

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

**Pretrial Preventive Detention Working Group  
Minutes**

March 6, 2019 9AM-11:00AM  
700 Kipling, 4<sup>th</sup> Floor Training Room

**ATTENDEES:**

**WORKING GROUP MEMBERS**

Bo Zeerip, WG Leader, District Attorney 21<sup>st</sup> Judicial District  
Maureen Cain, Office of the State Public Defender  
Aubree Cote, Denver Pretrial Services  
Bill Kilpatrick, Golden Police Department  
Lucy Ohanian, Office of the State Public Defender  
Tom Raynes, Colorado District Attorney's Council  
Colette Tvedt, Defense Attorney (on the phone)

**ABSENT**

Margie Enquist, District Judge, 1<sup>st</sup> Judicial District  
Rick Kornfeld, Defense Attorney

**STAFF**

Laurence Lucero, Division of Criminal Justice

**GUESTS**

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

Issue/Topic	Discussion
<p>Welcome</p>	<p>Bo Zeerip, Chair of the Working Group, welcomed and thanked the members and guests for attending. Due to scheduling conflicts, the meeting will adjourn at 11am.</p> <p>Bo reminded the group that these efforts have slowed down for the purpose of getting better consensus on some points in the proposal.</p> <p>Maureen wanted to put on the record that these efforts have also slowed down to wait to see what happens in the legislature regarding the CCJJ pretrial recommendations.</p> <p>Bo proposed a recap of last meeting and to discuss the risk language related to public safety and court appearance. If the group cannot come to an agreement, the options will be brought to the Task Force to decide.</p>

Issue/Topic	Discussion
<p>Proposal Review</p>	<p>Bo pointed out that the proposal was included in the meeting materials. He reminded the group that the language in Red is proposed by Defense, the language in Blue by the Prosecution and Black Underline is a draft language to be reviewed by the Working Group.</p> <p>The group reviewed the proposal below:</p> <ul style="list-style-type: none"> <li>- <b>Page 7:</b> Provision for early release prior to initial hearing was added. Language was taken from Recommendation #6.</li> <li>- <b>Page 21:</b> Detention eligible crime net.             <ul style="list-style-type: none"> <li>a. All property and fraud offenses are removed from the detention eligibility → the group agreed</li> <li>c. <u>“regardless of whether the offense is specifically charged as a crime of violence in the complaint, information or indictment”</u> The group agreed to removed drafted underlined text.</li> <li>d. “Felony offenses defined as a “crime” for purposes of victims’ rights in 24-4.1-302, C.R.S., <u>including any felony offense designated as a crime of domestic violence under 18-6-800.3, C.R.S. and any misdemeanor domestic violence offense when the defendant is eligible to be charged as a habitual domestic violence offender under 18-6-801(7), C.R.S.;</u>” The language for misd. DV will have its own section e.</li> </ul> </li> </ul>

<p><b>Issue/Topic</b>          Proposal Review          (continued)</p>	<p>m. “The following misdemeanor offenses or comparable municipal code violations:”</p> <p>The group discussed at length the significant number of cases that are filed in municipal courts and that many people are detained on misdemeanor offenses if they are detention eligible.</p> <p>Bo will highlight all offenses listed in the proposal under m. (i. through v.) for further discussion at the next meeting in April.</p> <p>- <b>Page 24</b></p> <p>c. <u>“Revoke the defendant’s release and order that the defendant be detained if the defendant has been at liberty for a felony property crime and there is probable cause that the defendant committed another felony property crime after being released, and by a clear and convincing standard the court finds that there are no conditions of release that can reasonably ensure that the defendant will not commit another felony property crime if released; or</u></p> <p>d. Revoke the defendant’s release and order that the defendant be detained if the defendant has been at liberty for a felony, or misdemeanor, or a traffic offense resulting in death or bodily injury, or any comparable municipal code violation, and the court finds:”</p> <p>The order of this language will be reversed (d. will become c.)          The group will discuss further this language in April.</p> <p>- <b>“Risk” language throughout the proposal</b></p> <p>The group discussed municipal courts and the interpretation of community safety.</p> <p>Bo asked whether it is the will of the group to exempt municipal court from this proposal. Two options were discussed:</p> <ol style="list-style-type: none"> <li>1. Exempt entirely municipal courts from this proposal</li> <li>2. Take out the ability for municipal courts to detain and draft language in C.R.S. 16-4-105 (page 6 (2) Scope of Article 4) to say that <i>“if seeking detention, the case will be filed in state court”</i>.</li> </ol> <p>Collette mentioned that the defense may change its opinion on the detention crime net if the municipal courts issue is addressed and asked to have the opportunity to discuss this with colleagues from the defense bar.</p>
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<p><b>Issue/Topic</b>                  Proposal Review                  (continued)</p>	<ul style="list-style-type: none"> <li>- <b>“Court appearance” language throughout the proposal</b></li> </ul> <p>Maureen, Collette, Lucy and Rebecca will discuss the language on page 19 under 7) c. and 7) d. related to “... by failing to appear in court” and will report back their suggestions at the April meeting.</p> <ul style="list-style-type: none"> <li>- <b>Page 17 - Preliminary hearing for all defendants who are detained</b>  <u>If a defendant is being detained for any offense under the provisions of this Article 4, Part 1, they shall be entitled to a preliminary hearing pursuant to the provisions and timeframes specified in 16-5-301, C.R.S. The defendant may also choose to combine the detention hearing and the preliminary hearing within the timeframes specified in 16-5-301, C.R.S.</u></li> </ul> <p>Tom discussed this approach with Cliff Riedel and both believe that, while this process may be cumbersome with the increase number of hearings, this may result in less detention which would be the desired outcome. Tom will discuss more with members of the CDAC.</p> <p>Lucy emphasized that an advanced timeline should be agreed upon as currently preliminary hearings may take up to 35 days.</p> <p>Bo provided the following meeting recap:</p> <ul style="list-style-type: none"> <li>- Bo and other members of the TF will report at the April meeting that, in light of the issue of significant number of detention of cases filed in municipal courts, the working group proposes to either 1) exempt the municipal courts from this proposal, or 2) develop language that would remove the ability of municipal courts to detain individuals.</li> <li>- Several points in the proposal regarding the safety language have been highlighted for Maureen, Collette, Lucy and Rebecca to come to agreement and report back to the Working Group. If that decision holds, there will be agreement in the safety language.</li> <li>- Current proposal for the court appearance: DAs agree with the language but defense need to discuss further.</li> <li>- There is no disagreement about the language regarding an attempt to obstruct criminal justice process (language that comes from NJ).</li> </ul> <p>Tom brought up the issue of victims being present at detention hearings. If a victim is present at the detention hearing, the prosecution doesn’t want the victim to be called to the stand unless a subpoena has been issued.</p> <p>Bo will draft some language to address this concern and will submit language at next meeting.</p>
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<b>Issue/Topic</b>	<b>Discussion</b>
<p>Next steps and Adjourn</p>	<p>Bo will reach out to Judge Day and discuss the detention issue in municipal courts.</p> <p>Bo will report to the Pretrial Task Force at its next meeting in April that the Working Group discussed the idea of exempting municipal courts or adding new language that would remove the ability of municipal courts to detain.</p> <p>Defense representatives will discuss some highlighted points in the proposal and report back to the Working Group.</p> <p>Adjourned 10:56</p>

**Next Meeting**

April 10, 2019

9:00am – 1:00pm 700 Kipling, 4<sup>th</sup> Floor Training room