

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

July 11, 2017 1:30PM-4:30PM
700 Kipling, 4th Floor training room

ATTENDEES:

TASK FORCE MEMBERS

Maureen Cain, Criminal Defense Attorney (phone)
Steve Chin, Mesa County Pretrial Services
Mike Garcia, Division of Probation Services
Bill Kilpatrick, Golden Police Department
Greg Mauro, Denver Community Corrections
Clifford Riedel, Larimer County District Attorney
Monica Rotner, Boulder County Community Justice Services
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

Jennifer Bradford, Metro State University of Denver
Valarie Finks, Victim Services, 18th Judicial District
Charles Garcia, CCJJ At-large representative
Stan Hilkey, Dept. of Public Safety
Patrick Murphy, Judge, 17th Judicial District
Joe Salazar, Representative, House District 31
Lang Sias, Representative, House District 27
Kirk Taylor, Pueblo County Sheriff

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| <p>Issue/Topic: Welcome and Introductions</p> | <p>Discussion:</p> <p>Doug Wilson began the meeting and welcomed group members on behalf of Task Force Chair Stan Hilkey who was unavailable to attend. Doug explained that there were a handful of absentees including Stan, Judge Murphy, Jen Bradford, Valarie Finks and Charley Garcia. Additionally, Maureen Cain will be joining the meeting via conference call.</p> <p>Doug reviewed the agenda and asked if everyone had a chance to look at the minutes. There was a motion to approve the minutes and a second. All were in favor and the minutes were approved.</p> |
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| <p>Issue/Topic: Initial Meeting Review</p> <p>Action:</p> | <p>Discussion:</p> <p>Richard Stroker reviewed the outcomes from the first meeting of the Task Force in June. He reminded Task Force members that they heard presentations on pretrial reform from both a local and national perspective. He added that the group members also discussed two areas of values going into the work. The first area is centered on how the group feels it wants to work <u>generally</u>, and those things were labelled Group values, the other category is about the pretrial justice <u>topic area</u> and things that are important to keep in mind about the topic. Those are called Project values.</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> <p>Richard pointed out that despite individual differences and preferences, there is a desire among all members to explore opportunities and identify ways to make improvements in the state. He went on to explain that the bulk of today's meeting will focus on digging deeper into the next layer of identifying key issues, obstacles and problems.</p> <p>Richard explained that before identifying opportunity areas, Bo Zeerip and Steve Chin from Mesa County will present some information about the work that took</p> | 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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| | place in their district and outcomes associated with the changes they made. This information should help this Task Force understand issues, opportunities and areas for change. |
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| Issue/Topic: | Discussion: |
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| <p>Data Report Back / Mesa County Findings</p> <p>Action:</p> | <p>Bo Zeerip and Steve Chin presented a PowerPoint titled Mesa County Evidence Based Pretrial Reforms and Outcomes.</p> <p><i>PRESENTATION HIGHLIGHTS</i></p> <ul style="list-style-type: none"> • Bo explained that he and Steve would be presenting the story, experience and outcomes of Mesa County’s Pretrial Reforms including successes, shortcomings and limitations of the current law. • Steve reviewed the timeline of Mesa County reforms from 2008 (when Mesa was chosen as one of 7 national Evidence Based Decision Making sites by the National Institute of Corrections) through 2017 and the current (3rd) revision of bond guidelines. • Through the EBDM experience and years of work, Mesa overcame many issues, found common ground, and made very important strides in pretrial/bail/bond reform. • In 2012 Mesa was the first Colorado jurisdiction to actually use the CPAT. • In 2013 Mesa produced its first bond grid which removed money based release on charges. • The Mesa Pretrial/Bail/Bond Committee reviewed U.S. and Colorado constitutions, case law, and statutes. They also reviewed the research and standards. • The United States is the only country besides the Philippines that uses surety bondsmen. • The reduction and/or elimination of the use of money pretrial is supported by dozens of organization both left and right. • The reforms that have taken place in Washington D.C. are the gold standard nationally. • Mesa used the following values to guide reforms: <ul style="list-style-type: none"> -Data tracking of outcomes -Decisions and reforms based on data, research and evidence -Agreement to disagree on different risk tolerance -Determination to make the system better • The old Bail / Bond Schedule and process was monetary based and had nothing to do with research, evidence, or an assessment tool. • Money has almost nothing to do with risk pretrial. • A majority of defendants who fail to appear are lowest level risk. • If people are truly concerned about public safety and risk - traditional bond schedules have nothing to do with that. • 70% of the time we’re letting bondsmen make the decision about who stays in jail and who gets out. The JUDGES should make the decision. • There are big problems with high risk defendants buying their way out, while low risk are not able to buy their way out. |

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| | <ul style="list-style-type: none"> • Mesa created key philosophies and reform goals including: <ul style="list-style-type: none"> -Well-informed judges should make pretrial decisions, not profit-driven bondsmen -All arrested defendants should be screened with a risk assessment tool -High risk defendants should be held by a judicial decision -Money and bondsmen should not be primary stakeholders in the decision process -A large majority of defendants should be released on their own recognizance • Bo and Steve went on to provide background information on the CPAT. • In 2015 the PEN group (Pretrial Executive Network) revisited the CPAT. • CPAT was empirically developed but has never been validated. • MESA looked at predictions to see how good they performed locally. • CPAT does well at predicting the general success rate, however it gets confusing statistically with validation. • A separate 3-question risk assessment proxy is done on the street by the officer that shows whether the person is low, medium or high risk. • The three Hawaii proxy questions include current age, age at first arrest, and #of prior arrests. • For people with domestic violence, the DVSI is more predictive than the CPAT. • Bo and Steve went on to describe the Bond Decision Making Grid. • In Mesa, everyone gets reminder calls now. • After implementing the new system in Mesa – release and bond decisions changed dramatically <ul style="list-style-type: none"> -PR bonds went from 30% up to 62+% -Cash only bonds went from 1% to 30+% -Surety bonds went from 70% to 6-7% • Currently 80% of people in Mesa are released without any money. • As PR bonds went up the safety rate remained exactly the same. • Greg Mauro asked if the public safety numbers are too high since they don't include new crimes post FTA? He noted that a significant number of people commit new crimes post FTA in Denver. • In Boulder they're looking at what mitigates risk if it's not money. • Reminder calls definitely make a big difference. • Bo noted that criminal filings are up, but that the jail population is not up as much as criminal filings. • Greg Mauro noted that Denver data tracks similar to Mesa's data. • 70% of the general public support risk assessments instead of bail bonds, 12% oppose and 16% are undecided. |
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| <p>Identification of Opportunity Areas</p> <p>Action:</p> | <p>CCJJ consultant Richard Stroker began a group discussion about possible opportunity areas and areas of interest. He clarified that the discussion isn't about looking for answers or solutions – but rather an exploration of specific areas deserving of additional attention where the group could make some positive changes.</p> <p><i>DISCUSSION POINTS</i></p> <ul style="list-style-type: none"> • The original CCJJ Bail Subcommittee made recommendations that became statutory changes four years ago. The presumption was that the bench would be a leader in this movement for reform but that hasn't occurred. • A lot more could be done inside the current statute that has not taken place. • There needs to be more education and understanding of what the concept of the bail reform statute was about. • There's disappointment at the lack of attention paid to the statute, and the resulting outcome of jurisdictions falling back to bond schedules. • There are things that can be done to improve the implementation of the 2013 statute. • There needs to be a system-wide scheme for everyone to have the opportunity at bond/bail regardless of their financial status. • Money is the problem for both low and high risk. • Need to explore ways to provide services to all jurisdictions in Colorado. Not all jurisdictions have an assessment tool. • About 15 out of 22 jurisdictions are using the CPAT now. • There are not only issues jurisdiction-to-jurisdiction but <i>within</i> jurisdictions as well. For example, there are two counties in the 8th JD – one of them uses the CPAT and the other doesn't. • Who can be held without bond – how best identify individuals from a public safety perspective who needs to remain in jail (e.g. - should a serial rapist be allowed out). • What do we do about high risk pretrial people in terms of bond setting and supervising? • Boulder is working to not just on eliminating money, but also exploring the least restrictive release. • There are problems with resource allocation and there's also a problem with social justice (people with many more conditions besides actual money amount). In Boulder there has been a 30% increase in number of people supervised on pretrial in the last year. Many are low risk but with substance abuse monitoring, electronic home monitoring and/or GPS. All of the monitoring is very costly. • Many people who rank low risk on the CPAT (ones and twos) are getting revoked for non-compliance with UAs. • There's a problem with bond conditions that continue to include urinalysis testing for addicts, without providing any sort of treatment options. • We continue to over-condition and over-supervise people. |

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| | <ul style="list-style-type: none"> • There's a substantial delay and inconsistencies with filing and bringing cases to the court around the state. • There needs to be more consistency with training and education of CPAT best practice for frontline workers. • There also needs to be an improvement in supervision standards. • There is a significant lack in public education and the result is that law enforcement often takes it on the chin. There needs to be more public understanding of why we need to move in this direction. Even the cops don't understand and nobody realizes this is best practice. • There is also a problem with the constitution. There should be something that says nobody can be held in jail simply because they don't have money. The most meaningful big picture thing we can do is work on constitutional change. • There is an ongoing debate between prosecutors and defenders about preventive detention and a constitutional amendment. Prosecutors would never support a constitutional amendment strictly based on risk. • There needs to be a risk/crime combination system. • There are opportunities within the statutory structure that don't require a constitutional amendment. • Constitutional language is the problem - what drives decision making, what is the statutory framework and who has the authority. • Judges have to have the ability to hold someone without bail in order to accomplish the amount of release that we want to accomplish. • Constitutional language is the problem; we can't accomplish big justice change without addressing that issue. If judges can't hold someone without jail there's going to be a problem. We need a preventive detention statute <u>and</u> risk scale. • Need to recognize that pretrial services is different than probation. • We talk about JD's but we don't know how many <u>counties</u> use CPAT. • The group needs to talk about a statewide pretrial services program. • Right now even the CPAT is getting tweaked by judicial districts – there has to be statewide standardization. • It's important to not let different perspectives become barriers. • Current case law and litigation is really important. There will soon be some constitutional case law saying we can't hold people if they can't post money. • What's driving over-utilization of pretrial and over-conditioning? Lack of education? There needs to be judicial education that additional conditions don't really necessarily help public safety. • Something needs to happen in the system to create better confidence in the CPAT. There is still decision making taking place because of how someone 'feels' about a defendant rather than actuarial risk. Something culturally needs to shift. • What mitigates risk and how can we use this contact with the CJ system to start moving people into more prosocial adaptive behavior. • How do we start diverting resources into things that help to create more pro-social opportunities? • Need to reinvest dollars into treatment. • An ancillary problem to preventive detention is how do you define risk |
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| | <p>and what risk equals preventive detention. Operationally that’s where there is a lot of disagreement. Judges now use money to detain a lot of people.</p> <ul style="list-style-type: none"> • What about defendants and addiction? What is the role of the criminal justice system and pretrial with these people? Should we just let an addict be an addict? Is it even the business of the CJ system? If that’s not our perspective why do we treat them at all? This touches on resources and over-conditioning. • There’s national work around opioid addiction and decriminalizing substance abuse. <p>Richard took discussion elements and summarized them into 8 issue areas as follows:</p> <ol style="list-style-type: none"> 1. Implementation of 2013 statutory changes 2. Arrest/Summons issues 3. Assessment – CPAT – Pretrial services 4. Decision making factors use of \$ / Risk considerations / Mental Health and addicts 5. Preventive Detention 6. Condition setting 7. Supervision/services/violations/resources/ability to pay 8. Data Collection / Information / Municipal Court data (Sheriffs, police, pretrial, DA’s, need consistency in defining success and failure, and accessing municipal court data) |
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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 (August) meeting the group will revisit this list of 8 issue areas and the possibility of combining and prioritizing them.</p> |
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Next Meeting

August 8, 2017

1:30pm – 4:00pm

710 Kipling, 3rd floor training room