

Pretrial Release Task Force

Minutes

August 6, 2019 1:30 PM - 4:00 PM
710 Kipling, 2nd floor Meeting Room

ATTENDEES:

TASK FORCE MEMBERS

Stan Hilkey, Task Force Chair, Department Public Safety
Chris Bachmeyer, 1st Judicial District Judge
Maureen Cain, State Public Defender's Office
Steve Chin, Pretrial Services, Mesa County
Shawn Day, Municipal Court Judge, Aurora
Janet Drake, Attorney General's Office
Valarie Finks, Victim Services, 18th Judicial District
Bill Kilpatrick, Police Department, Golden
Lucienne Ohanian, State Public Defender's Office
Sean Smith, Sheriff's Office, La Plata County
Glenn Tapia, Probation Services, Judicial Branch
Adam Zarrin, Governor's Office
Bo Zeerip, District Attorney's Office, 21st Judicial District

ABSENT

Rick Kornfeld, Private defense attorney
Greg Mauro, Denver Community Corrections
Tom Raynes, Colorado District Attorneys' Council (CDAC)
Clifford Riedel, District Attorney's Office, 8th Judicial District
Monica Rotner, Community Justice Services, Boulder County

STAFF

Richard Stroker, CCJJ Consultant
Kim English, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Damien Angel, Division of Criminal Justice

GUESTS

Cooper Reveley, CDPS
Becca Curry, ACLU
Linda Cooke, Municipal Court Judge, Boulder
Elizabeth Epps, Freedom Fund

Issue/Topic	Discussion
<p>Welcome and Introductions</p>	<p>CCJJ Consultant Richard Stroker welcomed the group and explained that Stan Hilkey would join the group following a meeting at the Governor’s Office. Richard asked everyone in attendance to introduce themselves.</p> <p>Richard welcomed new Pretrial Task Force members, Sean Smith (Sheriff, La Plata County and CCJJ member) and Adam Zarrin (Gov’s Office). Richard acknowledged the contributions and service of former Task Force member Sheriff Kirk Taylor, Pueblo County.</p> <p>Richard asked if there were corrections or additions to the minutes from the June meeting. With none offered, he entertained a motion and the June minutes were unanimously approved.</p>

Issue/Topic	Discussion
<p>June Meeting Recap Richard Stroker</p>	<p>At the June meeting, the group heard an overview of the Municipal Courts presented by Judge Day and a continued discussion of the efforts by the Task Force and its working groups in response to the failure of House Bill 19-1226.</p> <p>The Task Force has agreed on the following work plan:</p> <ul style="list-style-type: none"> • Reviewing and revising the Commission recommendations based on the amendments to H.B. 19-1226. The <i>Pretrial Recommendations/HB19-1226 Review Working Group</i> (Maureen Cain and Greg Mauro, WG Co-Leaders) was created to revisit the Commission’s FY19 pretrial recommendations and the amendments to H.B. 19-1226. The group is also tasked with estimating the average cost of pretrial services. • Improving judicial engagement. One of the issues discussed by the Task Force is the lack of response by the judges to the Commission’s 2013 bond reform efforts and the continued reliance on monetary bond in many judicial districts. The <i>Judicial Engagement Working Group</i> (Lucy Ohanian, WG Leader) was created to address these issues. • The <i>Data Working Group</i> continues. Greg stepped down as Leader but will remain a member of this Working Group. Monica Rotner will serve as the WG Leader. • The <i>Preventive Detention Working Group</i>. This work is tabled until additional progress is made to establish statewide pretrial services. • The <i>Audio/Visual Technology Working Group</i> is on hold to consider information in the November 2019 report by the Judicial Branch, pursuant to the mandate in H.B. 19-191 requiring that chief judges in each judicial district develop a plan (including technology enhancements) for quicker release of defendants.

Issue/Topic Working Group Updates	Discussion
<p>Pretrial Services Data Collection Working Group</p>	<p>Kim English reported that the Data Collection Working Group met twice and will be meeting four times before the next Task Force meeting in September.</p> <p>The group started its work by examining pretrial processes and identifying the data currently collected. The group is drafting a list of the critical information to be collected.</p> <p>It is anticipated that a recommendation may be presented at the next Task Force meeting in September.</p>

Issue/Topic Working Group Updates	Discussion
<p>Judicial Engagement Working Group</p>	<p>Judicial Engagement Working Group</p> <p>Lucy Ohanian (WG Leader) distributed a handout/update from the Working Group, which can be found on the Commission’s web site at, colorado.gov/ccjj/ccjj-cPRTF under the “Materials” tab.</p> <p>The Working Group held a meeting on June 24, 2019 with Judge Chris Bachmeyer, Judge Shawn Day, Monica Rotner, Bo Zeerip (by phone), and Lucy Ohanian.</p> <p>The meeting was held primarily to address three topics: (1) Judicial Training and Education, (2) Judicial Leadership, and (3) Evaluation Measures. At the outset, the group acknowledged that the judiciary would best lead improvement in bail practices in Colorado, but that other criminal justice actors, particularly prosecutors, have a significant role in affecting release outcomes. The group discussed the concept of “shared risk” (shared responsibility for risk-related decisions) and how pretrial services, prosecutors, and defense attorneys have an important role in improving a judge’s rate of release by sharing the “decision risk” and by providing relevant information to support that decision.</p> <p>This meeting concluded with a brief conversation about next steps. The group was unsure whether the Task Force supported further work on the issues they have raised and asked the Task Force the following clarifying questions:</p> <ul style="list-style-type: none"> • Does the Task Force support further work on this topic? • If so, what is the scope of this group’s work? • If so, what other subject matter experts should participate in this group? (for example, individuals from state judicial?) • If so, does the Task Force wish that work be focused only on the judiciary’s performance around bail practices or on other criminal justice actors, too? <p>More information is available in the handout mentioned above.</p>

<p>Issue/Topic Working Group Updates</p> <p>Judicial Engagement Working Group (continued)</p> <p>ACTION The Judicial Engagement Working Group (WG) has the support of the Task Force to continue its stated efforts and a representative from the Judicial Branch will be invited to join the WG.</p>	<p>The group discussed training and education opportunities, including the participation in the annual Judicial conferences, providing training to new judges and ongoing onsite training. Additionally, it was suggested that information sharing and training should be provided to community members and law enforcement officers.</p> <p>One of the issues previously 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.</p> <p>The group discussed Judicial’s Bail Blue Ribbon Commission and was curious whether it could operate in a leadership role to support these efforts. It is important to determine and understand why bond reform efforts from the 2013 legislation have not been implemented in many jurisdictions and to address these concerns with research and training. The absence of pretrial services in all jurisdictions represents an obstacle to pretrial reforms.</p> <p>Measures should be developed to evaluate efficiency and outcomes of pretrial services in jurisdictions.</p> <p>Task Force members supported the Working Group’s continued efforts on these topics with the goal of system reform.</p> <p>A state judicial representative will be added to the Working Group.</p>
--	---

<p>Issue/Topic Working Group Updates</p> <p>Recommendations Review / HB19-1226 Working Group</p>	<p style="text-align: center;">Discussion</p> <p>Maureen Cain (WG Co-Leader) reported that the working group is continuing its review and revisions of the FY19 Pretrial Task Force recommendations approved by CCJJ to ensure consistency with the amended elements of H.B.19-1226.</p> <p>The Working Group includes Maureen, Greg Mauro (WG Co-Leader), Glenn Tapia, Steve Chin, Tom Raynes, Bo Zeerip, Steve Vasconcellos, Becca Curry and Elisabeth Epps.</p> <p>Below are the points of consensus and areas of discussion in the Working Group:</p> <ul style="list-style-type: none"> • The language regarding risk assessment in FY19-PR01 will be revised to state that risk assessment will not be the sole factor in the release decision and that other statutory factors should be considered. Risk assessment will be used for release decisions but not conditions of pretrial supervision. • Continue to support the prior recommendations regarding the use of a pretrial bonding commissioner to authorize individuals for release without a court hearing (and prior to admission into the jail population) through administrative order (FY18-PR06).
--	---

<p style="text-align: center;">Issue/Topic Working Group Updates</p> <p style="text-align: center;">Recommendations Review / HB19-1226 Working Group (continued)</p>	<ul style="list-style-type: none"> • Expand pretrial assessment statewide to assist bond commissioners/courts in making release decisions and to avoid reliance on money bond. Include a presumption that money, as a condition of bond, must be justified by the court at a hearing. • Retain the assessment language regarding bias from H.B.19-1226. • Retain the language in H.B.19-1226 that requires data reporting of the total number of closed cases in which the person was released from custody, was supervised by the pretrial services programs and, while under supervision, did not have a failure to appear in court that was not followed up by a court appearance in that case within 30 days and 90 days. Another data point at 120 days will be added. • Regarding the issue of people missing court dates due to jail confinement, the group agreed that the person conducting the assessment in the jail should be obligated to check on pending cases, to notify the prosecutor and defense counsel of pending cases and to inform the court that the defendant confined in another county. Language in H.B.19-1226 (page 17) will be used to re-write the reporting provisions at 30 and at 90 days. • Develop a funding source to support the statewide use of risk assessment in pretrial; this will be prioritized. Risk assessment will be a county government function and shall not be contracted to for-profit or to non-profit entities. There are two funding components: 1.) Provide funding for the use of assessments and other factors provided to the court for the consideration of release, and 2.) Provide funding for jurisdictions that do not have pretrial supervision services. Maureen explained that funding for #1 would be prioritized over #2. • In regard to the discussion of the increasing use of summons. The group agreed that each jurisdiction should develop an Administrative Order in conjunction with a best practice model to guide the chief judge’s determination of detention versus release, while also providing discretion to jurisdictions. Those subject to mandatory arrest will still appear before a judge. • Funding needs shall be evaluated. Maureen asked Peg Flick at DCJ to run arrest data per county to better estimate costs. Significant funding would be allocated for FTEs and administrative costs in each county. • Limit supervision funding to only those providing services for individuals who are higher risk. • Require that there be a nexus between conditions and risk factors in the case. The current language of “least restrictive” is not effective. • Move to decriminalize bond violations, except for those related to protection orders. Fifty percent of the new crimes for people on bond are violations of bail bond conditions. If someone violates a bail bond condition, the judge can revoke the bond, which would allow the judge to issue a contempt of court order and sentence the person to jail for a maximum of 48 hours. The Working Group has not decided whether, in
--	---

<p style="text-align: center;">Issue/Topic Working Group Updates</p> <p style="text-align: center;">Recommendations Review / HB19-1226 Working Group (continued)</p>	<p>addition to protection order violations, there are other bail bond violations that would not qualify for this option.</p> <ul style="list-style-type: none"> • It was suggested to create the same procedure as above for failures to appear (FTA). The judge could issue a contempt of court order and sentence an individual for a maximum of 48 hours in jail in lieu of considering FTA as a criminal violation of bail bond conditions. • The monitoring of sobriety is still under discussion. Consider creating the opportunity for voluntary service participation in some instances rather than mandating services. • Considering the creation of a role for DCJ to evaluate and monitor pretrial release programs similar to DCJ’s similar responsibilities in community corrections. This would include setting standards and performing audits. The Working Group is continuing discussions of unethical pretrial practices. • Address data/information sharing between Judicial and DCJ. • Allow for robust hearings and the presence of counsel and victims as needed. • Considering the implementation of time limitations on conditions of release. <p>The Working Group will meet twice before the September Pretrial Release Task Force meeting.</p> <p>The group discussed risk assessment instruments at length. There was debate regarding whether the Colorado Pretrial Assessment Tool (CPAT) is predicting risk appropriately. The CPAT was not designed to establish conditions of supervision but to assess risk of flight, failure to appear and safety risk.</p> <p><i>Is there consensus on what the CPAT measures and how it is being used?</i></p> <ul style="list-style-type: none"> • Becca Curry (ACLU) stated that the ACLU would find the risk assessment tool acceptable to assess for release within twenty-four hours. • Maureen stated that the Working Group agreed with the language in H.B. 19-1226 to continue data collection and validation of the CPAT. From the defense perspective, the use of the CPAT shows positive outcomes through the release of more people. • The district attorneys agreed that validation of the CPAT should continue, that the CPAT not be the sole factor in release decisions, and that the CPAT has been validated to predict court appearance and the likelihood of committing another offense during the pretrial period. • Becca explained that the ACLU would challenge the CPAT as long as it includes prediction of low-level offenses and suggested removing low-level offenses. • Chief Kilpatrick argued that the definition of low-level offenses is challenging as communities are often impacted by low-level offenses.
--	--

<p>Issue/Topic Working Group Updates</p> <p>Recommendations Review / HB19-1226 Working Group (continued)</p> <p>ACTION: Maureen will acquire and share data on violations of bail bond conditions.</p>	<ul style="list-style-type: none"> • Kim English regularly discusses the validation of the CPAT with researchers at the University of Northern Colorado and will report the ACLU concerns about the tool predicting minor crimes. She believed that an analytical solution could be found. <p><i>Do bonding commissioners use factors beyond those in the CPAT?</i></p> <p>One of the recommendations approved by CCJJ and included in House Bill 19-1226 required that each judicial district develop an Administrative Order (AO) to establish standards consistent with national research. The AO would provide bonding commissioners with the release factors and criteria to use and, with these elements in place, would grant them the authority to release on a Personal Recognition (PR) bond.</p> <p>The group discussed data about violations of bail bond conditions and Maureen will share the data with the Task Force.</p>
---	--

<p>Issue/Topic: Next Steps and Adjourn</p>	<p style="text-align: center;">Discussion</p> <p>Because several members from the Task Force have conflicts with the date of the September meeting, the Task Force meeting will be rescheduled.</p> <p>The meeting adjourned at 4:00 pm</p> <p>Addendum: A new meeting notice was distributed to the Pretrial Release Task Force members on 8/7/19. The Pretrial Release Task Force meeting was rescheduled. Please note change of time, date, and location!</p> <p>Friday, September 13, 2019, 9:30am-12:00pm Lookout Mountain Room, Jefferson County Government Center, 100 Jefferson County Parkway, Golden, 80419</p> <p>Use the elevator or stairs to the left of the central atrium to travel to the Lower Level (basement). From the elevator, the meeting room is to the left. From the stairwell, the meeting room is a "U-turn" to the right.</p>
---	--

Next Meeting

See note above!

Friday, September 13, 2019/ 9:30AM – 12:00PM
 Lookout Mountain Room, Jefferson County Government Center
 100 Jefferson County Parkway, Golden 80419