

Pretrial Release Task Force

Minutes

June 11, 2019 1:30PM-4:00PM
710 Kipling, 2nd floor conference room

ATTENDEES:

TASK FORCE MEMBERS

Stan Hilkey, Chair, Department Public Safety
Chris Bachmeyer, 1st Judicial District Judge
Maureen Cain, Public Defender's Office
Steve Chin, Mesa County Pretrial Services
Judge Shawn Day, Aurora Municipal Court
Janet Drake, Deputy, Attorney General's Office
Bill Kilpatrick, Chief, Golden Police Department
Rick Kornfeld, Defense Attorney
Greg Mauro, Denver Community Corrections
Lucienne Ohanian, Public Defender's Office
Tom Raynes, Colorado District Attorneys' Council (CDAC)
Clifford Riedel, Larimer County District Attorney
Monica Rotner, Boulder County Community Justice Services
Bo Zeerip, District Attorney 21st Judicial District

ABSENT

Valarie Finks, Victim Services, 18th Judicial District
Glenn Tapia, Judicial, Probation Services
Kirk Taylor, Pueblo County Sheriff Office

STAFF

Richard Stroker, CCJJ Consultant
Kim English, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Stephané Waisanen, Division of Criminal Justice
Cooper Reveley, CDPS Legislative Liaison

GUESTS

Candyce Cline, Westminster Municipal Court Judge
Aubree Cote, Denver Pretrial
Becca Curry, ACLU
Meghan Dollar, Colorado Municipal League
Elizabeth Epps, Freedom Fund

Corin Flannigan, Lakewood Municipal Court Judge
Robert Frick, Longmont Municipal Court Judge
Anne Stavig, Lakewood Municipal Court Judge
Amy Stephens, Dentons LLC and state liaison for CMJA
Colette Tvedt, Criminal Defense Attorney

Issue/Topic:	Discussion
Welcome and Introductions	<p>Chair Stan Hilkey welcomed the group and asked everyone in attendance to introduce themselves.</p> <p>Stan asked if anyone had corrections or additions to the minutes from the May meeting. With none offered, he asked for a motion to approve the minutes from the May meeting. The minutes were unanimously approved.</p>

Issue/Topic:	Discussion
Municipal court presentation	<p>Judge Shawn Day explained that this presentation focuses on the role of municipal courts in the justice system.</p> <p>Shawn presented a PowerPoint titled, Overview: Municipal Courts. The full presentation can be found in “Materials” on the Commission website at, colorado.gov/ccjj/ccjj-cPRTF</p> <p>PRESENTATION HIGHLIGHTS</p> <ul style="list-style-type: none"> • There are more than 215 municipal courts in Colorado • Most municipal judges participate in the Colorado Municipal Judges Association (CMJA). The CMJA provides community outreach and engagement, and serves as a policy and legislative liaison resource. • Types of municipal court cases include traffic, civil infractions, municipal code violations, and criminal offenses. • Specialty courts include, among others, teen court, outreach court, wellness court and veterans court. • Municipal courts: <ul style="list-style-type: none"> ○ Are the only courts that the vast majority of community members will ever come in contact with as part of the justice system. ○ Can be described as the first line of recourse in a community when dealing with criminal behavior. ○ Especially focus resources and attention on first time offenders so as to reduce the number of repeat offenders. ○ Provide resources to address community issues such as homelessness, substance abuse, mental health, etc. ○ Reduce the workload of the district and county criminal courts. • Have a cap of 364 days in jail; this is most often used as a last resort.

<p>Issue/Topic: Municipal court presentation (continued)</p>	<p>DISCUSSION</p> <p>Shawn explained that many representatives from the municipal courts are present at the meeting today to express concern about the possible exclusion of municipal courts from the work of the Preventive Detention Working Group. He reminded the group that the Preventive Detention Working Group recently discussed the possibility of either 1) exempting entirely municipal courts from the preventive detention model, or 2) developing language that would remove the ability for municipal courts to detain individuals.</p> <p>Bill Kilpatrick recalled a statement made at the Preventive Detention Working Group that there are many municipal cases where people end up in jails. He believed that municipal courts should have the ability to detain individuals; otherwise, the result will be continued criminal involvement.</p> <p>Becca Curry clarified the discussion that occurred at the Working Group. When the Working Group discussed the definitions of “risk” and “community safety,” it was mentioned that municipal courts may have a broad definition of both terms, and the idea of exempting municipal courts from the proposal was mentioned as a possible tradeoff. Also discussed was that, in New Jersey, municipal courts are excluded from the recent bond reform and still hold people on monetary bonds.</p> <p>Representatives from the municipal courts asked to be included in future bond reform discussions by the Task Force, as municipal courts are a critical part of the justice system. Shawn agreed to forward meeting materials to the group of interested judges.</p>
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<p>Issue/Topic: Recap of May meeting Update and Reactions: H.B. 19-1226</p>	<p style="text-align: center;">Discussion</p> <p>At the May meeting, the group discussed the failure of House Bill 19-1226, <i>Concerning changes to release on bond....</i> Many members voiced disappointment and the group agreed to move forward with the following tasks:</p> <ul style="list-style-type: none"> • Consider what has been learned from the last legislative session • Revisit the Task Force/Commission recommendations and H.B.19-1226, pushing forward with expanding pretrial services statewide • Identify monetary amounts associated with recommendations • Continue the work of the Data Working Group on identifying important pretrial services data elements • Review audiovisual capabilities and the failure of H.B. 18-1131, <i>Concerning a program to facilitate conducting judicial proceedings via networking technology</i>
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<p>Issue/Topic: Update and Reactions: H.B. 19-1226 (continued)</p>	<p>Stan reported that he recently attended the Governor’s Criminal Justice Cabinet Work Group, and also a full Cabinet retreat, both with discussions regarding developing and prioritizing criminal justice issues for the coming year. In both meetings, pretrial was the first issue discussed. Stan believes that the Governor’s Office recognizes the impact of the H.B. 19-1226 failure and will support future pretrial efforts.</p> <p>Reactions to Stan’s report included:</p> <ul style="list-style-type: none"> • Tom and Cliff expressed that it would be important that the Commission and this Task Force receive a statement of support from the Governor’s Office to continue these efforts and acknowledge the work that Commission undertakes. The issues discussed are complicated and studied for many months or years by stakeholders. Commission recommendations should be given greater weight than was recently experienced during this past legislative session. • Rick echoed that a statement from the Governor’s Office would be important considering the competing efforts experienced during this legislative session. • Tom suggested inviting a representative from the Governor’s Office to attend these meetings. • The group discussed that appropriate funding for statewide pretrial services is critical. <p>Stan thanked Task Force members for their remarks and will convey the message to the Governor’s Office.</p>
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<p>Issue/Topic: Report Out: Preventive Detention Working Group</p>	<p style="text-align: center;">Discussion</p> <p>Bo Zeerip mentioned that the Preventive Detention Working Group submitted a report to the Pretrial Release Task Force and this is included in the meeting materials. The report can be found in “Materials” on the CCJJ web page at, colorado.gov/ccjj/ccjj-cPRTF.</p> <p>Report highlights:</p> <ul style="list-style-type: none"> • The Working Group was formed by the Task Force in August 2017 and convened approximately 20 meetings. The group was tasked with creating a preventive detention proposal and drafting the associated statutory language. • During the past six months the Working Group has made significant progress toward some compromises that are reflected in the final draft proposal submitted to the Task Force. However, while few in number, there are significant remaining disagreements.
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<p>Issue/Topic: Report Out: Preventive Detention Working Group (continued)</p>	<ul style="list-style-type: none"> • At the May 28 meeting, Megan Ring from the Public Defender’s Office was present to confirm that the Public Defender’s Office no longer wished to participate on the Working Group given the barriers associated with the failure of HB19-1226. • Tom, representing CDAC, then expressed a similar perspective. • There was consensus (but this was not unanimous) by the participants in the Working Group, that the preventive detention proposal had reached a point where additional progress and consensus was unlikely until some of the foundational reforms defined in HB 19-1226 were implemented. • There was also consensus within the Working Group that additional pretrial reforms are necessary. There was discussion regarding some of the possible additional reforms that might be undertaken by the Task Force, including statewide pretrial services with a dedicated funding source, but also increasing the use of summons instead of arrest, holding an initial hearing with 48 hours, and the need to gather additional data. These and other ideas will be brought to the Task Force to consider for the next legislative session. <p>In light of the municipal judges' concerns expressed today, Bo clarified that in the most recent version of the preventive detention proposal municipal courts <u>are</u> included in the secondary net - which would allow them to revoke the release of certain defendants for violation of release conditions.</p> <p>Bo said he felt privileged to have been asked to chair this Working Group and he appreciated all the participants’ hard work and dedication. The Working Group members agreed that there should be more work on additional reforms, many of which are contained in HB19-1226, before continuing with the preventive detention proposal.</p> <p>DISCUSSION <i>Does the Task Force agree to put the Preventive Detention Working Group on hold?</i></p> <ul style="list-style-type: none"> • Monica Rotner and Bill Kilpatrick expressed disappointment as preventive detention was a high priority for the Pretrial Release Task Force. She added that, from the perspective of those running pretrial services, the failure of H.B. 19-1226 doesn’t change the need to make changes to the system, but it is difficult to go forward with bond reform without preventive detention. • Bo responded that the Working Group has produced a proposal that includes some disagreements between the defense and the prosecution, and he believes that those differences should be resolved by the Task
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<p>Issue/Topic: Report Out: Preventive Detention Working Group (continued)</p> <p>ACTION The work of the Preventive Detention Working Group is tabled.</p>	<p>Force. A majority of members from the Working Group believe that the work on preventive detention should be put on hold until more fundamental work is done.</p> <ul style="list-style-type: none"> • Greg concurred that it makes strategic sense to lay the foundation for change with the elements of H.B.19-1226, and that this work will lay the groundwork for a preventive detention Constitutional amendment. However, it is very important to gain broader support from the Governor’s Office. As a former member of the Commission’s Bail Subcommittee (2011-2012; this work resulted in House Bill 13-1236, <i>Concerning pretrial release from custody</i>), Greg is concerned that, years later, the system is incomplete and still relies in large part on monetary bonds. The key to release is adopting preventive detention is identifying an appropriate detention net. • Maureen believed that proceeding with a preventive detention model without the implementation of H.B.19-1226 is not realistic because a Constitutional amendment requires 2/3 approval from the General Assembly. Funding for statewide pretrial services should be established before pursuing preventive detention. To this day, the number of judges who continue to rely on monetary bonds is stunning despite earlier reform efforts in 2013. Other discussions need to occur such as follow-up on S.B.19-191, <i>Concerning defendants’ rights regarding pretrial bond</i>, the cost of pretrial, and risk assessment. • Janet agreed that what has been experienced at this year’s legislative session requires more work and answers to prepare for next session. The results of the study conducted by UNC on the CPAT should be released next summer. There is support from the Governor’s Office for criminal justice reform. Janet shared that the Attorney General is very supportive of the work from the Commission, the Pretrial Release Task Force and its working groups. <p>In light of the discussion, Stan tabled the work of the Preventive Detention Working Group.</p>
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<p>Issue/Topic: Report Out: Data Collection Working Group</p>	<p style="text-align: center;">Discussion</p> <p>Greg Mauro reported that the Data Working Group met twice and members are Greg, Monica, Steve, Kim and Becca. The group discussed the need to collect pretrial data at three different stages of the system:</p> <ul style="list-style-type: none"> ○ In custody, ○ At initial bond settings/court appearance, ○ During the period of supervision.
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<p>Issue/Topic: Report Out: Data Collection Working Group (continued)</p>	<p>The group believes that the data points should be easily identified but the challenge will be to determine <i>how</i> to collect and <i>who</i> will collect? On behalf of the Working Group, Greg requested that Dr. Victoria Terranova from the University of Northern Colorado be invited to participate.</p> <p>DISCUSSION</p> <p>House Bill 19-1297, <i>Concerning data collection from jail facilities...</i>, mandates that the Division of Criminal Justice (DCJ) collect and compile data from jail facilities. Will the Working Group look at this data collection for pretrial population in the jails?</p> <p>The group discussed this bill and will look at the potential gaps as these relate to pretrial data points. Peg Flick is managing this project for DCJ and will join the Data Working Group.</p>
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<p>Issue/Topic: Group Discussion Work Plan/Strategy</p> <p>ACTION A review of the Commission’s recommendations and the Recs. Review/HB19-1226 Working Group is created and will report back at the next Task Force Meeting</p>	<p style="text-align: center;">Discussion</p> <p>The group discussed the following topics for future work:</p> <ul style="list-style-type: none"> ● Revisit the Commission recommendations and the amendments made to H.B. 19-1226 <p>The questions that need to be answered include the following:</p> <ul style="list-style-type: none"> ○ What would be the fiscal impact of statewide pretrial services? ○ What are the challenges for counties regarding implementing pretrial services? ○ Should risk assessment tools be used in the release decision or, alternatively, to set conditions or level of supervision? ○ Should private organizations be allowed to provide pretrial services? <p>A working group was created to revisit the Commission’s FY 2019 pretrial recommendations along with the amendments to H.B. 19-1226. The group will also estimate what would be the average cost of pretrial services. The Working Group will be co-chaired by Maureen and Greg and include Steve, Becca, Tom, Elizabeth, Glenn and Bo.</p> <ul style="list-style-type: none"> ● Judicial education and training One of the issues discussed by the Task Force is the lack of response by judges to the Commission’s 2013 bond reform efforts and the continued reliance on monetary bonds in many judicial districts. Judicial should be involved in leading the reform efforts.
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<p>Issue/Topic: Group Discussion Work Plan/Strategy (continued)</p> <p>ACTION A Judicial Considerations Working Group was created and will report back at the next Task Force meeting</p>	<p>Chris Bachmeyer suggested inviting a keynote speaker to discuss bail reform at the annual Judicial Conference.</p> <p>A Working Group was created to develop recommendations that would enhance culture change; review the implementation of H.B.13-1236, <i>Concerning pretrial release</i>; provide for judicial education; and improve judicial engagement around bail reform. Lucy will chair the Working group which consists of Rick, Monica, Chris and Shawn (or Corin Flannigan from Lakewood Municipal Court).</p> <ul style="list-style-type: none"> • Expansion of the use of audio/visual equipment in court hearings The passage of S.B. 19-191, <i>Concerning defendants’ rights regarding pretrial bond</i>, may address this issue. The bill requires that the chief judge in each judicial district develop--in conjunction with representatives from sheriffs’ offices, district attorneys’ offices, public defenders’ offices and county commissioners--a plan by November 2019 to release defendants quickly, and submit the plan to Judicial. In developing these plans, the groups must evaluate the use of new or existing audiovisual conferencing technology. The plans are likely to include cost estimates. <p>It will be necessary to bring a sheriff’s perspective to the table when discussing this topic.</p> <p>The Task Force decided to wait for the report from Judicial on S.B. 19-191 to discuss further A/V technology. The Task Force may issue a recommendation that A/V technology be available for all counties.</p> <p>Chris Bachmeyer suggested that this Task Force concentrate on the effect of H.B.19-1263, <i>Concerning changing the penalty for certain violations pursuant to the "uniform controlled substances act of 2013,"</i> which reduces most drug possession charges from a felony to a misdemeanor offense. She indicated that in the 1st Judicial District, the vast majority of people in pretrial services are there for felony drug offenses and these offenses will soon become misdemeanors. The bill becomes effective March 1, 2020. This will likely add substantially to county court dockets. Chris does not believe that pretrial services in county courts are prepared for this significant increase of caseloads.</p> <p>Maureen concurred but clarified that, under the bill, all jurisdictions have the discretion to decide whether district courts and county courts have concurrent jurisdiction over misdemeanors so those offenses could still be filed in district courts.</p>
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<p>Issue/Topic: Group Discussion Work Plan/Strategy (continued)</p> <p>ACTION See the Working Group notes in the summary to the right</p>	<p>Richard summarized the discussion today:</p> <ul style="list-style-type: none"> • <i>Preventive Detention Working Group</i> This work is tabled until additional progress is made in establishing statewide pretrial services. • <i>Data Working Group</i> This group continues. Greg stepped down as WG Leader, but will remain a member of this Working Group. As Monica co-leads this group, she will now serve as the WG Leader. • <i>Pretrial Recommendations / H.B. 19-1226 Review Working Group</i> This group was created and Maureen and Greg will be Co-Leaders. The Working Group will revisit the Commission recommendations that resulted in H.B. 19-1226, along with the amendments made to the bill, and will estimate the cost of implementing pretrial services statewide. • <i>Judicial Engagement Working Group</i> This group was re-affirmed with a new title and Lucy will serve as WG Leader. This group will discuss how to promote culture change, H.B.13-1236 implementation, judicial education and engagement regarding bail reform. (NOTE: This working group was previously titled, the “2013 Implementation WG.”) • <i>Audio/Visual Technology Working Group</i> The work on A/V Technology is on hold to consider the information from Judicial’s November 2019 report from chief judges’ plans, as mandated in H.B.19-191.
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<p>Issue/Topic: Membership</p> <p>ACTION Staff will pursue additional Task Force members</p> <p>Issue/Topic: Adjournment</p>	<p style="text-align: center;">Discussion:</p> <p>The Task Force discussed adding voices from the following systems:</p> <ul style="list-style-type: none"> ○ Judicial Department (Steve Vasconcellos?) ○ Governor’s Office ○ Kim will reach out to Sheriff Kirk Taylor and confirm his engagement. <p>The meeting adjourned at 4:00 p.m.</p>
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Next Meeting

July 9, 2019/ 1:30PM – 4:00PM
710 Kipling, 2nd floor conference room