

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

February 6, 2018 1:30PM-3:30PM
710 Kipling, 3rd floor conference room

ATTENDEES:

TASK FORCE MEMBERS

Doug Wilson, Public Defender's Office
Jennifer Bradford, Metro State University of Denver (phone)
Steve Chin, Mesa County Pretrial Services
Bo Zeerip, District Attorney 21st Judicial District
Clifford Riedel, Larimer County District Attorney
Valarie Finks, Victim Services, 18th Judicial District (phone)
Greg Mauro, Denver Community Corrections
Monica Rotner, Boulder County Community Justice Services
Mike Garcia, Division of Probation Services
Bill Kilpatrick, Golden Police Department
Mindy Masias, State Court Administrator's Offices

STAFF

Richard Stroker/CCJJ consultant
Kim English/Division of Criminal Justice
Germaine Miera/Division of Criminal Justice

ABSENT

Stan Hilkey, Dept. of Public Safety
Kirk Taylor, Pueblo County Sheriff
Charles Garcia, CCJJ At-large representative
Maureen Cain, Criminal Defense Attorney
Joe Salazar, Representative, House District 31
Lang Sias, Representative, House District 27

ADDITIONAL ATTENDEES

Kathy Livornese, 4th Judicial District
Joe Thome, Division of Criminal Justice

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Commission consultant Richard Stroker welcomed the group and explained that he would be filling in for Task Force Chair Stan Hilkey who is unavailable to attend the meeting. Richard reviewed the agenda and asked for any additions or corrections to the minutes. Seeing none he asked for a motion to approve the January minutes. Cliff Riedel made a motion to approve the minutes and Mindy Masias seconded the motion. The minutes were unanimously approved.</p>
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<p>Issue/Topic: Recap / January meeting outcomes</p>	<p>Discussion:</p> <p>Richard summarized the January meeting outcomes as follows:</p> <ul style="list-style-type: none"> • Aubrey Cote from Denver Pretrial Services gave a presentation on the pretrial efforts taking place in Denver which included information, data and results. From the presentation it appears Denver’s approach is similar to that of other jurisdictions that have pretrial services. • During the January meeting the Task Force also received an update from the four working groups and those groups will report out again today.
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<p>Issue/Topic: Report outs / Recent decisions and updates</p>	<p>Discussion:</p> <p>Richard reported that pretrial initiatives continue to take place at the local, state and national level and that Doug Wilson, Bo Zeerip and Mindy Masias have updates on various pretrial efforts and decisions.</p> <p>Humphrey COA Opinion / Doug Wilson</p> <p>Doug Wilson explained that the California Court of Appeals handed down an opinion in January signaling major systems changes on the horizon for California. Doug directed Task Force members to a handout in their packets that contains a synopsis of the 46-page opinion. He pointed out that the opinion is similar to that of the Harris County, Texas decision and is indicative of cases taking place across the country. The defendant in this case was being held on a \$350K money bond without the court making any factual or written findings, and without the prosecution presenting any evidence as to why that bond amount was the least restrictive to ensure public safety or appearance – which resulted in the court ordering a new hearing. Doug explained that this is the current trend and that cases are going to continue to play out the way this one did. The decision calls attention to the fact that the Governor of California made bond reform a priority, the Chief Justice made it a priority and the California legislature made it a priority but that changes have not gone far enough and have not taken place quick enough. Much like the Harris County opinion this one calls for courts to step up.</p> <p>Doug pointed out that some of the fault lies with defense attorneys and that some lies with the court. Defense attorneys need to do a better job of constitutionalizing this issue in front of the courts, but the courts have to step up</p>
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as well. Doug pointed out that he suspects Colorado will likely face a lawsuit at some point soon too if the state doesn't make changes soon. Doug added that the Public Defender in San Francisco reported changes immediately following the decision and that many people are getting released already. There will also be major systems changes in California soon as they do not have pretrial detention capability. There is a prohibition against detaining without factual findings, but not against detaining in general.

DISCUSSION

- Richard asked Doug if he sees this development as being similar to the Harris County ruling. Doug replied that it is similar but goes further because it explains to the court why it is their obligation to step up. The verbiage in the Harris County case was not as direct.
- Bo pointed out that the difference lays in the fact that they have the ability to detain whereas that is not available in Colorado. Doug replied that there is ability to detain in limited circumstances in Colorado. It may not be as expansive but it does exist for a small number of cases. Doug added that he agrees that Colorado could look at a more expansive hold.
- Mindy pointed out that Colorado is also missing the intermediary piece because pretrial programs don't exist in every county, so there is limited ability to supervise released people and a significant gap. She added that altering current practices around release will require a significant system and cultural shift.
- Greg pointed out that even though Colorado is not all the way there, there are many jurisdictions that have moved the needle. If there was a system of release or detain it would be easier to get rid of all those cases in the middle.

NAPSA Black Letter Standards / Bo Zeerip

Bo directed Task Force members to a handout in their packets titled National Standards on Pretrial Release: Black Letter Standards Final Draft. He pointed out that the document is in draft form and asked the group to refrain from distributing or citing the document. He said, however, that he thought the contents of the document would be helpful for the working groups.

The document was created by the National Association of Pretrial Services Agencies (NAPSA) and funding came from the National Institute of Corrections (NIC). Bo was part of the team that created the document and the work has been ongoing for two years. There is a lot of language in the standards about money and how to mitigate problems around money. While the document has not officially been published or released, Bo does have permission to share it with the Task Force to assist in its work and to help guide the work of the working groups.

Bo noted that for every standard in the document there is approximately ½ page of commentary. Some of the language used is not typical Colorado language, and will be different state to state and jurisdiction to jurisdiction. The standards contain four parts as follows:

-Guiding Principles for Pretrial Decision Making

- Essential Elements of a Pretrial Justice System
- Pretrial Release and Detention Decisions
- Pretrial Services Agencies

Bo noted that of particular interest is Standard 1.1 which states ‘The purposes of bail are to maximize release, court appearance and public safety’. He added that there are issues addressed in three of the standards in **Part 1** that are of particular interest and that some of them have never been addressed before. Those standards are:

- 1.5: Financial conditions of release or detention should be prohibited
- 1.6: The use of pretrial detention should be authorized, but limited only to when the court finds by clear and convincing evidence that a detention-eligible defendant poses an unmanageable risk of committing a dangerous or violent crime during the pretrial period or willfully failing to appear at scheduled court appearances. Detention prior to trial should occur only after a hearing that guarantees due process and equal protection rights, and which includes explicit consideration of less restrictive purposes.
- 1.10: Jurisdictions should ensure adequate funding of all functions related to bail decision making, including representation by counsel, defendant screening, assessment, monitoring and supervision, and data collection.

Bo added that the following standards in **Part 2** are of interest as well:

- 2.7: All jurisdictions should establish a dedicated pretrial services agency
- 2.8: Jurisdictions should use validated risk assessments to assist courts in making release or detention decisions
- 2.10: Jurisdictions should engage in performance measurement and feedback of pretrial system practices

Bo added that the following standards in **Part 3** are of interest and should also guide the group discussions:

- 3.2(a): Defendants who have not been released pursuant to 3.1(a) within 24 hours of arrest should be brought immediately before a judicial officer for the initial pretrial court appearance. Defendants not presented to court within 24 hours should be eligible for consideration for immediate release.
- 3.4(a): Jurisdictions should define and justify the criteria defendants must meet to be legally considered for pretrial detention, keeping in mind that “liberty is the norm and detention should be the carefully limited exception.” The Court should detain a detention-eligible defendant only after a finding that the defendant offense or to willfully fail to appear for court proceedings.
- 3.4(b): At the initial pretrial court appearance, the Court may order the temporary detention of the defendant pending a formal pretrial detention hearing if:
 - (i) the Court finds probable cause for the crime charged; and
 - (ii) the defendant meets the jurisdiction’s detention eligibility criteria; and
 - (iii) the Court finds by a preponderance of the evidence that the

defendant poses an unmanageable risk to commit a dangerous or violent offense or to willfully fail to appear for scheduled court appearances.

In making these determinations, the court may consider the charging document, results from the risk assessment that suggest the defendant presents a higher likelihood to commit a dangerous or violent offense if release or to willfully fail to appear for scheduled court dates, and arguments presented by prosecution and defense counsel.

-3.4(g): At the formal pretrial detention hearing, the Court must make the following findings in order to detain the defendant:

- (i) probable cause to believe that the person committed the alleged offense; and
- (ii) the defendant meets the jurisdiction’s criteria for pretrial detention; and
- (iii) by clear and convincing evidence, that the defendant poses an unmanageable risk to commit a dangerous or violent offense or to willfully fail to appear for scheduled court appearances.

-3.5(d): Before revoking the defendant’s release status, the judicial officer should determine that there is:

- (i) probable cause to believe that the person committed a crime while on release; or
- (ii) clear and convincing evidence that the defendant willfully failed to appear for a scheduled court appearance; or
- (iii) clear and convincing evidence that the defendant violated any other condition or conditions of release; and
- (iv) clear and convincing evidence there is no condition or combinations of conditions that would reasonably assure future court appearance or public safety.

DISCUSSION

- Mindy asked if she could distribute the document to the judicial committee members. Bo replied that she could but to ask them to refrain from using it in briefs, etc.
- Kim pointed out that this is very valuable information and helpful for the work this group is doing.
- A question was asked regarding item 3.4(g)(ii) pertaining to the defendant meeting the jurisdiction’s criteria, and whether this group could make a recommendation for what that criteria might look like. Bo replied yes, and that this group could make a recommendation on what the net looks like and who is eligible for detention. For example in New Jersey everything is available for detention but some have rebuttable presumptions for detention and some have rebuttable presumption for release.
- In New Mexico the court determines the criteria and their charge net is all felonies.
- If this group were to put forth a recommendation the word ‘jurisdiction’ would need to be defined and localities should not be more restrictive than state statute.
- Mindy asked when the document would be finalized and Bo replied he’s

not sure. The Department of Justice and NIC will need to give final approval.

- There will be a need to respect local decisions but have a common standard as well.

Judicial Bail and Pretrial Committee / Mindy Masias

Mindy provided an update on the work of the Judicial Bail and Pretrial Committee. She explained that the mission statement for the group has gone through the review process and was presented to the Supreme Court for approval. However, after much discussion it was decided that the group will not issue a mission statement because the next step in the process should instead focus on bringing stakeholders (district attorneys, public defender, etc.) into the discussion for feedback. The Supreme Court wants to ensure this a collaborative effort. The next meeting, which will include Chief Judges, is scheduled for February 16th. After that the Judicial committee will reach out to DAs, the Public Defender and the CCJJ leadership on how best to collaborate and move forward.

HB18-1089 – No Monetary Conditions of Bond for Misdemeanors

Richard explained that a bill has been introduced by Representative Benavidez (House Bill 18-1089) which will have an impact on pretrial procedures and would basically eliminate money bond for misdemeanors, petty offenses and municipal code violations. Task Force Chair Stan Hilkey has asked for feedback on the bill from the Task Force.

DISCUSSION

- Doug noted that Representative Benavidez is also bringing together a group of stakeholders to discuss the bill on Thursday, February 8th.
- There is concern that she is pushing for no cash bond for misdemeanants without any thought to risk. It’s an offense-based only approach.
- Bo noted he has quite a few concerns and has already met with Rep. Benavidez. He commends her for recognizing the issues around money bond but believes there should be an effort for broader reform.
- There are also concerns that she is moving forward without input from this task force or the judicial committee.
- Her bill calls for a guaranteed hearing within 48 hours but that turnaround time would require the court, prosecutors and judges to all work on the weekends which would result in significant funding.
- Cliff noted that one of the main findings from the Task Force is that risk assessments are essential and should be paid attention to. This is counterproductive to what we’re working on and counterproductive to best practice.
- Additionally, the current charge doesn’t predict risk or public safety and because of that very few risk assessments even include the current offense.
- There’s also concern that the bill calls for the inclusion of a bail bondsman on a judicial community advisory board as the boards put together standards.

	<ul style="list-style-type: none"> • Additionally, the verbiage in the bill from ‘must approve’ to ‘may approve’ on page 4, line 6 diminishes a chief judges role. • Also on page 4 there is verbiage about the report requirement for pretrial services and that should read that it needs to be reported at the case level not by ‘persons’. Doug replied that this could be a drafting issue. This would be a clean-up issue. • In the statute 16-4-106.6 refers to ‘cases’ and subsection 7 refers to ‘persons’. There is an inconsistency in statute. • Additionally, on page 5 the way the bill is written implies that a defendant can simply ask for another hearing because they want another hearing. Currently the defendant has to file a written motion and there has to be something new or different. • Chief Kilpatrick noted that the Golden Municipal Court is concerned that this completely skews money bond for municipal courts altogether. • Judge Shawn Day from Aurora was in attendance at the meeting and added that Aurora has the same concerns and is worried about the revolving door that this bill will create. • Mindy asked if Representative Benavidez would be amendable to allowing CCJJ and Judicial to continue their work and wait until those two groups finish their process.
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Issue/Topic:	Discussion:
<p>Working Groups - Report Out</p> <p>Action: Working groups will present preliminary recommendations and ideas at the March meeting.</p>	<p>The lead of each of the four working groups offered a report on their progress.</p> <p>Implementation of 2013 Statute <i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Doug offered a report on behalf of Maureen Cain who was unable to attend the meeting. Doug explained that this working group was not able to meet this month but will meet on March 5th, April 12th and May 7th. <p>Assessment Tools/CPAT/Decision making/Bond schedules/Conditions <i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Greg Mauro reported that some of the group members met before the Task Force meeting today and that the group continues to work on ideas around pretrial risk assessment. • Elbert County Sheriff Shayne Heap has agreed to be part of the group. • A recommendation will likely be coming forward from this group requiring risk assessment to take place in all counties and removing the section of statute that allows jurisdictions to opt out. • Additionally, if the assessment is standardized there should be uniformity around supervision services. • Also, in counties where there is an absence of pretrial services there should be a state entity to fill that void. • The underlying piece to all of this is that there should be some type of funding mechanism to support and encourage counties that don’t have

	<p>supervision services in order to fund them, or opportunities to compete for funding.</p> <ul style="list-style-type: none"> • The group has also discussed setting minimum requirements around supervision. For example, pretrial services functions at a minimum would include reminder calls, but there would be a need to put parameters in place to allow for learning lessons from the past while keeping an eye on not over-supervising. This would need to be controlled from the outset. • As far as a risk assessment instrument the group has not yet decided exactly what it will recommend. At a minimum the group will likely recommend that a tool be empirically developed and validated, but the group hasn't determined whether it will recommend CPAT or leave it up to jurisdictions to determine their assessment tool and conditions. <p>Pretrial Release Detention <i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Bo Zeerip reported that this group met yesterday and they are planning to produce a statutory scheme that includes preventive detention as a component. • Yesterday the group solidified some significant provisions about the process as to how someone might be detained. • They began with who should even be arrested and whether the number of summons should be increased and expanded. • If the recommendations were to be approved the Benavidez bill would be moot. • The group also talked about the initial court appearance and will recommend that all people appear at a minimum on the first day following a weekend or holiday. • The group also decided on language as far as defendants rights at the first hearing. The group also discussed the possibility of audio/visual capability during hearings but defense attorneys aren't in favor so that will likely be put on the back burner. • The group discussed the DA and defense role at the initial court appearance. • The issue of temporary detention was discussed and how much time between initial detention and the detention hearing. This would be no later than 5 court days which is in line with what DC and NJ does. • The group discussed what sort of findings would be necessary for a court to order the detention of a defendant and they think that there is a consensus that the findings would need to include; 1) probable cause that a defendant committed a dangerous or violent crime, 2) that there is a substantial risk of willful FTA or that the defendant will commit another dangerous or violent crime if released, or that the defendant would obstruct or attempt to obstruct the criminal justice system if released, and 3) clear and convincing evidence that no conditions of release could reasonably assure the defendants appearance in court, or the safety of any person or the community. • Chief Kilpatrick noted that the group has put in a lot of work and there is a lot of consensus. • As far as the charge net, it includes a lot of VRA offenses but not all of
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	<p>them.</p> <ul style="list-style-type: none"> • As for the VRA, the initial bail bond decision is not a critical stage and per statute the victim doesn't have right to be at that hearing. Doug replied that this was originally a request by the prosecution because the availability of victim contact info is limited. • Bo noted there is a lot of consensus in the group. <p>Pretrial Services/Supervision/Violations/Resources/Behavioral Health <i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Steve Chin reported that this group met last Friday. • Kentucky has a state-funded system and this group has talked with Kentucky about their process. • There has been good discussion about how Kentucky deals with rural areas that can't support full time pretrial services. They have part time instead. They also conduct risk assessments over the phone. • Hardest part about an assessment is the initial criminal history data collection, but Kentucky has a clearing house that conducts this. • Part time pretrial could work in Colorado and the services could be offered to jurisdictions when it is needed. • The biggest issue with all of this will be funding. • Jennifer Bradford reported that she finished the survey for programs with pretrial services and has received 18 completed responses. • It's too early to start looking at the data but it will be interesting to see the final results.
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Issue/Topic:	Discussion:
<p>Next Steps and Adjourn</p> <p>Action:</p>	<p>Richard wrapped up the meeting by noting that groups seem to be reaching a point of consensus and are drawing conclusions. With that in mind he asked if each group could come forward with at least one (maybe two) preliminary recommendation at the next meeting. He elaborated that the recommendation doesn't need to be perfect or final but should include the nature of the problem along with a general idea or recommendation to address the problem.</p> <p>He also advised groups not to worry about fiscal repercussions and that this is just a preliminary step to get a feel from the task force about their level of support for the ideas. If the task force agrees on the direction then there can be a discussion about how to move forward with things like funding. He added that details would be helpful but aren't necessary.</p> <p>The goal is to hopefully have final recommendations by May or June and with that in mind the group should start putting their ideas on paper now. It's also important to look at any cross-over on recommendations between the groups</p>

	<p>before going further.</p> <p>Bo added that there is one issue that has been percolating and that is around defendant's statements during pretrial interviews. The question about defendant statements in pretrial interviews and when and how those statements can be used (for example for impeachment purposes). One of the groups should be looking at that issue. Richard replied that this should probably fit into the group that Steve Chin is coordinating. Steve replied he thinks this will be covered in the state standards and black letter document and could fit into pretrial best practices.</p> <p>Richard added that Germaine will send a recommendation template out to all working group members.</p>
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Next Meeting

March 6, 2018

1:30pm – 4:00pm 710 Kipling, 3rd floor conference room