

Pretrial Release Task Force

Minutes

October 8, 2019, 1:30-4:00pm
2nd Floor Meeting Room, 710 Kipling St., Lakewood CO 80215

ATTENDEES:

TASK FORCE MEMBERS

Richard Stroker, ACTING CHAIR, CCJJ Consultant
Chris Bachmeyer, 1st Judicial District Judge
Maureen Cain, Public Defender's Office
Steve Chin, Mesa County Pretrial Services
Shawn Day, Aurora Municipal Court Judge
Janet Drake, Attorney General's Office
Valarie Finks, Victim Services, 18th Judicial District
Rick Kornfeld, Defense Attorney
Greg Mauro, Denver Community Corrections
Tom Raynes, Colorado District Attorneys' Council (CDAC)
Monica Rotner, Boulder County Community Justice Services
Sean Smith, La Plata County Sheriff's Office
Glenn Tapia, Judicial, Probation Services
Adam Zarrin, Governor's Office
Bo Zeerip, 21st Judicial District Attorney's Office

ABSENT

Stan Hilkey, Chair, Department Public Safety
Bill Kilpatrick, Golden Police Department
Lucienne Ohanian, State Public Defender's Office
Clifford Riedel, Larimer County District Attorney

STAFF

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

GUESTS

Becca Curry, ACLU
Joe Thome, DCJ
Rebecca Wallace, ACLU

Issue/Topic:	Discussion
<p>Welcome and Introductions</p>	<p>Consultant Richard Stroker welcomed the group and explained that Stan Hilkey was unable to attend the meeting due to a scheduling conflict. He asked everyone in attendance to introduce themselves.</p> <p>Richard asked if anyone had corrections or additions to the minutes from the September meeting. With none offered, he asked for a motion to approve the minutes from the September meeting. The minutes were unanimously approved.</p>

Issue/Topic:	Discussion
<p>Report Out: Data Collection Working Group</p> <p>Final recommendations presentation and Vote</p>	<p>Monica Rotner directed the group to the draft of two recommendations from the Data Collection Working Group. These recommendations were presented in preliminary form at the Task Force meeting in September.</p> <p>The recommendations include the revisions made at the Task Force meeting in September; more specific language about the definition of the data advisory group; the development of training, technical support and software; and additional data elements added to the addendum.</p> <p>The group discussed the recommendation and made revisions to the language noted in BOLD CAPS below.</p> <p>Recommendation FY20-PR#01 – Implement Pretrial Measurement and Data Requirements [Policy]</p> <p>Local pretrial service programs, State Court Administrators’ Office and other data repository entities must gather and submit specific, case and/or person level data elements to the Division of Criminal Justice annually. These data must include distinct performance and outcome measures (detailed data elements in the addendum). THE DIVISION OF CRIMINAL JUSTICE IN CONSULTATION WITH A statutorily CREATED statewide pretrial data advisory group WILL establishes the required data elements.</p> <ul style="list-style-type: none"> • The Division of Criminal Justice is the central repository for all pretrial services data required by this recommendation. This is to support consistency in measurement of all pretrial programs across the state. • Distinct categories for outcome and performance measures have been identified for this recommendation: <ul style="list-style-type: none"> ○ Arrest; ○ Initial bond period, including assessment, bond recommendations, bond ordered, and jail pretrial data; ○ Jail pretrial population data and sentencing outcomes; ○ Supervision related outcomes.

<p style="text-align: center;">Issue/Topic: Report Out: Data Collection Working Group</p> <p style="text-align: center;">Final recommendations presentation and Vote (continued)</p>	<p>Recommend that the current statutory pretrial reporting requirement language in §16-4-106 be replaced to concur with this recommendation (see Proposed Statutory Language below). This will include:</p> <ul style="list-style-type: none"> ○ Removing specific data elements from §16-4-106 to be replaced with recommendations from the statewide pretrial data advisory group made to the DCJ office responsible for implementation of the defined data requirements. ○ Replacing State Court Administrators’ Office as the reporting body with the Division of Criminal Justice. ○ Creating a statewide pretrial data advisory group staffed by the Division of Criminal Justice. ○ Data reporting will be annual, consistent with current language in statute §16-4-106. <p><u>Proposed Statutory Language</u> Amend C.R.S., §16-4-106 (6) and (7). Pretrial services programs. <i>[Note: Bold indicates any changes to the statutory language.]</i></p> <p>§16-4-106 (6) Commencing JULY 1, 2020, each pretrial services program established pursuant to this section shall provide an annual report to the DIVISION OF CRIMINAL JUSTICE judicial department no later than November 1 of each year, regardless of whether the program existed prior to May 31, 1991. THE ANNUAL REPORT FROM PRETRIAL SERVICES PROGRAMS SHALL INCLUDE THE DATA AND INFORMATION REQUIRED BY THE DIVISION OF CRIMINAL JUSTICE. Notwithstanding section 24-1-136(11)(a)(I), the DIVISION OF CRIMINAL JUSTICE judicial department shall present an annual combined report to the house and senate judiciary committees of the house of representatives and the senate, or any successor committees, of the general assembly. The report to the judicial department must include, but is not limited to, the following information:</p> <ul style="list-style-type: none"> (a) The total number of pretrial assessments performed by the program and submitted to the court; (b) The total number of closed cases by the program in which the person was released from custody and supervised by the program; (c) The total number of closed cases in which the person was released from custody, was supervised by the program, and, while under supervision, appeared for all scheduled court appearances on the case; (d) The total number of closed cases in which the person was released from custody, was supervised by the program, and was not charged with a new criminal offense that was alleged to have occurred while under supervision and that carried the possibility of a sentence to jail or imprisonment; (e) The total number of closed cases in which the person was released from custody and was supervised by the program,
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Issue/Topic:	Discussion
<p>Report out: Recommendations Review / HB19-1226 Working Group</p> <p>Preliminary recommendations presentation</p>	<p>Maureen Cain directed the Task Force to the materials included in the meeting packet including draft recommendations from the <i>Recommendations Review/HB19-1226 Working Group</i>.</p> <p>She explained that the document contains highlighted points (in underlined bold) that didn't reach consensus at the Working Group for the Task Force to discuss. These points are noted in the recommendations below.</p> <p>Tom Raynes recommended that all recommendations included in this packet should be voted on and adopted as a whole.</p> <p>A language revision was suggested (in BOLD CAPS) in the recommendation below and Maureen will update the document.</p> <p>Recommendation FY20-#03. Require a Pretrial Risk Assessment Instrument that will assist the court in release decisions for felony, misdemeanor and traffic level offenses that do not qualify for a mandatory summons [Statutory]</p> <p>Amend Section 16-4-103 (3) (b) to require that a pretrial risk assessment instrument shall be available and utilized BY STATE judicial officers in all counties throughout Colorado for the purpose of assisting in release decisions for felony, misdemeanor and traffic cases when the offense charged does not meet the requirement for a mandatory summons. The court shall not use the results of any such instrument as the sole basis for determining release or detention. Other criteria shall be considered, including those circumstances contained in Section 16-4-103(5). The results of a risk assessment provided to the court must include the risk category of the defendant along with the predicted success rates for each risk category. The effective date of this section February 1, 2021.</p> <p>Maureen indicated that this recommendation is similar to last year's recommendation and that language referring to pretrial risk assessment instruments has been designed to assist in release decision and not to establish conditions of supervision.</p> <p>The group discussed the Colorado Pretrial Assessment Tool (CPAT). Kim English will reach out to the University of Northern Colorado and determine whether there are CPAT elements that measure expected success of individuals on pretrial. Kim will report back to the group.</p> <p>The group was directed to the next recommendation.</p>

<p>Issue/Topic: Report out: Recommendations Review / HB19-1226 Working Group</p> <p>Preliminary recommendations presentation (continued)</p>	<p>Revisions were suggested (in BOLD CAPS) in the recommendation below and Maureen will update the document. This recommendation contains highlighted points (in <u>underlined bold</u>) that didn't reach consensus at the Working Group for the Task Force to discuss. <i>[Note: The <u>pending language</u> is maintained as pending in the recommendation draft below because the Task Force did not make a decision regarding its inclusion or exclusion.]</i></p> <p>FY20-#04. Criteria for the use of Pretrial Risk Assessment Instrument and data collection for validation and impact of an instrument. [Statutory]</p> <p>Any pretrial risk assessment instrument used in Colorado shall meet the following criteria:</p> <ul style="list-style-type: none"> • By December 2020, the Division of Criminal Justice (DCJ) shall compile an inventory of approved risk assessment instruments available and authorized for use in Colorado. Any instrument authorized and approved by DCJ must be empirically developed and validated. • By December 2021, any risk assessment instrument approved for use must have been evaluated and validated in Colorado to maximize accuracy and to statistically minimize bias of race, ethnicity and gender. • BY FEBRUARY 2022, the outcomes of the bond setting process, including the type of bond set, the amount of any secured monetary condition of bond, and any other conditions of release on bond must be evaluated for bias on the basis of race, ethnicity, and gender by judicial district. • The evaluations for bias based on race, ethnicity and gender must be conducted by DCJ or a non-profit research organization. • Any approved risk assessment instrument must be re-evaluated for accuracy and for bias a described above every three years. These evaluations shall, at a minimum, consider release rates, release conditions, technical violations or revocations and performance by race, ethnicity and gender to monitor disparate impact within the system • DCJ, as part of their SMART Act hearing, shall present the findings of any study conducted to evaluate the risk assessment instrument for bias and efforts to reduce any identified bias • The Judicial Department and the Department of Public Safety shall cooperate to develop and agree upon statistical, information sharing and reporting methodologies to be used to allow for the data collection and evaluations required pursuant to the provisions of this section. • Beginning January 1, 2024, any risk assessment instrument approved for use must provide pretrial decisions-makers separate risk category information for each of the pretrial risks identified in section 16-4-104(1)(a)(I). • In order to evaluate the instrument for bias and proper measurement of risk factors, beginning in December 2020, each
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<p>Issue/Topic: Report out: Recommendations Review / HB19-1226 Working Group</p> <p>Preliminary recommendations presentation (continued)</p>	<p>jurisdiction shall collect all relevant data as requested by DCJ. The data must, at a minimum, include the following information for each person assessed:</p> <ul style="list-style-type: none"> ○ Race, ethnicity and gender, ○ The pretrial risk category, ○ Scores assigned to each underlying variable used by a risk assessment instrument, ○ The total risk assessment instrument score, ○ Any recommendation made by a structured decision-making instrument, if available, ○ Whether the recommendation of the structured decision-making instrument was followed by the court, if available, ○ The bond type set by the court, ○ The conditions of bond set by the court, which must include, but is not limited to, the monetary condition imposed, ○ If the defendant failed to appear for court while on pretrial release, whether the defendant subsequently appeared in the case within 30 days, ninety days and one hundred twenty days, AND TO THE EXTENT INFORMATION IS AVAILABLE, whether the appearance was voluntary, through arrest on a warrant on the case, or arrest on for another criminal case, ○ The pretrial supervision outcome, ○ <u>Bond revocations, if any,</u> ○ The results of any additional assessments used in order to provide additional information to the court. <p>DCJ shall provide technical assistance to local pretrial services program stakeholders to include training, education, informational materials and tools to track outcomes and fidelity to best practices. DCJ shall also collect, analyze, and report centralized data to identify pretrial services trends and outcomes throughout the state.</p> <p>The group discussed the availability of data related to conditions of release and deadlines to evaluate the outcomes of the bond setting process.</p> <p>The group was directed to the next recommendation.</p> <p>This recommendation contains highlighted points (in <u>underlined bold</u>) that didn't reach consensus at the Working Group for the Task Force to discuss. <i>[Note: The <u>pending language</u> is maintained as pending in the recommendation draft below because the Task Force did not make a decision regarding its inclusion or exclusion.]</i></p> <p>FY20-PR#05. Expand pretrial services statewide and provide state resources for certain assessment and supervision costs with the priority given to assessment costs [Statutory] Amend Section 16-4-106 such that pretrial services shall exist in all counties in Colorado and the Colorado General Assembly shall create a</p>
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<p>Issue/Topic Report out: Recommendations Review / HB19-1226 Working Group</p> <p>Preliminary recommendations presentation (continued)</p>	<p>pretrial services cash fund that consists of any money appropriated by the General Assembly to the fund and any money received through gifts, grants or donations. The pretrial services cash fund shall be operated by DCJ and allocation of funds to counties shall be accomplished by the Division in accordance with the priorities as outlined below. The money in the fund shall be subject to annual appropriation by the General Assembly for implementation of the provisions of Title 16 Article 4. The money in the fund must be used to fund individual counties or counties working in cooperation with each other that request funds to operate or assist in the operation of a pretrial services program as required by Section 16-4-106(1) and to fund the necessary program services required by this section to be conducted by DCJ.</p> <p>Money may be used by counties for the administrative and personnel costs related to the operation of a pretrial service program and any adjunct services including, but not limited to, program development, assessment services, supervision services, monitoring and contract services when appropriate.</p> <p>Funding priorities for pretrial services programs shall be as follows:</p> <p>Assessment services allowing for the release of arrestees and the program development for these assessment services. Program development shall include the collection of data as required by the provisions of recommendation FY20-PR#04. Assessments services shall be funded pursuant to formula that estimates the average amount of time for an individual assessment/court time and an average cost to that time. No county shall be funded in excess of two FTEs for assessment. Assessment dollars shall be provided based on the county numbers or judicial district numbers whichever is more practicable and cost-effective as determined by DCJ. <u>No assessment services shall be provided by any non-profit program and county /judicial district provided services are preferred.</u> No costs of assessment shall be assessed against any defendant.</p> <p>Supervision services for the higher risk offenders that require supervision. Supervision services shall conform to the recommendations in FY20-PR#08. No county shall be funded in excess of 1 FTE for supervision and the costs of supervision including the costs of any compliance with any term and condition of supervision shall not be charged to any defendant OR who has qualified for court-appointed counsel and OR any costs of supervision shall only be assessed upon conviction.</p> <p>Maureen engaged the Task Force in a discussion of for-profit entities. The group agreed that, given that costs of supervision will not be charged to defendants, for-profit entities should be allowed to provide supervision services.</p>
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Issue/Topic:	Discussion
<p data-bbox="183 212 467 243">Next Steps and Adjourn</p> <p data-bbox="272 352 378 384">ACTION:</p> <p data-bbox="123 390 527 527">Kim will reach out to Victoria Terranova at UNC to discuss CPAT and data elements to measure success.</p> <p data-bbox="144 569 506 636">Maureen will update the preliminary recommendations</p> <p data-bbox="139 674 511 741">A new meeting is scheduled on 10/22/19 at 8:30-5pm</p>	<p data-bbox="565 243 1502 443">The group discussed timelines to present the preliminary recommendations to the Commission by December 2019. In order to allocate more time for the review of the recommendations by the Task Force, an all-day meeting was scheduled on October 22, 2019, from 8:30am-5pm at 700 Kipling St., 4th Floor Training Room, Lakewood CO.</p> <p data-bbox="565 491 1516 558">Furthermore, the Task Force meetings on November 7 and December 10 will be extended to start at 12pm instead of 1:30pm.</p> <p data-bbox="565 615 1459 726">Greg Mauro thanked the members of the Working Group and especially Bo Zeerip who has stepped in while Greg was unable to attend and chair the Working Group meetings.</p> <p data-bbox="565 779 932 810">Meeting adjourned at 4:00 pm</p>

Next Meeting

Tuesday, October 22, 2019/ 8:30AM – 5:00PM
 700 Kipling St., 4th Floor Training Room
 Lakewood, CO 80215