



Colorado Commission on Criminal and Juvenile Justice

Minutes

November 9, 2018

Jefferson County Department of Human Services
 900 Jefferson County Parkway
 Golden, CO 80401

Commission Member Attendance

Stan Hilkey, Chair	Nancy Jackson	Cliff Riedel
Joe Thome, Interim Vice Chair	Jessica Jones	Megan Ring
Chris Bachmeyer	Daniel Kagan - ABSENT	Rose Rodriguez
Jennifer Bradford	Bill Kilpatrick	Glenn Tapia
John Cooke - ABSENT	Rick Kornfeld	Anne Tapp
Cindy Cotten	Cynthia Kowert	Abigail Tucker
Shawn Day	Andrew Matson	Joe Salazar - ABSENT
Valarie Finks	Joe Pelle	Lang Sias - ABSENT
Tony Gherardini - ABSENT	Rick Raemisch	Jennifer Stith
Kristen Hilkey	Tom Raynes	Karen Wilmes – ABSENT

Substitutions:

CALL TO ORDER AND OPENING REMARKS

Stan Hilkey, Chair and Executive Director of the Department of Public Safety

Mr. Stan Hilkey, Chair of the Commission and Executive Director of the Department of Public Safety, called the meeting to order at 1:04 pm. He noted that Joe Thome is serving as the interim Vice-chair during the timeframe between the recent election and into early 2019. This will give the new incoming Governor time to make Executive Director appointments, which may affect Commission membership and therefore the permanent Vice-chair position. Mr. Hilkey asked Commissioners to introduce themselves, reviewed the agenda, and asked for any additions or corrections to the October minutes. Seeing none, he asked for a motion to approve the minutes. A motion was made and seconded and the minutes were unanimously accepted by Commissioners.

MONEY BOND AND PRETRIAL RELEASE: THE NATIONAL LANDSCAPE, LEGAL ANALYSIS AND SUPREME COURT CASES

Bo Zeerip, Mesa County District Attorney’s Office

Chair Hilkey introduced Bo Zeerip of the Mesa County District Attorney’s Office and explained that Mr. Zeerip is a member of the Pretrial Release Task Force, which will be presenting four recommendations to the Commission later today. The presentation by Mr. Zeerip is part of an ongoing effort to frame the context of the work of the Task Force.

Mr. Zeerip explained that his work in the field of pretrial justice began eight years ago when the National Institute of Corrections chose Mesa County as one of seven jurisdictions in the nation to participate in a grant-funded project focused on evidence-based decision making. During that project Mesa County centered its efforts on their pretrial system, resulting in dramatic changes. Mr. Zeerip added that as a result of his work he has been asked to speak in numerous states on the issues of bail, bond and pretrial reform. He also noted that his presentation contains a fair amount of data and statistics and asked Commissioners to feel free to ask questions today and/or in the future for more detail. Mr. Zeerip began a PowerPoint presentation, the full content of which can be found on the Commission website at, colorado.gov/ccjj. Discussion points following the presentation follow.

DISCUSSION

A question was asked about the budget for the preventive detention program in Washington, D.C. Mr. Zeerip replied that he does not have exact numbers but that Washington, D.C. has a well-funded and very large pretrial services agency. Judge Shawn Day shared that he believes the budget is somewhere in the vicinity of \$60M. Mr. Zeerip added that the funding of pretrial services and the success of pretrial services programs are interconnected.

A question was asked about the availability of pretrial services in Colorado. Mr. Zeerip replied that 82% of defendants are covered by pretrial services, and that 14 counties actually have pretrial services in Colorado. A question was asked about the reason behind the resistance to bail/bond reform in the United States. Mr. Zeerip replied there was a pendulum swing for reform in the 1950's and 1960's followed by a swing the opposite direction in the later part of the 20th century. The country is now seeing another swing toward reform. He added that the bail/bondsmen industry also has a vast sum of money to put toward lobbying efforts and a great deal of influence in general. He did note, however, that the current push for reform appears to be carrying more weight than previous efforts, primarily due to court cases and litigation calling into question how money bail is used. Mr. Hilkey added that bail/bondsmen are funded by insurance companies, which is where a large amount of funding and effort has originated in opposition to reform.

THE COMMISSION'S 2013 BOND REFORM EFFORT

Kim English and Peg Flick, Office of Research and Statistics, Division of Criminal Justice

Chair Hilkey introduced Kim English and Peg Flick of the Office of Research and Statistics in the Division of Criminal Justice. Ms. English explained that she and Ms. Flick will be presenting information in the hopes of putting the recommendations presented later today in the context of previous work by the Commission in the area of bond reform. She added that the Commission produced significant work in the area of bond reform in 2011, 2012 and 2013 which resulted in legislative changes in 2013. Ms. English began a PowerPoint presentation, the full content of which can be found on the Commission website at, colorado.gov/ccjj. Discussion points following the presentation are below.

DISCUSSION

Mr. Hilkey asked about the general, overall impact of the 2013 bond reform legislation. Ms. English replied that the most significant take-away was the increase in the use of public recognizance (PR) bonds for felony cases (12% to 21%), and for misdemeanor cases (16% to 27%), from 2011 to 2016. However, while these are significant increases the overall rate is still fairly low. She added that the impact was most significant in the handful of counties that appeared to more thoroughly embrace the reforms (e.g., Mesa and Denver Counties). Sheriff Pelle pointed out that the process of implementing new policy, creating new programs and seeing resulting real change can take years. With that said, places like Boulder County, which had pretrial services in place, did not start seeing significant changes in the release of individuals on PR bonds until 2017. Mr. Hilkey shared that when Mesa County undertook significant pretrial reforms, the Sheriff's Office did not necessarily see a significant decrease in the jail population, but that they did finally know the level of risk for the pretrial population in jail, and the pretrial population post-reform showed much higher risk levels than before the reforms.

**PRETRIAL RELEASE TASK FORCE: FINAL RECOMMENDATION
PRESENTATION AND VOTE**

Stan Hilkey, Pretrial Release Task Force Chair
Richard Stroker, Commission Consultant

Mr. Hilkey reminded Commissioners that four recommendations from the Pretrial Release Task Force were preliminarily presented at the October meeting, and that a final vote will be held on those same recommendations today. Mr. Hilkey asked if there was anyone present who would like to provide public comment before voting takes place. Seeing none, he asked Commission consultant Richard Stroker to provide a brief introduction to the work of the Task Force before presenting the four recommendations. Mr. Stroker began a PowerPoint presentation (available at colorado.gov/ccjj) which reviewed the work of the Task Force and detailed how the group arrived at the recommendations.

Mr. Stroker directed Commissioners to the final recommendations in their packets. A summary of each recommendation follows below along with discussion points.

Recommendation FY19-PR #01**Require Pretrial Risk Assessment Tools [Statutory]**

Amend §16-4-103 (3) (b), C.R.S., such that Pretrial Risk Assessment shall be available and utilized by Judicial Officers in all counties throughout Colorado for purposes of setting bond and establishing conditions of release for felony and misdemeanor level offenses. The court shall not use the results of any such instrument as the sole basis for setting type of bond and conditions of release. Other criteria may include those circumstances contained in §16-4-103 (5), C.R.S.

DISCUSSION

Mr. Stroker explained that current statutory language encourages the use of risk assessment in all counties in Colorado, but that this recommendation takes that concept one step further by mandating the use of risk assessment tools. The content of the full recommendation includes

reasons why this change is necessary and includes a list of counties in Colorado that do and do not utilize risk assessment instruments and/or have established pretrial services.

A question was raised about the word “may” in the third sentence of the recommendation and whether it should read “shall” in order to ensure a risk assessment is used by the court. After a discussion by the Commission, and a counter-recommendation by Glenn Tapia, Tom Raynes made a motion to include the second sentence of the recommendation which reads “The court shall not use the results of any such instrument as the sole basis for setting type of bond and conditions of release” into the Proposed Statutory Language portion of the full recommendation. Cliff Riedel seconded the motion.

Judge Day asked a question about the application of Title 16 to municipal courts and suggested that future proposals, as they relate to bond reform, should apply to municipal courts. He pointed out that municipal courts do not currently have access to pretrial services. Mr. Stroker noted that the Task Force discussed this issue in great detail and he believes it was the will of that group that this particular recommendation simply amend §16-4-103 (3) (b) and have it apply to the courts to which it currently applies.

Judge Chris Bachmeyer made a friendly amendment to also add the third sentence of the recommendation “Other criteria may include those circumstances contained in §16-4-103 (5), C.R.S.” to the Proposed Statutory Language portion of the recommendation. Mr. Raynes and Mr. Riedel replied that they were in agreement.

Mr. Hilkey asked for any further discussion and seeing none he explained that procedurally, the Commission will first vote on the motion to add the two sentences to the Proposed Statutory Language section of the recommendation and then vote on the recommendation as a whole. The process for voting on the amendment was explained. To pass, the amendment requires approval by 66% of members, combining the A and B votes of:

A = I support it B = I can live with it C = I do not support it

Amendment Vote: FY19-PR #01

Add the following verbiage to the Proposed Statutory Language segment of the recommendation: “The court shall not use the results of any such instrument as the sole basis for setting type of bond and conditions of release. Other criteria may include those circumstances contained in §16-4-103 (5), C.R.S.”.

A: 22

B: 2

C: 0

The amendment to FY19-PR #01 was APPROVED.

Final Vote: FY19-PR #01. Require Pretrial Risk Assessment Tools [Statutory]

The process for voting on a final recommendation was explained. To pass, a Commission recommendation requires approval by 66% of the members, combining the A and B votes of:

A = I support it B = I can live with it C = I do not support it

A: 22

B: 2

C: 0

The recommendation FY19-PR #01 was APPROVED.

Recommendation FY19-PR #02**Implement Pretrial Risk Assessment Processes and Training [Policy]**

The following points are offered as basic implementation guidance for the selection, use, and administration of and training on pretrial risk assessment to all Colorado counties and jurisdictions in order to set bond and establish conditions of release for felony and misdemeanor level offenses:

- The Colorado Pretrial Assessment Tool (CPAT) shall be the recommended assessment tool; however, any jurisdiction may utilize an alternative assessment tool to improve pretrial decision making subject to the approval of the Chief Judge of the Judicial District.
- The State Court Administrator is responsible to compile an inventory of approved pretrial risk assessments available and authorized for use in Colorado.
- Any alternative tool approved by a Chief Judge must be empirically developed and consistent with setting the type of bond and conditions of release; however, this does not prohibit a jurisdiction from utilizing additional assessment tools to advance pretrial decisions.
- Any individual authorized to administer pretrial risk assessment for the Court, shall receive introductory training.
- The Office of the State Court Administrator (SCAO) in consultation with the Colorado Association of Pretrial Service Agencies (CAPS) shall develop and provide standards for training and fidelity measurement of the Colorado Pretrial Assessment Tool (CPAT).
- If an alternative pretrial risk assessment tool is approved for use by the Chief Judge of a judicial district, the SCAO shall also review and approve any training protocol and plan to ensure measures are in place to measure assessor fidelity to the instrument.
- In order to preserve neutrality in the assessment process, prosecutors and criminal defense attorneys shall not be authorized to administer a pretrial risk assessment for purposes of setting bond and establishing conditions of release.

DISCUSSION

Mr. Stroker pointed out that this second recommendation pertains to the use of an assessment tool itself, determines which tool to be used, and identifies the role of the State Court Administrator (SCAO) and the Colorado Association of Pretrial Service Agencies (CAPS) to create and support the use of a risk assessment tool. He clarified that this is a policy recommendation rather than a statutory recommendation.

A question was asked about who exactly would conduct the training developed by the SCAO and CAPS. Mr. Stroker replied that the training will likely be conducted by individuals within each jurisdiction. Mr. Riedel pointed out that in bullet #3, the Task Force called for assessment tools to be empirically developed and validated. Mr. Hilkey agreed that this was an oversight and that a motion is not needed to include the word “validated”. Nancy Jackson thanked the members of the task force for writing this recommendation to be permissive for jurisdictions that want to use their own, alternative assessment tool.

Mr. Hilkey asked for a motion to approve the recommendation. Sheriff Pelle made a motion to approve the recommendation and Jessica Jones seconded the motion. Mr. Hilkey asked for any further discussion and seeing none a vote was held.

Final Vote: FY19-PR #02. Implement Pretrial Risk Assessment Processes and Training [Policy]

A: 21

B: 3

C: 0

The recommendation FY19-PR #02 was APPROVED.**Recommendation FY19-PR #03****Expand Pretrial Services Programs Statewide [Statutory; Budgetary]**

Pretrial Services shall exist in all counties in Colorado and the Colorado General Assembly is encouraged to create a state grant program to incentivize local jurisdictions (counties) to develop and support pretrial programs and services. Jurisdictions without pretrial programs shall be prioritized to receive funding. The recommendation includes these additional elements:

- On or before July 1, 2021, pretrial services programs shall be established within each of Colorado's counties. Counties may directly provide pretrial services or enter into agreements with other municipalities, counties or other entities to provide such services.
- The Office of the State Court Administrator in consultation with the Colorado Association of Pretrial Service Agencies (CAPS) shall develop minimum standards governing the operation of pretrial service programs.
- Any pretrial services program established pursuant to this recommendation shall, at a minimum:
 - provide the Court with an empirically developed and validated pretrial risk assessment for the purpose of setting bond and establishing conditions of release,
 - provide research-based supervision services to mitigate pretrial misconduct, such as court date reminder notification, and
 - align with legally- and evidence-informed practices found in the CAPS standards.

DISCUSSION

Mr. Stroker explained that the premise for this recommendation is that all counties create, by July 2021, a pretrial service system within their jurisdiction. The current statute encourages jurisdictions to establish a pretrial service program but does not mandate pretrial services. The full recommendation contains a discussion about why pretrial services are recognized as a necessary and appropriate. For those jurisdictions that do not have the wherewithal to create or establish a pretrial services system, the General Assembly is encouraged to establish a statewide grant program to incentive local jurisdictions to develop and support pretrial programs and services.

Mr. Raynes noted concerns about the funding for this recommendations and suggested stronger language calling for the General Assembly to fully fund this initiative. This is the foundation for the next round of recommendations coming from the Pretrial Release Task Force and without services in place and funded, significant reform will not take hold. Commissioners held a lengthy discussion about the importance of funding for this proposal.

Specifically, Mr. Raynes wanted to ensure that the following information would be documented in these meeting minutes: If we are to follow the best practices examples, then we need funding

per those models. Washington DC, which is roughly the same population as Denver, funds its pretrial services program in excess of \$70 million per year.¹ To extrapolate that statewide would cost more than \$550 million if Colorado were to have similar success rates. On a smaller scale, the pre-trial program in Larimer County operates on about \$1.5 million per year and the one in Mesa County operates on about \$1 million per year. These two counties account for less than 1/10 of the state's population. Accordingly, a very conservative extrapolation of those cost results in an absolute bare bones required investment of at least \$18-20 million in Colorado to have any legitimate and sincere hope of a successful statewide pre-trial services mandate.

Mr. Stroker responded that the task force was attempting to be sensitive to a couple different issues with this proposal and did not want to take away the authority of local jurisdictions, but also recognized that if jurisdictions are mandated to undertake an initiative there should be a corresponding financial component.

Sheriff Pelle proposed an amendment to strike the word "grant" and replace it with "formula funding" and that the entire first paragraph under Recommendation FY19-PR #03 be moved into the Proposed Statutory Language section. Additionally, the verbiage "General Assembly is encouraged to create a state grant program to incentivize local jurisdictions" in the first sentence of the recommendation shall be replaced with "General Assembly shall create a state formula-funded program to incentivize local jurisdictions". Tom Raynes seconded the motion.

Mr. Hilkey asked for any further discussion on the amendment. Joe Thome reminded the Commission about the desire by the Task Force not to interfere with existing programs and asked if the new verbiage might preclude jurisdictions, with programs currently in place, from accessing funding. The original context was that this would only be available for those jurisdictions lacking a program. Sheriff Pelle pointed out that there is language in the recommendation that emphasizes prioritizing funding for jurisdictions without a pretrial services program. Mr. Hilkey called for any further discussion and seeing none he reminded Commissioners that as before, they will first vote on the motion and then vote on the recommendation as a whole.

Amendment Vote: FY19-PR #03

The first part of the recommendation, Recommendation FY19-PR #03, shall be moved under the Proposed Statutory Language portion of the recommendation. Additionally, the verbiage "General Assembly is encouraged to create a state grant program to incentivize local jurisdictions" in the first sentence of the recommendation shall be replaced with "General Assembly *shall create a state formula-funded* program to incentivize local jurisdictions..."

A: 20

B: 4

C: 0

The amendment to FY19-PR #03 was APPROVED.

Final Vote: FY19-PR #03. Expand Pretrial Services Programs Statewide [Statutory; Budgetary]

A: 22

B: 2

C: 0

The recommendation FY19-PR #31 was APPROVED.

Recommendation FY19-PR #10**Create a Statewide Court Date Reminder System [Statutory]**

On or before July 1, 2020, the state court administrator shall develop and manage a program that is responsible for reminding criminal defendants to appear for their scheduled court hearings in the county and district courts of the state (Note: Denver County and Municipal Courts may be excluded from this requirement.).

DISCUSSION

Mr. Stroker summarized the recommendation and Mr. Hilkey pointed out that this proposal is based on what is universally recognized as an evidence-based best practice. Cynthia Kowert asked if there has ever been an issue with a defendant missing a court date, who then claims they did not receive notification, and is therefore not at fault. Mr. Riedel replied that Larimer County has used a reminder call system for years and this particular issue has never occurred.

Mr. Hilkey clarified the reason this last recommendation is numbered FY19-PR #10, instead of sequentially as FY19-PR #04, is that some of the other working groups of the Task Force were also drafting recommendations and the numbers are assigned to recommendations as they are produced. Mr. Hilkey asked for any further discussion and, seeing none, he asked for a motion to approve the recommendation. A motion was made and seconded and a formal vote was held.

Final Vote: FY19-PR #10. Create a Statewide Court Date Reminder System [Statutory]

A: 22

B: 2

C: 0

The recommendation FY19-PR #10 was APPROVED.

MENTAL HEALTH/BEHAVIORAL HEALTH UPDATE**Doyle Forrestal, Colorado Behavioral Healthcare Council**

Mr. Hilkey introduced Doyle Forrestal, the Director of the Colorado Behavioral Healthcare Council (CBHC). Ms. Forrestal explained that CBHC is the parent organization for Colorado's network of community behavioral health providers. The Council was very instrumental in the passage of Senate Bill 17-207, as was the Commission, and Ms. Forrestal shared that she will offer an update on the implementation of the landmark legislation.

Ms. Forrestal described that the Mental Health/Jails Task Force of the Commission produced a recommendation that helped lay the groundwork for the legislation, and the Commission's four legislative representatives sponsored the bill. The main components of SB17-207 were originally intended to end the use of jails for those in a mental health crisis who have not been charged with a crime. Ms. Forrestal directed Commissioners to a handout which details the funding components of the bill and outlines the robust stakeholder engagement for the initiative. She explained that overall, the funding bolsters the statewide Behavioral Health Crisis System and related services by a total of \$9,428,755. The handout and more details can be found on the Commission website at, colorado.gov/ccjj.

A question was asked about rural jails and whether they have actually concluded the use of jails for emergency mental health holds (M1 holds). Ms. Forrestal replied that the deadline to end the use of jails for M1 holds was May 1, 2018 and that all jails have complied. Rural communities are now relying on things such as additional supports through secure transport, and interventions through co-responders. However, in places like Montrose they are also anxiously awaiting the opening of a new facility to help manage this population. And in Grand Junction the psychiatric wing of the hospital is undergoing a major expansion that will provide more beds and alleviate some of the pressure points. Additionally, a couple rural communities are now operating secure, mobile transport pilot programs.

On another note, Ms. Forrestal mentioned that the crisis system is up for re-procurement and that CBHC is in the process of challenging the request for proposal (RFP) process, as they believe it is flawed and goes against the intent of SB17-207. Currently the state is divided into four regions while the new RFP divides the state into seven regions. The resulting administrative burden will redirect those dollars that are currently used for treatment away from treatment and both the Western Slope and Eastern Plains would be particularly impacted. A handful of other agencies and organizations are also raising concerns about the RFP process.

Ms. Forrestal added that the Equitas Foundation was another organization strongly in support of the passage of SB17-207 and they are currently actively involved in planning for the new incoming administration. Equitas recently held a meeting with multiple stakeholders to discuss issues that still need attention and they hope to present the new administration with a collaborative plan and comprehensive voice on issues involving both the criminal justice and mental health systems. Mr. Hilkey added that while Equitas acts as a convening organization, the resulting recommendations still remains a product of the state.

COMMISSIONER HOUSEKEEPING ISSUES

Stan Hilkey, Chair and Executive Director of the Department of Public Safety

Opioid Bill Update

Mr. Hilkey informed Commissioners that the Opioid and Other Substance Use Disorders Study Committee has recommended legislation that may require some work by the Commission. Mr. Hilkey described the language in the proposed bill, which can be found on the Commission website at, colorado.gov/ccjj. He emphasized that this is currently only proposed legislation and that he will provide updates on the progress of the bill as it makes its way through the General Assembly.

Public Comment

Mr. Hilkey called for any additional public comment and seeing none moved to the adjournment portion of the meeting.

ADJOURN**Stan Hilkey, Chair and Executive Director of the Department of Public Safety**

Before closing the meeting, Mr. Hilkey noted that various stakeholder organizations, legislators and others are closely watching the work of the Commission as it relates to pretrial release initiatives. He went on to caution Commissioners and Task Force members about getting out ahead of any of the work product or recommendations until they are finalized. He added that the pretrial release effort could potentially result in one of the most important pieces of work to come from the Commission in its 11-year history, and that it would be unfortunate for it to be inadvertently derailed. The more the Commission is unified in the effort the better the chance for positive outcomes.

Mr. Hilkey reminded the group that the December 14th Commission meeting will be held at the Colorado Department of Transportation, 2829 West Howard Place in Denver. He asked Commissioners for any final comments and seeing none the meeting was adjourned at 4:03 p.m.

ENDNOTE (see. p. 7)

¹ Pretrial Services Agency for the District of Columbia (2018). *FY2019: Congressional Budget Justification and Performance Budget Request*. See the summary on page 6. (Retrieved 12/12/2018 at, psa.gov/sites/default/files/FY2019%20PSA%20Congressional%20Budget%20Justification.pdf)