

Colorado Commission on Criminal and Juvenile Justice

Pretrial Release Task Force

Minutes

June 5th, 2018 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

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

Mindy Masias, State Court Administrator's Offices

Maureen Cain, Criminal Defense Attorney

Bill Kilpatrick, Golden Police Department

Monica Rotner, Boulder County Community Justice Services

STAFF

Richard Stroker/CCJJ consultant

Kim English/Division of Criminal Justice

Germaine Miera/Division of Criminal Justice

ABSENT

Greg Mauro, Denver Community Corrections

Doug Wilson, Public Defender's Office

Charles Garcia, CCJJ At-large representative

Kirk Taylor, Pueblo County Sheriff

Joe Salazar, Representative, House District 31

Lang Sias, Representative, House District 27

ADDITIONAL ATTENDEES

Joe Thome, Division of Criminal Justice

Judge Shawn Day, Aurora Municipal Court

Jacqueline Nkhoniera, ACLU

Becca Curry, ACLU

Aubree Cote, Denver County

Anthony Azari, University of Northern Colorado

Jessie Slepicka, University of Northern Colorado

Sydney Bender, Weld County

Doug Erler, Weld County

Katie Hecker, State Court Administrator's Office

ADDITIONAL ATTENDEES, CONT.

Victoria Terranova, University of Northern Colorado

Kyle Ward, University of Northern Colorado

<p>Issue/Topic: Welcome and Introductions</p>	<p>Discussion:</p> <p>Stan Hilkey welcomed Task Force members and reviewed the agenda. He asked for any additions or corrections to the April minutes and seeing none he asked for a motion to approve the minutes. A motion was made and seconded and the minutes were approved.</p>
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<p>Issue/Topic: Recap / April meeting outcomes</p>	<p>Discussion:</p> <p>Richard explained that the May meeting was cancelled and he offered a summary of the April meeting outcomes as follows:</p> <ul style="list-style-type: none"> • In April the Task Force received an update from Mindy Masias about the Bail Blue Ribbon Commission in the Judicial Branch. Bo Zeerip offered a review of the New Jersey Pretrial Reform Panel Discussion and played some video clips for Task Force members as well. • Representatives from each of the Working Groups provided updates on their progress and recommendations, and the Working Groups will report out again today with more information and more detailed recommendations.
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<p>Issue/Topic: Report outs / Recent decisions and updates</p>	<p>Discussion:</p> <p>Richard explained that various pretrial initiatives continue to take place at the local, state and national level and that Mindy Masias has an update on the progress of the Bail Blue Ribbon Commission.</p> <p>Bail Blue Ribbon</p> <p>Mindy explained that the first public meeting of the Blue Ribbon Commission is scheduled for June 19th at 1pm at the Colorado Supreme Court. The Commission has heard from both CDAC and the Defense Bar about their perspectives on bail reform. The Chair of the Commission, Judge Samour has recently been appointed to the Supreme Court but will likely continue to participate on the Commission.</p>
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<p>Issue/Topic: Colorado Pretrial Assessment Tool / Revision project</p>	<p>Discussion:</p> <p>Stan introduced Drs. Victoria Terranova and Kyle Ward from the University of Northern Colorado who offered an update on their study of the Colorado Pretrial Assessment Tool. They presented a summary of the outcomes from Phase 1 of the study, which can be found in its entirety on the Commission website at www.colorado.gov/ccij/ccij-cPRTE.</p> <p><i>DISCUSSION</i></p> <p>Maureen noted that slide 8 lists a Pretrial Outcome category for ‘New arrest’ that combines domestic violence and order violations. She explained there are important differences between the two and that they shouldn’t be clumped. Both Bill Kilpatrick and Bo Zeerip agreed. Dr. Terranova replied that there are some data limitations but that she can separate those two categories in the final analysis.</p> <p>At the end of the PowerPoint presentation Dr. Terranova summarized that findings so far show that the CPAT does indeed validate and has merit for stakeholders. She added that there is potential for improvements in predictive performance via risk items and risk level designation. Preliminary survey findings also indicate common hurdles in implementation for the jurisdictions that are using the CPAT.</p> <p>Dr. Terranova noted that Phase 2 of the project consists of focus groups and observations and that Phase 3 includes piloting a modified tool and a preliminary analysis which will factor in prior FTA’s and employment.</p> <p>Bo pointed out that if an alternative tool is considered it would be beneficial to have one based on an interview and an alternative version that could be completed without an interview, so those without resources could do the assessment without an interview. Possibly a tiered CPAT with the interview as the ideal and then an option if an interview isn’t available. Dr. Terranova agreed and replied that one goal is to have a tool that could be used as much as possible everywhere. She added it will depend on the predictive performance of the tool. Bo added that more factors don’t necessarily mean better predictability and that the tool in Florida has 3 items that predict. Maureen stated that she believes the risk assessment tool from the Arnold Foundation has 4 questions.</p> <p>Dr. Terranova noted that the Federal pretrial assessment tool has also been validated and that she and her colleagues are combing through all available peer-reviewed literature regarding risk assessments. One of the tricks with risk assessment when it comes to local vs. generalized tools is that criminal justice systems vary across states. Monica explained that every time a risk assessment tool is tweaked to fit a specific population it decreases predictability.</p> <p>Cliff asked about the ‘new offense’ category and what parameters are included for a new offense. Dr. Terranova said a new arrest had to happen after the interview and before the sentence date. However, some offenses varied according to arrest. Cliff asked if researchers got their data from Judicial and Dr. Terranova explained that they gathered the info through CCIC so it does not capture out-of-state offenses. Maureen</p>
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	added that most municipalities report arrest data. Municipal offenses are only reported if they are booked, photographed and finger printed and many people are released on summons.
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Issue/Topic:	Discussion:
<p>Working Groups - Report Out</p> <p style="text-align: center;">Action:</p> <p>The Implementation Working Group to refine and finalize recommendations for preliminary presentation to the Task Force at the July meeting</p> <p>invite a Joint Budget Committee analyst to the next meeting to advise the group on potential bill verbiage on the recommendation to establish pretrial programs statewide</p> <p>Recommendation FY19-PR #03: Move up the implementation date and change the title.</p>	<p>Members of each Working Group reported on their progress and the status of preliminary recommendations.</p> <p><u>Implementation of 2013 Statute</u> Maureen Cain is the lead for this Working Group which includes Jen Bradford, Mindy Masias and Ryan Brackley. She distributed four preliminary draft recommendations to the Task Force for review as follows:</p> <p>Recommendation 1: Develop a statewide screening system to release people before booking pursuant to criteria developed within each judicial district.</p> <p>The recommendation creates a pre-booking/upon arrival at jail screening process to avoid the detention of persons who meet the criteria to be on a PR bond or a summons. It requires the court and other stakeholders to develop criteria for immediate release.</p> <p><i>DISCUSSION</i></p> <ul style="list-style-type: none"> • Maureen explained that this system is basically based on the SB94 model, and instead of mandating statewide criteria for who goes home and who gets booked, it would allow for those parameters to be developed by individual jurisdictions. • The criteria shall be developed in conjunction with the state court administrator of the judicial department, the county sheriff, the local DA, a representative from the public defender’s office, local law enforcement and a representative of county government. • A designated bonding commissioner would have release authority and if someone doesn’t meet the release criteria for that particular jurisdiction they would have to be booked and go before a judge. • This fits with the recommendation from the Pretrial Services Working Group recommendation that mandates every JD to have pretrial services. • The recommendation calls for the screening for release to occur immediately upon entry into the county jail but no later than 8 hours after entry. • This system would be unlike SB94 in that with SB94 there’s a place where someone gets assessed and can leave, and it’s not a secure setting. • Bill said he’s concerned about inconsistency and fairness because with local release decision making someone could commit a crime in Pitkin County and

be released, while someone else could commit that same crime somewhere else and be held, and it's the exact same offense.

- Maureen replied the argument in support of this system is that individual counties pay for their jail and services. The level of risk the jurisdiction is willing to accept should be respected. This proposal aims to create a statewide standard and balance that with local control.
- In defense of the 8-hour turnaround time Maureen pointed out that judges are available 24/7 to make decisions, and release decisions should be able to be made on Saturday's and Sundays as well.

Recommendation 2: Create a presumption for release with conditions that are tailored to the individual and without monetary conditions. Outline limited exceptions to non-monetary release.

DISCUSSION

- Maureen explained that this recommendation is based on the Harris County case.
- Bo asked if the language in the recommendation is an interpretation of the court decision, or if it comes directly from the court decision. Maureen replied that her group discussed the language with CDAC in combination with verbiage from the Humphreys case.

Recommendation 3: Define the court process and set a definite time for a person to appear in court for initial bond setting and advisement.

DISCUSSION

Maureen explained that this is something she and Bo discussed in regards to how soon someone should be back in court and how quickly they should be processed. Stan pointed out that in Mesa County they used to have bond magistrates on weekends but that the process was stopped because it was too expensive. It's an unfunded mandate and an extra cost to counties, which is a burden especially in a small jurisdiction.

Bo noted that his Working Group discussed this issue and their original proposal was going to call for a hearing the next day after an arrest excluding weekends and holidays. They ended up settling on 'within 48 hours' because in the Harris County case the verbiage reads along the lines of 'must be in front of the judge in 48 hours of arrest no matter what.' So it's got a good constitutional basis. Texas rejected the 24-hour period and the constitutional standard is 48.

Recommendation 4: Eliminate long and unnecessary delays in filing of felony cases (and certain misdemeanor cases) after the initial advisement and bail setting by the court. Require filing within 72 hours, unless good cause is shown.

DISCUSSION

There was no further discussion on this recommendation and Maureen reminded the group that all 4 proposals are currently in the preliminary draft stage. Richard thanked Maureen and asked her group to come back with more detailed recommendations at the July meeting and to formally present preliminary recommendations to the group at that time.

Assessment Tools/CPAT/Decision making/Bond schedules/Conditions *AND* Pretrial Services/Supervision/Violations/Resources/Behavioral Health

Steve Chin presented four preliminary recommendations on behalf of Greg Mauro and the two combined working groups. Stan clarified that with the recommendations preliminarily presented today a formal vote will be held on them during the July meeting. Steve noted that the four recommendations could be combined into one or could remain as four separate segments

FY19-PR #01. Establish and Require the Use of Pretrial Risk Assessment Tools in all Colorado Counties

DISCUSSION

- Steve Chin explained that the group has seen this recommendation before but that changes have been made in red based on feedback from this task force.
- On page 3 the statutory language now reads “In determining the type of bond and conditions of release, the court shall consider an empirically developed risk assessment... **The Colorado Pretrial Assessment Tool shall be the instrument considered unless an alternative instrument is approved by the Chief Judge of the Judicial District. An alternative tool must be empirically developed and meet requirements in this section.**”
- Cliff said that after getting the report today on the CPAT study verbiage should be included that reads something along the lines of an alternative assessment tool should be ‘validated for the local population.’

FY19-PR #02. Implement Training Standards for the Administration of Pretrial Risk Assessment Tools.

DISCUSSION

There was no discussion on this recommendation.

FY19-PR #03. Establish a State Administered Grant Program to Assist in the Development of Pretrial Programs Statewide.

DISCUSSION

- Steve reminded the group that one issue that has been discussed is the sentence in the last paragraph that reads “The chief judge is encouraged to

	<p>appoint to the community advisory board at least one representative of the bail bond industry...”</p> <ul style="list-style-type: none"> • He added that this verbiage was included to appease the bail bond industry. Maureen countered that the verbiage should be stricken because bail bond industry reps won’t support any of the recommendations being proposed. • There’s currently a bail bond representative on the board in Garfield County but nowhere else. Cliff replied he agrees with Maureen and that giving them a seat at the table would be counter-productive. • Bo added that what’s more important than this verbiage is requiring pretrial services everywhere. He said he believes that wording mandating pretrial services availability should actually be in the title. • Bo also suggested that all counties and cities should be required to develop pretrial programs within the next 3 years rather than the next 4 years. Current verbiage says “shall develop by July 1, 2022” • The number one issue for elected DA’s is the unavailability or pretrial services, in rural jurisdictions in particular. Not having pretrial services is a hindrance to all other recommendations. It’s the best thing as far as a foundation for other recommendations. • Cliff pointed out that another big issue with rural jurisdictions is the funding. Rural jurisdictions already struggle with funding for deputy district attorneys. • Maureen replied that the state has money now and there are millions of dollars’ leftover from this year’s budget in unallocated funds. • A suggestion was made for the recommendation to both require the development/establishment of pretrial programs statewide AND the establishment of a grant program to assist in the development of those programs. This should be the first recommendation. • The recommendation should also clarify that the state provide funding for jurisdictions that don’t have adequate services, not simply across-the-board funding. • The full group agreed with this proposal but also agreed that more thought needs to be given to funding and how that would work (grant?) • Maureen reminded task force members that when the CCJJ recommendation to create diversion programs was approved years ago it specified that the money would come through Judicial to DA’s offices. The specificity impacts where the money goes and how it is administrated. • A recommendation was made to invite a Joint Budget Committee analyst to the next meeting to advise the group on potential bill verbiage. • Move up the implementation date and change/expand the title of this recommendation.
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FY19-PR #04. Ensure Proxy Services are available to Provide Pretrial Functions in Jurisdictions Lacking a Pretrial Program.

DISCUSSION

- This 4th recommendation gives the Chief Judge the ability to use a proxy to provide pretrial related functions in jurisdictions that are unable to develop and support a local pretrial program.

Pretrial Release Detention

Bo Zeerip explained that his group has accomplished a significant amount of work and has three different documents to present and review today. He added that the work is evolving and will change again before the next meeting.

DISCUSSION

- The first document is a one-page summary of the full proposal.
- This second document is three pages long and references the proposed statutory language that is detailed in the third document, which is 27 pages in length.
- The first summary document outlines the primary goal of the proposal which is to stop using money to detain people. It specifically reads *“This proposal re-writes most of the pretrial, bail, and bond provisions of the Colorado Constitution and statues with the aim to move away from a system based on imposition of financial conditions of bond tied to criminal charge, and toward a constitutional and transparent pretrial decision making process that determines whether a defendant is released or detained based on pretrial risk and actual behavior, not financial ability to pay.”*
- Bo noted it’s also important to move away from terminology of bail and bond in new statutory language and more toward verbiage of release, detention, etc.
- He added that in looking through this proposal it is important to make a distinction between those people just coming into the system and facing initial detention vs. the group of people that have been released and then violated the conditions of release in some way. There is a significant difference between the two.
- The standards are different for detaining people who mess up during pretrial period.
- Bo directed the group to page 24 of the third document which modifies subsection (8) of 16-4-108 specifically addressing the findings necessary to detain a person. As for people who FTA the verbiage reads *“Revoke the defendant’s release and order that the defendant be detained if the person repeatedly failed to appear in court without justifiable excuse.”*
- Bo directed the group to page 19 which lists the *“detention eligible crimes”*. He

	<p>clarified that the working group has not agreed 100% on the list of crimes and added that the crimes highlighted in yellow are VRA crimes.</p> <ul style="list-style-type: none"> • He pointed out that if everyone who committed all the crimes on the list were detained (based on data from the last 4 years), that would represent 15% of the defendant population in Colorado. • Bo noted that the goal is to have a final draft proposal ready for the July meeting with changes expected for the August meeting. The working group plans to meet multiple more times before the next couple of meetings. • Bo added that the task force has a great opportunity to take lessons from states like New Mexico, New Hampshire and the District of Columbia, etc. • Cliff expressed concerns about the verbiage on page 3 that reads “Detention eligible crimes shall be specified by the general assembly but such crimes must be violent, dangerous or otherwise substantially serious...” because in looking at the list of eligible crimes the wording opens it up for defense council to challenge it as unconstitutional. • Bo replied that it’s tricky because other people are concerned about the general assembly adding everything to the eligibility list as they feel like it. • Colette Tvedt, a member of this working group, explained that it’s important to make the charge based net as narrow as possible to keep in mind the purpose of detention that is allowed by the U.S. Constitution in the Salerno case. • Bo noted that there’s also some disagreement between defense and prosecution regarding the pretrial detention hearing and whether the prosecution should be required to call a witness. The verbiage in question is on page 15/16, subsection (2). • Richard replied that for all the issues in the recommendation where there isn’t consensus the working group should provide both sides for consideration by the task force at the next meeting.
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Issue/Topic:	Discussion:
<p>Next Steps and Adjourn</p> <p>Action:</p>	<p>Richard wrapped up the meeting and summarized the next steps as follows:</p> <ul style="list-style-type: none"> • Task Force members to read through the materials provided by the Pretrial Release Detention Working Group and be prepared to discuss the recommendation more fully at the July meeting. • The Task Force will vote on the final recommendations from Greg and Steve’s combined Pretrial Services Working Group. • Maureen’s Implementation Working Group to return to the July meeting with more detailed draft recommendations. <p>Richard pointed out that some of the recommendations are complimentary and some</p>

	may be at odds. The Task Force needs to be mindful of how they all fit together, not that they have to fit together exactly - but the recommendations also need to be able to stand on their own.
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Next Meeting

July 10, 2018 1:30pm – 4:00pm 710 Kipling, 3rd floor conference room