

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

**Pretrial Preventive Detention Working Group
Minutes**

May 8, 2019 9AM-11:00AM
700 Kipling, 4th Floor Training Room

ATTENDEES:

WORKING GROUP MEMBERS

Bo Zeerip, WG Leader, District Attorney 21st Judicial District
Maureen Cain, Office of the State Public Defender
Aubree Cote, Denver Pretrial Services
Janet Drake, Attorney General's Office
Bill Kilpatrick, Golden Police Department
Rick Kornfeld, Defense Attorney
Lucy Ohanian, Office of the State Public Defender
Colette Tvedt, Defense Attorney (on the phone)

STAFF

Laurence Lucero, Division of Criminal Justice

GUESTS

Becca Curry, ACLU
Elisabeth Epps, Colorado Freedom Fund
Stan Hilkey, Department of Public Safety

ABSENT

Margie Enquist, District Judge, 1st Judicial District
Tom Raynes, Colorado District Attorney's Council

Issue/Topic	Discussion
Welcome	Bo Zeerip welcomed the group and Stan Hilkey, chair of CCJJ and the Pretrial Task Force, and Bo suggested starting the meeting with comments from Stan about the legislative session that ended a few days ago.

Issue/Topic	Discussion
Update and Reactions: HB19-1226	<p>Stan apologized for having missed the Pretrial Task Force meeting yesterday as he attended another meeting with the Governor and the Attorney General to discuss various elements of this year’s legislative session. During that meeting Stan explained that, with the passage of H.B. 19-1263, which makes possession of certain controlled substances a misdemeanor rather than a felony, it is expected that there will be a substantial increase in the need for jail beds as well as more front-end services. The services would have been developed with the passage of H.B. 19-1226, however, the bill failed at the end of the session.</p> <p>Stan’s goals are to continue engaging the Governor’s Office in these efforts and prepare for next session. Stan appreciates everybody’s hard work and realizes how difficult it is to come back to the table with a feeling of defeat, but he encouraged the group to move forward and continue working on these important issues. He will engage the Commission and the Task Force to review what has been learned from this legislation session.</p> <p>Stan also received feedback about yesterday’s Task Force meeting that there was consensus from the Task Force to continue these efforts.</p> <p>The group thanked and honored Maureen Cain for her hard work during this legislative session.</p> <p>Maureen expressed concern that proceeding with a preventive detention model without the passage and implementation of H.B. 19-1226 is seriously problematic and may not be worth the effort unless there is a stakeholders’ coalition and significant political support.</p> <p>Maureen offered a detailed summary of the legislative process surrounding H.B. 19-1226 during the session.</p> <ul style="list-style-type: none"> • As the bill was introduced, there were issues with some of the sponsors in the House. After the first hearing and the testimony of ACLU, Representative Herod said that the bill is likely to die at first Committee unless the concerns about the risk assessment (tool validation and racial/ethnic & gender bias) are addressed. • In an attempt to address those concerns, Maureen arranged multiple stakeholders’ meetings and worked with CDAC, ACLU and Kim English at DCJ to introduced amendments. Maureen commended Kim English who has worked with ACLU to make sure that there was good language in the bill and that the data collected was going to produce effective results.

<p>Issue/Topic Update and Reactions: HB19-1226 (continued)</p>	<ul style="list-style-type: none"> • A few days later, the bill came out of the House with almost no money for pretrial services. Maureen negotiated with Judicial to get \$1.5 million out of the Offender Services Cash Fund and then with the Department of Corrections to get \$1 million from work release. An amendment was prepared and submitted. • In the Senate, the bill was assigned to State, Veterans, & Military Affairs. Maureen reached out to the Senate Policy’s Office to discuss potential problems and was informed that there was lobbying against the bill regarding for-profit organizations providing pretrial services. Maureen consequently drafted multiple amendments to address this issue. • Finally, another amendment was drafted to ensure that the number of people served by pretrial services should be part of the grant funding criteria. • On the last day of the session, the bill died on the calendar and Maureen believed that this was the result of the opposition from the bail bond industry that strongly lobbied against the bill. <p>Maureen expressed frustration and discouragement; she was very committed to representing CCJJ and the Pretrial Release Task Force and wanted to make sure that their efforts went forward. She felt left alone facing these challenges, especially at the end as stakeholders such as CDAC and ACLU backed out of supporting the bill.</p> <p>Janet Drake thanked Maureen for her “amazing efforts.” Janet said she learned a lot from Maureen and was impressed by her energy and impact at the Capitol. Janet believed that she owed Maureen an apology as she felt she should have been more by her side and welcomed her input on how to improve that collaboration. Janet emphasized that these efforts remain a priority for the Attorney General’s Office.</p> <p>Elizabeth Epps mentioned that she, too, was impressed by Maureen’s work and wanted to express that, while she was very skeptical of all of these efforts a year ago, she is now extremely impressed and appreciative to work with people who value her opinion. Regarding H.B. 19-1226, Elizabeth thought the bill was going to pass so her testimony at the Legislature was a way to have her voice heard. She also feels that she owed an apology and maybe should have offered better input. Elizabeth thinks that the voice of the community has been missing in this process and respectfully asked that communities be included in those discussions.</p> <p>During the legislative process, Maureen also described that:</p> <ul style="list-style-type: none"> • an amendment had been added to the bill to include a community representative on the local bail oversight groups. • there was a discussion of whether the grant money for the counties should be administered by Judicial or the Department of Public Safety.
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<p>Issue/Topic Update and Reactions: HB19-1226 (continued)</p>	<p>Becca mentioned that lots of research occurred regarding this bill, even from the point of drafting, and the ACLU agreed with the amended risk assessment language. Becca said they learned a lot during this session, especially on the risk assessment study underway at the University of Colorado in Greeley. Once the study is complete, it will be important to examine how people are evaluated and which tools are being used to measure success.</p>
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<p>Issue/Topic</p>	<p>Discussion</p>
<p>What's Next: HB19-1226</p>	<p>Maureen believed that the group must spend time talking about how to put into law some of the core presumptions for release that are in H.B.19-1226 and how to address the bail industry. The work of preventive detention represents a significant compromise on both sides and she asked whether CDAC was on board with such project.</p> <p>It is also very important to tackle the funding issue for statewide pretrial services which should be added in the proposal, and maybe engage Colorado Counties Inc. to get feedback and ideas on how to make it work.</p> <p>Bo expressed that this group was asked by the Task Force to work on a preventive detention proposal and suggested that the Working Group proceed. He thought the strategy regarding how to continue these efforts should be developed by the Task Force, perhaps even the Commission, but not the Working Group.</p> <p>One of the lessons learned is that the ACLU and community voices should be at the table and at the Task Force.</p> <p>Bo informed the group that New Jersey recently released their 2018 Criminal Justice Reform report and encouraged the group to read it. The highlights of the report are that 95% of defendants were released in 2018 under their new release/detention model which uses risk assessment. They also studied the risk assessment instrument and found that it did not produce disparate outcomes but maintained status quo. The pretrial jail population decreased 40% under the reform.</p> <p>Collette Tvedt said that New Jersey had all stakeholders invested in this reform and that the problem in Colorado is that the various stakeholders are not in agreement. It is a fractured system. Collette expressed concern about preventive detention and the crime net because communities are reporting a negative impact on poor black and brown people. In 2013, the law changed and judges still do not abide by the new law and do not apply the least restrictive condition of release; judges are still using the word "hammer" when discussing pretrial detention. What concerns Collette is that judges in the state haven't been educated on the issues related to pretrial preventive detention.</p> <p>Collette understands the need to continue working on these efforts, but is unsure how this can be done if there is no agreement on important things such</p>

<p>Issue/Topic What's Next: HB19-1226 (continued)</p>	<p>as: what crimes are included in the net? how should stakeholders be engaged before undertaking this effort? In New Jersey, the Governor and the Supreme Court were on board before passing this initiative.</p> <p>Maureen added that Judicial's Bail Blue Ribbon Commission support seems conditional on pretrial services. Is there a commitment from Judicial to an overall constitutional principle? Maureen was concerned that Judicial is not there.</p> <p>She also believed that it is very important to obtain data on the number of jail beds in the state, the number of people in pretrial detention, how many get charged with crimes in the net, and how many people get bond revoked or probation revocation? Are there enough jail beds or do we have to build more jails to complete this project?</p> <p>Bo responded that many of these questions may be more appropriate for the Task Force. This Working Group has been asked to bring a preventive detention model and Bo believes that the proposal is nearly finished. At yesterday's Pretrial Release Task Force meeting, the Task Force members said they wanted to hear about the Working Group proposal and the areas of disagreements, and will vote on those disagreements at the Task Force level. Bo noted that the Task Force is interested in re-working the recommendations that resulted in H.B. 19-1226.</p> <p>Bill Kilpatrick reminded the group that, about six months ago, they discussed slowing down the work to see what happens at the Legislature. He believed that we now need to move forward, re-address the problems, and add some of the elements of H.B. 19-1226 into this proposal.</p> <p>Maureen expressed concern that this requires a constitutional amendment and will face many challenges unless there are significant changes and a clear implementation process.</p> <p>Aubree Cote agreed with Chief Kilpatrick and believed it is very important to continue the work to propose a complete package. Aubree also believed that stakeholders are currently at the table and that opposing views should be expected. If the group works on a complete package, it is likely that stakeholders will come together. As to the issue regarding judges putting high monetary bonds on defendants, Aubree suggested including judicial officers in the discussion so they can bring their perspectives to the table.</p> <p>Janet explained that Governor Polis was not involved in the H.B. 19-1226 process as most of his efforts went to his full-day kindergarten project. But where do we go from here? CCJJ is important and carries weight at Capitol, and the Attorney General's Office is very supportive of bail reform. It is important to have Governor and Judicial support to make these changes. Janet also believed that the group needs to continue the work and push forward. What happened at the Legislature reflects progress, and it spread the word about these efforts and this is now on the Governor's radar. The Governor has</p>
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<p>Issue/Topic What's Next: HB19-1226 (continued)</p>	<p>engaged Stan Hilkey and Phil Weiser, and he now understands that these efforts should have been a bigger priority, given that jail beds will be filled with drug defendants because drug possession will soon be a misdemeanor. There is a critical need for processes that will release people on pretrial status. In conclusion, we need the Governor's Office, Judicial and the Supreme Court on board for this to happen.</p> <p>Maureen agreed and suggested discussing a plan to work with Judicial on how to educate judicial officers and how to get feedback on what the judges are doing.</p> <p>Bo suggested a straw vote on whether Working Group members are willing to continue the preventive detention proposal discussion to reach more agreement. Bo indicated that those elements of the proposal have been highlighted in the document handed out at the meeting.</p> <p>Maureen stated that the defense representatives around the table needed to meet and discuss some elements of the Working Group's proposal and also H.B. 19-1226. Maureen expressed not committing her agency to anything at this point.</p> <p><u>Risk Assessment</u></p> <p>Bill Kilpatrick asked if not CPAT (Colorado Pretrial Assessment Tool), then what? Should the release decision be left to the judges with no tool in place?</p> <p>Rick Kornfeld said that, in the Federal system, there is no risk assessment but there are statutory factors that judges must consider. The magistrate typically conducts the detention hearing, and there is a process for the district court to appeal the magistrate's decision. The culture in the Federal system is to rely on pretrial services and to release if possible. Release rates depend on the jurisdiction.</p> <p>Bo expressed that this proposal doesn't rely on risk assessment to go forward. It is possible to take the risk assessment tool language out of this proposal or use "may consider risk assessment tool" instead of "shall."</p>
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<p>Issue/Topic Next Steps & Adjourn</p>	<p style="text-align: center;">Discussion</p> <p>In summary, the following are the major points from the discussion:</p> <ul style="list-style-type: none"> • How to put into law some of the core presumptions for release and how to address the bail industry. • Funding and the funding mechanism for statewide pretrial services. • Engage Colorado Counties Inc. • ACLU and community voices at the table.
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<p>Issue/Topic Next Steps & Adjourn (continued)</p>	<ul style="list-style-type: none"> • Develop a plan to educate judicial officers on pretrial detention and get feedback on what the judges are doing. • Obtain data on number of people in pretrial detention: how many get charged with crimes in the net, how many people get bond revoked or probation revocation? • Governor’s support. <p>The working group set additional meetings to precede the June Pretrial Release Task Force meeting. Defense representatives will meet before 5/28.</p> <p>5/28 - 9:00am-12pm – 700 Kipling St. 4th Floor Training room</p> <p>6/11 - 10:00am-12pm – 710 Kipling St. 2nd Floor Meeting Room</p> <p>Maureen will recommend at the June Pretrial Release Task Force meeting that another working group be created to study issues related to Judicial that this group has not tackled.</p> <p>The meeting adjourned at 11am.</p>
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Next Meeting

May 28, 2019

9:00am – 11:00am 700 Kipling, 4th Floor Training room