

Pretrial Release Task Force

Minutes

March 5, 2019 9:00AM-11:00AM
710 Kipling, 3rd Floor Meeting Room

ATTENDEES:

TASK FORCE MEMBERS

Stan Hilkey, Chair, Department Public Safety
Bo Zeerip, District Attorney, 21st Judicial District
Monica Rotner, Boulder County Community Justice Services
Greg Mauro, Denver Community Corrections
Maureen Cain, State Public Defender (on phone)
Rick Kornfeld, Defense Attorney
Lucienne Ohanian, State Public Defender
Tom Raynes, CDAC
Clifford Riedel, Larimer County District Attorney
Janet Drake, Deputy, Attorney General's Office
Glenn Tapia, Judicial, Probation Services (on the phone)

STAFF

Richard Stroker, CCJJ Consultant
Kim English, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Stephane Waisanen, Division of Criminal Justice

ABSENT

Judge Shawn Day, Aurora Municipal Court
Steve Chin, Mesa County Pretrial Services
Judge Chris Bachmeyer, 1st Judicial District
Valarie Finks, Victim Services, 18th Judicial District
Bill Kilpatrick, Golden Police Department
Kirk Taylor, Pueblo County Sheriff

ADDITIONAL ATTENDEES

David Schuck, ACLU
Tim Lane, CDAC

Issue/Topic:	Discussion
Welcome and Introductions	Chair Stan Hilkey, welcomed the group and new Commission and Task Force member Janet Drake from the Attorney General’s Office.
Approval of Minutes & Agenda	<p>Stan stated that he would offer an update on legislative matters after Richard’s recap of the February meeting.</p> <p>He asked if there were any corrections or additions to the minutes. With none offered, following a request for a motion, the minutes were approved unanimously.</p>

Issue/Topic:	Discussion
Recap of February Meeting	<p>Richard recapped February’s meeting, noting the discussion on the recommendations that moved forward from the Task Force and to the Commission and the update from Bo’s Working Group. After a lengthy discussion last month, the following two issues were determined worthy of exploration:</p> <ol style="list-style-type: none"> 1. Audiovisual technology for court hearings - How it could be potentially used? The costs that might be associated with it? What kind of methods might be used? 2. Data Collection – Review current data collection efforts in pretrial services and how it can be improved? <p>We will continue our discussion on both of these topics today, after we hear an update from Stan.</p>

Issue/Topic:	Discussion
Legislative Updates	<p>Stan stated that there have been many conversations with legislators, members of the Attorney General’s Office, and the Governor’s Criminal Justice Working Group (CJ WG). At a meeting on February 20, there was agreement to develop two bills. Judicial would write the bill for the first three recommendations (FY19-PR#01: Risk Assessment Tools, FY19-PR#02: Risk Assessment Training, and FY19-PR#03: Pretrial Expansion Statewide) and another entity would write a second bill pertaining to three additional recommendations (FY19-PR#06: Expedited Pretrial Release, FY19-PR#07: Revise Bond Hearing Process, and FY19-PR#08: Pretrial Training/Data Collection).</p> <p>However, Maureen already was working with legislators and had started drafting all of these recommendations into one bill. The draft of that bill came out after the February 20 meeting. The Governor’s CJ WG has focused on the issue of prison overcrowding in light of the Department of Corrections request for supplemental funding. The request was denied and these substantial funds may be available to add pretrial services in counties that currently do not have them. This is more money than becomes available through the typical fiscal note process. The Governor’s CJ WG met with Rep. Weissman, Rep. Herod, and Sen. Lee and agreed it would be a legislative set-aside in the amount of \$10-\$15M.</p> <p>Stan believed this was significant progress. He stated that he had received a bill draft from Judicial’s Terry Scanlon this morning that still review for harmony with</p>

<p>Issue/Topic: Legislative Updates (continued)</p>	<p>the recommendations. The idea is to draft a single bill, and if Judicial wanted to support specific parts of the bill, they would be able to do that.</p> <p>Tom mentioned that it was detrimental to draft two separate bills. There are parts of the bill that the defense prefers and would support while remaining neutral on the other half of the bill. That does not benefit anyone’s interest in fostering the bill. For the prosecution, there are parts that we are more supportive of and other parts that we are tepid on. Creating one bill, ties the stakeholders together to collaborate. Tom believed that having separate bills would be detrimental for the work that the Commission has done.</p> <p>Maureen added that she and Tom reviewed the bill draft and made sure that the language was consistent with all the Commission proposals. Maureen agreed with Tom’s reasons that there should be one bill. Senator Lee called yesterday and said there was already a drafter who would start work on the bill.</p> <p>Stan stated there was also broad consensus for a single bill by the Attorney General’s Office. There was mention that a fiscal note would be needed to establish pretrial programs in the counties that don’t have them. Everyone agreed that the cost of the bill will exceed the regular fiscal note process and that a legislative set-aside is necessary.</p> <p>Stan will share Terry Scanlon’s email that incorporates the recommendations. He asked Laurence to distribute it to the Task Force members.</p> <p>Glenn added that he met with Maureen and Tom last week regarding the bill, but they may have misunderstood his points. Judicial would request that the language from the previously proposed Bill #1 be incorporated into the single bill because that language had been fully vetted by the Bail Blue Ribbon Commission.</p> <p>Maureen noted that there are many unknowns in terms of cost and, as work proceeds on the bill, there must be a firm understanding of supervision fees, of Denver’s budget versus other jurisdictions’ budgets, of the percentage of defendants who require pretrial supervision, and of the cost of an evaluation.</p>
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Issue/Topic:	Discussion
<p>Update: Preventive Detention Working Group</p>	<p>Bo stated that Working Group members met last month with a focus on a few different issues, some of which are still pending. The discussion topics included:</p> <ul style="list-style-type: none"> • The “charge net” and what offenses would be detention eligible • Narrowing the “net” for detention eligibility. For example, felony Class 1-3 property and fraud offenses were removed from the “net.” Possession of weapons by a previous offender was limited to firearms. A possession of a knife by a previous offender was not included in the net. The biggest change is that initially all 3rd degree assaults were included, but this was narrowed to domestic violence. • Whether prosecution will be required to call a witness to detention hearings. Bo proposed that the group compromise by granting a preliminary hearing to any individual who could be detained. It would require prosecution to call a witness

<p>Issue/Topic: Update: Preventive Detention Working Group (continued)</p>	<p>at the preliminary hearing to establish a probable cause.</p> <ul style="list-style-type: none"> • The defense have concerns about having to wait a month for a preliminary hearing. • There was also concern regarding the expansion of the right to preliminary hearings. <p>Tomorrow, the Working Group plans to reach agreement:</p> <ul style="list-style-type: none"> • on the risk language. Currently, the proposal includes the agreed upon phrases, <i>“safety of any other person”</i> and <i>“the substantial risk avoiding prosecution by not appearing in court,”</i> and • on additional pending variations in the language of the proposal. Bo is hopeful the group will agree on these at tomorrow’s meeting, but, if not, he intended to bring these alternatives to the Pretrial Task Force in April for discussion. <p>Richard reiterated the four topics from the Working Group:</p> <ol style="list-style-type: none"> 1. Charge net 2. Whether a witness would be required to participate in hearings 3. Language around risk and how to define it <p>Bo expected the Work Group to finish their proposal by June and be ready for a presentation to the Task Force by July. Peg Flick from DCJ has been working with the group to gather supporting data and, upon task force adjournment, there will be a meeting with Peg, Kim, Lucy and Bo.</p>
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<p>Issue/Topic: CCJJ Feedback: Future Study Topics & CCJJ Vote: Rec. FY19-PR #04</p>	<p style="text-align: center;">Discussion</p> <p>Richard reported that the Commission had approved the group’s study of the two issues raised last month: audiovisual equipment and data collection.</p> <p>The first was audiovisual equipment for use to expedite hearings for people who are being detained in one county with an arrest warrant from another. W Previous discussions have addressed the need for a more expeditious hearing process.</p> <p>Stan referenced a failed bill (House Bill 2018-1131) to provide audiovisual equipment and internet connectivity to judicial districts that was “postponed indefinitely” due to its funding requirements. He raised this point because there was likely a fair amount of work done by others on the previous bill that could serve as an informative resource.</p> <p>There was discussion that many of the smaller jurisdictions do not have the internet connectivity available to larger jurisdictions. Even if money becomes available, some jurisdictions may only implement audiovisual hearings if mandated to do so.</p> <p>Bo described that, according to Rule 43, audiovisual equipment can be used for first appearances, filing charges, and setting preliminary hearings to modify bail. It will be important for the scope of use to include pretrial hearings to conform to elements of the Preventive Detention proposal.</p>
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<p>Issue/Topic: CCJJ Feedback: Future Study Topics & CCJJ Vote: Rec. FY19-PR #04 (continued)</p>	<p>Recapping, Richard summarized the audiovisual equipment issues raised. Would another work group be created to explore these issues? For example, a group could explore what could be learned from House Bill 2018-1131. Tom stated he would review the bill and whether any follow-up had occurred.</p> <p>Richard then raised the second item: data collection. Data is currently collected by pretrial service agencies and these data should be better understood. There appear to be several differences in the data collected across jurisdictions. Identifying and reviewing these data would provide a better baseline understanding of the existing pretrial circumstances and processes and of the individuals served by the system.</p> <p>As an initial step, members of the Task Force might gather such data over the next couple months. Greg and Monica volunteered and it was noted that Steve and Glenn would also be good sources for such data.</p> <p>Bo indicated that the ACLU compiled information on jails last summer and the Task Force could request an ACLU representative share this work. Data might also be collected on felony and misdemeanors by county, length of stay, and racial breakdown.</p> <p>Richard asked Kim whether she or a member of her staff would be willing to meet with this group to talk about these data issues.</p> <p>In regard to Task Force Rec. FY19-PR #04, Richard simply reported that the Commission had approved the recommendation.</p>
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<p>Issue/Topic: Next Steps & Adjourn</p>	<p style="text-align: center;">Discussion</p> <p>Richard summarized the updates expected for the next meeting:</p> <ul style="list-style-type: none"> ● Bo will provide an update from the Preventive Detention Working Group. ● Tom will obtain information on H.B. 18-1131 to begin to address the audiovisual equipment issue. ● Monica and Greg will present information on the data issue. <p>Stan thanked the group for all their contributions and adjourned the meeting.</p>
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Next Meeting

April 9, 2019/ 9:00AM – 11:00AM
 710 Kipling, 3rd floor conference room