



**Colorado Commission on Criminal and Juvenile Justice**

**Minutes**

January 11, 2019

Jefferson County Department of Human Services  
 900 Jefferson County Parkway  
 Golden, CO 80204

**Commission Member Attendance**

Stan Hilkey, Chair	Nancy Jackson	Gretchen Russo
Joe Thome, Interim Vice Chair	Jessica Jones	Jennifer Stith
Chris Bachmeyer	Bill Kilpatrick	Glenn Tapia
Jennifer Bradford	Rick Kornfeld	Anne Tapp
John Cooke - ABSENT	Andrew Matson	Abigail Tucker
Cindy Cotten	Joe Pelle	Dean Williams - ABSENT
Shawn Day	Tom Raynes	CDHS Representative - TBD
Janet Drake	Cliff Riedel	CO House Rep. (D) - TBD
Valarie Finks	Megan Ring	CO House Rep. (R) - TBD
Kristen Hilkey	Rose Rodriguez - ABSENT	CO Senate rep. (D) - TBD

Substitutions: David Johnson for Dean Williams

**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 1:05 pm. Mr. Hilkey thanked Commissioners for attending and introduced Janet Drake from the Attorney General’s Office who was appointed to the Commission by Attorney General Phil Weiser. Mr. Hilkey informed the group that Mr. Dean Williams was appointed as the new Executive Director of the Department of Corrections (CDOC) but is unable to attend this meeting. Mr. Hilkey also announced that this is Dr. Jennifer Bradford’s last CCJJ meeting as she has accepted a position out of the country, and he presented her with a departing gift, thanking her for her service on the Commission. Mr. Hilkey then asked Commissioners to introduce themselves.

Ms. Gretchen Russo informed the Commission that Mr. Tony Gherardini, the representative for CDHS, accepted a position at the Governor’s Office and that his replacement on this Commission should be announced soon.

Mr. Hilkey shared that the new legislators’ appointments by the General Assembly should be expected in the coming weeks.

Mr. Hilkey commented that there is a lot of interest by the media and the legislature with regards to the Commission’s work on pretrial reform, and mentioned that he was recently interviewed by

Colorado Public Radio about the recent recommendations regarding pretrial that passed the Commission. Mr. Hilkey was also asked by CPR about the upcoming recommendations and responded with general information, emphasizing that these recommendations have not yet been presented and approved by the Commission.

Mr. Hilkey reviewed the agenda and in consideration of the busy agenda, proposed to postpone the presentation on “Trends and Issues in the Criminal Justice.”

Mr. Hilkey asked for any additions or corrections for the November and December minutes. Motions were made and seconded to approve the minutes, and they were unanimously accepted by Commissioners.

**MENTAL HEALTH/JAILS TASK FORCE  
PRELIMINARY RECOMMENDATION PRESENTATION  
Sheriff Pelle, Boulder Sheriff’s Office  
Dr. Abigail Tucker, Community Reach Centers  
Captain Jamison Brown, Colorado Jails Association**

Sheriff Pelle started his presentation by commending the members of the Mental Health/Jails Task Force for their energy and work on these efforts. He provided a brief background of the Task Force’s work. Discussion points following the presentation are noted below the synopsis of the recommendation.

The first area of work for the Task Force centered on opportunities to divert individuals early from the criminal justice system who present a variety of mental health issues.

The second area of work explored opportunities to divert individuals in the criminal justice system from jail and resulted in one recommendation approved by the Commission (FY18-MH01) to develop post-arrest, pre-file diversion pilot programs. These recommendations were mirrored in Senate Bill 18-249, and implementation of these pilot programs are in the early stages.

The third and final issue the group is presenting about today centers on challenges with jail detainees who are not eligible for diversion due to the seriousness of their offenses and present significant behavioral health needs that exceed jail resources. This population requires an appropriate setting for stabilization and treatment while maintaining inmate status. Sheriff Pelle commented that this recommendation supports parity of services between medical emergencies and behavioral health emergencies. He also emphasized that the intent of this recommendation is not to address the issue of the lack of competency beds in the state but rather find a solution for these emergency situations for individuals in jails in need of stabilization.

Sheriff Pelle acknowledged and thanked Dr. Tucker for her leadership in the development of this recommendation.

Dr. Tucker explained that this legislative recommendation is to create pilot sites involving partnerships between regional hospitals and county jails. She indicated that this recommendation also includes a fiscal request to develop these pilots site and support one-time building modifications for hospitals to accommodate this population.

**Preliminary Recommendation FY19-MH #01: Develop Collaborative Pilot Programs to Provide Care for Jail Detainees with Acute Behavioral Health Needs [Policy; Budgetary]**

This recommendation proposes the development of pilot jail-health programs to provide quality care for individuals held in jail who have acute behavioral health needs that are beyond the ability of the jail to manage and who do not meet criteria for diversion with the goals to develop information and experience necessary to advance a state-wide solution. [Statutory]

- A care transitions partnership between local and regional acute care hospitals and county jails that provides quality care for jailed individuals who have acute behavioral health needs that are beyond the ability of the jail to manage.
- The target patient population includes those who are not eligible for diversion programs because of the serious nature of the criminal charge and whose behavioral health needs surpass the capacity of the jail to manage with existing in-house medical and/or mental health service providers.
- This partnership allows for the transfer of jailed individuals to acute care facilities for provision of appropriate services and is modeled after, and expands upon, the existing partnerships and transfer protocols for individuals experiencing a medical crisis while being held in jail.
- To support the development of initial pilot sites and to allow for one-time building modifications or other required changes, it is anticipated that additional state funds will need to be allocated to pilot this solution in one rural region and one urban region.

Feedback from county jail administrators suggests that a minimum of 100 individuals annually, statewide, may need to be transferred from a jail to an acute care provider. Currently the most common method jail officials have to manage this population is to request a court order to transfer the individual to Colorado Mental Health Institute/Pueblo (regardless if competency is raised or not, due to acute psychiatric needs); there is a significant backlog for those awaiting transfer.

Jails have limited capacity to provide necessary treatments or services for these individuals who are required to remain in jail. Jails are not authorized to provide involuntary medication to individuals and not all jails in our state have nursing staff or mental health staff available daily, and very few have around-the-clock staffing. Jails can initiate and access hospitalization services for individuals with acute medical concerns and can even seek reimbursement for those acute care providers for Medicaid-eligible individuals during their detention.

However, efforts to transfer these individuals with acute behavioral health needs to these and other community services for stabilization and services are often unsuccessful. Effectively addressing the mental health needs of this patient population will not only provide direct benefit to the individuals and improve safety for jail staff, but may also significantly improve outcomes,

such as system expenditures and recidivism, that would otherwise be absorbed by the broader community if no appropriate services are provided.

It is anticipated that most of these individuals will be eligible for Medicaid during their incarceration based on data from Department of Health Care Policy and Financing (HCPF) indicating that approximately 65-75% of individuals leaving Colorado Department of Corrections are Medicaid-eligible. Further, a survey of jails undertaken by the Task Force suggests the rates for jail populations to be higher. As a result, any community-based stabilization service, provided they are administered in accordance with federal regulations, would be eligible for reimbursement from the HCPF, the state executive agency that administers Colorado's Medicaid program.

It is anticipated that additional state resources would be necessary to cover additional services and costs associated with these episodes of care.

Dr. Tucker describe the proposed pilots and processes which included the target population, description of the facility and services, proposed geographic location (one urban, one metro), security requirements, estimated size of population per year, maintenance of custody and security, funding strategy and the administrative oversight state entity.

When the pilot proves to be successful, it is anticipated that a statewide solution would require at least four facilities to ensure regional access for all jails.

#### *DISCUSSION*

Dr. Tucker was asked whether the Task Force believes that this recommendation can address some of the concerns expressed by hospitals to serve this population and whether this might influence their willingness to participate in this project. Dr. Tucker responded that she was hopeful that this proposal will address some of these concerns. She added that some of the concerns expressed by hospital administrators related to the lack of appropriate equipment and staffing and the concern of not being able to send people back to custody once stabilized.

A question was raised regarding whether the Task Force discussed options for those beds to be available to other people in need of mental health services especially lacking in some rural communities. The Task Force did not discuss this option mainly because this model intends to provide stabilization for jail inmates in acute psychotic state in a secure unit within a hospital and there would be safety concern if this population was mixed with the general population.

Dr. Tucker specified that most of the county jails ensure that jail detainees are enrolled for Medicaid prior to being released and a similar program exists within the Department of Corrections.

It was reiterated that this population is not eligible for diversion due to the seriousness of their offense but it is anticipated that individuals would go through court proceedings more rapidly when stabilized and able to attend court hearings.

A question was asked whether there is data on the number of homeless individuals in this target population. Dr. Tucker responded that the data was not available.

As CCJJ passed previous recommendations to create pilot diversion program for jail inmates with behavioral health issues, it was asked whether the Mental Health/Jails Task Force discussed the possibility of combining strategies for this acute population. Dr. Tucker acknowledged this idea but explained that the target population is not eligible for diversion and represents a set of challenges with regards to safety, custody and treatment that only can be addressed in secure and locked wing within a hospital setting.

### **PRETRIAL RELEASE TASK FORCE PRELIMINARY RECOMMENDATION PRESENTATION**

**Glenn Tapia, Division of Probation Services**

Mr. Tapia explained that this recommendation follows the series of recommendations (FY19-PR#01, FY19-PR#02 and FY19-PR#03) approved by the Commission in November 2018. The purpose of this recommendation is to provide an alternative for some of the smaller counties that are lacking the resources to implement a full pretrial program.

Counties are classified in statute (13-6-201, C.R.S.) into four classifications (A, B, C and D) and this recommendation proposes that the counties that a) do not have pretrial services, and b) are classified as C and D may request that the judicial department provide pretrial services on behalf of those counties within the judicial district.

Pretrial supervision strategies to mitigate risk and increase pretrial success are not available in each county throughout the state. In jurisdictions that have a smaller volume of bonds set, developing county-based pretrial programs may not be the most effective service delivery model. State probation departments exist in all 22 judicial districts and may provide an infrastructure to complete limited pretrial assessments and supervision of pretrial defendants in jurisdictions that do not provide these services.

#### **Preliminary Recommendation FY19-PR #04: Create a Pretrial Services Alternative for Smaller Jurisdictions [Statutory]**

This recommendation proposes to modify 16-4-106, C.R.S., such that pretrial services shall exist in all counties in Colorado and amend 13-6-201(1), C.R.S., to conform. A county identified as Class C or D pursuant to 13-6-201, C.R.S., may opt out of state formula funding for the provision of pretrial services and may, instead, request that the state judicial department utilize formula funding to provide services on behalf of counties within a judicial district. The recommendation includes these additional elements:

- The Judicial Department may directly provide services, establish inter-governmental agreements, or contractual agreements necessary to provide services upon request by counties and only upon approval of the Chief Judge of a judicial district.
- In these instances, judicial districts are authorized to use state appropriations to provide pretrial functions upon formal written request by a local government and upon approval of the Chief Judge in each judicial district.
- State Judicial shall assure that pretrial services conform to the standards of the State Court Administrators Office and adhere to the underlying purpose of pretrial justice.

Mr. Hilkey reminded Commissioners that four recommendations from the Pretrial Release Task Force were preliminarily presented at the December 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 directed Commissioners to the final recommendations in their packets. The presentation and the full context of the final recommendation can be found on the Commission website at [colorado.gov/ccjj](http://colorado.gov/ccjj). A summary of each recommendation follows below along with discussion points.

**PRETRIAL RELEASE TASK FORCE  
FINAL RECOMMENDATION PRESENTATIONS**

**Maureen Cain, Office of the State Public Defender and Jennifer Bradford, Commissioner and Representative for the Dept. of Higher Education**

**Recommendation FY19-PR #06: Establish an Expedited Pretrial Release Process**

Establish, through a locally-determined, research-based administrative order, an expedited screening process for persons arrested for an offense committed in that jurisdiction which shall be conducted as soon as practicable upon, but no later than 24 hours after, arrival of a person at the place of detention, allowing for the immediate release of certain low/medium risk persons. If a person does NOT meet the criteria for release as determined by administrative order, the person SHALL BE HELD until the initial court appearance. Also, expand the definition of “bonding commissioner.”

**DISCUSSION**

Mr. Hilkey asked for a motion to approve the recommendation. A motion was made and seconded to approve the recommendation. Mr. Hilkey asked for any further discussion and seeing none a vote was held. The process for supermajority 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

***Final Vote: FY19-PR #06: Establish an Expedited Pretrial Release Process***

A: 21

B: 2

C: 0

***The recommendation FY19-PR #06 was APPROVED.***

**Recommendation FY19-PR #07: Revise the Initial Bond Hearing Process and the Considerations of Monetary Conditions of Bond**

For individuals who do not meet the criteria for expedited pretrial release (see Recommendation FY19-PR #06), revise the following statutory elements related to the initial bond hearing process, including considerations of the conditions of monetary bond:

- Assess the person for risk before the hearing, require the court to consider financial circumstances of persons when setting bond, and presume release on bond without monetary conditions unless no reasonable non-monetary conditions will address public safety and flight risk.
- Require the filing of felony charges within three days, excluding Saturdays, Sundays and legal holidays, unless good cause is shown.
- Require reconsideration of monetary and/or non-monetary conditions of bond in both felony and misdemeanor cases (a “second look”) when good cause is shown, and expand the definition of bonding commissioner.
- Create an expedited docket for cases where the defendant is in custody on a monetary bond that he/she has not posted.

### *DISCUSSION*

Ms. Cain highlighted that a change had been made in the FY19-PR #07 recommendation following the preliminary presentation in December. She reminded Commissioners that Mr. Riedel expressed concern at the last CCJJ meeting that district attorneys should be able to bring information to judges when there is a strong presumption that a breach of pretrial bond conditions is about to occur but has not yet happened. The statutory language “threatened breach” has been reinserted into the recommendation (initially crossed out). This change has been discussed and approved by the Task Force.

Judge Bachmeyer asked whether there is a requirement for defendants to appear at the filing of charges. Ms. Cain responded that there is no mandate for defendants to appear at the filing of charges. She added that the requirement of the filing of charges to occur within three days should speed up court proceedings because it is currently observed that the filing of charges may take up to three weeks in some jurisdictions.

Judge Bachmeyer related a concern expressed by judicial officers with regards to judge’s discretion to consider other open cases for bond condition. It could be that the same defendant is eligible for bond release in one case but held on other cases for serious charges.

Ms. Cain suggested that judicial districts are going to address pending case issues in their administrative orders and that judicial officers should have discretion to consider these pending cases at initial bail settings.

Judge Bachmeyer also asked about the exemption of VRA cases and other protection order concerns. Ms. Cain responded that the law remains in place for those cases where there is mandatory court appearance for the Victims of Crime Act (VRA) offenses, domestic violence, sex assault and stalking cases.

Mr. Tapia mentioned a question raised by chief judges about the funding of non-monetary conditions such as drug testing, GPS monitoring, mental health treatment etc. Ms. Cain suggested that judicial districts reviews how Correctional Treatment Fund dollars are expended within their jurisdictions and how to include the pretrial services into the appropriation of these funds. As jurisdictions develop administrative orders, a discussion could occur on how to expand correctional treatment funding dollars to include those services.

Ms. Cain mentioned that the Pretrial Release Task Force agreed to continue working on the issue defendants who are being held in another county. This discussion involves the design of a different process and technology for both jails and courts.

Mr. Hilkey asked for a motion to approve the recommendation. A motion was made and seconded to approve the recommendation. Mr. Hilkey asked for any further discussion and seeing none a supermajority vote was held [*See supermajority vote explanation above.*].

***Final Vote: FY19-PR #07: Revise the Initial Bond Hearing Process and the Considerations of Monetary Conditions of Bond***

A: 22

B: 1

C: 0

***The recommendation FY19-PR #07 was APPROVED.***

**Recommendation FY19-PR #08: Encourage Best Practices for Pretrial Training and Data Collection**

To improve pretrial-related services throughout Colorado through education and improved data collection, this recommendation proposes the following:

- Request the State Court Administrator's Office (SCAO) establish, identify, and develop a core training curriculum around the best practices of pretrial and the pretrial process to disseminate to participating stakeholders;
- Encourage major pretrial stakeholders to participate in new hire and regular pretrial training via the SCAO curriculum. The major stakeholders recommended for inclusion are the Colorado District Attorneys' Council (CDAC), SCAO, State Public Defender's Office, Alternate Defense Council, Pretrial Services, and law enforcement;
- Recommend the SCAO have primary oversight of curriculum development and maintenance, dissemination, and follow-up of individual stakeholder training protocols;
- Recommend the SCAO implement evaluation protocols assessing the effectiveness of pretrial process through appropriate and data collection procedures.

**DISCUSSION**

Ms. Russo asked whether this recommendation also includes pretrial training and data collection for juveniles. This recommendation specifically targets adult and does not include juveniles.

Mr. Hilkey asked for a motion to approve the recommendation. A motion was made and seconded to approve the recommendation. Mr. Hilkey asked for any further discussion and seeing none a vote was held [*See supermajority vote explanation above.*].



***Final Vote: FY19-PR #08: Encourage Best Practices for Pretrial Training and Data Collection***

A: 23  
B: 0  
C: 0

***The recommendation FY19-PR #08 was APPROVED.***

**Recommendation FY19-PR #09: Clarify Defense and Prosecution Involvement in Bail Hearings**

Ms. Cain explained that a small change was made to the preliminary recommendation presented last month, excluding new language about a revised time frame.

This recommendation clarifies in statute that a person is entitled to counsel at the initial bail setting hearing, and that counsel shall have adequate time to prepare for an individualized hearing on bail. Retain language that the DA has the right to appear and pretrial information shall be shared.

Under this proposal, there will be no bail schedules so persons not released pursuant to administrative order will be held until the court hearing. Therefore, the public defender should be on the case pursuant to the Chief Justice Directive 04-04.

***DISCUSSION***

Mr. Hilkey asked for a motion to approve the recommendation. A motion was made and seconded to approve the recommendation. Mr. Hilkey asked for any further discussion and seeing none a vote was held [*See supermajority vote explanation above.*].

***Final Vote: FY19-PR #09: Clarify Defense and Prosecution Involvement in Bail Hearings***

A: 21  
B: 2  
C: 0

***The recommendation FY19-PR #09 was APPROVED.***

**ADJOURNMENT**

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

Mr. Hilkey thanked Commissioners for their time and asked the group for any final comments.

Mr. Tapia shared that this suite of recommendations is really contingent upon funding for counties to build robust pretrial services and suggested that CCJJ consider some legislative strategy with regards to funding.

Seeing no further business Mr. Hilkey adjourned the meeting at 3:05 pm

The next meeting of the Commission is February 8, 2019 at 1:00pm at an alternate location:  
**Colorado Department of Transportation, 2829 W. Howard Place, Denver CO 80204.**