

**Jefferson County  
Criminal Justice Strategic Planning Committee (CJSPC) Meeting**

November 17, 2010  
5:00 pm to 7:15 pm  
Administration and Courts Building  
Lookout Mountain Room

**5:00 p.m. – 5:15 p.m.**  
**5:15 p.m. – 7:15 p.m.**

**Dinner and Networking  
Business**

**AGENDA**

- |  |                 |
|--|-----------------|
| 1. Approve the minutes of the July 21, 2010 CJSPC meeting<br>(The September 15 meeting was canceled.)                        | Jackson         |
| 2. Learn about the status of pretrial justice at the national level  | Murray          |
| 3. Receive recommendations about the administration of bail from<br>the System Performance Subcommittee                      | Lammers/Mundell |
| 4. Inform each other about changes in our own agency that may<br>affect the workload of other agencies in the justice system | All Members     |
| 5. Prepare for and schedule the next CJSPC meeting on<br>Wednesday, January 19, 2011, 5:00 p.m. to 7:15 p.m.                 | Jackson         |

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**The next regularly scheduled CJSPC meeting is: Wednesday, January 19, 2011,  
Quad Room (1552AB/1565AB), Jefferson County Administration and Courts Building**

1<sup>st</sup> Judicial District Court  
Jefferson County Court  
1<sup>st</sup> Judicial District Administration  
Jefferson County Board of County Commissioners  
Jefferson County Administration  
1<sup>st</sup> Judicial District Attorney's Office  
Colorado State Public Defender's Office  
1<sup>st</sup> Judicial Bar Association  
Jefferson County Sheriff's Office  
Lakewood Municipal Court  
1<sup>st</sup> Judicial District Probation  
Lakewood Police Department  
Arvada Police Department  
Golden Police Department  
Wheat Ridge Police Department  
Rocky Mountain Offender Management Systems  
Intervention, Inc  
Jefferson Center for Mental Health  
Jefferson County Human Services Department  
Jefferson County Justice Services Division  
Lakewood City Council  
Jefferson County School District  
State of Colorado Parole & Community Corrections

**Members Present:** R. Brooke Jackson, Mitch Ahnstedt, George Boyle, Dan Brennan, Tom Giacinti, Faye Griffin, Lynn Johnson, Maureen O'Brien, Cheryl Lammers, Bill Kilpatrick, Gail Meinster, Ted Mink, Kelly Sengenberger, Vicki Stack, Scott Storey

**Members Absent:** Dan Beeck, Jack DeVita, Harriet Hall, Jeaneene Miller, Kevin Paletta, Ralph Schell, Jackie Senese, Cindy Stevenson, Don Wick

**Alternates Present:** Tom Bay, Dave Kollar, Jason Lucero, Patsy Mundell, Kate Newman, Tom Olbrich, Tammy Russell, Eva Wilson

**Guests Present:** Brenidy Rice, Jefferson County Recovery Court; Bryan Standley, Creative Treatment Options; Margie Enquist, District Court; Susan Fisch, County Court; Tammy Greene, County Court; Verna Carpenter, County Court; Jennifer Fairweather, Human Resources; Bridget Klauber, private defense attorney; Leslee Waggoner, RMOMS; Gary Darling, Larimer County; Sharon Winfree, Larimer County

**Staff Present:** Mike Jones, Lynne Nieman, Tim Schnacke, Claire Brooker, Sue Ferrere, Melinda Kraus, Juston Cooper

### **Agenda Item**

#### **Approve CJSPC meeting minutes.**

- The Minutes from the July 21, 2010 meeting were approved as submitted.

#### **Learn about the status of pretrial justice at the national level. (presentation by Tim Murray)**

- We have been doing things the same for 100-150 years. However, Pretrial is now being talked about nationally and is a "hot" topic in criminal justice, including at the Justice Department.
- We tend to put a price tag on a crime and therefore base things, such as bail, on the offense and not the person. This also tends to separate the financial "haves" from the "have-nots".
- Various national organizations began to look at Pretrial a few years ago, giving this topic a lot of momentum today.
  - ✓ Many of these organizations stated that every defendant should be screened in a neutral and objective way to determine his level of risk. The level of risk should be the main determining factor of who gets out of jail and under what conditions.
  - ✓ These groups also take the position that as much information should be gathered and shared with the courts, prosecutors, and defense attorneys.
- A person is presumed innocent until proven guilty. However, often what happens is that the presumed innocent person stays in jail pretrial, and then upon being found guilty, he/she is let out of jail and goes to probation. In Tim Murray's opinion, this does not make sense.
- Tim posed the question: Does money make us safe?

#### **Receive recommendations about the administration of bail from the System Performance**

##### **Subcommittee. (see slide show handout and other handouts)**

- The project originated with the County's Organizational Review Committee in 2007 and the Criminal Justice Strategic Planning Committee in 2007.
- CJP staff collected background information, which was then presented to the System Performance Subcommittee. The group did a lot of self-education and discussion on the topic.
- Earlier this year the Bail Impact Study took place. A great deal of data was collected, which the CJP staff then analyzed and presented to the Subcommittee.
- Some of the process findings:
  - ✓ The previous money bond schedule was suspended. There was less reliance on secured money bonds.

- ✓ There was variation in judges', prosecutors', defenders', and defendants' requests or decisions.
- ✓ The bond type did not alter disposition times.
- ❑ Some outcome findings:
  - ✓ Two judges who had similar cases were compared. They differed in the types of bonds they set with one using a higher number of secured money bonds and the other using less.
  - ✓ For defendants, secured money bonds did not increase the court appearance rate, decrease the number of new law violations, or decrease the number of technical violations. Money bonds did substantially increase jail use because defendants with a secured money bonds took longer to post bond or did not post bond at all compared to defendants who did not have secured money bonds (i.e., PR bonds).
- ❑ Findings Summary
  - ✓ A change in bail/pretrial practices that includes less reliance on secured financial conditions/bonds and more reliance on supervised pretrial release by Pretrial Services is supported by local and national data and is more consistent with Colorado law.
- ❑ Recommendations from the System Performance Subcommittee (see Action Item handout):
  - ✓ Form an Implementation Team to make changes in consideration of the System Performance Subcommittee's ratings and responses (see handout).
- ❑ Dan Brennan expressed concern that there could be some risk going from a small scale to a large scale regarding implementation, education, and training.
- ❑ There is concern over someone slipping through the cracks. Judge Jackson said we cannot ensure that someone won't slip through the cracks unless we put everyone in jail.
- ❑ Judge Jackson emphasized that we need to keep people in jail or let them out more intelligently -- based on risk. He also pointed out that this will ultimately be up to the judges as to how this would be implemented. He said that the judges have had two en banc meetings on this subject. The judges will always retain their judicial discretion, but that the judges were willing to try to rely less on secured bonds, especially surety bonds. He emphasized that our study was based on research and evidence that are fundamental to the justice system. Judges will always try to base their bond decisions on good input from Pretrial Services, the DAs, and defense attorneys. Judge Jackson emphasized that the system should encourage the use the PR and low cash bonds for those people who can be managed in the community safely. Judges will find a way to keep dangerous defendants incarcerated. Lastly, he stated that the recommendations have good merit and we should adopt them.
- ❑ Scott Storey has concerns over the risk assessment tool and its merit. There will soon be a new one that will come out of the Colorado Improving Supervised Pretrial Release (CISPR) project.
- ❑ There was some concern regarding the costs associated with implementation. This will be addressed by the Implementation Team.
- ❑ Judge Margie Enquist stated that she thought the individualized bond setting was a better practice for judges. She agrees that we need a good risk assessment and good pretrial supervision. Judge Enquist also commented that the bail bond decision is really about whether the defendant should be in jail or out on pretrial release, and if on release, how the defendant can be managed.
- ❑ Eva Wilson from the DA's Office is in favor of the enhanced pretrial supervision, but has strong reservations about this project.
- ❑ Scott Storey said that he thought this project is a solution seeking a problem, and that a problem has not been identified.
- ❑ Mitch Ahnstedt said he thought the changes were happening slowly and in a deliberate manner, so he is for going ahead with the project.
- ❑ A vote was taken on whether or not to accept the Subcommittee's Action Item and recommendation to form an implementation team for this project. All but one member voted yes. There was one no vote (Storey).

**Inform each other about changes in our own agency that may affect the workload of other agencies in the justice system.**

- Chief Dan Brennan said that the Wheat Ridge Police Department received a Department of Justice (DOJ) grant for 3 years. They will be funding 2 School Resource Officers (SRO) and 1 vice intelligence officer.
- Chief Bill Kilpatrick said that the Child and Youth Leadership Commission is funding a LifeSkills Training coordinator.
- Tim Schnacke acknowledged Sharon Winfree and Gary Darling of Larimer County. Sharon put a lot of time and effort into opposing Proposition 102.
- Lynn Johnson invited everyone to attend National Adoption Day events on Saturday, November 20.

**The next CJSPC meeting is Wednesday, January 19, 2011 from 5pm to 7:15pm in the Quad Room (1552AB/1565AB) on the first floor of the Administration and Courts Building. Dinner will be served.**

**The meeting was adjourned.**

Submitted by:

\_\_\_\_\_  
Lynne P. Nieman, Criminal Justice Planning Unit

Reviewed by:

\_\_\_\_\_  
Michael R. Jones, Criminal Justice Planning Unit

Date: \_\_\_\_\_

## Timothy Murray Bio

Timothy J. Murray has worked as a criminal justice practitioner at the local, state and federal levels. His extensive pretrial services experience includes management and executive positions with the Washington DC and Miami-Dade County's pretrial services systems. While in Miami he was the principle architect and administrator of the nation's first Drug Court. He went on to serve with the US Department of Justice as first Director of the Drug Court Program Office.

Following that appointment, he held the positions of Director of Policy and Planning and Director of Program Development at the Bureau of Justice Assistance. He completed his federal service as part of the start-up team for the Transportation Security Administration, now part of the US Department of Homeland Security.

He has provided technical assistance to numerous programs and organizations, nationally and internationally. He is a lifetime member of the National Association of Pretrial Services Agencies and is the proud recipient of the Association's most prestigious honor, the Ennis J. Olgiatti award.

# THE JEFFERSON COUNTY BAIL IMPACT STUDY

Summary of Findings and Recommendations

Presented to the  
Jefferson County

Criminal Justice Strategic Planning Committee

by the

System Performance Subcommittee  
and Criminal Justice Planning Staff

November 17, 2010

## Slideshow Contents

- ▣ Project Origination
- ▣ Project Phases
- ▣ Bail Impact Study's Process Findings
- ▣ Bail Impact Study's Outcome Findings
- ▣ Findings and Recommendations

## Project Origination

1. 2007 County's Organizational Review Committee's Justice Oversight Committee
  - Purpose: Improve the local criminal justice system to help the County stay within its reduced budget
  - Participants: (1) Storey, Pautler, Mink, Fleer, Giacinti, Leopold, Jackson, CJP; (2) Moore, Riede, Senese
  - Method: Created 7 projects (e.g., Pretrial Release/Bonding/Supervision)
2. 2007 System Performance Subcommittee's goal of "Review and modify, if necessary, pretrial release/bonding practices"
  - ▣ Merger of the two became the Jeffco Bail Project

## Project's Phases

- ▣ Late 2007/Early 2008 - CJP staff collected background information
  - Literature review, legal research, jail analyses, advisement observations, interviews
- ▣ Summer 2008 - System Performance Subcommittee began self-education and discussions
- ▣ Late 2009 - Designed pilot project and was awarded a grant
- ▣ Early 2010 - Conducted Jeffco Bail Impact Study
- ▣ Summer/Fall 2010 - Analyzed and discussed process and outcome findings
- ▣ Today - Present findings and recommendations to the CJSPC

## Bail Impact Study: Some Process Findings

- ▣ 14 judges, 24 prosecutors, 9 public defenders, and many others (PTS, Jail, Court Clerks, Victims Advocates) participated
- ▣ Money bail bond schedule was suspended and new-crime defendants saw a judge
- ▣ Advisements occurred every day
- ▣ Public defenders represented felony defendants
- ▣ Change in the reliance on money
  - 30% received PR bonds (prior was 14%) (96% were eligible)
  - 32% received surety bonds (prior was 76%)
- ▣ Info for bond setting
  - Attorneys added information not in the PTS assessment ranging from 5% (prosecution) to 53% (private attorney) of the time
  - Non-attorneys advocated for defendants 8% of the time and against defendants <1% of the time
- ▣ Variation in judges', prosecutors', defenders', and defendants' requests or decisions
- ▣ Bond type did not alter dispo times

## Bail Impact Study: Some Outcome Findings

### Similar Cases – Different Bond Types

Cases Closed, Posted Bond, Ordered to PTS Supervision

	Felony	Misd.	PR	Cash Only	Surety Option
County Court Judge (More secured money)	35%	65%	37%	28%	35%
County Court Judge (Less secured money)	35%	65%	52%	32%	16%

## Bail Impact Study: Some Outcome Findings

County Court Judge  
(More secured money)

County Court Judge  
(Less secured money)

Court Event Appearance Rate	No New Arrest/Filing Rate	People with Technical Only Violations	Avg. Time to Post Bond
96%	86%	48%	2.9 Days
97%	86%	37%	1.2 Days

## Bail Impact Study: Some Outcome Findings

- 775 defendants' cases took 4 or more days to close.

Bond Type	# Defendants	Defendants' Bond Posting Status by up to 6 to 9 Months Later		Average # of Days to Post Bond
		% Posted	% Not Posted	
PR/PRCo	229	98	2	0.1
Cash Only	272	68	32	3.4
Surety Opt	274	47	53	6.9
	<b>775</b>			2.9

Bond Type	# Defendants Annually	Avg. Daily # of Beds Needed for Defendants Who:		Annual Estimated Total Cost (@ \$65 Per Day)
		Post Bond	Do Not Post Bond	
PR/PRCo	916	1	4	\$104,000
Cash Only	1,088	6	90	\$2.3M
Surety Opt	1,096	9	163	\$4.1M

## Subcommittee Findings and Recommendations

- ▣ Findings: The addition of a secured financial condition to released defendants' bonds did not enhance public safety or court appearance or reduce technical violations. It does, however, substantially increase jail bed use.
- ▣ Interpretation: A change in bail/pretrial practices that includes less reliance on secured financial conditions/bonds and more reliance on supervised pretrial release by PTS is supported by local and national data and is more consistent with CO law.
- ▣ Recommendations: The major recommendations are: (refer to Action Item for more detail)

## Recommendations

- ▣ Issue
  - Responding to ORC and CJSPC
  - Did self-education and an impact study
  - Showed a mixture of risk-based and cash-based bail bond setting and movement toward a less cash-based system (consistent with Colorado law and maintaining full judicial discretion) with enhanced pretrial risk assessment and supervision resulted in no observable difference in public safety or court appearance outcomes. These local findings are consistent with national research.
- ▣ Proposed Remedy
  - Form an implementation team to make changes in consideration of Subcommittee's ratings and responses
- ▣ Anticipated Benefits
  - Depends on what is implemented and to what extent
- ▣ Projected Costs
  - Depends on what is implemented and to what extent

# Jefferson County Criminal Justice Strategic Planning Committee (CJSPC)

## Proposed Action Item for System Improvement

**Title of Proposal:** Recommendations from the Jefferson County Bail Project

**Date of Proposal:** November 17, 2010

**Issue:** In February of 2007, the Jefferson County Board of County Commissioners and its Organizational Review Committee formed the Justice Oversight Committee to identify and recommend areas of improvement in the local criminal justice system that could better help the County stay within its upcoming reduced budget. The Committee selected “Pretrial Release/Bonding/Supervision” as one of seven projects to accomplish this mission. In May of 2007, the System Performance Subcommittee of the Criminal Justice Strategic Planning Committee (CJSPC) adopted a goal of “Review and modify, if necessary, pretrial release/bonding practices.” Stakeholders agreed to consolidate the Justice Oversight Committee’s Pretrial Release/Bonding/Supervision project with the System Performance Subcommittee’s goal. The result was the Jefferson County Bail Project.

During the next three years, the Subcommittee, with assistance from Criminal Justice Planning staff, has educated itself about bail/pretrial-related terminology, the history of bail, Colorado law, and legal and evidence-based practices such as those articulated by the American Bar Association<sup>1</sup> and supported by other national entities including, but not limited, to the National Association of Counties, the National Association of Pretrial Services Agencies, the American Probation and Parole Association, the Pretrial Justice Institute, and the National Institute of Corrections.

The Subcommittee found, through legal and social science research (e.g., the Bail Impact Study), that the First Judicial District’s administration of bail is currently driven by a mixture of risk-based and cash-based (i.e., secured bonds) determinations, but also found, during the 14-week Bail Impact Study, that the movement toward a less cash-based system (consistent with Colorado law and maintaining full judicial discretion) with enhanced pretrial risk assessment and supervision resulted in no observable difference in public safety or court appearance outcomes. These local findings are consistent with national research.

**Proposed Remedy:** The Subcommittee requests that the CJSPC member agencies consider making changes to the local administration of bail considering the various ratings and responses to the items attached to this action item. Subcommittee members reached, with some dissent and certain dissent by the District Attorney’s Office “based on public safety concerns,” consensus that several areas of improvement should be realized. The Subcommittee requests that the CJSPC accept this report and appoint a small implementation team to consider the work of the Subcommittee as a basis for further examination of risk assessment (the CISPR project will be one step in this process to better provide enhanced information to judges), individualized bond settings, and pretrial supervision, and to work through the programmatic and operational changes that would need to occur prior to any implemented changes.

**Anticipated Benefits:** Anticipated benefits vary and are complex, and depend largely on the extent to which changes to existing practices are made. The Subcommittee believes that certain benefits may include better risk assessment, more individualized bail settings, and better pretrial supervision. The Subcommittee has already experienced benefits from the educational and collaborative aspects of the project.

**Projected Costs:** Potential financial costs vary and depend on the extent to which changes to existing practices are made and the extent to which agencies are able to reallocate existing resources. As decisions to programmatic or operational changes are made, the implementation team would be able to identify any actual financial costs, as well as cost savings. The Subcommittee recognizes that there will be specific costs depending on the level of implementation and that all involved agencies will need to work collaboratively to assume these costs.

**Sponsoring Entity:** System Performance Subcommittee of the CJSPC

**Other Notes:** For more information, contact Mike Jones at 303-271-4669 or [mjones@jeffco.us](mailto:mjones@jeffco.us).

Portion below to be completed when item is acted upon.

**Action Taken:**

**Date of Action Taken:**

<sup>1</sup> The ABA standards were used only as a guideline for study and discussion and are not endorsed by the Subcommittee wholly in and of themselves.

**Jefferson County Bail Impact Study**  
**Ratings and Commentary for Individual Items for Consideration**  
**Compiled by the System Performance Subcommittee**  
**2010-11-12**

**Rating Participants**

One representative from the following eleven agencies/entities provided a rating and/or commentary:

- County Court Bench
- District Court Bench
- Municipal Court
- District Attorney's Office
- Public Defender's Office
- Sheriff's Office
- Municipal Law Enforcement
- Pretrial Services
- Probation Department
- Intervention, Inc.
- Rocky Mountain Offender Management Systems

**Rating Scale**

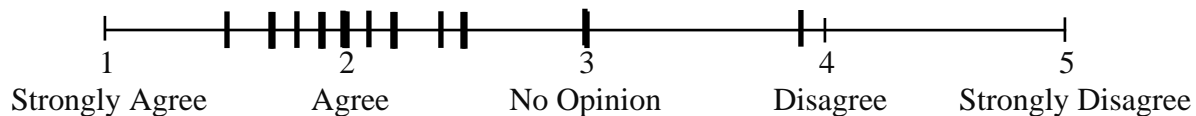
The following rating scale was used for each item:

Strongly Agree    Agree    No Opinion    Disagree    Strongly Disagree  
1                    2                    3                    4                    5

**Illustration of Rating Results**

A maximum of eleven and a minimum of nine representatives rated each item.

The following illustration depicts the degree to which the average ratings for each item fell on the continuum from Strongly Agree to Strongly Disagree.



## Ten Rated Items

**1. Consistent with current Colorado law, judges should strive to follow some or all of ABA Standards 10-1.3 and 10-3.1 through 10-3.3,**

**a) to liberally use their authority to issue summonses in lieu of arrest warrants unless the warrant is necessary to prevent flight, the commission of future crimes, or when the defendant's whereabouts are unknown;**

**Average Rating: 2.5**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: I’m frankly not sure when this would come into play. The DA’s request warrants or summonses and I don’t think judges should interfere with that initial filing determination unless it is shown to be unreasonable. Judges can, however, set appropriate bonds for new filings – but they will have limited information (criminal history and currently charged offense) and not the wealth of information we desire from pretrial on an arrestee. This will make the bond setting more difficult for new filings.

Judges don’t issue warrants unless a defendant violates a term of bond or probation or fails to appear (and evidence-based practices encourage swift consequences for such violations in support of facilitating change) – summons for this type of violation is not appropriate. Duty judges only set bonds for persons who are in custody.

Law enforcement should strive to issue summons where appropriate and are in the best position to make that determination.

District Attorney’s Office: Colorado’s “Summons in lieu of warrant” statute which was amended in 2009 specifies the appropriate standard. The ABA’s use of the term “liberally” suggests a less deliberative decision-making process. The command to “always” issue a summons in minor offenses without certain risk factors takes away judicial discretion and leaves open for interpretation “minor offenses.” There are a myriad of factors that could elevate the status of a “minor offense” to a serious crime including the defendant’s criminal history, risk to public safety, use of drugs or alcohol, prior failed rehabilitative efforts, domestic violence issues etc., Additionally, these standards do not appear to take into account the difficulty in serving certain defendants with summons. This includes transient individuals, those held in custody elsewhere, individuals who reside outside this jurisdiction, etc., for whom an arrest warrant may be the best method to secure their initial appearance in court.

Public Defender’s Office: [Strongly Agree] with the understanding that the most important factor is current Colorado Law.

Sheriff’s Office: By using summonses, victims have to wait weeks for the return date until they get a protection order. For many victims, it makes little sense that we can have probable cause without a protection order. This is particularly concerning for victims who know the offender through work, school, social circles and family. If we have a citizen call law enforcement to make a report of a crime committed against them, particularly a violent crime, they expect the system will not leave them hanging out to dry without protection. If victims get this impression from the system, it's likely they will choose not to report again. A protection order - a prompt

protection order - is key. During this study, we were able to assure victims that they would get a protection order at Advisements. Defendants were not able to bond out before a protection order was entered. This was a major plus to the study.

Municipal Law Enforcement: I would rate this a 2 if the word “liberally” were not in the sentence. It implies a sense of carelessness, and it minimizes the factors that need to be considered.

**b) to always issue summonses in cases involving minor offenses unless certain risk factors are present;**

**Average Rating: 2.5**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Law enforcement officers are in a position to best judge whether to proceed by summons or warrant.

Municipal Court: Subsection (b) uses the term “always” which takes away important discretion for a judge or the prosecutors’ office. A judge or the prosecutor should not be limited to considering pre-established risk factors in determining whether a warrant should be issued.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

Public Defender’s Office: Rating of 1 but the term “always” should not be construed as removing judicial discretion where it currently exists pursuant to Colorado Law.

Sheriff’s Office: It’s important to note that the ABA states “In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.” Our current system allows for summons on even violent cases such as 3rd degree assault and child abuse. During this study even victims of these cases were granted timely protection orders.

Intervention, Inc.: As long as “minor” is defined appropriately.

**c) and to consider relevant individualized factors in addition to the charge when issuing summonses or warrants.**

**Average Rating: 1.9**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Law enforcement officers are in a position to best judge whether to proceed by summons or warrant.

District Attorney’s Office: [Agree] provided this “individualized factor” information is verified and reliable.

**2. Consistent with ABA Standard 10-5.3(e), judges should cease using a predetermined schedule of amounts fixed according to the nature of the charge (the money bail bond schedule).**

**Average Rating: 2.0**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Individualized bond setting better serves the community and courts.

Municipal Court: When a bond does need to be set, a schedule contributes to consistency and fairness. The nature of the charge is still a significant factor in setting a bond or determining the risk to the community. A bond schedule to assist with settings bonds where bonds should be set would still be helpful.

District Attorney’s Office: Judges already have discretion in the amount of bond to set and are not bound to the bond schedule. A bond schedule gives guidance to judges and fosters consistency between judges, provides a level of predictability for defendants and victims and achieves a degree of fairness when the judges utilize the bond schedule as a benchmark.

Public Defender’s Office: The allegations are only one factor in the setting of bond and should not determine a schedule. If a schedule is necessary, it should be based on factors other than the initial allegations.

Pretrial Services: Although there seems to be face validity, there is no evidence in the Bail Study or any other research that the amount of bond influences any outcome other than keeping a defendant, without means, incarcerated. In addition there is no consistency between jurisdictions in monetary bond schedules. Also, there is little consistency between judges in bond setting on charges without mandatory bonds required. In the interest of fairness and consistency, do away with the use of a bond schedule and assign one or two judges to do all advisement hearings.

Intervention, Inc.: Fixed amounts are too arbitrary.

**3. Consistent with ABA Standard 10-1.4(f) and 10-5.3 (and commentary), judges should cease setting commercial surety option bonds in favor of non-commercial financial options for securing bonds, such as using uncompensated sureties or setting bonds in amounts such that the for-profit bondsman function becomes unnecessary.**

**Average Rating: 2.2**

**Commentary:**

County Court: The county judges disagree with question #3.

District Court: I agree, except some defendants continue to request surety bonds in lieu of even low cash bonds, so there should be room for exceptions.

Municipal Court: Community safety must be the absolute priority. High cash bonds or other bonds which would hinder release must be imposed in cases where the individuals present a danger to the public. Defendants who do not pose such a risk could have lower bonds or uncompensated sureties with adequate supervision. The compensated surety offers little in the way of community safety.

District Attorney's Office: This bail impact study did not assess the impact of bail bondsmen on the criminal justice system in the 1<sup>st</sup> Judicial District. Despite the request of the DA's office, the Systems Subcommittee supported by the Criminal Justice Strategic Planners did not invite the bond industry to present their position during this project regarding the value they provide to the system. The DA's office requested that the planners review existing posted surety bond cases to determine whether bonds were being forfeited and whether bondsmen were locating and surrendering fugitives on these cases. No such data or explanation of the lack of such information has ever been provided or discussed. There is a void of anything but anecdotal information on these important points and therefore this office cannot concur with this position.

Probation Department: Until such time as the legislature allows the courts to collect a percentage of the bond and return it upon appearance, the court should still have the option of using surety bonds, as should defendants – since they may not have the money to post bond. 1<sup>st</sup> District should encourage the legislature to pass legislations allowing defendants to post a percentage of the bond with the court (court assumes the current role of a surety)– this would provide an incentive to the defendant to appear, since they would get a substantial portion of the posted money back if they appear, unlike a traditional surety bond. Should also encourage legislation to promote individual risk assessment based on offender lifestyle and behavior, versus simply on the current charges – to allow higher risk individuals to be held, regardless of the charge, and some individuals accused of serious offenses, to post bond, or get PR with supervision, based on level of risk.

Intervention, Inc.: [Strongly Agree] !!!!!

**4. Consistent with previous ABA Standards and commentary to existing Standard 10-1.4 (f), if judges do set a commercial surety bond as an option, they should not couple that option with pretrial services supervision.**

**Average Rating: 3.9**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Pretrial supervision should be imposed where appropriate, whether there is a surety bond or not – as we have learned through this process, sureties don’t do much to ensure appearance and even less to prevent recidivism (they don’t address alcohol / drug use, stability, etc). Pretrial’s purpose is not met by a surety bond.

Municipal Court: Commercial sureties do not supervise defendants. If they are still used, pretrial services supervision should still be an option.

District Attorney’s Office: Throughout this project, statements have been made that “double supervision” is a negative and to be avoided. However, the reason for that statement is unknown and flies in the face of logic. Nothing in this bail impact study has demonstrated that coupling a surety bond with pretrial supervision has a deleterious effect on public safety or appearance in court. The DA’s office strongly supports pretrial release supervision where appropriate for offenders who are able to bond into the community regardless of the type of bond that is posted.

Public Defender’s Office: If Judges believe that a particular defendant warrants a commercial surety, that surety should have supervision responsibilities to the court beyond simply profiting from the bond.

Sheriff’s Office: From experience, bondsmen are more interested in their financial investment than victim security. Pretrial Services supervision does a much better job implementing victim safety measures such as GPS and communication with victims.

Pretrial Services: We would agree with this if professional sureties were obligated to enforce the conditions of bond ordered by the court at the advisement hearing. Until there is a competent alternative to the supervision by professional pretrial services, issues of public safety and the integrity of the court oblige us to oppose this recommendation.

Probation Department: While this would definitely send a message to legislators and surety companies, it would increase risk to the community and to the offender in some cases.

Intervention, Inc.: Since Pretrial is accountable to the judges, and bail bonds people really are not—pretrial should be always be considered, especially if there is a no contact /restraining order, or sobriety issues.

**5. Consistent with ABA Standard 10-1.10, judges should work closely with the Court Services Advisory Board and the Pretrial Services Unit to implement and augment legal and evidence based practices in the statutorily created Pretrial Services Program for the First Judicial District.**

**Average Rating: 1.7**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: This is a significant cornerstone of an effective program.

Public Defender’s Office: I would include other essential stakeholders in this group (i.e. DA, Public Defender, Sheriff’s Dept., etc.).

Pretrial Services: The effectiveness of existing conditions of bond should be validated with defensible research on a jurisdiction’s defendant population and regularly reviewed and updated or replaced with new conditions that research has shown to have a positive verifiable impact on bond compliance. (Some traditional predictors have, over time, decreased in value as predictors of bond condition compliance; residential stability, telephone ownership, and job stability are in that category).

Intervention, Inc.: Probation and Community Corrections are held to this standard, so should Pretrial.

**6. There is no ABA Standard concerning delegated release authority through bond commissioners; accordingly, judges should evaluate the need for this function based on whether they implement other recommendations for the administration of bail.**

**Average Rating: 1.8**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Their role needs to be evaluated – currently, I’m not comfortable with delegating individualized assessment to non-judicial personnel.

District Attorney’s Office: No opinion at this time. However, the DA’s office believes that the current exclusion list for Pretrial Services PR bond allowance needs to be updated and expanded, as previously indicated in a memo distributed to the Court Services Advisory Board by the DA’s office.

Pretrial Services: The release decision making by a bond commissioner, if used, should mirror all the validated decision rules used by the court and approved by the Court Services Advisory Board and the officers of the Court. Protocols should be developed to provide telephonic approval of special conditions recommended by the Bond Commissioners.

Intervention, Inc.: [Agree] One step at a time.

**7. Consistent with ABA Standard 10-4.1 (b), defendants should be held no longer than 24 hours without appearing before a judicial officer.**

**Average Rating: 3.0**

**Commentary:**

County Court: One day per weekend is appropriate for seeing in custody defendants.

District Court: This is simply not practicable – even during the project we held people for 30 hours (those arrested at 4 am were seen at 10 am the next day) – we should expand this to 48 hours as provided by statute. If implemented, a 24-hour window would consume an unreasonable amount of judicial, pretrial, and sheriff’s resources.

Colorado law provides for 48 hours (and for good reason). I have a further concern that we would create a “due process” right that would then come back to bite us. We don’t want to set the system up to have a “due process” violation filed because someone wasn’t seen within 24 hours, resulting in the dismissal of charges or other sanctions (or even invite the motions practice which would burden both county and district court).

Municipal Court: It is too great a drain on resources to run advisements and bond hearing daily through every weekend. A 24 hour time limit would mean Saturday and Sunday advisements every weekend.

District Attorney’s Office: Weekend advisements were an enormous resource drain and expense on all parts of the judicial system including our office. It is not practical to implement such a change without greatly increased resources. During the bail impact study, our office provided experienced attorneys on the weekends to cover advisements, which was only possible because of the project being limited to a finite twelve week time period. During these twelve weeks, approximately 100 hours of attorney time were spent on the weekends covering this project. We could not compensate attorneys monetarily but tried to allow them to take time off (hour for hour, not time and a half) at some date after their weekend duty. This was difficult due to their heavy caseloads and/or supervisory duties. Despite a great need, we could not provide secretarial or victim-witness assistance to our attorneys due to budgetary mandates during the weekends. We also had to involve the part-time assistance of a paralegal to our intake unit to handle the increased paperwork that this project created. Weekend advisements are also untenable due to the difficulty they create in allowing victim access to the process. Victims should have an opportunity to attend the Advisement Hearing. Weekend advisements are simply too burdensome on our limited resources. Our current system provides for defendants to receive a judicial probable cause review within 48 hours of arrest and without evidence of defendants being unjustly detained, even adding a Saturday *or* Sunday weekend advisement is unnecessary and financially unsupportable.

Public Defender’s Office: But I do feel that 48 hours is appropriate and workable in the 1<sup>st</sup> Judicial District. This would require weekend court on either a Saturday or a Sunday.

Sheriff’s Office: Although I agree with this statement on principle, if we put aside the bond schedule, this would require weekend/holiday court. This would necessitate the same services for victims as is available any given weekday. We should have advisements in the Courts and Administration Building. Victims should be provided a secure waiting area (a right provided by the state constitution). Victims should be awarded a victim advocate from the DA's office to work with before, during and after the hearing. The Family Tree Legal Clinic should be open and available to victims so that they could help the victim file for a civil protection order. The

courts should be open to allow victims to file for civil protection orders. The Sheriff's Office Civil unit should be open for civil service processing and stand-by to prevent needs. Victims should be able to get a copy of their protection order before the suspect is able to bond out.

Pretrial Services: For most of the recommended changes this will be necessary.

Probation Department: If bond appearances are only held once on the weekend, some individuals who were not previously held, will now be held, which could impact work, child care, etc... We must also consider those arrested in other jurisdictions on our warrant, who previously could have bonded from the other location, and now must be transported to our district for bond hearing, again, resulting in some individuals who will be released by our courts on minimal bond/PR, being held longer...

**8. Consistent with ABA Standard 10-4.3 (b) (commentary, citing the ABA’s Providing Defense Services Standards), judges should encourage defendant representation at first advisement.**

**Average Rating: 2.4**

**Commentary:**

County Court: The county judges agree with question #8.

District Court: Representation for all defendants benefits the entire system.

Municipal Court: Defendants should be advised of their right to counsel. “Encouraging” representation is not necessary, particularly on simple cases such as municipal cases which can often be resolved quickly and easily.

District Attorney’s Office: This is a broad, over-reaching statement which is inconsistent with Colorado law which provides that it is the duty of the judge to inform defendants at first appearance of *their right* to counsel and, if indigent, of their right to make application for court-appointed counsel (C.R.S. 16-7-207). However, our statutes do not require the court to “encourage” representation nor is that consistent with C.R.S 16-7-301 which provides flexibility for a DA to work out a plea agreement with a defendant in misdemeanor, petty offense or traffic cases when the defendant has been advised of their right to retain or seek appointment of counsel but prior to an attorney appearing on that case. Our statutes allow prosecutors to conduct plea discussions on these cases without counsel being mandated to appear. Additionally, C.R.S. 16-7-207(1)(c) provides that court-appointed counsel may not be assigned to a defendant when the DA is not seeking incarceration. This standard is simply in conflict with Colorado law.

Pretrial Services: In all circumstance where the defendant’s liberty is affected; the opportunity for private or public counsel should be available.

**9. Consistent with current Colorado law, judges should strive to follow some or most of ABA Standards:**

**a) 10-1.1 (promoting a balance between public safety and securing defendants for trial with the constitutional due process rights of defendants),**

**Average Rating: 1.5**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Attorney’s Office: The brief summaries listed below do not capture the overreaching language of the actual ABA standards. These standards encroach on judicial discretion, are not focused on public safety or protection of victims and make a philosophical statement which is not consistent with Colorado statute, procedures or case law.

Sheriff’s Office: I think this was one of the main points of the study: finding a balance and taking into consideration public safety. Threat assessments are a great idea. Defendants should not be able to bond out until risk is identified. Further, they should not be able to bond out before a protection order is issued on cases involving crimes against persons. Especially in cases of child sexual abuse, the public needs bond conditions ordered to prohibit the defendant from having contact with children. In cases of domestic violence, victims need that protection order and they need time to make decisions and put into place a safety plan.

Many offenders do not pose a risk and some do. If we can accurately identify those who threaten victims and our community, we can be a more responsible system. During the subcommittee meetings, we discussed some of the risk assessment failures. These anecdotes lead me to question whether we were successful in our risk assessment during this study. A good threat assessment (and implementation of that assessment) will take time and practice. It may also necessitate a change in philosophy in our system which comes from the leadership down. Getting the judiciary on the same page, and treating similar circumstances equally will be a challenge. I think there needs to be very specific guidelines for the risk assessment. I also think that the success of a risk assessment is directly linked to the training of the assessor. Risk Assessment should include victim/offender dynamics. Training to the judiciary, prosecutors and pre trial services is very necessary.

Intervention, Inc.: As long as victims are protected in the process.

**b) 10-1.2 (promoting the use of least restrictive conditions of release to protect public safety and court integrity),**

**Average Rating: 1.7**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

Probation Department: Based on credible assessment.

**c) 10-1.4 (a) and (b) (promoting release on recognizance or unsecured bonds, with additional non-financial conditions as deemed necessary),**

**Average Rating: 1.9**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

Public Defender’s Office: Community Safety and flight risk should never be determined based on a particular defendant’s access to money. Non-financial conditions such as pre-trial release and supervision should be heavily relied upon.

**d) 10-1.4 (c) (promoting release on financial conditions only when no other condition will reasonably assure appearance, set at the lowest level necessary to ensure appearance and with regard to a defendant’s financial ability to post bond),**

**Average Rating: 2.0**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Public safety, while not a justification for an increase in monetary conditions, is a fair consideration in our circumstance when making a release/detain decision and how to accomplish detention when necessary for public safety. As an aside:

I strongly disagree with 10-1.4(d) for the above reason.

I disagree with 1.4(f) as well because it is not permitted in Colorado. If it were, we would simply have to adjust the bond setting to allow for a 10% deposit – instead of a \$10 bond, would we then set a \$100 bond which, frankly, seems counter to the intent of the project.

Municipal Court: The primary concern still needs to be public safety.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

Probation Department: The need for this should be explored and very specifically defined, since there does not appear to be a relationship between cash and appearance...

**e) 10-1.6 (promoting a policy favoring release with detention as an exception to that policy),**

**Average Rating: 2.2**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: The vast majority of defendants receive probation and are not a community safety risk, so don’t need pretrial detention (there is some evidence that swift sanctions are an impetus for change, but such sanctions must be fair and proportionate to the violation). Time will tell whether we see more incarceration on the back end instead of the front end.

Municipal Court: There must be detention to protect the public on many cases. This should not be considered an exception.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

Pretrial Services: Suggest that a written justification for “no bond” release and continued detention should be presented by the Court.

**f) 10-1.7 (warning against giving inordinate weight to the present charge except in certain circumstances),**

**Average Rating: 3.0**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: While the charge is a very valid consideration, it should be considered in light of all other factors (history, stability, mental health, drug/alcohol issues)

Municipal Court: The present charge is a significant factor and will dictate the possible penalty which will affect the likelihood of appearance as well as the danger to the community. The present charge must be given substantial weight.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

Public Defender’s Office: I believe the actual charge has little, if any, relevance to the setting of bond. The underlying factual allegations are relevant and should be considered in certain circumstances.

Pretrial Services: The circumstance should be justified and documented with a pretrial hearing.

**g) and 10-5.1 through 10-5.11 dealing more specifically with the judicial release and detention decision including specific recommendations for release on financial conditions.**

**Average Rating: 2.0**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: This is the cornerstone of our project.

District Attorney’s Office: See District Attorney’s Office’s comments in a) above.

**10. Consistent with ABA Standard 10-5.3 (a) (recommending that financial conditions should not be imposed that result in the pretrial detention of a defendant solely due to an inability to pay), and 10-5.12 (articulating other reasons for promptly re-examining the release decision), judges should develop a system for monitoring and reviewing the status of defendants, including defendants detained pretrial after the decision to release has been made.**

**Average Rating: 2.1**

**Commentary:**

County Court: No opinion. Words such as “always”, “some or most”, “should or should not” give us pause to commit to an answer.

District Court: Once the decision to release is made, absent other conditions preventing release (holds, defendant’s decision), the individual should be released; if release doesn’t timely occur, review should. This will (may?) result in some additional workload for county court and possibly the sheriff’s office (if people are brought over for the review), but the burden should be acceptable. Appointment of counsel in these cases would benefit the defendant, courts, etc.

District Attorney’s Office: The DAs Office is not in favor of the usage of these ABA standards which are inconsistent with Colorado law and procedures. Our law provides for the ability of a defendant to request a bond modification which is how the court currently reviews the status of defendants who have been unable to post bond. These motions are routinely filed and bond reductions are frequently granted by our courts when sufficient information supports such an adjustment. The DA’s office is an active participant in such hearings and must be so involved to ensure that there is compliance with the Victims’ Rights Amendment and that notification is provided to the victim of a bond modification hearing. This process works and is not in need of adjustment or change.

Originally, as a possible simple alternative to this far-reaching Bail Impact Study, the DA’s Office and a County Court Judge encouraged the production of a list of inmates being held solely because of their inability to post a minimal bond on their Jefferson County case. These defendants who were being held pretrial could be reviewed by the court sua sponte and the court would have the discretion to set any of these cases for a bond hearing with notice to counsel and the DA. This process would bring to the court’s attention these cases and discourage unintended lengthy pretrial detention. No list of such low-bond incarcerated defendants was ever produced and the suggestion for a development of such a process was not adopted by the System’s Subcommittee.

Municipal Law Enforcement: Law enforcement has a strong interest in maintaining public safety. My experience with this study has convinced me that this can be accomplished by adopting a non-monetary bond system if pre-trial supervision is included. We need to have additional bonding and pre-trial condition options for those defendants who pose a risk to reoffend while on bond. For the majority, non-monetary bonds work.

Pretrial Services: The issue of a defendant remaining incarcerated because of an inability to raise funds for a monetary bond should be brought back before the court automatically.

## Other Comments

District Attorney's Office: The District Attorney's Office does not ascribe to the belief that local movement towards adopting the ABA Standards is good policy for the 1<sup>st</sup> Judicial District. The ABA Standards frequently conflict with Colorado law and procedure. Based upon our analysis and legal reviews, the ABA Standards are viewed by many as politicized and partisan. As written by Kent Scheidegger, the Legal Director of the Criminal Justice Legal Foundation in California, "The ABA's transformation from a broad umbrella organization representing the entire bar into a shill for the criminal defense bar is now clear for all to see."

Understanding our general and continuing objection to the usage of the ABA Standards as a guide, the District Attorney's position on each individual item is indicated in this document.

Public Defender's Office: With respect to the impact this project will have on my office, it is difficult to define at this point. Obviously having a public defender presence at advisement will require significant additional lawyer time in the courtroom. This will require additional lawyers but should not affect the administrative or investigative staff. As a statewide agency this is something I will have to address with our State Public Defender. However, with our current staffing we will find a way to accommodate the additional time commitments if this project is implemented.

Intervention, Inc.: Judges should always be allowed discretion.