

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

November 7, 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

Bill Kilpatrick, Golden Police Department

Lucienne Ohanian, Public Defender's Office

Bo Zeerip, District Attorney 21st Judicial District

Clifford Riedel, Larimer County District Attorney

Doug Wilson, State Public Defender

STAFF

Richard Stroker/CCJJ consultant

Peg Flick/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ABSENT

Valarie Finks, Victim Services, 18th Judicial District

Greg Mauro, Denver Community Corrections

Patrick Murphy, Judge, 17th Judicial District

Monica Rotner, Boulder County Community Justice Services

Kirk Taylor, Pueblo County Sheriff

Mike Garcia, Division of Probation Services

Joe Salazar, Representative, House District 31

Lang Sias, Representative, House District 27

ADDITIONAL ATTENDEES

Joe Thome, Division of Criminal Justice

Doug Erler, Weld County

Katie Hecker, SCAO

Becca Curry, ACLU

Donyelle Alexander, Metropolitan State University

Gilbert Landeros, Metropolitan State University

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Task Force Chair Stan Hilkey welcomed the group, reviewed the agenda and requested any additions, corrections or discussions to the minutes. Seeing none he asked for a motion to approve the minutes, Lucy Ohanian made a motion to approve the minutes and Steve Chin seconded the motion. The minutes were unanimously approved.</p> <p>Stan asked if anyone had pretrial news to share. Bo Zeerip noted that a lot of changes have been taking place with Chief Judge Flynn in the 21st JD. The Judge has been studying other cases around the country and he’s been issuing multiple orders basically saying he’s finding there’s a constitutional right to be released unless held under the preventive detention rights of the constitution. Judge Flynn is saying people have a right to a PR bond or a right to post affordable bond. The implications have been staggering and DAs are appealing him on Rule 21 to the court.</p> <p>Stan asked about what will likely happen next in the 21st. Bo replied that he believes the Supreme Court will likely make a ruling on the case in the near future.</p> <p>Maureen Cain added that in other news, the ACLU has filed suit against El Paso County for refusing to waive the pretrial supervision fee. People are being granted a PR bond but won’t be released until they pay the \$55 supervision fee. The last ruling was that the court had no jurisdiction to waive the fee.</p>
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<p>Issue/Topic: Report Outs</p> <p>Action:</p>	<p>Discussion:</p> <p>Steve Chin provided a report on an analysis of the outcomes of Secured Bonds versus Unsecured Bonds by Risk Level in Mesa County vs. Colorado. Steve directed participant’s attention to a handout in their packet and reviewed the findings with the following discussion points. The handout can be found on the Commission website at www.colorado.gov/ccjj/ccjj-cPRTF.</p> <p>Outcomes of Secured Bonds versus Unsecured Bonds by Risk Level <i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Drug cases often prove to have the worst outcomes. People forget to show up and if and when they do they’re often found with more drugs in their pockets. These are people who probably don’t belong in jail but need treatment. • Also, a majority of new crimes are for violation of protection order – but there’s no good, solid data on this data point. • There is one unintended consequence in Mesa regarding treatment, drug cases and bond reform. Years ago Mesa County built a 48-bed treatment facility instead of a jail pod so people could PR into treatment. However, a few ago only 12 of the 48 beds were full. It turns out the issue is
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related to bond reform because since the court is no longer holding low level drug people in jail – there’s less incentive for someone to get into treatment pre-file. The treatment facility used to have a wait list but that’s not the case anymore because people with low level drug offenses aren’t being held in jail. A judge can’t order treatment as a condition of bond anymore.

- As far as law abiding data - In Mesa of the cases under supervision, 85% of those people did not commit a new crime.
- Three times the number of people are out on a PR bond than money bond.
- The court appearance rates in Mesa are at 76% for unsecured (PR/OR bonds) and 81% for secured (Cash or surety) bonds which confirms the discussion from the last meeting that the way someone is released does not play much of a role on outcome.
- The percentage of the pretrial population in jail in Mesa is still high at 66%, and the jail population is up too.

Peg Flick provided information on cases that do not post bond.

Bond Analysis – Cases that do not post bond

Peg directed task force members to a handout outlining who is posting bond vs. who is not posting bond. The full bond analysis document can be found on the Commission website at www.colorado.gov/ccji/ccji-cPRTF.

DISCUSSION

- Peg explained that the analysis looks at cases with pre-disposition bond records in District and County court covering a 3-year period per and post HB 13-1236.
- The analysis contains two Tables. Table 1 breaks out cases by posted bond, pre- and post – HB13-1236. Table 2 looks at felony cases by posted bond and Judicial District, pre- and post- HB13-1236.
- The document answers the question of who posted and who didn’t.
- After a review of the data, a question was asked if it is appropriate to say that in Colorado 24% of the population is being detained by some sort of money bail. Peg answered that yes that is correct.
- The numbers conclude a couple of things:
 - Filings are up for felonies across the state
 - District court filings are up
 - Felony filings involving bond consideration are up
 - Filings in Mesa alone are up 50% from three years ago
 - Filings in Larimer are up about 68% over that same time period
- CCJJ and many other stakeholders are asking about this rise in felony filings.
- Maureen noted that even though there’s an increase in PR bonds – the number is still very low considering where both Mesa and Denver are currently, but the results vary dramatically by jurisdiction. Looking at the overall numbers each district has its own story.
- Cliff noted that 1/3 of people in jail in Larimer are transient, which is part of why the misdemeanor numbers are so high there.

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Issue/Topic:	Discussion:
<p>Working Groups - Report Out</p> <p style="text-align: center;">Action:</p> <ul style="list-style-type: none"> • Add a DA and Mindy Masias to the Implementation working group • The Assessment Tools working group will have a presentation in December on a validation project of the CPAT 	<p>The lead of each of the four working groups offered a report on their progress.</p> <p>Implementation of 2013 Statute Maureen Cain</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Maureen mentioned that in another piece of pretrial news, there is one jurisdiction that is using statements given by defendants in CPAT interviews as substantive evidence. The court ruled that the information is inadmissible because the people weren't Mirandized – so now the sheriff there won't perform the CPAT anymore at all. • Maureen noted that her group is posing the question to stakeholders about "What changes or things could be changed to make the implementation of the 2013 statute better". • There's a feeling from stakeholders that local control would be important in terms of making risk decisions jurisdiction to jurisdiction. • One question is "Are there people in jail who shouldn't be?" • Many people in jail are there on crimes of poverty, crimes of mental illness and crimes of addiction. • Another question is "Are there adequate resources and is that being factored in as we try to address pretrial issues?" • Charley Garcia mentioned the value of bond committees in certain jurisdictions and that if sheriffs and judges talk to each other more gets accomplished. • There has been discussion about the sense of judges feeling like they're somehow protected from bad decisions if they set a money bond. Historically they think if they set a PR bond they will get in trouble and are not protected. • Judges feel they are shielded if they use money bond, but they need to know money doesn't make anyone any safer. • The working group is exploring how to message that, however while judicial education is great, without teeth judges are not going to do it. • Sheriffs in Colorado have the sense there is a much greater separation between the bench and everyone else than in every other state. • In order to make sure 2013 gets implemented there has to be some kind of bonding committee. • Richard noted that the group should look at opportunities to put teeth into the 2013 statute and bring more clarity. The group should also look at strengthening training and drilling down on some of the issues mentioned. • The group needs a DA at the table and someone from judicial who can participate and vote, maybe Mindy Masias.

Assessment Tools/CPAT/Decision making/Bond schedules/Conditions

Clifford Riedel

DISCUSSION

- Cliff noted that this group met last week.
- The group is looking at the CPAT and at the December meeting there will be a presentation from some researchers from UNC who are working on a CPAT validation.
- The group is gathering information on other assessment tools that are out there and available and looking at pros and cons of other tools.
- Arapahoe County has its own tool.
- The group is also exploring a tool from the Arnold Foundation.
- There's also discussion about getting input from smaller jurisdictions that don't use an assessment tool and don't have pretrial resources. It would be good to be able to offer smaller jurisdictions a best practices recommendation.
- Maureen commented that the Arnold Foundation tool is a 'hands off' tool and doesn't require an interview. It's based on data about prior criminal history, age of first arrest etc. and could be administered by a number of different people in jurisdictions.

Pretrial Release Detention

Bo Zeerip

DISCUSSION

- This group met yesterday at the Jefferson County courthouse with Judge Engquist, and future meetings will be held Monday before the Tuesday meeting.
- Judge Engquist is a new addition to the group and will be very helpful with historic and judicial perspectives.
- Collet Tvedt is another member of the group; she's a private defense attorney who had a lot of involvement with reforms in New Jersey. She's providing the group with some very useful data. New Jersey has only set 8 monetary bonds since January 1st of this year. The detention rate there is 17%, which is a decrease of 16%.
- This group also talked about the 2013 statute not having teeth.
- The biggest thing this group has decided is that it will proceed with drafting a new bail law for Colorado that includes a hold/release system from the constitution on down. The group will look at the whole system and do a full rewrite, then submit it to this group in the future.
- The group is looking at a 'charge based' net and the process of due process to hold someone without bail. They're also looking at what to do with pretrial failures and post – conviction.
- Right now the group is trying to determine where to start. It wants to start with the process, rather than at the top with the constitution

because the process is really important. The due process piece may be more important than the net. If there's a good process it will make it more comfortable to talk about the charge-based net.

- By the next meeting the group will come up with: standard of proof, judicial findings, risk factors, when the hearing would be, how soon after arrest, etc.
- The group also talked about arrest standards, summons, warrants and municipal courts.
- Additionally, there's a large group of people getting prosecuted in municipal court that is important to look at.
- Another big item is to come up with language that no one will be held in custody simply because they can't post bond.

Pretrial Services/Supervision/Violations/Resources/Behavioral Health

Steve Chin

DISCUSSION

- This group met yesterday and they added Judge Yoder since Judge Murphy is no longer able to participate.
- There are people on pretrial who don't need to be on supervision but judges use the fact that they have put people on pretrial services to shield against and backlash.
- One key finding is that all the jurisdictions don't have pretrial services.
- Jen Bradford is putting together a survey asking about those who use pretrial services in some form or another, versus those not using any at all.
- Maureen mentioned she will supply the group with her data that breaks the same information out by individual judges.
- It's important to look at this information county by county rather than just by jurisdiction because each county has to fund its own programs.
- Services aren't necessarily just about money either, Pitkin doesn't have pretrial services and they're not a poor county. It's often lack of interest, lack of information, lack of resources.
- The group wants to assess buy-in potential. If counties are interested what are their obstacles and barriers. Need to determine which have money issues and which have interest issues.
- There are other issues as well, just because a county doesn't have pretrial services doesn't mean it's not available. In the 7th JD they are using video conferencing for CPAT. There's the ability to utilize that in smaller JDs as well.
- As far as funding – there's a consensus that those who have pretrial services wouldn't be opposed to being funded by the state, yet they don't want to be told what to do.
- The 7th is a good JD to look at – it's a good mix of wealthy/poor/small/large.

Issue/Topic:	Discussion:
<p data-bbox="175 302 456 331">Next Steps and Adjourn</p> <p data-bbox="269 373 362 403">Action:</p>	<p data-bbox="561 302 1373 331"><u>Richard summarized the work of the four working groups as follows:</u></p> <ul data-bbox="610 373 1511 657" style="list-style-type: none"> • Group # 1 is looking at ways to put teeth into the 2013 legislation to bring about implementation. • Group #2 is looking at assessments and tools and looking at information about which tools are best utilized. • Group #3 is drafting a statute with a variety of components on how bail bond could work. • Group #4 is trying to understand pretrial services and is engaging in a survey to find out about motivators and issues. <p data-bbox="561 737 1520 804">Stan closed out the meeting by reminding the Task Force members that the next meeting would be held on December 5th.</p>

Next Meeting

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