

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0539

FILED

DEC 28 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

PETITION

COMES NOW the Honorable James W. Hardesty, Associate Justice of the Nevada Supreme Court, and petitions the Nevada Supreme Court on its administrative docket to consider adoption of a statewide requirement that all judges utilize a validated risk assessment tool for use in pretrial decision-making as recommended by the Committee to Study Evidence-Based Pretrial Release. In support of the petition, petitioner asserts that:

1. The Committee to Study Evidence-Based Pretrial Release was created by Resolution of the Judicial Council of the State of Nevada in 2015. Justice James W. Hardesty chairs the Committee; membership is comprised of rural and urban judges, public defenders, district attorneys, pretrial services representatives, county representatives and a representative from Boyd School of Law. The Committee was charged with studying the process for pretrial release under NRS 178.484 and NRS 178.4853.

2. Since its inception, the Committee has held fourteen meetings. The Committee has received presentations from pretrial release experts from the Pretrial Justice Institute; the State of Kentucky Administrative Office of the Courts and Department of Pretrial Services; the Arizona Supreme Court; the U.S. District Court, District of Nevada; the University of Cincinnati; the National Institute of Corrections; the JFA Institute; and the Department of Justice, OJP Diagnostic Center. In addition, the Committee has also heard presentations from the Nevada Bail Agents Association and the American Bail Coalition.

18-910736

3. The Committee to Study Evidence-Based Pretrial Release launched its pilot site program on September 1, 2016, using a Nevada-specific risk assessment tool (Nevada Pretrial Risk Assessment or NPRA) developed and validated by Dr. James Austin with the JFA Institute. Prior to commencing the pilot program, the NPRA Implementation Subcommittee was convened to develop the pilot site manual and to provide pilot site stakeholders with necessary training. 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. Since the commencement of the pilot program, courts in Douglas and Churchill Counties have implemented and used the NPRA. Since the inception of the pilot site program, the Committee, together with Dr. Austin, has monitored the status of the pilot sites and has made changes to the program and the NPRA tool as necessary.

4. On August 15, 2018, the Committee's efforts culminated in a special meeting during which the Committee unanimously voted to recommend that the Nevada Supreme Court enter an order requiring the use of a validated, pretrial risk assessment tool on a statewide basis for use in pretrial release decisions in the form of Exhibit A or B attached to this Petition.

5. Following the Committee's action, Justice Hardesty attended a Nevada Association of Counties (NACO) Board meeting. During this meeting, the NACO Board approved a motion ". . . indicating the Board's support for the implementation of a validated pretrial risk assessment tool on a statewide basis, and to request that, if the Supreme Court mandates the use of such a tool, they: 1) allow counties latitude in implementing the tool; and 2) gather additional information on potential budgetary and staffing impacts from implementation so that counties can adequately prepare to use the tool."

Accordingly, petitioner requests that the Nevada Supreme Court place this matter on its administrative docket, hold such hearings as it deems necessary, and consider the Committee to Study Evidence-Based Pretrial

Release's recommendation to require all judges to use a validated risk assessment tool in the form of either Exhibit A or B in making pretrial release decisions under NRS 178.484 and NRS 178.4853.

Respectfully submitted,

 J.
James W. Hardesty

EXHIBIT A

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

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

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

Address: _____ Contact Phone#: _____ # of Current Charges: _____

City State Zip

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: ___/___/___