

Pretrial Release Task Force

Minutes

February 11, 2020 / 1:30 PM - 3:00 PM
2nd Floor Meeting Room, 710 Kipling St., Lakewood CO 80215

ATTENDEES:

TASK FORCE MEMBERS

Stan Hilkey, TF Chair, Department of Public Safety
Chris Bachmeyer, Judge, 1st Judicial District
Steve Chin, Mesa County Pretrial Services
Shawn Day, Judge, Aurora Municipal Court
Valarie Finks, Victim Services, 18th Judicial District
Rick Kornfeld, Private Defense Attorney
Greg Mauro, Denver Community Corrections
Clifford Riedel, Larimer County District Attorney
Monica Rotner, Boulder County Community Justice Services
Sean Smith, La Plata County Sheriff's Office
Glenn Tapia, Division of Probation Services, Judicial Branch
Anne Tapp, Safehouse Alliance for Nonviolence
Adam Zarrin, Governor's Office
Bo Zeerip, 21st Judicial District Attorney's Office

ABSENT

Maureen Cain, Office of the State Public Defender
Janet Drake, Attorney General's Office
Bill Kilpatrick, Golden Police Department
Lucienne Ohanian, Office of the State Public Defender
Tom Raynes, Colorado District Attorneys' Council (CDAC)

STAFF

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

Issue/Topic	Discussion
<p>Welcome & Agenda Stan Hilkey, Task Force Chair</p>	<p>Stan Hilkey welcomed the group and explained that the purpose of the meeting was to discuss recent developments and strategy related to the introduction of Senate Bill 2020-161 (<i>Pretrial Release</i>) that was derived from CCJJ/Task Force Recommendation FY20-PR#03 (<i>Implement Bail Bond Reform</i>). The bill was scheduled for a hearing on February 24, 2020 at 1:30 pm by the Senate Judiciary Committee (<i>date confirmed after the meeting</i>).</p> <p>Stan Hilkey reported that the CCJJ Legislative Subcommittee had been “activated” to track Commission-related bills for the 2020 Legislative Session. Commission members approved the appointment of Judge Shawn Day to fill a vacancy on the CCJJ Legislative Subcommittee at the January meeting. Also, Maureen Cain was approved to occupy an <i>ex officio</i> position on the Subcommittee during the session, given her vital work on Recommendation FY20-PR#03 and her assistance with the drafting of S.B. 20-161.</p>

Issue/Topic	Discussion
<p>Legislative Updates & Group Discussion Stan Hilkey, All</p>	<p>Stan Hilkey initiated a discussion of member awareness of any challenges to the bill and solicited strategies to support the bill during the legislative session.</p> <p>Challenges</p> <ul style="list-style-type: none"> • Stan Hilkey described that the Pretrial Justice Institute (PJI; pretrial.org) and the MacArthur Foundation (macfound.org) recently released position statements withdrawing or diminishing support for the use of pretrial risk assessment tools. Stan discussed these statements with Maureen Cain and Tom Raynes who agreed that Colorado is in a stronger position, given the research and evaluation of the Colorado Pretrial Assessment Tool (CPAT) by the University of Northern Colorado. [<i>Note: Alternatively, the National Association of Pretrial Services Agencies has augmented its support for pretrial risk assessments in its newly released, <u>2020 Standards on Pretrial Release</u>.</i>] • As expected, there is opposition from the bail bond industry. An article recently published by the American Bail Coalition (ABC) cites the recent PJI position in the ABC statement of opposition. • Some in the pretrial community have expressed concern around these statements of opposition to risk assessment and anxiety that they do not provide viable alternative methods to use in pretrial decision-making. In the absence of risk assessment tools, decision-making is exclusively discretionary, which can increase the likelihood of bias influencing decisions. • Monica Rotner mentioned that there is resistance from some in the Judicial branch and sheriff’s offices who believe that the bill results in unfunded mandates that will affect their work processes. Monica Rotner felt that the funding concerns are also attributable to the 48-hour

<p style="text-align: center;">Issue/Topic Legislative Updates & Group Discussion Stan Hilkey, All (continued)</p>	<p>detention hearing bill (Senate Bill 2020-172). She has attempted to address these perceptions by describing the \$5M in funding the Governor’s Office committed to support the pretrial bill.</p> <ul style="list-style-type: none"> • Monica also mentioned an email circulating within the Judicial community regarding negative impacts of the pretrial bill. Chris Bachmeyer explained that the specific concerns derive from changes that affect speedy trial provisions and appeal and reconsideration processes. <ul style="list-style-type: none"> ○ Specifically in Section 9 of the bill, <i>The Court shall give scheduling precedence to a defendant who is unable to post a monetary condition of bond for purposes of litigated hearings and trials subject to provision of the section 18-3-411(4) and 18-1-405 [Proposed revision to §16-4-107, C.R.S].</i> Judges are concerned that this will lead to speedy trial issues requiring more judges and courtrooms. ○ Referring to Sections 2, 10 and 11 of the bill, there is concern for a potential reconsideration and appellate workload increase related to the speed at which court decisions must be made under the bill. Also, more defendants who are detained, rather than released, may file an appeal of the bond decision resulting in higher court demands. <p>Support & Strategies</p> <ul style="list-style-type: none"> • There was some concern regarding the continued support from Colorado American Civil Liberties Union (ACLU) relative to the PJI and MacArthur positions mentioned previously. Bo Zeerip believed that the ACLU still supports S.B. 20-161 based on their statements at Task Force meetings and concurrence with modifications made to the recommendation regarding the narrow use of risk assessment in pretrial services. • Dr. Terranova from the University of Northern Colorado will be invited to testify on the CTAP at the bill hearing. • Members considered other individuals who might testify as subject matters experts regarding the advantages of validated risk assessment for use in pretrial decisions. • A possible strategy is to provide data from those jurisdictions currently using assessment tools (Denver, Mesa or Boulder) that clearly show that, across all race and ethnicity, the rate of unsecured (non-monetary) bonds is significantly higher than when assessment tools are not used. • The Task Force returned to the discussion of risk assessment tools and, while acknowledging that there may be some bias in the tools, there are still strong arguments for their use. <ul style="list-style-type: none"> ○ Research shows that the level of bias is higher when no tool is used. ○ A larger proportion of individuals receive personal recognizance bonds when risk assessment is a part of the pretrial decision process. ○ In New Jersey where risk assessment is utilized, the raw number of those detained was reduced dramatically and this applied to all demographic categories.
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<p style="text-align: center;">Issue/Topic Legislative Updates & Group Discussion Stan Hilkey, All (continued)</p>	<ul style="list-style-type: none"> ○ The data collection requirements in the bill provides an opportunity for ongoing analysis to improve risk assessment tools. ○ While acknowledging the bias in risk assessment tools, within a structured approach, one can gather data with the goal to mitigate bias over time. Otherwise, bias remains hidden in the landscape of discretionary decision-making. ● Joe Thome and Kim English referred to and commented on recent research and statements from Arnold Ventures (AV). <ul style="list-style-type: none"> ○ Joe and Kim referred to recent research sponsored and reported by AV: <i>Evaluation of Pretrial Justice System Reforms that Use the Public Safety Assessment: Effects of New Jersey’s Criminal Justice Reform</i> (2019; Manpower Demonstration Research Corporation; mdrc.org) and <i>Beyond the Algorithm: Pretrial Reform, Risk Assessment, and Racial Fairness</i> (2019; Center for Court Innovation; courtinnovation.org). ○ The AV <i>Statement of Principles on Pretrial Justice and Use of Pretrial Risk Assessment</i> notes, in summary, that, “...validated and evidence-based pretrial risk assessment can support more objective and consistent judicial decision-making about pretrial release conditions - but is only one among a variety of pretrial justice reforms jurisdictions should adopt.” (arnoldventures.org) ○ The Center for Court Innovation evaluated the Arnold tool (<i>Public Safety Assessment</i>; psapretrial.org) in a number of scenarios to determine whether it mitigated racial bias and reduced the rate of confinement. Joe offered a summary of this statement on the AV website: “The Center’s study came to these key conclusions: <ul style="list-style-type: none"> ▪ Business-as-usual approaches to pretrial decision making often fall short of accurately assessing risk and reducing unnecessary pretrial detention. ▪ By offering judges additional information, risk assessment can improve subjective decision making. But concerns over risk assessments perpetuating racial disparities are real - even when the assessment itself is deemed to be free of bias, criminal justice data itself is biased. ▪ However, even given these concerns, a more targeted use of risk assessments shows the potential for both significantly reducing pretrial detention and alleviating racial disparities.” (arnoldventures.org/newsroom/risk-assessments-when-paired-with-appropriate-policies-can-contribute-significantly-to-pretrial-reform) ○ When judges made decisions based primarily on the seriousness of the charges combined with risk assessment, dramatically fewer people would go to jail and the rate of racially disparate false positives would almost disappear. ○ Pretrial decisions without risk assessment result in over-confinement and greater racial bias in decision making.
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<p style="text-align: center;">Issue/Topic Legislative Updates & Group Discussion Stan Hilkey, All (continued)</p>	<ul style="list-style-type: none"> • Richard Stoker offered that: <ul style="list-style-type: none"> ○ The use of assessment tools has helped create a more objective approach to decision-making and a better way to evaluate decisions. A structured approach that includes assessment tools enables an understanding of the impact of one’s decisions and the collection of data to improve decision tools and decision-making. ○ PJI does not describe alternatives to the risk assessment process and seems only to emphasize presumptive release. ○ The common goal of decision makers at pretrial or parole release is to make objective decisions that are fair. The use of assessment tools has helped established that degree of fairness. Fairness in decisions can be further improved with the use of tools that allow collection and analysis of data. ○ This is the intent of the Task Force: to develop a more objective decision-making process that creates a mechanism to study and improve decisions and to provide feedback on the impact of decisions. • Judge Bachmeyer noted that a structured approach that includes risk assessment among a set of decision factors provides a level of consistency in decisions, especially in ambiguous decision circumstances. • Steve Chin felt that, based on the bill last year (H.B.19-1226) and the recent statements by the America Bail Coalition, counterarguments can be prepared in advance. He forwarded an email from Dr. Mike Jones (originator of the CTAP) with additional points that address the PJI position statement. • The recommendation/bill provides ways to improve the problems with the pretrial system, whereas the opposition argument is simply to maintain the status quo and ignore those problems. <p>Bill Elements and Other Matters</p> <ul style="list-style-type: none"> • Shawn Day asked about the mandated training and teleJustice components of the recommendation (Element 3.11 and 3.13 of FY20-PR#03) that were excluded from S.B. 20-161. Stan Hilkey believed those elements will be introduced separately and will follow up with Maureen Cain for an update. • Members asked whether there were other bills within the pretrial “sphere.” One will address a failure-to-appear grace period (<i>Note: House Bill 2020-1123, was subsequently introduced and was postponed indefinitely</i>) and the other, as mentioned above, addresses the 48-hour hearing requirement (S.B. 20-172).
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Issue/Topic	Discussion
<p>Next Steps & Adjourn Stan Hilkey, Task Force Chair</p>	<p>Data from Denver, Boulder and Mesa will be gathered showing the significant increase of PR bonds when using risk assessment tools.</p> <p>Stan invited Task Force members and stakeholders to testify at the Judiciary hearing. Members discussed those who might testify and how to track the exact hearing date and time.</p> <p>The meeting was adjourned at 2:40 pm.</p>

Next Meeting

TENTATIVE: March 10, 2020
 2nd Floor Meeting Room
 710 Kipling St., Lakewood, CO 80215