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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

January 8, 2016

1:30p.m. – 4:35 p.m.

Videoconference (Carson City, Las Vegas)

Members Present

Justice James Hardesty, Chair
Judge David Barker
Judge Joe Bonaventure
Jeremy Bosler
Heather Condon
Kowan Connolly
Judge Gene Drakulich
Judge David Gibson, Jr.
Joey Orduna Hastings
Judge Douglas Herndon
Chris Hicks
Judge Kevin Higgins
Judge Cedric Kerns
Judge Jennifer Klapper
Phil Kohn
Judge Victor Miller
Judge Michael Montero
Judge Scott Pearson
Judge Thomas Perkins
Judge Melissa Saragosa

Judge Elliott Sattler
Judge Mason Simons
Dagny Stapleton
Judge John Tatro
Judge Alan Tiras
Judge Ryan Toone
Judge Natalie Tyrrell
Anna Vasquez
Jeff Wells
Steven Wolfson
Judge Bita Yeager

Guests

Lori Eville
Jim Halsey
Dana Hlavac
Kim Kampling
Spurgeon "Kenny" Kennedy

AOC Staff

Jamie Gradick
Raquel Rodriguez

- I. Call to Order
 - Justice Hardesty called the meeting to order at 1:30 p.m.
- II. Call of Roll
 - Ms. Gradick called roll; a quorum was present.

III. Public Comment

- There was no public comment in Las Vegas or in Carson City.

IV. Approval of Prior Meeting Summary

- The summary from the December 3, 2015 meeting was approved.

V. Opening Remarks

- Judge Perkins introduced Captain Jim Halsey with the Douglas County Sheriff's Office; he has been involved in discussions regarding the work of the Committee. Justice Hardesty welcomed Capt. Halsey and thanked him for his attendance.
- Justice Hardesty welcomed representatives from Clark County Sheriff's Office attending in Las Vegas and thanked them for their attendance.
- Justice Hardesty informed Committee members that the courts participating in the pilot-site program have met to begin working on pilot program details and processes.
 - IT, court services, pretrial services are all participating in the discussion.
 - Any court wishing to participate in the pilot-site program is invited to do so; Douglas County and Las Vegas Muni Court have both expressed interest in participating in the program.
- Justice Hardesty informed attendees that the goal of today's meeting is to make "policy" decisions regarding:
 - What measurement outcomes will the pilot program use? (*See "Measuring What Matters..." in meeting materials*) What definitions will be used?
 - What risk assessment tool will be used by the pilot program courts?

VI. Guest Speaker Presentations

- Justice Hardesty introduced Ms. Lori Eville and Mr. Spurgeon "Kenny" Kennedy to those in attendance.
- Ms. Eville thanked the Committee for allowing the NIC to work with Nevada, praised the work the Committee has already completed, and provided a brief overview of the work the NIC has done in the pretrial release realm.
- Mr. Kennedy presented information on outcome and performance measures and selection of appropriate measures.
 - Measures matter because we need to be able to validate and quantify success for various reason including funding and validation efforts.
 - Suggested pretrial outcome measures and definitions include: (*See "Measuring What Matters..." in meeting materials*)
 - *Appearance rate* - percentage of supervised defendants that make all scheduled court appearances. This requires an appropriate definition of failure to appear and ability to track defendants.
 - *Safety rate* - the percentage of supervised defendants who are not charged with a new offense during the pretrial stage; how many remain "arrest free" while case still pending? This can be difficult to measure depending upon availability of criminal history and rearrest information. Discussion was held regarding looking to jurisdictional definition; local rules will have to provide clear definition/guidance. The safety rate should be based on a chargeable offense; discussion was held regarding prosecutorial behaviors

and possibility of “papering” the case. Biggest concerns with the measure are technology challenges and inability to track relevant criminal activity and identify charges. Mr. Kennedy discussed the JUSTIS system used in D.C for these purposes. Discussion was held regarding differences of filing practices in different jurisdictions and how variances will impact the safety rate measurement. Discussion was held regarding having court services available at booking and resource limitations in pretrial services and processes. In Washoe County, pretrial services currently indicate supervision status and rearrests to the judge.

- *Concurrence rate* - the ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct. Mr. Kennedy warned attendees that this measurement should be defined carefully in terms of low, medium, and high levels of supervision - these levels should appropriately correspond to risk level. Justice Hardesty informed Committee membership that he has asked Heather Condon and Anna Vasquez to formulate a list of conditions that could be used for pretrial release so that everyone is operating under the same set of specified conditions. Once these conditions are established, the Committee will be asked to define the level of risk for each, creating sets of specified conditions for each level of risk. Ms. Eville pointed out that this measurement also measures the judge’s level of concurrence with the recommendations.
 - *Success rate* -The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision. This measurement requires development of clear definitions for “complaint defendant” and “infractions.” Must be able to accurately track and report noncompliance back to the court.
 - *Pretrial detainee length of stay*- the average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release. This is an optional measurement; research shows significant harmful impact on low to moderate risk defendants who are detained pretrial - increases potential for reoffending. Discussion was held regarding the ability to identify pretrial population in terms of “time in” and “time out.” Justice Hardesty suggested that this measure be adopted as one of Nevada’s outcome measures; can be tracked in most jurisdictions.
- Discussion was held regarding jail statistics across the state; most counties can provide “snapshots” of this data - Heather Condon is currently finalizing the numbers for Washoe County; Jeff Wells provided a snapshot from Clark County (1473 inmates on 1/5/16).
 - Discussion was held regarding mental health and substance abuse issues/components of pretrial release programs and how much authority courts are willing to bestow upon pretrial services to address these matters and modify conditions of supervision when necessary.

- Suggested performance measures (performance measures are not measures of program success, but are ways to evaluate program function) and definitions include: (See “*Measuring What Matters...*” in meeting materials)
 - *Universal screening* - percentage of defendants statutorily eligible for release that are screened by pretrial program.
 - *Recommendation rate* - reflects how frequently the pretrial program follows its risk assessment criteria; assumes that programs make recommendations to the court, not all programs do.
 - *Response to defendant conduct* - measures how often staff responds appropriately (by recognized policy and procedure) to compliance and noncompliance with court-ordered release conditions. Research has demonstrated that a response time of 3-5 days, following a noncompliance event, has the greatest impact on the defendant’s behavior.
 - *Pretrial intervention rate* - measures the pretrial program’s effectiveness at resolving outstanding bench warrants, arrest warrants, etc. How quickly can you get them “back into court”?
- Mr. Kennedy briefly discussed suggested mission critical data (See “*Measuring What Matters...*” in meeting materials)

VII. Pilot Sites Discussion

- Justice Hardesty asked Committee members for opinions regarding “conceptually” adopting the outcome and performance measures presented by Mr. Kennedy for the pilot program and explained that adopting these may allow court and pretrial services staff participating in the pilot program to begin evaluating the measures for feasibility and applicability. Once the measures are adopted, the pilot sites could begin to assess what parts can and cannot be met and what resources are needed for each jurisdiction.
- Justice Hardesty discussed the value of these programs to public safety; a goal of the pilot site program is to dispel rumors and concerns regarding public safety.
- Mr. Wolfson asked for clarification regarding what a “pilot site” program would look like in Clark County; the motion on the table is for the adoption of the measures, not a risk assessment tool itself.
 - A motion was made (and seconded) to conceptually adopt the outcome and performance measures for use in the pilot site program.
 - A roll call vote was taken; the motion was passed.
- Upon approval of the motion, Justice Hardesty suggested that the Committee “pause” and take the information presented by Mr. Kennedy back to their staff for consideration and evaluation; Justice Hardesty directed Committee members to consult with staff (in-depth) regarding any concerns, possible changes, impediments, etc. If there are concerns or suggestion for amendments, this needs to be brought back before the committee.
- Justice Hardesty asked Ms. Condon, Ms. Vasquez and Ms. Connolly whether they could have the list of pretrial release of conditions prepared for the next Committee meeting. Ms. Condon stated that the Washoe County portion is currently being finalized; the consensus was that the list could be completed in the next few weeks.
- Risk Assessment Tools - Justice Hardesty informed Committee members that risk assessments can be specifically geared toward crime types and asked Mr. Kennedy to

comment on this and to share what he thinks the Committee should be thinking about and asking questions about as it evaluates/considers known risk assessment tools.

- There’s a difference between “validating” a risk assessment and “operationalizing” it; Mr. Kennedy discussed the importance of using “validated” factors to assess risk and explained that there are “subsets” within the risk factors addressed by the tools. For example, demographic information is a subset of substance abuse risk factor. It’s also important to understand how each element (or substance, in this example) has been researched and weighted in terms of risk based on its impact on FTA.
- Also realize that there are different types of re-arrest and each carries varying level of predictability in terms of the risk the defendant poses.
- Discussion was held regarding tools that are in the public domain and already validated; Mr. Kennedy explained that the research and risk factors have become greatly standardized throughout the country. The big question is: Can you make the tool work for your own needs and program goals. Which risk assessment tool is going to be able to be consistently implemented, defined locally within own policies and systems, and “operationalized” successfully?
- Discussion was held regarding time requirements; there’s a difference between “administering” the tool and having the information compiled “in the background.” What about arrests without disposition where there’s a “hole” in the national criminal justice database - far more charges than there are dispositions. In DC, pretrial services will bring this to the attention of the judge but this isn’t directly used in risk assessment calculations.
- Discussion was held regarding the interview portion of the risk assessment tools and whether having an interview or not having an interview is best; concerns exist regarding self-incrimination and constitutional rights. Mr. Kennedy explained that interviews can be an important part of the process and give important insight into defendant mental processes/behaviors etc. The process is about “giving information to make good decisions,” not about just giving the judge a number.
 - Mr. Kohn agreed with the method DC uses.
 - Ms. Eville addressed the Kentucky tool “issue” and explained that Kentucky currently uses the PSA (no interview) which is not a “public domain” tool and, thus, not available to Nevada.
 - Discussion was held regarding the use of MOUs between the stakeholder to establish “rules” regarding how the risk assessment tool and interview can and cannot be used.
 - Judge Kerns shared concerns regarding interviews becoming a “drain” on resources and defendants providing incorrect answers/information. Concern was expressed regarding the pilot sites not having the resources to incorporate interviews into the process; should the pilot sites be working with the resources they currently have?
 - Discussion was held regarding the extent of the interview process and misconceptions regarding time required to conduct/complete pretrial interview and prepare reports. Mr. Kennedy asserted that this process

could be completed in 10-20 minutes; criminal history is the most time-consuming portion.

- Discussion was held regarding the interview questions on the Ohio and DC tools - very similar.
 - Mr. Wolfson asked Ms. Vasquez how many people (approximately) would have to have an interview on a daily basis in Clark County. About 60-80; would be challenging to get the information to the judges within the 48 hour timeframe.
 - Ms. Condon explained that Washoe County interviews take about 20 minutes and asserted that the purpose of the interview isn't to incriminate the defendant; the goal should be implementing a program using best practices. A suggestion was made that Las Vegas use smaller pilot sites for the pilot site program so that we can evaluate processes, resources, constraints, and success more accurately. Justice Hardesty asked Judge Kerns to consider whether all Las Vegas dept. would participate or only a few. Judge Kerns explained that, operationally, only having 2-3 participate would be a problem.
 - Ms. Eville informed attendees that many of those jurisdictions that have tried the Arnold tool have gone back and added in "interview" style questions. The question to ask is which tool, operationally, fits best into Nevada's practices/processes? The task at hand is to take each potential tool and evaluate how to operationalize it.
 - Remember that the tool is just a tool and can be adapted to each jurisdiction as needed; over the next few weeks, look at each potential tool and ask how it would impact pretrial release and jail rates in your jurisdiction 0- if it doesn't do what we need it to, then it's not the right tool.
- Judge Yeager discussed the importance of incorporating a "reminder system" into the process and explained that there needs to be a balance between efficiency of resources and amount/quality of information provided to the judges. Justice Hardesty supported the need for an automated court reminder system as part of the pretrial process.
 - Justice Hardesty explained that one of the purposes of the pilot program is to help establish realistic goals and timelines. We should be evaluating the "best" assessment and testing it on processes to evaluate operational issues. It would be best to "think on this" and seek input from stakeholders not at the meeting before a decision is made.

VIII. Other Items/Discussion

- An email will be sent out with the next meeting date.
- Justice Hardesty thanked Mr. Kennedy and Ms. Eville for their attendance and input; Ms. Eville and Mr. Kennedy, once again, praised the Committee for the work it has already completed.
- Dr. Emily Salisbury from UNLV introduced herself to the Committee, provided a brief overview of her background and experience in this subject, and offered her assistance to the committee as it moves forward.

- Justice Hardesty asked the limited jurisdiction judges in attendance to reach out to their colleagues (while at the NJLJ Winter Conference) regarding the work the Committee has been doing.

IX. Additional Public Comment

- There was no additional public comment offered from either Las Vegas or Carson City.

X. Adjournment

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