

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

August 8, 2017 1:30PM-3:30PM
710 Kipling, 3rd 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

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

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

Valarie Finks, Victim Services, 18th Judicial District

Clifford Riedel, Larimer County District Attorney

Joe Salazar, Representative, House District 31

Lang Sias, Representative, House District 27

ADDITIONAL ATTENDEES

Lucienne Ohanian, Public Defender's Office

Sallie Clark, El Paso County

Kyle Gustafson, Judicial Branch

Jack Reed, Division of Criminal Justice

Peg Flick, Division of Criminal Justice

Ally Daley, Colorado Counties, Inc.

Doug Erler, Weld County

Denise Maes, ACLU

Kathy Livornese, Judicial Branch

Rebecca Wallace, ACLU

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion: Task Force Chair Stan Hilkey welcomed the group and reviewed the agenda. He asked if everyone had a chance to look at the minutes and requested any additions, corrections or discussion. Steve Chin made a motion to approve the minutes, Doug Wilson seconded the motion and the minutes were approved unanimously.</p>
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<p>Issue/Topic: Data Update / 2013 Bond Legislation – Before and After</p> <p>Action:</p> <ul style="list-style-type: none"> Task Force members to contact Kim English with local bond data that they are willing to share 	<p>Discussion: Kim English provided an update on the efforts to produce a data presentation on the outcomes of the 2013 bond legislation.</p> <p><i>PRESENTATION HIGHLIGHTS</i></p> <ul style="list-style-type: none"> Kim explained that she and Peg Flick have been looking at bonding behavior both before and after the 2013 reforms. She explained there are significant challenges with data so the presentation scheduled for today would be delayed. She then asked if any of the stakeholders in the room had access to local bond data that they would be willing to share. She noted that this would help in the efforts to try to match numbers and information from Judicial. Greg Mauro responded that Kim and Peg are welcome to look at Denver data. Kim added that specifically they’re looking for the proportion of cases that received various kinds of bonds both before and after 2013, particularly surety and money bonds, and trying to break the information down by judicial district. Maureen Cain shared that she has tried to collect data from each JD and has a lot of information. Judge Patrick Murphy explained that the 17th JD has seen a dramatic increase in PR bonds in the last year, but that data collection is still ongoing. Jen Bradford explained that she tried to call all of the county clerks 3 years ago and couldn’t get anywhere. She believes FTA data is sketchy at best. Kim explained that she and Peg have been working on this for a couple months and bumping up against data quality issues. It’s a complicated analysis but she hopes to have something by the next meeting. Apparently Arapahoe and Douglas have a lot of good data. Bo mentioned that Mesa can get what was ordered at the first bond hearing, but what was posted is different. Monica added that Boulder has quite a bit of data and that they have specifically watching the PR rate since October 2016. Kim asked Task Force members to contact her with any information.
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<p>Issue/Topic:</p> <p>July Meeting Review</p> <p>Action:</p>	<p>Discussion:</p> <p>CCJJ Consultant Richard Stroker reviewed the outcomes from the July meeting. He reminded Task Force members that during that meeting they discussed and established the top areas of interest, concern and opportunity for the future work of the Task Force.</p> <p>Richard summarized the top 8 issue areas as follows:</p> <ol style="list-style-type: none"> 1. Implementation/tightening 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) <p>Richard explained that the next step is to see if there is a way to combine some of these areas and then identify the top three broad areas of interest.</p>
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<p>Issue/Topic:</p> <p>Combination and Prioritization of Opportunity Areas</p> <p>Action:</p> <ul style="list-style-type: none"> • The issue of data is to be considered in all issue areas moving forward • Members from the Judicial Pretrial Committee to attend the next Task Force meeting 	<p>Discussion:</p> <p>Richard began a group discussion about the possibility of combining or ‘clumping’ these 8 areas in the hopes of winding up with three main areas to focus on first.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • There was a robust discussion at the July meeting about many things related to pretrial release and at the conclusion of the meeting the issues boiled down into 8 broad areas of interest. • The next step is for the group to determine which issues are the most important to start work on initially, and today’s goal is to identify the top three broad areas. • Part of the work today will focus on whether any of the identified issue areas can be combined. • During this discussion the group should keep in mind not to focus on solutions just yet. • With that in mind Richard reviewed and asked for more discussion on each of the 8 issue areas: <p><u>Item #1 – Implementation/tightening of 2013 statutory changes</u></p> <ul style="list-style-type: none"> • Many of these mandates have not come to fruition.
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- Many of the mandates have not been operationalized everywhere.
- Many of the changes haven't moved forward as it was originally presumed they would.
- There may need to be better operational/implementation language added to the statute.
- There has been a movement to include consideration of behavioral health issues in pretrial release
- A question was raised about whether this item should be clumped into Item #4.
- Are mental health and substance abuse issues worthy of their own category? Or should they be folded into many of the other categories?
- MH and SA issues are huge because they are the primary problem in condition setting.
- Behavioral health plays a role in many of the currently identified issue areas.
- Some of these issues areas are subsets of something bigger.
- It might help to have a bigger item around BH/MH and then include subsets of BH/MH into some of the other areas.
- The 2013 statutory changes deal with everything on this list except preventive detention and data. Almost all of these 8 issues fall under implementation tightening of 2013 legislation.
- CCJJ is supposed to look at ethnic and racial disparity on all issues.

Item #2 – Arrest/Summons Issues

- This includes law enforcement decision making and policy and procedures about who to arrest.

Item #3 – Assessment – CPAT – Pretrial services

- This includes issues around using the tool, those who use it, those who don't and what the CPAT entails.
- There is lack of uniformity around the use of the tool.
- This group needs to decide what it wants to recommend around assessment tools.

Item #4 – Decision making factors use of \$ / Risk considerations / Mental Health and addicts

- This includes decision making factors as they relate to pretrial release, the use of money, nature of the charges, risk considerations and special considerations.
- How judicial decision making occurs.
- The issue of bond schedules should go here too.

	<p><u>Item #5 – Preventive detention</u></p> <ul style="list-style-type: none"> • Maybe the title of this should be changed to ‘Constitutional language’ as it would not only be about detention, but about guaranteeing release rights. • Richard pointed out that a proposal to create a constitutional amendment is a solution, not a problem area. <p><u>Item #6 – Condition setting</u></p> <ul style="list-style-type: none"> • This topic needs to include a discussion about conditions being numerous and that conditions may not be necessary or helpful. <p><u>Item #7 - Supervision/services/violations/resources/ability to pay</u></p> <ul style="list-style-type: none"> • This topic is about how people are managed in the community on pretrial, what is expected of them, and what services are offered to help them. <p><u>Item #8 - Data Collection / Information / Municipal Court data</u> <u>(Sheriffs, police, pretrial, DA’s, need consistency in defining success and failure, and accessing municipal court data)</u></p> <ul style="list-style-type: none"> • This includes issues like what is known in terms of data, what kind of information is available, what it means, what it tells us, how can it help inform. <p>PRIORITIZATION DISCUSSION</p> <ul style="list-style-type: none"> • Should another (9th) issue area be added that addresses mental health and behavioral health issues? • The ‘data collection’ issue area should also include validating the data we have, particularly from municipal court, and making sure decisions are accurate and that there is good data in and good data out. It would also be beneficial to have data around bond conditions. • The state/local issue is huge in pretrial. There’s state judicial, but we expect counties to fund pretrial services and supervision is often paid through the county budget. Maybe we should be looking at a statewide solution in terms of pretrial. Or should all the funding be at the county level? Richard reminded the group that this will be discussed when the group talks about solutions. • Richard asked the group if there were some logical ways to organize the topics into more discreet clusters. • 6 and 7 could be combined because there’s a relationship between condition setting and monitoring/enforcement. 4 Could be folded in as well. • There should be a category with condition setting, release decision, use of money or bond schedules – it’s everything that takes place THAT DAY
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at court.

- It's difficult to clump these because many of them are related.
- Item #2 can't be addressed on a statewide basis. For example, some counties may be reluctant to expand the use of summons.
- Bo stated that he had difficulty issuing felony summons in Mesa County. It would be interesting to know how many non-VRA misdemeanors are brought into the system on an annual basis. Mesa doesn't arrest these people and other jurisdictions may issue summons as well.
- The group discussed leaving both Items 1 and 2 as stand-alone issues.
- Item number 3 could be a stand-alone as well.
- Over-setting of conditions is a waste of resources – but judges continue to check all the boxes.
- Violations of restraining orders are going sky high - someone will violate an alcohol restriction when they never even had an alcohol issue. People are violating on BA's and UA's – if it's not a drug arrest why are we doing this and setting them up to fail.
- There is overlap in many of these areas.
- Someone suggested combining 6 and 4. There was another suggestion to combine 2 and 3.
- Maybe this could best be organized as 'key decision points'.
- The issue of data needs to be addressed in all of these topic areas. This should be taken off the list as an individual item and folded into all the other topic areas. This is about upping our game around data. This was part of the discussion in 2013 and it got dropped. This should stand alone – we're struggling with this issue.
- Data is foundational to everything. Not just in this group but any group. In order to get into a different paradigm of decision making solid data needs to be available. Data is the only way to sell making a change. You can't go to the legislature or county commissioners to ask for more money if there's no data. It's the only way to convince elected officials to fund change.
- The group agreed to fold data into the three topic areas that will be determined today.
- Even though there is not one repository, there is a lot of good data out there. Let's not assume there is no data, we have it, but we may need better system management.
- However, even in places with robust, local data – it still often doesn't sway decision making.
- Public perception is an issue too.
- Standardized data points would be beneficial.
- Bill noted that there have been prior efforts to gather municipal court data with not much success. In many meetings people say things like they want to assess kid's → but they don't want to make assessments

without municipal court data, yet no one can get it. Consistently you can't get data out of Denver and it's hard to get data in the format people want. People also don't care about data from other counties because they say that's not OUR data.

At this point in the meeting Richard took the outcomes from the conversation and asked Task Force members if they would be comfortable with combining the issue areas into the following five 'clumped' categories:

1. Implementation of 2013 statute
2. Arrest/Summons Issues
3. Assessment tools/CPAT/Decision making/Bond schedules/Conditions/Behavioral Health
4. Preventive Detention
5. Pretrial services/supervision/Violations/Resources/Behavioral Health

The group agreed to the combination of topic areas. Richard then asked each Task Force member to rate their top three issue areas and the outcomes were as follows:

1. Implementation of 2013 statute – 7 votes
2. Arrest/Summons Issues – 1 vote
3. Assessment tools/CPAT/Decision making/Bond schedules/Conditions/Behavioral Health – 10 votes
4. Preventive Detention – 8 votes
5. Pretrial services/supervision/Violations/Resources/Behavioral Health – 13 votes

Richard summarized that issue areas 5 and 3 were the clear winners, but that it is too close to call on 1 and 4.

DISCUSSION

- A question was raised about whether Judicial is already dealing with Item #1? Judicial invited Chief Justice Daniels from New Mexico to present at its upcoming conference to energize everyone. A follow-up training has also been scheduled to implement the 2013 statute.
- Judge Patrick Murphy said there are likely multiple issues contributing to why there has been a delay in implementation including: inertia, change resistance, fear of change and comfort with the way Judicial has always done things.
- The Judicial committee working on this now is trying to address bond reform, bail reform and pretrial services. They've also asked to see if they can attend our meetings so we can explain what we're trying to do.
- There are many new judges in the state and this is a real opportunity. Judicial is committed to moving the 2013 statute forward.

	<ul style="list-style-type: none"> • Doug noted that he is irritated because this statute has been in place for four years and still has not been implemented. He added that the Public Defender’s office offered training to Judicial in 2013, 2014 and 2015 and were told it wasn’t needed. • Judge Murphy commented that Judicial is committed to the change and that they’re frustrated as well. • Implementation of the 2013 statute was one of the driving factors that brought this group together. The group should be cognizant of what it can do as a subcommittee to help Judicial in its efforts moving forward. • Greg pointed out that by addressing Items #3, 4, and 5 the group will automatically addressing Item #1 so the implementation issues will be covered. • Richard asked the group if they want to expand their scope of work to address 4 areas instead of 3. • Preventive detention requires a constitutional amendment and may be beyond the scope for this group. • Monica noted that it would be helpful to hear from the other task force before deciding which way to go, and that they’re both important issues. There’s some worry about duplicating efforts. • The group agreed to hear from the Judicial group to understand their scope of work before making a decision. • Stan reminded Task Force members that this group was designed with long-term work in mind and it should be able to tackle all of these issues eventually. • Richard added that it was encouraging that the group managed to condense the issue areas from 8 down to 4 today.
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<p>Issue/Topic:</p> <p>Next Steps and Adjourn</p> <p>Action:</p>	<p>Discussion:</p> <p>Richard summarized that the group identified its top four issue areas today. The task at the next meeting will be to prioritize those four areas and think about the batting order. Additionally at next meeting the group will discuss whether to address these issues as a full group or split into subgroups. Maybe first two subgroups would be around Item’s #3 and 5.</p> <p>Additionally, at the next meeting we’ll invite judges and reps from the Judicial group working on this to come and talk to us about their focus and where they are in the process.</p> <p>This group should also keep in mind that the jail interim study committee is also</p>
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	<p>looking at pretrial.</p> <p>Stan noted that the chairmen from two of the Legislative Interim Committees (that are currently working on criminal justice issues) will be presenting to the CCJJ during this Friday's Commission meeting. He said he will see if there is any overlap between those groups and this Task Force.</p>
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Next Meeting

September 5, 2017 1:30pm – 4:00pm 710 Kipling, 3rd floor training room