelle stated that that is not normally what holds up his jails but may be what holds up the process. Mr. Wilson said that data is an issue because he has no idea how many M1s there are. Sheriff Pelle stated that most jails will not take M1s, especially in the metro area. The rural area will often accept them because there are no options. Mr. Wilson stated that data is still an issue (how many individuals are being held in jails on M1 holds?) and that another need is to somehow redefine this population (e.g., striking <i>imminent</i> from 27-65). If the mental health worker cannot make the decision you will not be able to divert. The charge then occurs and the jail receives the individual. Dr. Fox stated that he used to believe that striking <i>imminent</i> from 27-65 would make a difference, and it might but now he feels that you need to know that the person making the evaluation are more interested in engaging and helping the person through a crisis vs. clearing their emergency room.
	Dr. Tucker stated that 1) bed space straddles both issues and 2) there are multiple opportunities to divert, or move to the civil side, before someone is an M1 and that is what we are missing. Sheriff Pelle stated that what is working for Boulder is the warm handoff and walk-in centers as well as the crisis workers who come to a scene. They can meet with someone and make sure they are safe and secure but then back off. He does not feel that the M1 definition is the problem if the bed space is available. Fox explained that a facility may have beds but if someone is self-pay and a low level case (e.g., mild depression) they are more likely to be accepted than someone with law enforcement involvement. Sheriff Pelle added that the individuals who are high risk and unwilling to participate in treatment are the problem. Dr. Smith added that hospitals have choice. The do not have an obligation to take patients whereas the jail is obligated to provide public safety. Sheriff Pelle asked how we can put pressure on tax funded entities to be more responsive to these patients. Dr. Tucker responded that it would not be her assumption that all of these facilities are

solely or only tax funded.
Mr. Wilson then stated that if you are at an arrest point you are no longer at Diversion. Mr. Stroker stated that we should be clear then that we are not speaking about diverting from jail but from the criminal justice system. Dr. Meyer stated that that is the point of programs like EDGE, to keep people away from criminal justice all together.
The group agreed that diversion equals diversion from the criminal justice system all together but it was stated that if someone enters the system there can and should be other steps to divert someone at later points. If a mental health professional is not available at the arrest point the individual cannot just be out of luck. There must be ways to divert later, if necessary.
Dr. Fox stated that a long term goal would eventually be for mental health courts to become unnecessary because that is too far down stream. Mr. Wilson stated that the mental health courts are coercive because they occur post-plea. Dr. Smith observed that the mental health courts would hopefully evolve to include a greater collaboration with the community. Sheriff Pelle stated that based on the nature of the crime or other reasons there are certain situations where arrest is inevitable. But other mental health options should be available later on.
Mr. Stroker asked if we should we focus on diversion from the criminal justice system (Intercept 1)? What about diversion opportunities within the criminal justice system? Mr. Cornelia is concerned that this may overlap with the Senate Bill 169 Task Force. Sheriff Pelle stated that this may provide the state with recommendations from two strong groups. And recommendations from this group may have a potentially different angle than the other group.
Jail Release and Beyond
Jail Release and Beyond Because some people will inevitably end up in jail, how do we provide the appropriate level of care for these individuals? Mr. Stroker asked what the primary areas of focus are within this category. Sheriff Pelle stated that providing the appropriate jail based services are needed but we also have the need to manage the acutely mentally ill and this includes finding a provider who is willing to take them. Often these individuals are actively psychotic and sometimes charged with serious crimes. The existing system needs to be modified to allow options that will provide a continuum of care. Sheriff Pelle stated that Boulder County is contracting with their local mental health provider to counsel within the jail and provide a continuum of care for medication. Mr. Goetz pointed out if an individual is not from Boulder County they will be out of this system and the provided continuum of care. Dr. Tucker noted that jails must have access to care and access to providers who can write prescriptions along with the ability to involuntarily treat (27-65).
Because some people will inevitably end up in jail, how do we provide the appropriate level of care for these individuals? Mr. Stroker asked what the primary areas of focus are within this category. Sheriff Pelle stated that providing the appropriate jail based services are needed but we also have the need to manage the acutely mentally ill and this includes finding a provider who is willing to take them. Often these individuals are actively psychotic and sometimes charged with serious crimes. The existing system needs to be modified to allow options that will provide a continuum of care. Sheriff Pelle stated that Boulder County is contracting with their local mental health provider to counsel within the jail and provide a continuum of care for medication. Mr. Goetz pointed out if an individual is not from Boulder County they will be out of this system and the provided continuum of care. Dr. Tucker noted that jails must have access to care and access to

necessary prescriptions for that person. There may be a reference to it in statute but he believes it is primarily an Office of Behavioral Health (OBH) rule that is preventing the prescription writing solely because someone is in a jail.
Mr. Stroker then summarized the areas of focus and asked the group to add any items he may have missed:
 A. Diversion from the criminal justice system Focus on Intercept 1, options and opportunities to expand Developing new system responses and more efficient funding to expand on promising practices B. Diversion within the criminal justice system Expand effective diversion alternatives Mental health/Recovery court Pre-plea options → post booking/pre-arraignment C. Jail through Release and Beyond. Services within the jail Level of care Ability to prescribe Efficiencies of treatment Acutely mentally ill in jail System response options Secure facility needs Ability to prescribe/access to providers
 Continuum of care Medication consistency
Mr. Wilson noted a diversion bill from CCJJ ^{1,2} was passed two years ago that was not related to mental health specifically, but could be used for this purpose, and currently most DAs do not operate adult diversion programs despite the establishment of this grant fund. Dr. Smith briefly discussed a jail diversion program in the early 1990s that he was part of for the City and County of Denver that happened after arrest.
 Mr. Wilson asked Dr. Fox if he believes we can get an effective diversion program set up? Dr. Fox responded that absolutely this is possible. He feels the cheapest competency evaluations are the ones that are never being done. Mr. Wilson said he believes that the reason we are seeing an increase in competency evaluations requests is because there is an increase in lower level offenders that are severely mentally ill and we (defense counsel) cannot see them because public defenders are not available for low level offenses. Dr. Fox stated that if someone meets the civil commitment requirements then we absolutely want to preserve those beds for the people who desperately need them. That is why they reduced Judicial's ability to request a competency evaluation this last legislative session.

¹ CCJJ Recommendation FY13-CS01 called for the reclassification of CRS 18-4-401 to expand the sentencing options available for theft crimes. Specifically, reclassify theft CRS 18-4-401 as specified in the following tables. Any cost savings from this recommendation should be reinvested in diversion and justice system programs. This recommendation resulted in the passage of House Bill 13-1160.

² CCJJ Recommendation FY13-CS04 recommended enhancing the availability of pretrial diversion options throughout the state, as well as developing appropriate funding alternatives, by:

^{1.} Replacing the existing deferred prosecution statute (C.R.S. 18-1.3-101), and

^{2.} Amending the Victim's Rights Act to ensure victims are able to provide input to the pretrial diversion decision

This recommendation resulted in the passage of House Bill 13-1156.

Dr. Smith stated that we need to identify a strategy to engage the Senate Bill 169 Task Force to ensure that we do not duplicate that group's work and to make sure we are engaging each other. Or if we are duplicating our efforts, we should make sure we are adding value to one another's efforts. Doug Wilson will serve as the cross-over representative, recognizing that Lenya Robinson also is a member of both task forces.

	Discussion:
Issue/Topic:	
Next Steps	Mr. Stroker stated that the idea to break into two groups was only met with lukewarm enthusiasm so he has another idea to focus on one topic at a time as a whole group. He would like to go around the room and hear everyone's perspective about this approach.
Action:	 Mr. Cornelia asked for a brief discussion on our timeline first noting that the work of the Senate Bill 169 Task Force must be complete by January. Mr. Stroker responded that he would like to be able to get through everything within one year which is approximately 3-4 months per issue. He stated that if we do address the same topic(s) as the Senate Bill 169 Task Force we could wait until the end of our time frame to address that topic. Sheriff Pelle stated that his concern about breaking into working groups is that we would lose knowledge and expertise of everyone on the task force. This is in agreement with Dr. Tucker's earlier comments.
	 Dr. Meyer stated that he is agnostic on the issue of breaking up into two groups or staying together but wanted to know what the expected deliverable is. The deliverable will be a recommendation – policy or legislative – to the CCJJ. Legislative recommendations that pass the CCJJ require obtaining the interest of a legislator who will sponsor a bill that reflects the legislation. Ms. English added that when a recommendation becomes a bill it has a reputation as being a "CCJJ bill" and those bills tend to be successful. In the past, recommendations that have been very broad do not seem to be very effective, but those that have been very specific about what agency will make what change have been the most successful. Dr. Meyer stated that with that end in mind we need to put a dead line on our work in order to make a specific recommendation about each of these three topics. There will have to be Work Group meetings occurring between Task Force meetings in order for draft recommendations to be developed by a certain date.
	Mr. Goetz stated that we should meet as a large group and break out as necessary. Ms. Gonzalez agreed and referred to Denver being mentioned numerous times and does not want the rural counties to be missed. For instance, the closest hospital to the Prowers County jail is 3 hours away.
	All others agreed that we should meet as one group and break off as needed.

 Mr. Stroker asked for the group to decide the order in which they will address the issues and then decide a timeline. Dr. Smith stated that it should go in the following order, which allows the Senate Bill 169 Task Force to develop their recommendations first (see previous section of minutes for more detail). A. Diversion from the criminal justice system B. Jail from release and beyond C. Diversion opportunities within the criminal justice system All agreed.
 recommendations be presented to the full Commission for a preliminary presentation no later than September or October to line up with the 2018 legislative session. This works perfectly with the 1 year time frame. The Senate Bill 169 Task Force has to have a report submitted to the General Assembly by Jamery 2017.
 Assembly by January 2017 With 3 – 4 months per topic we will have to have draft recommendations in three months.
• At the December 2016 Task Force meeting we should be satisfied with the first set of recommendations to move forward.

	Discussion:
Issue/Topic: Next Meeting and Public Comment	Sheriff Pelle confirmed that the group's next meeting is scheduled for September 8 th and asked if there was any public comment. Seeing none, the meeting was adjourned.
Action:	

Adjourned: 4:30 pm

Next meeting: September 8th, 700 Kipling, 4th Floor training Room, 1:30 – 4:30pm