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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 by Raquel Rodriguez and Jamie Gradick
December 03, 2015
1:30p.m. – 4:46 p.m.
Videoconference (Carson City, Las Vegas)

Members Present

Chief Justice James Hardesty, Chair
Assemblyman Elliot Anderson
Judge Stephen Bishop
Jeremy Bosler
Heather Condon
Kowan Connolly
Judge Gene Drakulich
Tad Fletcher
Joey Orduna Hastings
Judge Douglas Herndon
Chris Hicks
Judge Kevin Higgins
Judge Bitu Khamsi
Phil Kohn
Judge Victor Miller
Judge Michael Montero
Judge Scott Pearson
Judge Thomas Perkins
Judge Melissa Saragosa

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

Guests

Kim Kampling
Dana Hlavac as proxy for Judge Kerns
Sandy Molina
Ryan Sullivan

AOC Staff

Jamie Gradick
Stephanie Heying
John McCormick

- I. Call to Order
 - Chief 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.
- IV. Guest Speaker Presentations:
 - Chief Justice Hardesty asked Magistrate Judge Peggy Leen and Ms. Shiela Atkins to present to the Committee and thanked them for their availability.

- Magistrate Judge Leen provided a brief background to the Commission and provided a brief overview of the Federal Bail Reform Act which is a national standard by which all federal courts operate.
- The purpose of Congress in passing the Federal Bail Reform Act of 1984 was to address the alarming problem of individuals who committed offenses while on release.
- The primary two things the Federal Bail Reform act accomplished were to prohibit excessive monetary bail as an impediment for pretrial release and to authorize preventative detention.
- Federal courts now decide on who should be released, under what conditions they will be released, and if the individual is a serious flight risk, a danger to the community, the court has the authority to detain without bail.
- The federal courts decide which conditions or combination of conditions an individual will be released with and will reasonably assure the person will appear in court when required and not reoffend.
- Magistrate Judge Leen stated in her district an individual is rarely released on cash bond. Money is not the dependent factor for who is released and who is detained.
- An individual who is arrested or brought into federal custody will almost always be brought in for a preliminary hearing the same day, where they are appointed an attorney, reminded of their rights, given an opportunity to review their charges and are provided a decision from the court stating whether or not they are moving towards detaining the individual and if so, informed on which conditions would apply.
- Considerations taken into account to make the final decision are the Federal Bail Reform Act, statutory factors, the nature of the offense charge, personal characteristics of the accused individual, and the weight of the evidence.
- If the court decided to detain an individual the written detention order is entered and the person is notified on the record of the reasons the court has decided to detain that individual. If the individual is released they sign the bond paperwork and are released once they have been processed.
- Typical conditions of release require pretrial services to supervise the individual. Supervision requires drug or alcohol testing and/or mental health assessments and treatments, it may include verifying the individual is maintaining employment and residence, or GPS monitoring of an individual.
- There was a question regarding how drug and alcohol test and other treatments and assessments for supervising conditions were paid for. Magistrate Judge Leen stated payment was based on an individual's ability to pay, if the person could not pay, pretrial services would pay the expenses for the testing.
- An individual may be under supervision for three years or more, but on average an individual will remain under supervision for about one year.
- There was a question regarding how recommendations regarding supervision and release were assessed. Ms. Atkins stated in the national system a Pretrial Services Risk Assessment Tool has been used since 2009. Marie Van Ostrom, a pretrial services researcher, developed the tool.
- Ms. Atkins would forward links for articles written by Ms. Van Ostrom regarding legal and evidence- based practices for pretrial services to the Committee; Chief Justice Hardesty asked Ms. Atkins to provide a copy of the risk assessment tool, the interview worksheet, and a blank copy of the detention recommendation form to the Committee.
- Chief Justice Hardesty asked what validation was in place for the risk assessment tool. Ms. Atkins stated the tool had been validated twice since 2007 through researchers from the Administrative Office of U.S. Courts, the Federal Judicial Center, and the Federal Courts.
- The following questions are asked in the risk assessment tool:
 - The number of felony convictions
 - The number of prior failure to appear violations

- The number of pending felonies or misdemeanors
 - The current risk offense type
 - The class of offense
 - The age of the defendant at the interview
 - The highest education level
 - Employment status
 - Residential status
 - Current drug problems
 - Citizenship status
- Chief Justice Hardesty asked Mr. Jeffrey Clayton, National Policy Director for the American Bail Coalition, to provide his presentation to the Committee. (*See meeting materials packet for PowerPoint*)
 - Mr. Clayton thanked the Committee for their time and provided a brief work history and background.
 - Mr. Clayton clarified a few assumptions individuals have about bail which includes the thought that 60% of all people, nationally, are “indigent” and cannot afford bail. There are at least ten other reasons which have been identified that explain why an individual would be in jail within bail that has been set but is not posted.
 - Mr. Clayton stated if studies are not conducted for the jails regarding their population inquiring who is there and what offenses were committed, only assumptions will be made in regards to correct information about the jail population.
 - A study conducted by the ACLU in the Los Angeles county jail found there were 10,545 pretrial indigents in the Los Angeles County Jail who were eligible for bail. The concept that masses of individuals sit in jail for extended periods of time was found to be largely false when one considers additional reasons for why an individual cannot post bail, such as: sentences for prior crimes, outstanding warrants, violent crimes, and high security crimes.
 - Although a bond may not be posted for an individual that does not mean the person could not afford their bail.
 - Chief Justice Hardesty asked Mr. Clayton to provide to the Committee other areas that should be tested to examine the reasons for when an individual is in jail with a no bail hold or has no bail; the information would be helpful once surveys are conducted in Nevada’s jails.
 - Chief Justice Hardesty asked what the usual cost of bail is and what additional fees or charges are applied to an individual for bail. He also asked for more information regarding sliding scales for bails and information for how costs are determined.
 - Mr. Clayton would provide information to the Committee once he learned more regarding multiple bail charges based on a person’s multiple criminal charges.
 - Mr. Clayton addressed risk assessment tools stating limitations of the tool include not being able to scientifically validate how to set bail and the tools do not help identify what will mitigate the risk presented. Risk assessment tools ask if there have been prior felonies but do not ask what the prior felonies were; the use of demographic factors for sentencing and for setting bail would be topics to consider.
 - Mr. Clayton stated that interviewing individuals before setting bail slows down the process and suggested that Committee think about what would happen be if a defendant challenged the validity of the risk assessment tool.
 - Mr. Clayton stated there are studies that support that surety bonds are effective. If an individual may be released on recognizance, they should not be put on bond.
 - Mr. Clayton referenced a study conducted by the *Journal of Law and Economics* from the University of Chicago which states “defendants released on a surety bond are 28% less

- likely to fail to appear.” Mr. Clayton referenced other studies which support financial conditions for release.
- Mr. Clayton discussed revenues raised for the State by bond forfeiture; it’s about finding a balance.
 - Discussion was held regarding bail timelines and due process as a “cure” for constitutional time concerns regarding bail. Best practices are not always practical; bail schedules are necessary in those instances.
 - Mr. Clayton suggested that bail reform should be addressed at the local level. Judicial discretion is key in bail decisions and in bail reform discussion; support giving judges more information but bail is a “tool” judges need to have access to.
 - Mr. Clayton discussed concerns regarding indigent defendants. Moving to supervision-based model doesn’t alleviate the problem; if an indigent defendant cannot afford bail, he/she cannot afford supervision costs. There are also concerns regarding creating a “debtor’s prison” scenario or placing additional financial strain on counties.
- Chief Justice Hardesty asked Mr. Stephen Krimel with the Nevada Bail Agents’ Association to deliver his presentation to those in attendance. (*See meeting materials packet for PowerPoint*)
 - Mr. Krimel introduced himself and provided a brief background on his experience in the bail industry.
 - Mr. Krimel addressed a series of bail system/bail reform studies and explained that the role of surety bail is and has been greatly misunderstood. The OR system is flawed and doesn’t function as intended. Rather than benefiting indigents, the system resulted in benefiting “wealthy” defendants while providing no aid to indigents. Definitions being used (California’s AB 2) were inaccurate and led to misinterpretation, misunderstandings, and misapplication.
 - Mr. Krimel discussed the question of “projecting into the future” in terms of potential for reoffending and recidivism is not one that courts give much respect to. CA Supreme Court in a 1981 case said that predictions of future behavior are “erroneous” and “unreliable.” FTA is not something that can be easily predicted.
 - Mr. Krimel informed attendees that a records review of his bail bond company showed that, out of 541 bonds, only 41 failed to appear - 26 of those were exonerated, 3 reinstated and 2 are serving time. Gross FTA rate is 7.58%. There is no “matrix” or tool to ensure appearance or improve risk assessment.
 - Mr. Krimel discussed the importance of family integration into the bail bond process and the “support structure” that becomes essential, particularly for indigent defendants - the use of this, the use of credit, and the willingness to waive collateral all lead to a low FTA rate; there are ways to do it successfully. Many in the industry are already following “best practices” to work with and benefit the defendant but because the industry has generally been left out of the discussions, the roles it plays aren’t acknowledged.
 - Assemblyman Anderson asked whether there is data available on how many clients can and cannot afford the bail. Discussion was held regarding “myth” that clients are “turned down” because they can’t afford bail; denial usually based upon safety factors rather than ability to pay. Mr. Krimel will work on gathering data on how many people are turned down for bail and why and will supply this and the tools his companies use when making these determinations to the Committee.
 - Discussion was held regarding states that have eliminated surety bail systems.” Mr. Krimel explained that, while Kentucky “claims” to have done so, there are “bail kiosks” in the jails there for credit card/cash bail. Discussion was held regarding cash bail versus surety bail.
 - Discussion was held regarding the “handling fee” and what factors go into determining this. Each bond posted in Nevada results in a \$50 fee to the jail. Agencies charge 15% fee (set by legislature) to issue bond; no late fees or interest charges because they are “not lending institutions.” Discussion was held regarding what happens to the fee when a court

voids a bond; Mr. Krimel explained that once a defendant leaves penal facility, the premium is “fully earned.” Most agencies can/will issue a bond “rewrite” and give the client credit for the any premium already paid in those instances where a court changes the bond. If defendant hasn’t been released yet, then it’s not a consummated bond - the risk has not been created yet and the bond can likely be voided but the agency still has to pay the insurance company back from associated costs.

- Chief Justice Hardesty thanked Mr. Clayton and Mr. Krimel for their presentations and reiterated that the Committee does not have a predetermined outcome and is making an objective effort to determine what is in the best interests of the State judiciary regarding pretrial release; the Committee has never said or suggested that bail or financial conditions should be eliminated.

V. Review of Risk Assessment Tools

- Chief Justice Hardesty reiterated that the purpose of implementing a tool is to provide judges with additional information when making pretrial release determinations. The Committee needs to determine what tool will function best in Nevada.
- Chief Justice Hardesty asked attendees to review and evaluate the tools provided in the meeting materials and come to the January 8th meeting ready to discuss the tools in depth in order to move towards making a selection.

VI. Pilot Site Program

- Chief Justice Hardesty informed attendees that he has asked courts in the largest jurisdictions and one rural court to participate in a pilot site program to test possible tools; the response of pilot site participants was favorable.
- Discussion was held regarding technology integrations and compatibility. The courts participating in the pilot site program will be bringing their respective IT to the table to start discussing how to make this work once a tool has been selected and integrated into the case management systems.
- Another critical issue is determining what data we need to be capturing and how to define that data. “FTA” for example, may have varying definitions among the courts and the players in the pretrial process. Chief Justice Hardesty suggested a “list” of information to capture be compiled; this will be discussed at the next meeting.
- Chief Justice Hardesty asked Committee members for feedback regarding what the Committee has learned thus far; taking all presentations and discussions into consideration, does the Committee still want to move forward?
 - Discussion was held regarding resources concerns; rural needs and resources will need to be considered as part of the process. Additionally, pretrial processes already in place will need to be re-evaluated and possibly changed in order to accommodate any reform.
 - Discussion was held regarding the need to identify why people are sitting in bail in order to determine if risk assessment would even be helpful; we need the bail statistics - how many individuals are in jail solely because they cannot make bail?
 - General consensus among Committee membership was to continue to move forward; concerns were expressed regarding providing sufficient information when caseloads (especially in Clark) are so heavy; how will a new process impact timing? What about possible constitutionality concerns associated with conducting interviews without defendants’ attorneys present? How will this be implemented? Should come in with the probable cause review?
 - A suggestion was made that judges in other states already using some of these tools be invited to a future meeting - perhaps a judge from Maricopa County or Washington DC and a rural jurisdiction.

VI. Other Items/Discussion

- Discussion was held regarding indigency and chronic failure to appear; there are social dynamics that need to be part of the consideration.

VII. Adjournment

- Chief Justice Hardesty adjourned the meeting at 4:46 p.m.