

## **Pretrial Release Task Force**

### **Minutes**

May 7, 2019 2:00PM – 4:30PM  
710 Kipling, 3<sup>rd</sup> floor Meeting Room

#### **ATTENDEES:**

##### **TASK FORCE MEMBERS**

Bo Zeerip, District Attorney 21<sup>st</sup> Judicial District  
Monica Rotner, Boulder County Community Justice Services  
Greg Mauro, Denver Community Corrections  
Judge Shawn Day, Aurora Municipal Court  
Steve Chin, Mesa County Pretrial Services  
Bill Kilpatrick, Golden Police Department  
Rick Kornfeld, Defense Attorney  
Clifford Riedel, Larimer County District Attorney  
Janet Drake, Deputy, Attorney General's Office  
Valarie Finks, Victim Services, 18<sup>th</sup> Judicial District (on phone)

##### **STAFF**

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

##### **ABSENT**

Stan Hilkey, Chair, Department Public Safety  
Maureen Cain, Criminal Defense Attorney  
Lucienne Ohanian, Public Defender's Office  
Tom Raynes, Colorado District Attorneys' Council (CDAC)  
Judge Chris Bachmeyer, 1<sup>st</sup> Judicial District  
Kirk Taylor, Pueblo County Sheriff Office  
Glenn Tapia, Judicial, Probation Services

##### **ADDITIONAL ATTENDEES**

Becca Curry, American Civil Liberties Union (ACLU)  
Judge Anne Stavig, Lakewood Municipal Court  
Judge Candyce Cline, Westminster Municipal Court  
Judge Carla Sikes, Pueblo Municipal Court  
Judge Robert Frick, Longmont Municipal Court  
Amy Stephens, Dentons LLC and State Liaison for CMJA  
Judge Chris Randall, Wheat Ridge Municipal Court

<p><b>Issue/Topic:</b> Welcome and Introductions</p>	<p><b>DISCUSSION</b></p> <p>Richard Stroker, CCJJ Consultant, informed the group that Task Force Chair Stan Hilkey was planning on attending the meeting, but a situation arose that required his immediate attention. Richard welcomed the group and reviewed the agenda. Task Force members and guests introduced themselves.</p>
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<p><b>Issue/Topic:</b> Legislative Updates &amp; Recap of March Meeting</p>	<p><b>DISCUSSION</b></p> <p>Richard stated that one of the goals for today’s meeting was to discuss how the group should proceed, given the failure of House Bill 19-1226 which was based on several recommendations from the Task Force. H.B. 19-1226 was amended several times during the legislative session these past few months. Unfortunately, the bill died on the calendar at the end of the session. He asked the group what their thoughts were on this.</p> <p>Many members voiced disappointment. Cliff mentioned that when the money for pretrial services was stripped out there wasn’t much left. How can we have a preventive detention system if we do not have pretrial services statewide?</p> <p>Monica also expressed disappointment. This bill is the foundation for creating fair mechanisms to move forward, limiting money from the bail bond system.</p> <p>Bo stated that he did not think that the bill died because it was a bad idea. Funding was a huge piece of its failure, as well as strong opposition from the bail industry. This caused a filibuster that delayed progress towards the end of the session. We need to move forward, and understand lessons learned. Is there is a procedure within the Commission to look again at recommendations and reissue them?</p> <p>Richard mentioned that Stan wanted this group to move forward and bring improvements and reforms into the pretrial system. It has been discouraging, but there is an opportunity to learn from the past and to move forward.</p> <p>Richard stated that he saw a consensus within the group on a couple of matters:</p> <ol style="list-style-type: none"> <li>1. Pushing forward with pretrial services and creating improvements.</li> <li>2. Identifying monetary amounts associated with the recommendations, any fiscal implications, and how to resolve them.</li> </ol> <p>Does the Task Force have the right people around the table? Are we missing an individual or a group that would be an asset to discussions about pretrial services?</p> <p>What is the process for identifying individuals or groups to be a part of the Task Force? Stan is notified of individuals or groups that need representation, and he and the Commission’s Vice Chair, along with the chair of the task force (which, in this case, is Stan), make the final determination about task force membership.</p>
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<p><b>Issue/Topic:</b> Legislative Updates &amp; Recap of March Meeting (continued)</p>	<p>It was also mentioned that if the ACLU had questions, concerns, or suggestions, to please state them at the Task Force meetings. Ideas and concerns would be welcomed and could be openly discussed at the Task Force meetings rather than bringing them up at a legislative committee during testimony. As a group, we could work on these ideas/concerns and incorporate them into our work.</p> <p>Richard suggested to examine the recommendations and determine areas that might need some modification/revision, and possibly developing a funding strategy. The group should move forward with the next legislative timeline in mind, that is, have the Commission review recommendations by October and November in preparation for the next legislative session. We will also continue with preventive detention discussions.</p>
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<p><b>Issue/Topic:</b> Report Outs: Update from the Pretrial Release Working Group Bo Zeerip</p>	<p style="text-align: center;"><b>DISCUSSION</b></p> <p>Bo stated that last month’s meeting had been cancelled and the Working Group has not met since March. The group will meet tomorrow and once or twice more in June to work out disagreements. If the group cannot reach consensus on some areas, Bo proposed to present the proposal and the areas of disagreement to the Task Force at the June meeting.</p> <p>The Working Group is focusing on incorporating some of the languages from H.B-1226 into the pretrial preventive detention proposal. One of the items is the early release provision regarding releasing people before they see a judge; that concept was approved by this Task Force. There was concern from the ACLU and other community groups regarding the term “affected” persons to be included in the oversight process. Consequently, the following language was added: “A person or family member of an affected person...”</p> <p>The Working Group also made progress with the detention-eligible crime net. All property and fraud offenses were removed. The defense bar and the ACLU expressed concerns about including misdemeanors in the initial detention eligibility net and consequently the number of eligible crimes has been reduced. Some misdemeanors remain, such as Class I child abuse, Class I sexual assault, and domestic violence offenses. However, 3<sup>rd</sup> degree assault has been very controversial, so the group compromised and clarified these as offenses that were domestic violence incidents, instead of 3<sup>rd</sup> degree assault.</p> <p>The defense also wanted prosecutors to require a witness at the detention hearings. This has been an obstacle because of the detention charge net. Bo stated that the idea of requiring a witness at a detention hearing would be used to determine probable cause. The ACLU and defense bar were concerned about individuals being detained just on an affidavit under probable cause. They wanted a witness at the detention hearing to address the issue of a probable cause. The prosecution did not like that idea, so Bo advanced the idea that those detained would get a preliminary hearing. This will ensure that there is evidence of probable cause. Bo proposed to expand that to any person who is detained on a misdemeanor charge.</p>
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<p><b>Issue/Topic:</b> Report Outs: Update from the Pretrial Release Working Group Bo Zeerip (continued)</p> <p><b>ACTION:</b> Municipal judges would like to be included in TF and WG discussions. Judge Day will forward meeting notices.</p>	<p>A concern voiced by the ACLU and the defense bar was in regard to municipal courts. That is, many people would be detained in municipal courts for lower level misdemeanor offenses.</p> <p>In light of the issue of significant number of detention 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 the municipal courts to detain individuals.</p> <p>Representatives from the municipal courts informed the Task Force members that they would much rather be included in the proposal, with standards that would allow municipal courts to detain. They did not agree with giving all defendants PR (personal recognizance) bonds, and they commonly manage individuals with habitual FTA charges. They believe that the PR bonds are not effective in some cases. There was discussion and some disagreement about the number of municipal court cases involved and the number of jail beds available and necessary for the detention of municipal court cases. One judge mentioned that the ability to detain defendants provides individuals with the incentive to stay out of jail, and that this helps with treatment compliance. Bo reminded the group that these are individuals who are on pretrial status and have not been convicted or sentenced.</p> <p>The municipal judges asked to be included in the discussions of the Task Force and the Working Group. Judge Day agreed to forward meeting materials to municipal court judges, including meeting notices.</p>
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<p><b>Issue/Topic:</b> Report Outs: Update from Data Collection Working Group Greg Mauro</p> <p><b>ACTION:</b> The WG would like additional guidance from the TF on data elements.</p>	<p style="text-align: center;"><b>DISCUSSION</b></p> <p>Greg reported that the Data Collection Working Group (WG) held a meeting with several Task Force members, Judicial representatives, ACLU representatives, and Commission staff, to explore pretrial services data requirements outlined in H.B. 19-1226. Because the bill failed, there was concern about where we were going and the follow up meeting was cancelled.</p> <p>The WG is hoping that the Task Force will provide direction regarding pretrial data measures that would be helpful to inform the WG conversations over the next 8-10 months. House Bill 19-1297, <i>Concerning data collection from jail facilities....</i>, requires jails to report specific data to the Division of Criminal Justice. This may help our discussions, however, data collection and reporting does not happen until next winter.</p>
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<p><b>Issue/Topic:</b> Audiovisual Equipment</p> <p><b>ACTION:</b> Janet will contact John Vaught for information.</p> <p><b>ACTION:</b> Contact Legislative staff for available documents from the 2018 Jail Overcrowding Interim Committee.</p>	<p align="center"><b>DISCUSSION</b></p> <p>Richard reminded the group of the discussion on the use of audiovisual equipment, capabilities, and expansion at our last meeting. At a previous meeting, Tom Raynes mentioned H.B. 18-1131 that discusses the expansion of the use of audiovisual equipment in the courtroom. It did not pass in 2018 and he was going to explore the language and the reason it did not pass.</p> <p>Kim mentioned that she could report about the bill since Tom was not present. She stated that Kevin Ford, DCJ, listened to the recorded hearing when the bill failed. Colorado Counties Inc., (CCI) and the Municipal League supported the bill and were both present at the hearing when the bill failed. There were only three sponsors of the bill: Representative Michaelson Jenet and Senators Crowder and Fields. The conversation among the legislators during the hearing, although not documented, was that 45 out of 64 counties were already using AV systems. The bill mandated that the Public Utilities Commission would provide broadband to areas that did not have it. It was mentioned that the counties would have to buy equipment that would be an initial cost upfront but would save money in the long run without transportation costs.</p> <p>There was a discussion that Judicial could create a cash fund without a bill, but the cash fund idea was controversial. It bills did not pass because it seemed that the legislators did not think it was needed.</p> <p>Janet mentioned that she was a little concerned about this initiative because some jurisdictions around the state do not have infrastructure and funding. The president of the Colorado Bar Association, John Vaught, addressed this issue, and it received traction from the American Bar Association (ABA). Janet said she would try to meet with him to find out more about what he has learned and any suggestions he may have.</p> <p>It was suggested to contact the Legislature's 2018 Jail Overcrowding Interim Committee to possibly obtain some of their documents and studies, as well as to contact Municipalities and County Commissioners who make decisions on funding.</p>
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<p><b>Issue/Topic:</b> Next Steps &amp; Adjourn</p> <p><b>ACTION:</b> Bo will share the NJ 2018 bail reform report.</p> <p><b>ACTION:</b> Richard asked Bo to provide an overview of the WG proposal at the next meeting.</p>	<p align="center"><b>DISCUSSION</b></p> <p>Kim English announced that Task Force member Greg Mauro was appointed last week by the Governor to the Commission in an At-large position.</p> <p>Bo mentioned that he had obtained a copy of New Jersey's 2018 bail reform report that he will share with the group. He stated that that New Jersey officials continue to release about 95% of criminal defendants. Court appearance rates and public safety rates have not been affected by the 95% release rate, and the jail population decreased by 40%.</p>
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<p><b>Issue/Topic:</b> Next Steps &amp; Adjourn (continued)</p> <p><b>ACTION:</b> Becca Curry will obtain and share a Utah study of FTAs.</p> <p><b>ACTION:</b> Kim will circulate a copy of HB18-1131.</p> <p><b>ACTION:</b> Janet will contact John Vaught for information.</p>	<p>As next steps, Richard asked Bo if he would present the proposal to the Task Force next month so the group could get a better understanding of the remaining issues and concerns.</p> <p>Monica mentioned that the Data Working Group would meet and will present its ideas to the group at the next meeting.</p> <p>Becca Curry from ACLU stated there was a Utah study of FTAs. She will obtain the information and share it.</p> <p>Richard mentioned that it might be a good opportunity to circulate H.B. 18-1131 so that the Task Force could review, and asked Kim if she could find a copy and circulate it to the Task Force.</p> <p>Janet stated that she would reach out to John Vaught, as previously mentioned. He may be able to help us understand the process and what obstacles exist.</p> <p>Richard stated that the June meeting will be three hours since the group will have a lot of business to address. He thanked the Task Force members, staff, and guests for their input and time.</p>
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**Next Meeting**

June 11, 2019/ 1:30PM – 4:00PM

**NEW MEETING ROOM**

710 Kipling, 2<sup>nd</sup> floor Meeting Room