

**Colorado Commission on Criminal and Juvenile Justice
Pretrial Release Task Force**

Pretrial Preventive Detention Working Group

Minutes

February 6, 2019, 9:00AM-1:00PM
700 Kipling, 2nd Floor CJIS Conference Room

ATTENDEES:

WORKING GROUP MEMBERS

Bo Zeerip, Chair, District Attorney 21st Judicial District
Margie Enquist, District Judge, 1st Judicial District
Tom Raynes, Colorado District Attorney's Council
Rick Kornfeld, Defense Attorney
Colette Tvedt, Defense Attorney (on the phone)
Lucy Ohanian, Office of the State Public Defender

ABSENT

Maureen Cain, Office of the State Public Defender
Bill Kilpatrick, Golden Police Department
Aubree Cote, Denver Pretrial Services

STAFF

Laurence Lucero, Division of Criminal Justice

GUESTS

Rebecca Wallace, ACLU
Isabelle Epps, Colorado Freedom Fund
David Schuck, ACLU

<p>Issue/Topic: Welcome</p>	<p>Discussion:</p> <p>Bo Zeerip, Chair of the Working Group, welcomed and thanked the attendees for participating in these discussions.</p> <p>Bo proposed the following agenda:</p> <ol style="list-style-type: none"> 1) Discuss the crime net and review of filings 2) Updates 3) Witness issue/extend preliminary hearings to misdemeanors 4) Proposal review
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<p>Issue/Topic: Crime Net</p>	<p>Discussion:</p> <p>A dashboard prepared by DCJ researchers that provided the number of filings by crime category was displayed on a white board. These numbers represent four years of county and district court filings, excluding Denver county and municipal cases. It was noticed that the most frequent offense filed is 3rd degree assault.</p> <p>Colette suggested that the number of 3rd degree assaults would be significantly higher if the data included municipal court charges.</p> <p>Collette reiterated her concern (sent previously by email to the group) about the inclusion of misdemeanors offenses (M1 through M3) to the list of detention-eligible crimes. She represents numerous clients charged with 3rd degree assault and is concerned that, under this proposal, her clients would be held in pretrial detention even as first time offenders.</p> <p>The group agreed to remove all non VRA property crimes in those parts from the initial detention eligibility net.</p> <p>The group reviewed the number of filings for M1 through M4 crimes which include 3rd degree assault, child abuse, escape and sexual offenses in the M1 category (sex assault, unlawful sexual contact). DUI charges would be excluded.</p> <p>Judge Enquist stated that because of the due process requirements in this proposal, the number of individuals in detention is likely to decrease substantially.</p> <p>The violations of protection orders are eliminated from the list of detention eligible crimes. Lucy discussed the issue of charges for violations of protection order (VPO) that are not directly related with contacting the victim. For example, she observed that many defendants are charged with VPO for using alcohol or marijuana. Also, bail conditions may include no consumption of alcohol or marijuana, and a M1 or M2 can be filed as a violation of a protection</p>
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<p>Issue/Topic: Crime Net (continued)</p>	<p>order. Bo suggested that this issue is not within the scope of the proposal.</p> <p>The group discussed that many 3rd degree assaults are filed in municipal courts and that people are being detained on low financial bonds. There is a 48-hour rule to bring a case to municipal court.</p> <p>Bo believed that the issue of municipal cases may be addressed by the due process component of the proposal and he encouraged the group to discuss other possible solutions.</p> <p>Lucy asked whether first time domestic violence offenses should be excluded from the detention eligible crimes and instead develop language regarding “prior” offenses.</p> <p>Tom responded that the risk assessment is what matters and not necessarily the fact it is a first time. Because domestic violence offenses are detention eligible crimes, the court will make the finding.</p> <p>Judge Enquist believed that the victim community would not agree with excluding “first time” domestic violence offenders from the eligibility net. The due process burden on district attorneys to have a witness would minimize the detention.</p> <p>Collette expressed a concern related to felony possession of a weapon by a previous offender and proposed that weapon be defined as “firearm.” The group agreed.</p> <p>The group discussed a concern that there are people on revocation status for very low level offenses that may end up in detention when the offense might not be even considered for incarceration.</p> <p>The group agreed to look at MT1 offenses at future meetings and decide whether to exclude MT1 offenses (all or with some exceptions) as eligible for detention.</p>
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<p>Issue/Topic: Updates</p> <p>Action: Lucy will present on revocation data</p>	<p style="text-align: center;">Discussion</p> <p>Bo Zeerip informed the group that a bill has been introduced in this legislative session to eliminate cash bond conditions for some misdemeanors, but would exempt others, like VRA crimes for example.</p> <p>Bo informed that the National Association for Pretrial Services Agencies (NAPSA; napsa.org/) recently released a report and many of the NAPSA recommendations are consistent with the work from the Pretrial Task Force. Bo will forward the report to the group.</p>
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<p>Issue/Topic: Updates (continued)</p>	<p>Aubrey provided data included in the meeting materials. Pretrial service agencies are required to report annually to the State Judicial Department under §16-4-105, C.R.S.</p> <p>Lucy informed that the Pretrial Task Force agreed that additional data points be obtained and that she is working with Kim English and Peg Flick at DCJ to gather the data on:</p> <ul style="list-style-type: none"> - The number of revocations and the reason(s) for revocation from either having posted bail or from a summons. - How many of those cases are arrests vs. summonses. - How many of those revocations are based on a FTA. <p>Lucy mentioned that there are underlying challenges related to data entry given that there is significant variation in how the court clerks are recording these events. Consequently, the data will likely be an approximation.</p>
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<p>Issue/Topic: Witness issue/ Preliminary Hearings</p> <p>Action: Tom will ask questions about preliminary hearings to CDAC</p>	<p>Discussion:</p> <p>Bo asked the group for feedback about his suggestion to allow live witnesses for probable cause purposes by amending the preliminary hearing requirements to non-felony offenses so defendants have right to preliminary hearings for any offense for which they are being detained pretrial. If the concern is that people are detained when there is no probable cause, Bo suggested that adding misdemeanor charges in the preliminary hearing criteria.</p> <p>Collette expressed concern that with a preliminary hearing, defendants could be held up to 35 days in detention. She would be in favor of a live witness at a detention hearing that must be held within three days of the temporary detention order.</p> <p>DAs are unlikely to agree with a live witness at a detention hearing.</p> <p>Bo suggested reducing the 35-day timeframe for non-felony offenses.</p> <p>Judge Enquist expressed concern that this would increase the number of hearings at first advisement and represent a significant burden to the courts, perhaps delaying the resolution of cases.</p> <p>The idea of requiring live witnesses at detention hearings was discussed. Tom anticipated that district attorneys will not approve this idea but will ask the Council and will report back to the group at next meeting.</p> <p>The following questions will be asked of CDAC: What is the CDAC position regarding 1) offering preliminary hearings for all detainees and expanding this to misdemeanor offenses, and 2) adopting an advanced timeline on preliminary hearing for misdemeanors.</p> <p>Rebecca asked whether the standards for M1s should be raised.</p>
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<p>Issue/Topic: Proposal Review</p>	<p>Discussion:</p> <p>Bo responded that the net for potential revocation has been significantly narrowed to eliminate traffic infractions, traffic offenses, petty offenses and MT2. He added that, to Rebecca’ point, this may not exclude some municipal charges.</p> <p>The group agreed to add language about traffic offenses involving death or bodily injury and comparable municipal code violations.</p> <p>Rebecca said that the net for revocation should only include people who pose a bail-related risk such as “flight risk,” safety of others or obstruction of justice. The bond conditions of release must be relevant to the specific risks presented by the individual. Rebecca expressed concerned about over-conditioning. Additionally, we shouldn’t detain people pretrial based on concerns about property offenses. She suggested defining “serious property crime” or “serious property risk.” The group will discuss this issue at the next meeting.</p> <p>Judge Enquist mentioned that, with regard to felony level property charges, district attorneys are concerned about the ability to detain in the event that someone commits a property crime after being released the first time.</p> <p>The group discussed the repeated violations issue and agreed to include language addressing violation of release conditions that pose a risk to the safety of another person.</p>
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<p>Issue/Topic: Next steps and Adjourn</p>	<p>Discussion:</p> <p>Next Meeting is on Wednesday, March 6.</p> <p>At next meeting the group will hear back from Tom regarding the idea of preliminary hearings and an advanced timeline for preliminary hearings for misdemeanors. Plus, the group will discuss the inclusion of MT1 charges with some possible exceptions, defining “property risk crime,” and Lucy will report on revocation data. Bo also suggested that the group discuss Maureen Cain’s proposal about early release and how it might be integrated into this proposal. Rick informed that he will not be present in person, but will be calling in.</p> <p>Bo will send revisions to the group before the next meeting in March to finalize language.</p>
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Next Meeting

March 6, 2019

9:00am – 1:00pm

700 Kipling, 4th Floor Training room