

FILED

MAR 21 2019

ELIZABETH A. BROVIN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: THE COMMITTEE TO STUDY
EVIDENCE-BASED PRETRIAL
RELEASE.

No. ADKT 0539

*ORDER ADOPTING STATEWIDE USE OF THE NEVADA PRETRIAL
RISK ASSESSMENT*

WHEREAS, in June 2015, the Judicial Council established a Committee to Study Evidence-Based Pretrial Release, whose purpose was to examine the current pretrial release system in Nevada and to consider alternatives and improvements to the system through evidence-based practices and current risk assessment tools. The Committee was chaired by Justice James W. Hardesty and was comprised of rural and urban judges, public defenders, district attorneys, pretrial services representatives, county representatives, and other stakeholders; and

WHEREAS, the Committee held multiple meetings during which it received presentations from local and national experts on the subject of evidence-based pretrial risk assessment tools. These tools assess the likelihood that a defendant will appear for future court proceedings and the likelihood that a defendant will be a danger to the community if released. Nationwide, courts are moving towards the use of evidence-based risk assessment tools because they guarantee that a pretrial release decision is based on the individual's risk of failure to appear or threat to public safety rather than the individual's ability to pay bail, thus instilling greater fairness and consistency into the process. In Nevada, pretrial release is available for any person charged with a bailable offense "if it appears to the court that it can impose conditions on the person that will

adequately protect the health, safety and welfare of the community and ensure that the person will appear at all times and places ordered by the court.” NRS 178.4851(1). Though NRS 178.4853 sets forth factors for the court to consider in determining whether to release a person without bail, there is little uniformity throughout the state in how these pretrial release decisions are made and in what information is available or used in these decisions; and

WHEREAS, on September 1, 2016, the Committee launched a pilot site program using a Nevada-specific risk assessment tool, developed and validated by Dr. James Austin with the JFA Institute, designed to assess a defendant’s risk of nonappearance or new criminal behavior. Participating pilot sites included Washoe County District Court, Washoe County Justice Court, Reno Municipal Court, Sparks Municipal Court, Clark County District Court, Las Vegas Justice Court, Las Vegas Municipal Court, and White Pine Justice Court. In addition, courts in Douglas County and Churchill County voluntarily implemented and used the risk assessment tool; and

WHEREAS, on August 15, 2018, based on the results of the pilot program, the Committee unanimously voted to recommend that this court enter an order requiring the use of the validated pretrial release assessment tool statewide; and

WHEREAS, on December 28, 2018, the Committee chair, Justice James W. Hardesty, filed a petition to adopt a statewide requirement that all judges utilize a validated risk assessment tool in pretrial decision-making as recommended by the Committee; and

WHEREAS, this court solicited public comment on the petition, conducted a public hearing on this matter on February 5, 2019, and

considered the Committee's recommendation and the public comment. In particular, the court heard concerns by the Nevada Association of Counties that counties be allowed sufficient latitude in implementing the tool as well as sufficient time to obtain information on potential budgetary and staffing impacts so as to adequately prepare for the implementation of the tool. This court also considered concerns expressed by the American Civil Liberties Union about potential racial bias implicit in the risk assessment tool, and solicited a response from Dr. Austin affirming that there is no current evidence that the tool, which is based on non-racial factors, increases racial disparities in pretrial release decisions; and

WHEREAS, this court finds that the Nevada Pretrial Risk Assessment tool, in the form of both Exhibit A and Exhibit B to this order, has been validated by Dr. Austin of the JFA Institute, and is consistent with that used in other jurisdictions and supported by the Department of Justice; and


WHEREAS, this court has determined that statewide implementation of the Nevada Pretrial Risk Assessment tool is warranted, as it will assist judges in assessing whether a defendant is likely to show up for court and whether the defendant will be a danger to the community if released, it will promote uniformity in how pretrial release decisions are made across the state, and it will ensure that pretrial release decisions are based on the risk posed by the defendant and not by whether the defendant can afford to pay bail;

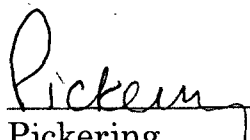
IT IS HEREBY ORDERED that the Nevada Pretrial Risk Assessment contained in Exhibit A and Exhibit B shall be adopted for use in all judicial districts in Nevada.

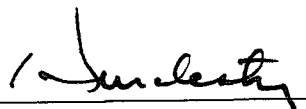
IT IS FURTHER ORDERED that the Administrative Office of Courts shall develop training materials for the implementation and use of the Nevada Pretrial Risk Assessment and make those training materials available on the Nevada Appellate Courts' website within 6 months of this order.

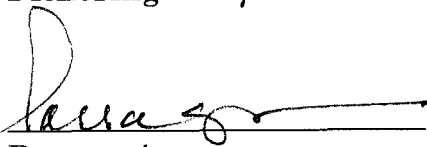
IT IS FURTHER ORDERED that the Administrative Office of Courts shall provide assistance to the judicial districts in educating judicial officers, court staff, and other interested individuals in the use and implementation of the Nevada Pretrial Risk Assessment, with training to be completed within 9 months of this order.

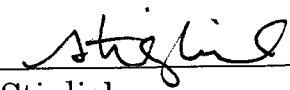
IT IS FURTHER ORDERED that the Nevada Pretrial Risk Assessment contained in Exhibit A and Exhibit B to this order shall be implemented within 18 months of this order, unless an extension of time is granted by the Administrative Office of Courts upon a showing of good cause.



_____, C.J.
Gibbons



_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Silver

cc: All District Court Judges
All Justices of the Peace
All Municipal Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Richard Pocker, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Administrative Office of the Courts

EXHIBIT A

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: ___/___/___ Assessor: _____ County: _____

Defendant's Name: _____ DOB: ___/___/___ Case/Booking #: _____

Address: _____ City _____ State _____ Zip _____ Contact Phone#: _____ # of Current Charges: _____

Most Serious Charge: _____ Initial Total Bail Set: \$ _____

Demographic Information (optional): Gender: Male _____ Female _____
 Race: Hispanic _____ White _____ Black _____ Asian _____ Nat. Amer. _____ Other/Unknown _____

SCORING ITEMS **SCORE**

1. Does the Defendant Have a Pending Pretrial Case at Booking?
 - a. Yes - 2 pts. If yes, list case # and jurisdiction: _____
 - b. No - 0 pts. _____
 2. Age at First Arrest (include juvenile arrests) First Arrest Date: ___/___/___
 - a. 20 yrs. and under - 2 pts. _____
 - b. 21-35 yrs. - 1 pt. _____
 - c. 36 yrs. and over - 0 pts. _____
 3. Prior Misdemeanor Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One to five - 1 pt. _____
 - c. Six or more - 2 pts. _____
 4. Prior Felony/Gross Misd. Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One or more - 1 pt. _____
 5. Prior Violent Crime Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One - 1 pt. _____
 - c. Two or more - 2 pts. _____
 6. Prior FTAs (past 24 months)
 - a. None - 0 pts. _____
 - b. One FTA Warrant - 1 pt. _____
 - c. Two or more FTA Warrants - 2 pts. _____
 7. Employment Status at Arrest
 - a. Verifiable Full/Part-time Employment - 0 pts.
(e.g. Self-employed, Disabled and receiving benefits, Student, Retired, Military, Stay at Home Parent, etc.)
 - b. Unemployed - 1 pt. _____
 8. Residential Status Date of Residency: ___/___/___
 - a. Nevada Resident - living in current residence 6 months or longer - 0 pts.
 - b. Nevada Resident - not lived in same residence 6 months or longer - 1 pt. _____
 - c. Homeless or non-Nevada Resident - 2 pts. _____
 9. Substance Abuse (past 10 years)
 - a. Other - 0 pts. _____
 - b. Prior *multiple* arrests for drug use or possession/alcohol/drunkenness - 2 pts. _____
 10. Verified Cell and/or Landline Phone
 - a. Yes - 0 pts. If yes, list #: _____
 - b. No - 1 pt. _____
- TOTAL SCORE:** _____

Risk Level (Circle One): **LOW** (0-4 pts.) **MODERATE** (5-8 pts.) **HIGHER** (9+ pts.) **OVERRIDE?:** Yes ___ No ___

Override Reason(s): Mental Health _____ Disability _____ Gang Member _____ Flight Risk _____
 Prior Record More Severe than Scored _____ Prior Record Less Severe Than Scored _____
 Other, explain: _____

Final Recommended Risk Level: **LOW** _____ **MODERATE** _____ **HIGHER** _____

Supervisor/Designee Signature: _____ Date: ___/___/___

EXHIBIT B

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: ___/___/___ Assessor: _____ County: _____

Defendant's Name: _____ DOB: ___/___/___ Case/Booking #: _____

Address: _____ City State Zip Contact Phone#: _____ # of Current Charges: _____

Most Serious Charge: _____ Initial Total Bail Set: \$ _____

Demographic Information (optional): Gender: Male ___ Female ___
Race: Hispanic ___ White ___ Black ___ Asian ___ Nat. Amer. ___ Other/Unknown ___

SCORING ITEMS SCORE

- 1. Does the Defendant Have a Pending Pretrial Case at Booking?
 - a. Yes - 2 pts. If yes, list case # and jurisdiction: _____
 - b. No - 0 pts. _____
 - 2. Age at First Arrest (include juvenile arrests) First Arrest Date: ___/___/___
 - a. 20 yrs. and under - 2 pts. _____
 - b. 21-35 yrs. - 1 pt. _____
 - c. 36 yrs. and over - 0 pts. _____
 - 3. Prior Misdemeanor Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One to five - 1 pt. _____
 - c. Six or more - 2 pts. _____
 - 4. Prior Felony/Gross Misd. Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One or more - 1 pt. _____
 - 5. Prior Violent Crime Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One - 1 pt. _____
 - c. Two or more - 2 pts. _____
 - 6. Prior FTAs (past 24 months)
 - a. None - 0 pts. _____
 - b. One FTA Warrant - 1 pt. _____
 - c. Two or more FTA Warrants - 2 pts. _____
 - 7. Substance Abuse (past 10 years)
 - a. Other - 0 pts. _____
 - b. Prior multiple arrests for drug use or possession/alcohol/drunkenness - 2 pts. _____
 - 8. Mitigating Verified Stability Factors (limit of -2 pts. total deduction)
 - a. Employed, Student or Retired (-1) pt. _____
 - b. Nevada Resident - Living in current residence 6 mos. or longer (-1) pt. _____
 - c. Verified Cell Phone/Landline (-1) pt. _____
- TOTAL SCORE:** _____

Risk Level (Circle One): LOW (0-3 pts.) MODERATE (4-8 pts.) HIGHER (9+ pts.) OVERRIDE?: Yes ___ No ___

Override Reason(s): Mental Health ___ Disability ___ Gang Member ___ Flight Risk ___
Prior Record More Severe than Scored ___ Prior Record Less Severe Than Scored ___
Other, explain: _____

Final Recommended Risk Level: LOW ___ MODERATE ___ HIGHER ___

Supervisor/Designee Signature: _____ Date: ___/___/___