

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

June 21, 2017 1:00PM-4:30PM
690 Kipling, 1st Floor Conference room

ATTENDEES:

TASK FORCE CHAIR

Stan Hilkey, Dept. of Public Safety

TASK FORCE MEMBERS

Jennifer Bradford, Metro State University of Denver

Maureen Cain, Criminal Defense Attorney

Steve Chin, Mesa County Pretrial Services

Valarie Finks, Victim Services, 18th Judicial District

Charles Garcia, CCJJ At-large representative

Mike Garcia, Division of Probation Services

Bill Kilpatrick, Golden Police Department

Greg Mauro, Denver Community Corrections

Patrick Murphy, Judge, 17th Judicial District

Clifford Riedel, Larimer County District Attorney

Monica Rotner, Boulder County Community Justice Services

Kirk Taylor, Pueblo County Sheriff

Doug Wilson, Public Defender's Office

Bo Zeerip, District Attorney 21st Judicial District

STAFF

Richard Stroker/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ABSENT

Joe Salazar, Representative, House District 31

Lang Sias, Representative, House District 27

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Stan Hilkey, Chair of the Commission on Criminal and Juvenile Justice (CCJJ) and Executive Director of the Department of Public Safety, welcomed the group and thanked Task Force members for participating. He explained that during its annual retreat the full Commission agreed to create a Task Force to study the issue of pretrial release and to eventually come forward with recommendations.</p> <p>Mr. Hilkey explained that he will be the Chair for this Task Force and he asked members to introduce themselves. He reviewed the agenda and noted that there would be a presentation later in the meeting outlining roles and responsibilities of Task Force members along with Task Force guiding principles. He added that early on in the Task Force process a good amount of time will be spent on education and defining issues, rather than trying to solve problems.</p>
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<p>Issue/Topic: Introduction and Background</p> <p>Action:</p>	<p>Discussion:</p> <p>Maureen Cain and Bo Zeerip offered a background presentation on how Colorado’s current pretrial release statute is written and how the statute actually works. Bo began the presentation with a PowerPoint presentation, the full copy of which can be found on the CCJJ website at colorado.gov/ccjj.</p> <p><i>PRESENTATION HIGHLIGHTS – BO ZEERIP</i></p> <ul style="list-style-type: none"> • Bo explained that during the presentation he and Maureen would briefly look at the: <ul style="list-style-type: none"> -Federal Constitution -Federal case law -Colorado State Constitution -Colorado Statutes -Colorado case law • Pretrial definitions include: <ul style="list-style-type: none"> -Bail – a process of release -Bailable – releasable -Bond – a promise to appear in court + something else (usually a document) -Unsecured monetary condition – i.e. PR / co-sign PR -Monetary condition of bond – cash, surety, property • Colorado statute makes it clear that bail is NOT equated with money. • There is no federal constitutional right to bail. • The eighth amendment states “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” – but it does not mean someone is guaranteed a monetary condition that they can make. • In a case called the Salerno Case, the US Supreme Court found that the 1984 Bail Reform Act was constitutional and that there is no “right to bail”, and that defendants may be detained pretrial for public safety reasons.
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<p style="text-align: center;">Issue/Topic:</p> <p style="text-align: center;">Introduction and Background (continued)</p> <p style="text-align: center;">Action:</p>	<ul style="list-style-type: none"> • U.S. v. Salerno quote – “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” • Bo reviewed additional federal cases and noted recent cases are calling into question the constitutionality of the use of charge-based money bail. • Washington D.C. has applied the principles in the Salerno case with the following outcomes: <ul style="list-style-type: none"> -Over 80% of arrested defendants are released w/o a monetary condition of bond immediately (within hours) -Over 90% are released w/o a monetary condition within a few days -Less than 10% are held without bail after a pretrial detention hearing -Court appearance rates and public safety rates are in the 90% range • In DC they are getting noteworthy results with remarkable release rates. • In Colorado <u>everyone</u> is ‘bailable’ or releasable with some exceptions: <ul style="list-style-type: none"> -Not a right to bail for certain narrowly defined crimes (e.g. capital offenses, proof evident – presumption great) -Judges may temporarily revoke release or bail for things like probable cause for new crimes, FTA or technical violations -Also, there’s not a right to bail post-conviction • The People v. Jones is the most recent, most important case in Colorado on the new bail statute. A judge was revoking bail for people when there was probable cause that they committed a new crime, and then holding them without bail. • The Colorado Supreme Court held that under our current statute and constitutional revisions someone cannot PERMANENTLY revoke bail for probable cause for a new crime, or for any reason. Someone can only temporarily revoke bail until they’re back in front of the judge. • New legislation in 2017 - The court may not set bail after conviction for: <ul style="list-style-type: none"> -a class 5 felony act of DV -a second or subsequent conviction for stalking w/in 7 years of a prior offense -Stalking w/ court order <p><i>PRESENTATION HIGHLIGHTS – MAUREEN CAIN</i></p> <ul style="list-style-type: none"> • In 2013, the CCJJ Bail Subcommittee recommended four proposals to the Commission that resulted in a rewrite of Colorado Bail procedures for the first time in decades (C.R.S. 16-4-101). • The intent of the bail statutes became- <ul style="list-style-type: none"> -Presume release under the least restrictive conditions -Individualize all release and detention conditions -Avoid unnecessary pretrial incarceration -Consider the defendant’s pretrial risk to public safety and for failure to appear in court through a risk assessment instrument • The current definition of bail in Colorado is that bail no longer means money – money is now a financial condition of release, a monetary condition of bond. • The “setting and selection” of the type of bond and criteria also changed substantially in 2013 including: <ul style="list-style-type: none"> -requiring the court to determine the type of bond and conditions of release
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<p>Issue/Topic:</p> <p>Introduction and Background (continued)</p> <p>Action:</p>	<ul style="list-style-type: none"> -review bonding conditions upon return of an indictment -consider a presumption of release under the least restrictive conditions unless the defendant is unailable pursuant to the constitution -Individualize conditions -Consider the defendant’s financial condition or situation -Set reasonable financial conditions -Consider ways to avoid unnecessary pretrial detention -Use an empirically-developed risk assessment tool (like CPAT) • The new statute lists four bond types: <ul style="list-style-type: none"> -Unsecured/PR bonds, with only statutory mandated conditions -Unsecured/PR bonds, with non-mandatory, tailored conditions -Bonds with conditions that use money when reasonably necessary to ensure court appearance and public safety -Bonds with conditions that include real estate conditions • A bond is only forfeited for failure to appear. • Pretrial programs now have their own section outlining that the purpose of pretrial is to assist with court appearance and public safety but also to decrease unnecessary detention. • If the defendant cannot meet the monetary condition of bond seven days after it is set, the defendant may file a written motion for reconsideration of the monetary condition and the court shall conduct a hearing within 14 days (with a caveat). • The court may increase or decrease the monetary conditions of bond, with reasonable notice to either party. • The court is allowed to keep cash posted for bond if the defendant posted the cash himself/herself, or if the person posting the cash agrees, for payment of fines, fees, court costs, restitution, or surcharges. • The court is required to grant a personal recognizance bond to persons charged with a class 3 misdemeanor or a petty offense or any offense with maximum penalty of 6 months (with caveats). • Maureen and Bo presented what they believe are problems with the current system from both prosecution and defense perspectives as follows: <ul style="list-style-type: none"> -Over-conditioning -Poor people stay in Jail -Response to Violation of Bail Conditions -What do you do to prevent high risk people from getting out? There’s no good mechanism to make sure high risk people don’t get out -Resources re: pretrial services (14 jurisdictions currently have pretrial services) -Many more locally driven concerns • Bill Kilpatrick noted that one of the issues for him is that people are releasable who are charged with high level offenses like serial rape. He believes there are crime categories that shouldn’t be eligible for bond. He also has an issue with people who are on low bond and can’t afford to get out of jail.
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Issue/Topic:	Discussion:
<p>National Trends and Developments</p> <p>Action:</p>	<p>Cherise Fanno Burdeen from the Pretrial Justice Institute discussed national efforts on pretrial justice reform. Her full presentation can be found on the CCJJ website at colorado.gov/ccjj.</p> <p><i>PRESENTATION HIGHLIGHTS</i></p> <ul style="list-style-type: none"> • Cherise started by noting that she has been working in and around Colorado on bail reform since 2008/2009, when Mesa County first became involved in the National Institute of Correction’s Evidence-Based Decision Making process. • Cherise explained that she will provide a national landscape perspective about the bail reform movement in the U.S. • The bail reform movement is massive and fast-moving – and there are only three states that <u>aren’t</u> discussing reform: North Dakota, Wyoming and Arkansas. • The criminal justice system in the U.S. is a money-based system. There is a multitude of ways to get into the criminal justice system, but very few ways to get out – and most of the avenues out involve money. • As far as litigation, the recent ruling on the Harris County case will probably end up being one of the most pivotal cases for bail reform. • In that case and in others, a group called Civil Rights Corps typically takes a municipal court into federal court and sues them under the 14th amendment’s violation of equal protection. • In many municipal courts jails are packed with people who are simply there due to an inability to pay. • One of the arguments that has helped win these lawsuits is that there is no proof that money does anything to assure appearance in court. • One of the pivotal studies cited in the Harris County case was the Colorado Study, done in Colorado with Colorado data, by Mike Jones. That study showed absolutely no statistical difference between people who posted a secure bond and people who are assigned an unsecure bond. They show up at exactly the same rates and they stay out of trouble at exactly the same rates. • The Harris County case was about misdemeanors only, but there’s a similar case being played out in San Francisco concerning both misdemeanors and felonies. • Progressive legislation is trying to move states forward toward what law and science show are best practices in pretrial justice. • Pretrial justice is about more than just bail, it includes things like: <ul style="list-style-type: none"> -Expanded use of citations instead of arrest -Making sure people have defense council appointed early -It’s about prosecutors not waiting 30-days to review a case -Risk assessment and conditions of supervision -Data collection and analysis • Significant progress is being made in many places at a state level including:

<p style="text-align: center;">Issue/Topic:</p> <p>National Trends and Developments (continued)</p> <p style="text-align: center;">Action:</p>	<ul style="list-style-type: none"> -Texas, Maryland, Connecticut, Pennsylvania, Louisiana, California and Illinois • Colorado was one of the first states where PJI realized that bigger strides could be made by making changes at a statewide level rather than via municipality by municipality. • But in Colorado there is still verbiage in the statutes that would inhibit a local jurisdiction from saying ‘we want to eliminate money altogether’. • Federally, Congress has realized this is an issue as well and the feds play a big part when it comes to grant money. Grant money from the feds provides an avenue for reform by covering any financial risk for jurisdictions that want to try something new. • A grant program may be launched soon that would provide significant funding to six states, giving them the opportunity to receive specialized technical assistance and some seed funding to start up and implement risk assessments and risk-based supervision. • Change is also taking place via Court Rules and through community activism as well. • There was an effort on Mother’s Day and Father’s Day to run campaigns to raise money and bail out a number of mothers and fathers. There’s also a National Bail Fund Network – but many of these efforts are meant simply as a disruption to the status quo, not a permanent response. • Cherise noted the hardest part of the work PJI does is to change culture and most of this happens in actual field work. PJI’s Field Work includes: <ul style="list-style-type: none"> -Smart Pretrial -3DaysCount -Safety and Justice challenge -Juvenile Detention Alternatives Initiative • Cherise asked task force members if they knew what percent of the jail population growth since 2000 is pretrial. She also noted that jail growth has tripled since the 1970s. She took guesses and then informed the group that 95% of the jail population grown since 2000 is just pretrial detainees (from the Bureau of Justice Statistics). • Other initiatives <ul style="list-style-type: none"> -Lucas County, Ohio has implemented risk-based pretrial decision-making and is releasing more people AND improving public safety and court appearance rates, with no disparate outcomes. -New Jersey changed their constitution to eliminate the right to bail which was the only way they could put practices and policies into place that would allow them to detain the 5-6% of people they’re detaining now. <ul style="list-style-type: none"> * They also implemented statewide pretrial *Only 8 secured bonds have been set through the state in the first quarter (out of 14,000) *30% reduction in the state’s jail population • Bill Kilpatrick noted that challenges often exist with pretrial not having enough staff and service providers to oversee the population. Cherise replied that some places use existing probation assets to manage pretrial. She added that most people don’t need much more than being reminded of court and some small touchstone with the court. Most
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<p>Issue/Topic:</p> <p>National Trends and Developments (continued)</p> <p>Action:</p>	<p>people don't require a lot of supervision to stay out of trouble.</p> <ul style="list-style-type: none"> • Bill asked how places overcome resistance from people who refuse to believe the risk assessment tool, particularly on the prosecution and police side of things. Cherise replied that there will be people who always feel that way, but the answer has to come from data. Then if someone doesn't believe research you can only fall back on the law. • Maureen noted that in New Jersey all prosecutors are appointed by the Governor – which results in top down support for change. She added that for two years before the New Jersey law took effect mandatory training was provided to all stakeholders including judges, public defenders, etc. • Cherise closed by noting that pretrial reform is lawful, research based, better for public safety, better for communities and saves money.
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<p>Issue/Topic:</p> <p>Group Discussion/Values</p> <p>Action:</p>	<p>Discussion:</p> <p>CCJJ consultant Richard Stroker began a group discussion and explained that he wants to get a sense from the Task Force members about some of the broader issues, concerns and thoughts that they have about pretrial in general. He said that he doesn't want to talk about potential problems or solutions just yet, which will take place at the next meeting. He noted that for today he simply wants to talk about areas and values people feel are important in general.</p> <p>Richard explained that there are two areas he wants to focus on, the first area is centered on how the group feels it wants to work <u>generally</u>, and those things will be called a Group value, the other category is about the pretrial justice <u>topic area</u> and things that are important to keep in mind about the topic. That will be called the Project values category.</p> <p>Richard facilitated a group discussion on this topic and the chart below summarizes the prioritized values from that discussion.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;">VALUES</th> </tr> <tr> <th style="text-align: center;"><i>Group</i></th> <th style="text-align: center;"><i>Project</i></th> </tr> </thead> <tbody> <tr> <td><i>Attendance</i></td> <td><i>Innovation /Use of resources</i></td> </tr> <tr> <td><i>Different perspectives</i></td> <td><i>Open to data</i></td> </tr> <tr> <td><i>Speak up</i></td> <td><i>Cost avoidance</i></td> </tr> <tr> <td><i>Action</i></td> <td><i>Realistic goals</i></td> </tr> <tr> <td><i>Courage</i></td> <td><i>Cross-communication</i></td> </tr> <tr> <td><i>Open diversity</i></td> <td><i>Culture</i></td> </tr> <tr> <td><i>Other areas</i></td> <td><i>Implementation issues</i></td> </tr> <tr> <td></td> <td><i>Judicial education</i></td> </tr> <tr> <td></td> <td><i>Different districts</i></td> </tr> <tr> <td></td> <td><i>Statewide consistency</i></td> </tr> <tr> <td></td> <td><i>Funding mechanism</i></td> </tr> </tbody> </table>	VALUES		<i>Group</i>	<i>Project</i>	<i>Attendance</i>	<i>Innovation /Use of resources</i>	<i>Different perspectives</i>	<i>Open to data</i>	<i>Speak up</i>	<i>Cost avoidance</i>	<i>Action</i>	<i>Realistic goals</i>	<i>Courage</i>	<i>Cross-communication</i>	<i>Open diversity</i>	<i>Culture</i>	<i>Other areas</i>	<i>Implementation issues</i>		<i>Judicial education</i>		<i>Different districts</i>		<i>Statewide consistency</i>		<i>Funding mechanism</i>
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<p>Issue/Topic:</p> <p>Group Discussion/Values (continued)</p> <p>Action:</p>	<p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • There was a request for a future data report that could outline possible cost-avoidance measures resulting from fewer incarceration days with increased pretrial release. • Kirk Taylor noted that the Pueblo Co. jail has a capacity of 509 yet currently has an ADP of 760. • Education around implementation efforts needs to take place with the people who are working pretrial on the front lines. It’s not just judges and prosecutors and defenders who need to understand the research. Everyone who touches pretrial needs to understand best practices. • As far as funding for pretrial programs – it would be ideal if the state could be involved with some funding mechanisms. • Stan pointed out the task force has latitude to make a variety of recommendations including policy recommendations, business practice, funding and legislation. • The recommendations (and subsequent) legislation that came out of the 2013 CCJJ Bail Subcommittee was a compromised/watered-down version of the original ideal proposals from the group. Now, four years later, the group should try for stronger recommendations. • Richard noted that he expects the work of the task force to proceed fairly rapidly and that there will likely be recommendations coming forward in the next six months. He added that this group has been given 18 months to complete its work.
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<p>Issue/Topic:</p> <p>CCJJ 101</p> <p>Action:</p>	<p>Discussion:</p> <p>Kim English, Research Director at the Division of Criminal Justice presented a PowerPoint to task force members outlining the CCJJ Task Force process including membership, roles and responsibilities, CCJJ guiding principles, processes and accomplishments.</p>
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<p>Issue/Topic:</p> <p>Next Steps and Adjourn</p> <p>Action:</p>	<p>Discussion:</p> <p>Richard summarized that at the next meeting he would like task force members to come prepared to talk about and identify what they believe are problem areas or opportunity areas. He added that there will also likely be an additional data presentation.</p>
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Next Meeting

July 11, 2017 1:30pm – 4:00pm 700 Kipling, 4th floor training room