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JUDICIAL COUNCIL OF THE STATE OF NEVADA

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Committee to Study Evidence-Based Pretrial Release

Summary Prepared by Jamie Gradick

March 20, 2017

3:00 p.m. – 5:00 p.m.

Videoconference (Carson City, Las Vegas)

Members Present

Justice James Hardesty, Chair
Judge Stephen Bishop
Jeremy Bosler
Heather Condon
Kowan Connolly
Judge Gene Drakulich
Tad Fletcher
Judge Douglas Herndon
Chris Hicks
Judge Kevin Higgins
Phil Kohn
Judge Victor Miller
Judge Michael Montero
Judge Scott Pearson
Judge Thomas Perkins
Judge Melissa Saragosa
Judge Mason Simons
Dagny Stapleton
Judge Diana Sullivan
Judge John Tatro

Judge Ryan Toone
Judge Natalie Tyrrell
Anna Vasquez
Jeff Wells
Steven Wolfson
Bita Yeager

Guests

Jim Austin
John Boes
Tom Clark
Angela Jackson-Castain
Steve Krimel

AOC Staff

Jamie Gradick
Hans Jessup
Kandice Townsend

I. Call to Order

- Justice Hardesty called the meeting to order at 3:00 p.m.
- Roll call was taken.
- The summary of the 11-18-16 meeting was approved.
- There was no public comment from either location.

II. Opening Remarks

- Justice Hardesty discussed the letter and white paper provided by Mr. Steven Krimel, with the Nevada Bail Agents Association.
 - These documents were circulated to committee membership prior to the meeting; committee members were encouraged to read the documents.
 - The white paper contains “good points” that should be discussed by this group.
- Justice Hardesty informed attendees that he provided an overview of this committee’s work to the Assembly Judiciary Committee in connection with AB136.
 - AB136, proposed by Assemblywoman Neal, has gone through several revisions and is “in flux”.
 - During the hearing, testimony was offered (from several differing perspectives) regarding the process and work of not only the Committee to Study Evidence-Based pretrial Release, but also of this bill and the impact it could have.
 - Justice Hardesty has offered support/participation of this committee to the Judiciary Committee.
- Justice Hardesty asked Mr. Chris Hicks to share his concerns regarding these issues (and the pilot sites’ efforts) with those in attendance.
 - Mr. Hicks explained that he is not critical of the study or work the Committee is trying to do; his concerns center on the serious issues surrounding the criminal background justice history system in this state.

III. NPR Assessment Results Update *(See meeting materials for PowerPoint)*

- Dr. James Austin and Ms. Angela Jackson-Castain provided an overview of the results for the pilot sites to date.
- As of February 13, 2017 the pilot sites have been using revised versions of the tool: Washoe and Ely are using “Version 2” while courts in Clark County are using “Version 3”.
 - The “Version 2” tool moves away from prior arrests to prior convictions; verifying employment and phone number drops from 2 points to 1 point.
 - Discussion was held regarding prior conviction data providing better predictability than prior arrest. Dr. Austin commented that, although this is the case, the prior arrest data was initially used because of the state’s issues with accessing reliable and accurate conviction data.
 - Mr. Steven Wolfson asked if the judges in pilot sites are still getting access to data regarding number of prior arrests (in addition to convictions). A comment was made that, prior to the pilot site program, the judges never

- had access to this information as it wasn't included on the original pretrial info sheet.
- The “Version 3” tool does not require an interview; it is based on prior convictions and points can be removed if employment and phone can be verified. This version is not as predictive as version 2 but it's better than the original version.
 - Mr. Jeremy Bosler asked for clarification regarding the use of overrides (slide 5) and whether there is a particular standard or percentage for overrides.
 - Dr. Austin commented that the override rate should be between 5% and 15%; if the rate is more than 20% there is an issue, likely with the screeners.
 - Overrides should be “up and down”.
 - Discussion was held regarding who should be making the decisions to override - the screener or the judge? Judges should not be overriding risk level; the screeners make a recommendation.
 - Justice Hardesty expressed concern regarding the idea that risk assessments can be discriminatory (particularly against black defendants) and referenced a quote from the white paper provided by Mr. Krimel.
 - Dr. Austin commented that risk assessment tools are based upon predictors for FTA and re-offense; the tool itself isn't discriminatory, it reflects the “discrimination that already exists” and bias in arrest/police/court practices. This “bias” is the subject of extensive literature and research nationwide.
 - A comment was made that using conviction data instead of prior arrest data can help “neutralize” this bias.
 - Justice Hardesty informed attendees that there is a provision in AB136 that requires assurance that there is no racial discrimination in the tool; is this something that is achievable?
 - Dr. Austin commented that, yes, this is achievable via a “multiple regression analysis” in which data is analyzed for each group to determine “independent effect of race” - is the instrument producing a higher score for a group of defendants independent of prior record pattern?
 - Discussion was held regarding the demographic information included on the tool and the fact that screeners see this info; a comment was made that the screening process should be “blind”. Someone needs to track this info for research purposes but the screener should not have access to it.
 - Justice Hardesty asked Ms. Condon, Ms. Connolly, Ms. Vasquez, and the judges to work together with Dr. Austin to figure out a way to “sanitize” this process in order to gather the necessary demographic data without allowing it to impact scores.
 - Justice Hardesty asked Mr. Hicks to share his concerns regarding the use of conviction data.

- Mr. Hicks commented that NCJIS is “inadequate” and case dispositions are not complete.
- Mr. Hicks expressed frustration with the creation of Version 2 “outside the scope” of the full-Committee’s input, particularly since that version moved from arrest data to conviction data. Because of this change, Mr. Hicks withdrew his support from the pilot site program.
- Mr. Hicks provided attendees with an example: His office is prosecuting a defendant with extensive arrests in his NCJIS criminal record; out of 8 arrests, only one disposition is listed in NCJIS - his prior convictions are not included in the record.
- Mr. Hicks has applied all 3 versions of the NPR assessment tool to this defendant with the following results: original version - high risk; version 2 - low to moderate risk; version 3 - low risk.
- Justice Hardesty asked what the situation would have been if no risk assessment process was taking place and the defendant was incarcerated and sought bail. For \$3,000, the defendant could have been released on bond.
- Justice Hardesty commented that this example demonstrates that the parties are “flying blind” - the fundamental problem is the flaws in the criminal justice reporting system.
- Mr. Hicks explained that part of this process is to “keep the right people in” and, without the conviction data, that judge can’t do that.
- Mr. Hicks asked for clarification regarding how Version 2 has better predictability when it doesn’t consider accurate conviction data; Dr. Austin explained that those people who are arrested but not convicted are creating “false positives” because they are being classified as higher risk than they should be. Arrest data “over-predicts” and keeps the wrong people in jail.
- Mr. Hicks commented that he doesn’t feel Nevada is ready at this point because of the inadequacies of the criminal history system. Dr. Austin commented that this isn’t an uncommon issue.
- Discussion was held regarding when and what arrest and conviction information is entered into the systems in Clark County (*much of this portion of discussion was inaudible*).
 - Dr. Austin explained that this instrument was created based on whether defendants were re-arrested while within the court’s jurisdiction; this is the “dependent variable”.
- Justice Hardesty asked Mr. Hicks (and the rest of the committee members) for opinions regarding whether these efforts should be “abandoned” until the criminal history system issues can be addressed and fixed.
 - Mr. Hicks commented that “now is not the time to mandate” the use of risk assessments; we shouldn’t quit but right now is “too early”. Mr. Hicks explained that he was under the impression that the original version of the NPRA would be used throughout the pilot site period.

- Justice Hardesty went on record: AB136 is Assemblywoman Neal’s bill and, although Assemblywoman Neal has asked what the Committee has been doing, the bill is not sponsored or drafted by this committee or by Justice Hardesty.
- Justice Hardesty agreed with Mr. Hicks that Nevada is not ready for this type of legislative mandate.
- Judge Tatro commented that the arrest history is “never right” in NCJIS unless the defendant has a limited arrest history; convictions are never there.
 - Judge Perkins agreed with this comment and explained that he views the NPRA as a tool that is not meant to be a substitute for discretion; there are procedural safeguards built into our processes. If this is “all about the data,” we can’t use convictions as the data we rely on.
- Discussion was held regarding the use of Tiburon in Washoe County; this system is a report writing and database system, it doesn’t keep conviction data.
- Discussion was held regarding the Advisory Commission on the Administration of Justice’s recommendation that steps be taken to address and rectify Nevada’s criminal history system and data issues. The legislature has put this in the form of a “mandated study committee” that would report in 2019.
 - Justice Hardesty would, ideally, like to get Clark County and Washoe County together independently of this legislative effort to troubleshoot these issues but that approach faces challenges as well since SCOPE is limited to Clark County defendants. The main issue is the need to “fix” NCJIS.
 - Discussion was held regarding the status of the NCJIS backlog and how extensive it truly is.
- Ms. Bita Yeager asked for clarification regarding the use of overrides for mental health. (*Portions of this discussion were inaudible*)
 - Ms. Heather Condon explained that her team created a guide to address these overrides including: self-reported, previous mental health court client, Legal 2000, history and obvious signs.
 - Washoe County overrode 24%-26% but is “different” because they have a praxis in place where lowest level defendants don’t necessarily have conditions imposed but a lot of the defendants in the top 5 overrides were bumped up for conditions.
 - Mr. Condon commented that her team will “override” if they see a red flag so a judge will review. Discussion was held regarding using overrides to impose conditions; Dr. Austin commented that this is why the rate in Washoe is so high. Additional training on override usage is needed.
- Discussion was held regarding whether the conviction data that is available is accurate.

- Dr. Austin commented that, while there is a correlation between arrest data and FTA and re-offense risk, the correlation between conviction and these risks is stronger.
- Justice Hardesty commented that, before this tool, the judges only had the info provided to them by the lawyers to go on. Discussion was held regarding timing and resources; it's very unlikely that the DA can provide the judge with the right information before the judge sees the pretrial risk assessment tool and makes his or her initial judgment.
- Concern was expressed regarding the time constraints surrounding pulling arrest and conviction information; arrests are “easier” but there needs to be a “statewide” solution so information can be shared.
- Justice Hardesty informed attendees that he has spoken with county commissioners and judges regarding the resources this process requires. To date, no court or administrator has written a letter of support.
 - Justice Hardesty urged the judges in attendance to consult with their colleagues regarding this issue before the Washoe and Clark County Commissions submit their budgets; pretrial services need adequate resources to accomplish what's being asked of them by this program.
 - Ms. Anna Vasquez commented that San Antonio's pretrial services department, which is comparable in size to her unit, has 71 employees whereas she has 22.
 - Mr. Jeff Wells commented that, at the last Clark County budget hearing, the recommendation for additional staff was discussed; amount depends on which version is used and the interview/verifying aspects.
 - Discussion was held regarding the cost-savings of this program.
- Justice Hardesty asked attendees for input regarding which version of the tool should be used; ideally he would like to see a statewide version.
 - Mr. Kohn suggested that we continue to use version 2 in Washoe and Ely and version 3 in Clark County (for the sake of resources) and review those results.
 - Mr. Wolfson asked what percentage of those not released are being interviewed in Clark County. If not everyone is begin interviewed, then the scores aren't accurate.
 - Those being interviewed are getting “mitigating” points which isn't fair to those not being interviewed.

IV. Pilot Site Program Status Updates

- Ms. Condon provided a few updates:
 - Pretrial services ORs in November were 4% and 41% in February.
 - Judge ORs in November were 58% and 34% in February.
 - Bails and bonds decreased from 38% to 25%.
 - FTA range between September and February was between 8-12%, increased in March by 3% - this is being tracked.
 - Re-arrest rate September to February was 4-5%

- Jail population decreased from 1185 in September to 1092 in February.
- Bookings increased from 1648 in September to 1873 in February.
- Active caseload went from 852-1947; contacts and random drug testing also increased.
- Ms. Condon commented that cost-savings will come from release; her department is setting supervised bail based on risk assessment
- Procedure has been changed so that cases are not being opened until the defendant actually posts bail or bond; this decreases the caseload.
- Ms. Anna Vasquez commented that her team interviewed 14%. (*Portions of this discussion were inaudible*)
 - Ms. Angela Jackson-Castain explained that from Feb 13- March 13 (the implementation of Version 3), there was a decline in high scores and shift in how the scoring is taking place.
 - A significant number of defendants are being released before the 72 hour mark; discussion was held regarding how many of these are “DA denials”.
 - Clark County average length of stay is increasing; Mr. Wells commented that this is because the “right folks” are staying in. Ms. Condon commented that WCSO has told her that, since the pilot site started, the type of inmate has changed; there are more high-level inmates.
 - Justice Hardesty commented that this is a public safety issue.
 - In Washoe County, everyone is “seen” within 48 hours (either in person or on paper).
- Justice Hardesty asked Judge Perkins for an update on his “informal” participation in the pilot site and asked whether he has the staff and resources to possibly incorporate his data into the analysis.
 - Judge Perkins and Ms. Condon will discuss this to see what is involved.

V. Pilot Site Program - Concerns and Recommendations Discussion

- This agenda item was tabled for a future meeting in order to allow committee members to review the concerns and recommendations that were provided.

VI. COSCA 2015-2016 Policy Paper Discussion

- This agenda item was tabled for a future meeting.
- Justice Hardesty asked committee members to review/reread this in preparation for future discussions.

VII. National Task Forces on Fines, Fees, and Bail Practices - Key Resources for States

- Justice Hardesty reminded attendees that this Judicial Council of the state of Nevada “assigned” this issue to this committee for further study.
- Quite a bit of work has been done on the federal level; various recommendations are being forwarded to the states for consideration.
- This issue has come up in various forms in the legislature; discussion was held regarding the roles of administrative assessments in the funding of the judiciary.

- Given the shortage of time, this agenda item was tabled for a future meeting.
- VIII. Subcommittee to Study Bail Schedules Status Update
- This agenda item was tabled for a future meeting.
- IX. Other Items/Discussion
- Justice Hardesty reminded attendees that the purpose of this pilot site program is to determine how the NPRA will help or not help with release decisions. To do this, we need to gather valid, informative data. Judges participating in these pilot sites need to take advantage of the tool; if they would prefer to not participate, they should withdraw from the pilot site program.
 - Justice Hardesty asked the judges in attendance to take this request back to their colleagues.
 - Justice Hardesty informed attendees that the committee will “continue to do what it’s doing” for another month and will reconvene in late April or early May.
 - Justice Hardesty asked attendees to revisit the outcome measurements adopted by the committee members and come to the next meeting prepared to discuss whether the measures can realistically be applied to/assessed for our program.
 - A subcommittee will be put together for this; Justice Hardesty will be reaching out to potential participants.
 - Justice Hardesty asked attendees (particularly the judges) to review the guidelines put forth by the Subcommittee to Study Bail Schedules and discuss the document and getting “unanimous” support for a “uniform,” statewide guideline with their colleagues. This will be discussed at the next meeting.
- X. Public Comment
- XI. Adjournment
- Justice Hardesty adjourned the meeting at 5:07 p.m.