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JUDICIAL COUNCIL OF THE STATE OF NEVADA

"To unite and promote Nevada's judiciary as an equal, independent and effective branch of government."

Committee to Study Evidence-Based Pretrial Release

Summary Prepared Jamie Gradick

May 23, 2016

2:00 p.m. – 4:30 p.m.

Videoconference (Carson City, Las Vegas)

Members Present

Justice James Hardesty, Chair
Judge Heidi Almase
Judge David Barker
Judge Stephen Bishop
Judge Joe Bonaventure
Jeremy Bosler
Heather Condon
Kowan Connolly (Tammy Counts - Proxy)
Judge Gene Drakulich
Tad Fletcher
Joey Orduna Hastings
Judge Douglas Herndon
Chris Hicks
Judge Kevin Higgins
Judge Cedric Kerns
Phil Kohn
Judge Victor Miller
Judge Michael Montero
Judge Scott Pearson
Judge Melissa Saragosa

Judge Mason Simons
Dagny Stapleton
Judge John Tatro
Judge Alan Tiras
Judge Natalie Tyrrell
Anna Vasquez
Jeff Wells
Steven Wolfson
Judge Bitia Yeager

Guests

Dr. James Austin
Lori Eville
Dana Hlavac
Angela Jackson-Castain
Kim Kampling
Ryan Sullivan

AOC Staff

Myrna Byrd
Jamie Gradick

- I. Call to Order
 - Justice Hardesty called the meeting to order at 2:04 p.m.
- II. Call of Roll
 - Ms. Gradick called roll; a quorum was present.

- III. Approval of Prior Meeting Summary
 - The summary from the February 12, 2016 meeting was approved.

- IV. Opening Remarks
 - Justice Hardesty welcomed attendees and thanked them for their attendance.
 - Justice Hardesty provided those in attendance with an update on the CCJ/COSCA Western Region Pretrial Justice Reforms Summit held in New Mexico; the conference was attended by Chief Judge Bonaventure, Mr. Jeff Wells, Ms. Heather Condon, Ms. Robin Sweet, Chief Justice Parraguirre, and himself.
 - Nevada has made significant progress in the area compared so some other states represented at the Summit. One of the key items to come from the Summit was a possible “work plan” for NPRA tool and process implementation; this will be addressed in more detail as the Committee moves forward.
 - Justice Hardesty intends to invite speakers from the Summit to attend a future meeting of this Committee.

- V. Public Comment
- VI. There was no public comment in Las Vegas or in Carson City.

- VII. NPRA Tool Testing Results
- VIII. Dr. James Austin, with the JFA Institute, together with Ms. Angela Jackson-Castain with the OJP Diagnostic Center, presented the results of the NPRA tool validation study. (*See PowerPoint presentation included in meeting materials.*)
 - Prototype pretrial risk instrument was developed based on other validated instruments.
 - Random samples of defendants released from jail in 2014 were created for Washoe, Clark and White Pine Counties.
 - Forms were completed and returned for statistical analysis.
 - Each case tracked to determine if defendant was re-arrested or had FTA Warrant issued while case(s) were pending
 - Currently 1,000 release data forms have been received and processed. Still checking another 50-60 forms but these results shouldn't change the results.
 - Attributes: most defendants are released quickly, most have multiple charges against them, and the average age is 35 years. Age at first arrest is significantly below current age so many have prior arrests.
 - Follow-up results: based on 999 cases, 25% either FTA or re-arrests. Re-arrest includes parole/probation violation charges.
 - 73% were not arrested for any crimes; FTA based completely on not showing up for court. Taking steps to improve communication with defendants can help decrease this FTA rate.

- “Modified” risk levels by county - “cut-off” ranges were raised to get a better prediction out of the tool (see slide 9)
 - Re-arrest and FTA rates by risk level - (see slide 10) - the tool “doesn’t do a very good job” of separating higher and moderate risk cases.
 - Further adjustments to NPRA tool - Dr. Austin suggested adjustments to the tool (see slide 11) and will make the changes to the NPRA tool and run “simulations” using the proposed changes. (Typo in slide: change “employment” to “residency”)
- IX. Dr. Austin stated that the NPRA tool gives better predictions than the ORAS tool and informed attendees that he will be writing up a complete and documented report on the validation process/findings.
- X. Mr. Steven Wolfson asked for clarification regarding what constitutes an acceptable percentage in terms of FTA rate; the rate results in the study are “typical.”
- Discussion was held regarding the power of interventions such as calling/reminding defendants of court dates and supervision conditions; the courts can take steps to lower FTA rates.
 - Justice Hardesty commented that this idea was supported by discussions held during the CCJ/COSCA Western Region Pretrial Justice Reforms Summit.
- XI. Judge Saragosa asked for clarification regarding whether intensive supervision requirements on those released OR (versus those released “straight OR”) was a factor the study looked at.
- XII. Discussion was held regarding the percentage of high risk defendants that produce the FTAs and re-arrests; Dr. Austin explained that most of those released fell into the low or moderate risk groups. Discussion was held regarding whether those released were released on bond/cash bail vs. OR - (See slide 8). Courts are “OR-ing” (compared to setting surety bond/bail) slightly higher risk group, which drives the FTA and re-arrest rates up; this tool would help mitigate that.
- Discussion was held regarding Nevada bail amounts in relation to “national trends.”
 - Discussion was held regarding definition of “OR” and whether those released without being charged (no complaint filed) are considered “OR”; concern was expressed regarding these types of instances “skewing” the numbers - shouldn’t the validation process only consider those cases that judges have control over and made a decision in?
 - Discussion was held regarding the defendant’s state of mind and perception of OR - it’s possible that the defendant believes he/she doesn’t have a pending case because he/she was released so returning to courts isn’t necessary. Some FTA issues like this can be addressed through clearer communication/explanation and reminder tools.

- Mr. Jeremy Bosler asked for clarification regarding whether conviction is more predictable of FTA rate than arrest (questions 3-5 on the NPRA tool). Dr. Austin clarified that one wasn't more predictive than the other.
- Mr. Chris Hicks asked for clarification regarding the benefit of breaking the data down by case type. Dr. Austin explained that defendants with felony charges typically have better FTA rates than those with misdemeanors; felonies are typically rearrested at a lower rate as well.
- Discussion was held regarding supervision/release conditions on low risk versus high risk defendants. Dr. Austin explained that studies have shown that supervision on low risk individuals can be "disruptive" and increases the FTA rate while supervision on high risk individuals lowers the rate; supervision is typically most helpful for high risk (and probably moderate risk) offenders.
 - Discussion was held regarding the issue of "OR-ing" because charges weren't filed; Ms. Condon commented that, in Washoe County, these individuals are still supervised.
- Judge Pearson requested clarification regarding how scoring would be handled for no prior criminal history; would the individual get a -2 for no prior misdemeanor arrest and no prior gross or felony arrest or would this remain just a -1? Dr. Austin explained that he will "look at it both ways" to determine which method results in "a better bump."
- Discussion was held regarding possible need for revalidation efforts within 18 months of implementation of the NPRA; Dr. Austin explained that this would be necessary as the tool is implemented in different jurisdictions throughout the state. Because we will be "going forward" and applying the tool to current cases, another validation of current cases will help solidify statistics and pin point focuses for training purposes.
- Discussion was held regarding score cut-offs. Dr. Austin has adjusted the score ranges to make the low and high risk groups overly predictive; this will be documented in the full written report that is currently being drafted.
- Mr. Chris Hicks inquired how the scoring would work if there were no discernible dispositions in criminal history. Discussion was held regarding benefits of using arrest data rather than convictions; this is something the Committee previously agreed to.
- Judge Saragosa asked for clarification regarding lower FTA rate among those charged with felonies; are the results "skewed" by not considering seriousness of charge in the FTA count?
- Discussion was held regarding collecting data on cell-phone and social media accounts - would need to be collecting this data on current cases as part of the interview process in order to go-back and evaluate/validate the data later (if these are elements we want to track).
- Judge Barker inquired whether criteria for data collection, submission, and verification were in place; were there "ground rules" in place? Dr. Austin explained that his team worked with those pilot sites that submitted data to

check how they processed the data they provided and worked with Washoe County to develop the instruction manual.

XIII. Adoption of Validated NPRA Tool

- Justice Hardesty asked the Committee for its preference regarding whether to move forward with implementing the NPRA tool in the pilot sites or to wait for the written validation study report to be released before taking any further action.
- Justice Hardesty explained that certain things would need to be decided before the pilot program can officially begin.
 - Consistent and thorough education and training of court services and staff in the pilot sites will be necessary. Justice Hardesty referenced the manual currently being compiled.
 - A suggestion was made that training/education begin with the judges and court staff and pretrial services staff and then be extended to attorneys, DAs and PDs.
 - Discussion was held regarding the distinction between approving the tool and deciding on how it would be applied. At this time, the Committee is only voting on whether to approve the tool, not how it will be used.
 - Discussion was held regarding the types of cases the tool could be used for and whether a domestic violence component (3-4 questions) could be added into the tool later or should be added in now. Justice Hardesty reminded attendees that the assessment is simply an additional tool for judges to use; they will still have access to the information they usually have. This topic will be discussed at a future meeting.
 - Discussion was held regarding whether Washoe County would need to stop providing the assessment “blurb” they currently provide in order to be operating in a similar process as the other pilot sites. The information in the “blurb” is not the validated information in the tool. Concern was expressed regarding “taking information away from judges.” The synopsis usually contains information on previous supervision conditions and if contact/employment information was verified. The NPRA tool will “supplement” the report the judge receives, not “supersede” it. Justice Hardesty expressed concern regarding the “blurb” containing information that could “throw off” the tool’s effectiveness and explained that more information is needed about the benefit the blurb provides before the Committee can decide whether to continue providing these or not.
 - Dr. Austin commented that this provides an opportunity for the Committee to evaluate and standardize what other information judges around the state should be getting in addition to the tool.
- Judge Bishop made a motion to proceed with implementation of the NPRA tool, with Dr. Austin’s suggested adjustments, in the pilot sites subject to a revalidation after 18 months.

- Judge Herndon seconded the motion.
- Ms. Gradick took a roll-call vote; the motion was approved unanimously by the Committee members in attendance.

XIV. Discussion of NPRA Tool Implementation Protocol

- Ms. Lori Eville, with the National Institute of Corrections, provided an update on the progress and recommendations of the subcommittee tasked with creating the NPRA tool implementation plan for the pilot sites.
 - Developing a plan focusing on 4 key components: training, operational/environment, quality assurance (developing trust in the tool), and communication (both internally and externally) in place. Policies and procedures will need to be developed and put in place for all 4 components.
 - Training will need to be completed as a precursor to implementation; judges and staff need to be trained in the “whys” behind the tool along with the “hows”. Public defenders and prosecutors need to be trained as well as pretrial services staff.
 - Operational aspects will include the processes for using the tools, how with the tools be processed, utilized, recorded? Technology and data management ties into this.
 - Ms. Eville has hired Mr. Leland Moore to assist her with this project; he is currently conducting a “survey” of implementation efforts in other states in order to ascertain what worked well and what did not.
 - Challenges include coordination training and implementation efforts and developing a “resource document” (manual) that meets the needs of stakeholders across the state.
- Ms. Condon explained that consistency in training and implementation efforts across the state is essential. The “same message” needs to be conveyed throughout the state.
- Justice Hardesty requested that the NPRA Implementation Protocol Subcommittee develop a written plan for the pilot sites to use (so that the full-Committee can review/approve) and suggested offsite training/education sessions (for the judges involved in the pilot site program) take place in both the northern and southern parts of the state in June.
- Discussion was held regarding how bail schedules are currently used and how the tool implementation would impact that; particularly if the bail is set before the judge receives the NPRA assessment.
- Justice Hardesty suggested Ms. Eville and Ms. Condon continue to work with Dr. Austin and the NPRA Tool Implementation Protocol Subcommittee to develop the manual while Chief Judge Barker, Chief Judge Bonaventure, Judge Kerns, Judge Pearson, Judge Flanagan, and Judge Higgins begin working with Justice Hardesty to set up training sessions in Las Vegas and in Reno.

- Justice Hardesty asked that Mr. Bosler, Mr. Kohn, Mr. Wolfson, and Mr. Hicks begin conferring on possible training dates/locations for public defenders and district attorneys.
- XV. Subcommittee to Study Bail Schedules Status Update
- Judge Mason Simons provided attendees with a status update on the subcommittee's work. The subcommittee has met once and is currently working to compile the various bail schedules in use throughout the state in order to conduct a thorough analysis of differences. (*See meeting materials for the subcommittee's meeting summary*).
 - Discussion was held regarding possible challenges of developing a "unified" or "statewide" bail schedule.
 - Mr. Kohn inquired whether bail is "stacked" anywhere in the state - how is bail established in cases of multiple versions of the same charge? Justice Hardesty asked the Subcommittee to add this topic to its agenda for its next meeting.
- XVI. National Task Force on Fines, Fees, and Bail Practices Discussion
- Justice Hardesty informed attendees that this topic was not originally within the scope of the Committee's work but was assigned to the Committee by the JCSN for examination.
 - Justice Hardesty informed attendees that he will work on compiling information being generated nationally and will set this as an agenda item in future meetings.
- XVII. Other Items/Discussion
- Ms. Eville requested that there be one "master-plan" for training in order to keep things consistent and organized. Ms. Gradick can help Ms. Eville coordinate this.
 - Discussion was held regarding possible venues/plans for recording trainings (either through AOC's Judicial Education department or using Washoe County Commission chambers, etc.).
 - Ms. Condon suggested conducting a "resources survey" of the rest of the counties now in order to be better prepared when the NPRA tool is ready to be implemented on a statewide basis. Justice Hardesty commented that the focus should be limited to just the pilot sites for now.
- XVIII. Next Meeting Date
- Justice Hardesty informed attendees that the next meeting would be set for early July, if possible, depending upon training plans.
- XIX. Additional Public Comment
- There was no additional public comment offered from either Las Vegas or Carson City.
- XX. Adjournment

- Justice Hardesty adjourned the meeting at 4:33 p.m.