

***Mental Health/Jails Task Force***  
***Colorado Commission on Criminal and Juvenile Justice***  
**Minutes**

March 8, 2018 1:30PM-4:00PM  
710 Kipling, 3<sup>rd</sup> Floor Conference room

**ATTENDEES:**

**TASK FORCE MEMBERS**

Joe Pelle, Boulder County Sheriff, chair  
Patrick Costigan, 17<sup>th</sup> JD District Attorney's Office  
Joe Morales, Adult Parole Board  
Benjamin Harris, Department of Healthcare Policy and Financing  
Doug Wilson, Office of the Public Defender  
Frank Cornelia, Colorado Behavioral Healthcare Council  
Abigail Tucker, Community Reach Centers  
Tina Gonzales, Colorado Health Partnerships  
Matthew Meyer, Mental Health Partners (on the phone)  
Evelyn Leslie, Private Mental Health Treatment Provider  
Jamison Brown, Colorado Jail Association  
Patrick Fox, Office of Behavioral Health

**ABSENT**

John Cooke, State Senator, District 13  
Charles Smith, Substance Abuse and Mental Health Services Administration  
Michael Vallejos, district court judge, 2<sup>nd</sup> Judicial District  
Dave Weaver, County Commissioner  
Charles Garcia, CCJJ Member At-Large  
Norm Mueller, Defense Bar

**STAFF**

Richard Stroker, CCJJ consultant  
Kim English, Division of Criminal Justice  
Laurence Lucero, Division of Criminal Justice

**GUESTS**

Vincent Atchity, Equitas Foundation  
Moses Gur, Colorado Behavioral Healthcare Council  
Lucy Ohanian, Public Defender's Office  
Dr. Reo Leslie, Co. School for Family Therapy  
Peggy Heil, Division of Criminal Justice

<b>Issue/Topic:</b> Welcome and Introductions	<b>Discussion:</b> Mental Health/Jails Task Force Chair Joe Pelle welcomed the group and reviewed the agenda.
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<b>Issue/Topic:</b> Legislative Updates	<p style="text-align: center;"><b>Discussion:</b></p> <p>Moses Gur informed the group that, during JBC figure setting for the Office of Behavioral Health (OBH), the Joint Budget Committee (JBC) voted to approve the draft of a bill to address Colorado’s competency restoration issues. Some components of the draft relate to the pre-filing diversion program that came out of this task force. The bill would be designed to:</p> <ul style="list-style-type: none"> <li>- Divert individuals with mental health disorders from the criminal justice system into treatment.</li> <li>- Improve communication between the Courts, district attorneys, defense attorneys, the Department of Human Services, the Department of Health Care Policy and Financing, local law enforcement agencies and community-based behavioral health providers concerning the needs and available treatment options for individuals with behavioral health disorders.</li> <li>- Provide timely competency-related services based on clinical necessity.</li> <li>- Integrate competency restoration services with existing community-based behavioral health services.</li> <li>- Improve the availability of mental health services in jails to help identify individuals who could be diverted into treatment and reduce the likelihood of individuals decompensating while they are held in jails.</li> <li>- Free up capacity for CMHIP to provide jails and other agencies with access to inpatient psychiatric treatment for individuals based on clinical necessity, regardless of whether there is court order concerning competency.</li> <li>- Reduce the maximum term of confinement for purposes of receiving competency restoration treatment to less than the maximum term of confinement that could be imposed if the defendant were to be found guilty of the charges (thereby addressing a critical constitutional issue and reducing the demand for restoration services).</li> <li>- Establishing procedures for transitioning individuals to a civil commitment when warranted; and</li> <li>- Improve procedures related to individuals who are found permanently incompetent to proceed.</li> </ul> <p>Through the briefing and hearing process, the JBC held multiple meetings with stakeholders and the JBC staff is currently engaging several of those entities to work on these efforts.</p>
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	<p>Moses shared that the creation of a statewide court liaison program is being envisioned with the goal of improving communication and information sharing between the mental health communities and the courts. The program would be in place in each judicial district and staffed with mental health professionals who would serve as resource to judicial districts.</p> <p>Moses engaged the Task Force members to provide feedback on the creation of a court liaison program.</p> <p>Sheriff Pelle indicated that only 44% of individuals who are in the Boulder County jail reside in the county and commented that a court liaison would be helpful to connect people with services in the jurisdiction where they reside.</p> <p>A statewide court liaison would be very helpful if used as a coordinated resource and a point of reference for the state.</p> <p>It was also suggested that the scope of services provided by the court liaisons be well defined to prevent the staff being pulled to other assignments that may not be necessarily within the parameters of their duties.</p> <p>The group agreed that such program would be very beneficial providing that the court liaisons work as network and connected to all communities across the state.</p>
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<b>Issue/Topic:</b>	<b>Discussion:</b>
<p>Pre-File Mental Health Diversion Program – Pilot Project</p> <p><b>Action:</b></p>	<p>Sheriff Pelle informed that following a board meeting with the county criminal justice stakeholders, Boulder county volunteered to participate to the pre-filing mental health diversion pilot project. Sheriff Pelle relayed that the board discussed how to conduct screens, interviews and make treatment recommendations in the timeframe defined in the pilot project and the cost associated with these efforts.</p> <p>Jamison Brown shared that Eagle and Pitkin counties have also expressed interested in this pilot project.</p> <p>The group discussed that the participation of a large jurisdiction would be valuable and it was suggested to reach out to Ms. Adrienne Greene, a prosecutor in Denver who has been informed of these efforts and seemed interested in the concept.</p> <p>Abigail Tucker mentioned that Adams county is also interested in learning more</p>

	<p>about the pilot project.</p> <p>Kim English will reach out to the jail administrators of the five mentioned counties: Boulder, Denver, Adams, Pitkin and Eagle.</p> <p>Kim will also discuss the concept with the CDAC President, Jeff Chostner and report at the next meeting.</p> <p>Finally, Tina Gonzales provided Kim English with contacts in the Department of Behavioral Health in California to gather more information on their regional jail systems.</p> <p>It was commented that the large majority of individuals in jails who reside in different counties or are homeless raises significant challenges for the mental health providers. The program has to work as network with other jurisdictions.</p> <p>Ben Harris indicated that for individuals who will be treated in the community, there is a program within DHPF that is specifically tasked to help with the coordination and networking of services. Once the participating jurisdictions will be identified, Ben proposed to engage his program to solve this issue.</p> <p>The National Institute of Justice just released a grant funding opportunity for innovative mental health programs in correctional systems. There may also be other grant opportunities available for these pilot sites to help support these efforts.</p> <p>Jamison Brown shared that Denver county has offered to host data of all the jails across the state and suggested that this may be helpful with the data collection of the pilot sites.</p>
<p><b>Issue/Topic:</b></p> <p>Recap of February meeting The provision of Mental Health Services in Jail</p> <p><b>Action:</b></p>	<p><b>Discussion:</b></p> <p>Richard Stroker provided a recap of the February meeting.</p> <p>The task force is now tackling issue #3: “The provision of mental health services in jails” and has identified 3 areas of focus: 1) Diversion of mental health cases from jail for post-filing/pre-adjudicating, 2) Provision of mental health services in the jails, 3) Alternative placement options for acute, unmanageable cases.</p> <p>1. Diversion of mental health cases from jail for post-filing/pre-adjudication</p> <p>Richard reminded that the group discussed the potential ability to expand and build on the diversion efforts developed by this task force.</p> <p>Additionally, Richard suggested that the discussion of post-filing diversion could include the expansion of effective practices in the state and asked Patrick Costigan to provide an overview of the diversion program in the 17<sup>th</sup> Judicial District.</p>

Patrick Costigan explained that the 17<sup>th</sup> Judicial District has a well-established and effective diversion program. Approximately 92% of the people who complete the diversion program do not reoffend within 3 years of completion. The diversion program is post-arrest, pre-filing.

In 2017, the 17<sup>th</sup> Judicial District diverted 277 cases which include felonies and offenses committed by juveniles. Most are low level offenses and approximately 65% of offenses are substance abuse related. Victims' Right Act and domestic violence cases are not eligible for diversion.

The diversion program is funded by the county. People are seen within 72-hours of their first court appearance. There is a three-hour intake to assess eligibility for diversion. The program includes 12 client managers who are addiction counselors, have a bachelor degree and a criminal justice background with 2 to 4 years' experience. The criminogenic tool used is called ORBIS. There are no psychologists on staff but there is a significant budget for referral to mental health services in community. The average length of time people stay in diversion is determined by the risks/needs level which is assessed during the three-hour intake. Individuals agree to a diversion contractual agreement that is drafted at intake. How often the person needs to meet with the counselor depends on the assessment information.

After reviewing the case, the district attorney chooses not to file charges and agrees to a diversion referral. The judge makes the diversion determination and the individual enters into a treatment agreement in lieu of being charged. It is believed that the program is successful because of the time invested in the front end with the client.

Levon Hupfer, the Diversion program director is available to present to the group.

#### GROUP DISCUSSION

The group discussed and agreed that the Task Force's diversion work at this stage of the process has already been completed with the pre-filing diversion recommendation. The language of the recommendation, and the description of the pilot project, may in time need to be reviewed and possibly amended to include the post-filing diversion. Additionally, the OBH efforts presented by Moses Gur will likely address some parts of this issue.

It was suggested to learn from the pilot sites' experiences before working on an additional proposal that may just be a minor tweak of the pre-filing diversion recommendation.

Richard summarized that, considering the pre-filing diversion program recommendation from this task force, the court liaison programs that are being developed by OBH and other initiatives across the state, no future work on the post-filing diversion will be undertaken.

#### 2. Provision of mental health services in the jail/voluntary vs. involuntary

Richard Stroker reminded the group that this issue relates to the provision of mental health services for individuals in the jails who are not going to be diverted. Last month, the group decided to start looking at the type of standards

that could be used to manage this population. The meeting materials include a copy of the table of contents of the “Standards for Mental Health Services in Correctional Facilities” from the National Commission on Correctional Health Care (NCCHC).

Additionally, the group will today be engaged in discussing the resources needed to provide services and the concept of making jails designated facilities under Title 27 Article 65.

It was commented that while the standards from the NCCHC are a good resource, the standards are more geared toward a population who is incarcerated for long periods of time. The average length of stay in jails is about 3-7 days and volume is constantly changing.

Additionally, one of the important issues is that jails are not designated to provide behavioral health services. If the NCCHC standards are considered to adopt by the Colorado jails, they should be modified to fit local jurisdictions capabilities.

It was mentioned that the Colorado Jails Association is a very active group with regards to best practice sharing, training and technical assistance support.

There are no statewide jail standards in Colorado and many county jail administrators are reluctant to agree to standards because of the diversity in facility size and the challenges for small rural/frontier jails. It was suggested that the word “Guidelines” may be better accepted than “Standards”.

Sheriff Pelle expressed that he liked the concept of transferring inmates to a designated accredited regional facility. Sheriff Pelle reiterated that when an inmate from Boulder county jail has a serious medical need, he/she is transferred to another facility such as the Denver or Douglas county jails, and Boulder county jail pays that facility to hold the inmate. This is factored in their budget. This option is lacking for people with serious mental health conditions.

Patrick Fox shared that, several years ago, he discussed with a member of the legislature the notion of having teams of clinicians in place in the four quadrant of the state in order to facilitate access to care. Many issues required further discussions, including payment structure, the facility liability, the jails’ liability etc.

There are several empty prison facilities in Colorado that could be of used for this purpose. The Colorado State Prison II building tower in Fremont and the facility in Hudson/Burlington were mentioned.

Because the location of the State Hospital is in Pueblo, it becomes a significant challenge to ensure transportation of this population to appear in court or to facilitate visitations from families or attorneys.

It was suggested to engage the Colorado Counties Inc. (CCI) in the discussion with regards to guidelines for jails. CCI assists with counties operations, risk mitigation and engage counties to work together on common issues.

There is a big difference between jail guidelines and guidelines for behavioral health treatment providers who provide services in the jails. Technically, the Office of Behavioral Health (OBH) sets standards for how behavioral health professionals provide care for individuals who are served under Jail Based Behavioral Health Services (JBBS). The JBBS program supports county sheriffs in providing screenings, assessments and treatment for substance use disorders, co-occurring substance use and mental health disorders. The goal of the OBH is to ensure that there is quality of behavior health care and are not involved in the jails' operations.

Abigail Tucker believed that the primary question is how to ensure that the individuals in jails who are acutely mentally ill are adequately treated and what are the opportunities? Abigail suggested to first look at C.R.S. 27-65. There are providers in many jails who can provide appropriate treatment but limited by state statutes since jails are not designated facilities in C.R.S. 27-65.

Richard Stroker suggested that there may be two considerations:

1. Individuals who need services and what would be our expectations in terms of receiving services,
2. Individual with acute needs and perhaps not appropriately manageable.

These categories should also break down by "voluntary" versus "involuntary" treatment cases. There may be appropriate services available but people do not want those services.

It was agreed that one of the biggest challenges in the jails is that treatment providers are unable to medicate people who refuse because the jails are not designated facilities.

The language in C.R.S. 27-65-102 currently says "*a facility designated or approved by the executive director of DHS*". Patrick Fox explained that new language was introduced last October to add "*or a jail approved by the executive director*". A pilot project with three or 4 jails was recommended to be conducted over the period of a year with a report back to the Senate and House Judiciary Committees.

Patrick commented that many concerns have been expressed with regards to this amendment. One side of the argument is that a person with a severe, acute mental health condition should not be in a jail settings and should be in a state hospital. Patrick Fox reiterated that there are currently 180 people on the waiting list for competency evaluation restoration in the State Hospital and no capacity to meet that need. These individuals are likely going to wait in the jails. The opposing argument is that even though our jails are not equipped similarly, many facilities have the qualified staff and capacity to treat appropriately but not the necessary authority.

The bill would allow the creation of a pilot program through the Office of Behavior Health that would enable a specified number of jails to obtain approval from the executive director of the Department of Human Services to petition a

probate court so then the judge can make the determination to involuntarily medicate.

Another alternative would be for regional hospitals to create their own Correctional Care Medical Facility (CCMF) in those hospitals. For example, there is a unit in the Denver Hospital that is run by the Sheriff's Office. Physicians in the hospital petition the probate judges to obtain an order to provide care and treatment even if the individual is unwilling to be medicated. This option seems unlikely to implement considering the diverse resource capabilities across the state.

There are currently legislative efforts to supplement JBBS. The idea is to take the JBBS framework that currently exists and create a mechanism for people with mental health needs.

There are no standards or guidelines to address mental health disorders in the jails but requirements that jails provide minimally adequate treatment.

It was suggested that the minimum requirement could just be access to care. If guidelines are to be developed, they should be adapted to county population size.

The Colorado Jails Association have guidelines around jail operations and it seems unlikely that county jails adopt statewide guidelines. It would make more sense to have regional designated facilities with guidelines on how to provide care for people with serious mental health disorders. The minimum requirement for the non-designated jails would be to understand when it is time to transfer those inmates.

One of the concerns expressed is that if a regional system is implemented to provide behavior health care, judges might continue to use confinement as a way to ensure that the person gets the treatment they need. Therefore, it is important to make sure that all the diversion options have been exhausted and that the regional designated facilities are equipped to provide an adequate level of care.

Richard Stroker asked if the group agreed with the concept of regional designated facilities (jails or hospitals) with defined guidelines/standards on how they would operate and provide mental health services for jail inmates from other counties. All diversion options should have been exhausted.

The group responded affirmatively and there was a consensus to pursue exploring this concept.

Richard Stroker summarized today's discussions:

1. **Diversion of mental health cases from jail for post-filing/pre-adjudication:**  
Already addressed with previous recommendation and OBH efforts.
2. **Provision of mental health services in the jails**

	<p><b>3. Alternative placement options for acute, unmanageable cases:</b>                  These two areas of work are combined. The group will study the concept of regional designated facilities with standards or guidelines for the provision of minimally adequate mental health treatment for jail inmates.</p>
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<p><b>Issue/Topic:</b>                   Next steps and Adjourn</p>	<p style="text-align: center;"><b>Discussion:</b></p> <p>Mr. Kyle Brown from the Governor’s Office will be invited to participate to the upcoming discussions.</p> <p>Patrick Costigan announced that he will not be able to attend the April meeting and that Ms. Callen Riedel will attend in his place.</p> <p>Sheriff Pelle informed that John Ferrugia from Rocky Mountain PBS is doing a special report on mental health and justice system which will be aired on PBS on 4/26 at 7pm.</p> <p>Sheriff Pelle has been invited to go to a national summit on Mental Health and the Justice System organized by the Police Executive Research Forum (PERF) on 4/16 in Florida. Sheriff Pelle proposed to report back on the feedback received regarding the Colorado initiatives.</p> <p>Meeting adjourned at 4:00 pm</p>
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**Next Meeting**

April 12, 2018

1:30pm – 4:00pm

710 Kipling, 3rd Floor Conference room