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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 Jamie Gradick

August 8, 2016

4:00 p.m. – 6:03 p.m.

Videoconference (Carson City, Las Vegas)

Members Present

Justice James Hardesty, Chair
Judge David Barker
Judge Stephen Bishop
Judge Joe Bonaventure
Jeremy Bosler
Heather Condon
Kowan Connolly
Judge Gene Drakulich
Tad Fletcher
Chris Hicks
Judge Kevin Higgins
Judge Cedric Kerns
Phil Kohn
Judge Victor Miller
Judge Michael Montero
Judge Scott Pearson
Judge Thomas Perkins
Judge Elliot Sattler
Judge Mason Simons
Dagny Stapleton

Judge John Tatro
Judge Ryan Toone
Judge Natalie Tyrrell
Anna Vasquez
Steven Wolfson
Judge Bitia Yeager

Guests

Michelle Alaire
Joel Bishop
John Boes
Ben Graham
Sandy Molina
George Ross
Laurel Stadler
Ryan Sullivan

AOC Staff

Jamie Gradick
Kandice Townsend

- I. Call to Order
 - Justice Hardesty called the meeting to order at 4:00 p.m.
- II. Call of Roll
 - Ms. Gradick called roll; a quorum was present.

III. Opening Remarks

- Justice Hardesty welcomed attendees and provided a brief outline of the goals for the meeting.

IV. Risk Level Supervision Conditions

- Mr. Joel Bishop, with Mesa County's Criminal Justices Services Department, provided a discussion of pretrial policies and supervision guidelines. (*See Tab 2 in meeting materials for presentation handout*)
- Mr. Bishop explained the policy/chart used in Mesa County (page 7 in handout).
 - Preferences for scrutiny regarding crime types can be tailored to the needs of the state/jurisdiction.
 - Presumptions were created based on risk level and crime type, even though crime type was not validated as a predictor of risk.
 - Goal was to reach 80% concurrence in order to allow for "courtroom intangibles" in each case; 100% concurrence would be too limiting on judicial discretion.
 - This page replaced the money bond schedule; the judge can still set bail but it needs to be based upon this chart.
- Mr. Bishop directed Committee members to page 10 of the handout and explained that the correlating supervision guidelines (SMART Praxis) outlines the supervision structure of the pretrial program and how defendants will be supervised within each level.
- Discussion was held regarding outcomes of these guidelines on the jail population within Mesa County. Mr. Bishop explained that jail now houses high-risk defendants who are there for "strategic" reasons, rather than low-risk defendants who are there simply because they are too poor to "buy their way out."
- Justice Hardesty asked whether characterizing this as set of "release guidelines" would be a "fair" characterization; Mr. Bishop agreed that this would be accurate but added that these guidelines also try to articulate the legal reasonable and legal circumstances under which a judge may hold someone.
- Discussion was held regarding Mesa County's decision not to set "uniform" dollar amounts for specific crime types because circumstances vary for each defendant.
- Justice Hardesty asked for clarification regarding how crime types requiring no supervision were determined.
 - Mr. Bishop explained that supervision requirements are based on actual outcome data so the "guesswork" has been taken out of it.
 - This is a "data-driven matrix."
- Justice Hardesty explained that the pilot sites are going through a similar process of identifying crimes in which administrative release would be appropriate versus crimes in which judicial assessment would be required

and asked for clarification regarding whether Mesa County has adopted a series of “supervision levels.”

- Discussion was held regarding the SMART Praxis and levels of supervision; the judges concur with the levels approximately 83% of the time.
- Justice Hardesty asked for advice regarding the process for determining “crime types” to include on the matrix.
 - Discussion was held regarding the subjective nature of this aspect of the process; Mr. Bishop suggested that the focus should be risk level, rather than crime type but acknowledged that this may not always be feasible depending upon the stakeholders involved in the process.
- Justice Hardesty expressed concern regarding limited resources and staff.
 - Mr. Bishop explained that Mesa County saw an increase in pretrial staff workload but were able to offset this by collaborating with Parole and Probation.
 - It’s important to monitor the workloads and “system design” - your focus should remain on the people who need to be supervised.
- Ms. Heather Condon asked for clarification regarding Mesa County’s decision to move away from fees. Mr. Bishop explained that supervision fees are currently being “phased out” and commented that this requires a “culture” shift.
- Discussion was held regarding impact on jail populations; Mr. Bishop explained that this doesn’t necessarily decrease jail population but it changes the population “make-up” by ensuring that those people who are in jail are there for specific, strategic reasons.
- Judge Perkins asked for clarification regarding whether there is an opportunity to post bail prior to assessment; Mr. Bishop explained that defendants remain in jail until they are assessed via universal screening.
 - Key philosophy is that judges, not bail bonds representatives, should be making release decisions.
- Judge Pearson asked for clarification regarding who pays for drug testing fees, SCRAM, etc. Mr. Bishop explained that the county has programs available to subsidize these fees if they cannot be collected from the defendants.
- Judge Sattler inquired about the average time from arrest to judicial assessment on release; Mr. Bishop explained that this “release rate” was a data element that Mesa County was particularly interested in tracking and offered to forward the data to the Committee membership. The average time to see a judge is 1-2 days; pretrial services staff work daily.
- Discussion was held regarding caseloads of pretrial services officers (approximately 100 per officer); there are various ways to break out the caseload (by courtroom, by category of risk, etc.).
- Mr. Bishop cautioned against the use of GPS tracking as a supervision tool; it’s not appropriate or effective in many instances and can be detrimental.

V. Order of Judicial Review Discussion

- Justice Hardesty explained that the materials provided include administrative orders currently in use in the pilot site jurisdictions.
- The pilot sites have been asked to collaborate and develop a consistent approach to how administrative releases will be handled during the pilot site program.
 - Discussion was held regarding whether all parties have received/reviewed all the approaches.
 - Justice Hardesty asked Judge Barker and Judge Bonaventure to review the approaches being used in the 2nd Judicial District with Mr. Wolfson, Mr. Kohn, and Judge Kerns and then discuss a “uniformed approach.”
 - Justice Hardesty suggested the parties set up a conference call before the August 18 and 19 trainings to discuss this.
- Justice Hardesty commented that he would like to start developing the supervision matrix (similar to Mesa County’s example) as soon as possible.

VI. Subcommittee to Study Bail Schedules Status Update

- Judge Mason Simons, as chair of the Subcommittee, provided a status update on the Subcommittee’s progress.
 - The group has been compiling and comparing the various bail schedules in play throughout the state; the results show that there are significant disparities among jurisdictions.
 - The Subcommittee has extensively discussed the feasibility of mandatory schedule but has concerns regarding push back. Instead, there is a general consensus among the members that a “model bail schedule” would be a more appropriate alternative.
- Mr. Wolfson commented that it may not be appropriate to have statewide consistency given how different the various jurisdictions across the state are.
 - Judge Simons explained that this is something the Subcommittee has considered; it might be worth having a model “rural” schedule and a model “urban” schedule.
- Justice Hardesty commented that judges should have the option of using bail to keep high risk defendant s in jail.
- Discussion was held regarding push back; attempts to develop uniform schedules have been made before but have failed.
- Justice Hardesty commented that there’s an equal protection issue at play: bail varies for same offense in different jurisdictions. What does money have to do with a defendant’s FTA or danger risk?
 - Judge Perkins commented that judicial discretion during the bail hearing alleviates the equal protection concern.
 - Discussion was held regarding the need for a “base level” to guide new judges and to bring the various “starting points” closer together; inconsistency is “dangerous.”

- Judge Perkins made a motion to request that the Subcommittee to Study Bail Schedules develop and present a “Model Bail Schedule” at a future full-Committee meeting.
 - The motion was seconded by Judge Kerns.
 - Mr. Wolfson opposed the motion.
 - Mr. Kohn opposed the motion.
 - The motion passed by majority vote.

VII. Other Items/Discussion

- Justice Hardesty informed attendees that both the Reno Municipal Court and the Sparks Municipal Court have joined the pilot site program.
- Justice Hardesty provided attendees with an overview of the logistics of the upcoming NPRA Tool Training Sessions.
 - Sessions will be recorded and made available through the AOC’s Judicial Education website.
 - CLE credit will be available but attendees must sign in at the presentations in order to get credit.
 - Justice Hardesty asked for “facilitators” to handle the sign-in sheets; Mr. Hicks, Mr. Wolfson, Judge Barker, and Judge Sattler were asked to assign someone from their respective teams to handle sign-in sheets.
 - Mr. Hicks suggested Justice Hardesty send a letter of invite to the Reno City Attorney and his team as well.
 - Judge Kerns clarified the alternate judges (pro tems) are welcome to attend the judges’ session.
 - Discussion was held regarding known, incoming judges attending as well.
- Justice Hardesty asked attendees for input regarding Kentucky’s rule (Miranda Rights issue) and suggested the Committee consider voting on a rule to propose to the Nevada Supreme Court.
 - Mr. Hicks expressed concern regarding the rule. Historically, in Washoe County, these types of questions have been asked of defendants for several years without any problems arising. The Kentucky rule is very “expansive” and could “handcuff” the prosecutor.
 - Mr. Kohn expressed concern with the rule’s language regarding its use in sentencing and commented that, while he cannot endorse the Kentucky rule, he is very willing to work with Mr. Hicks, Mr. Wolfson, and Mr. Bosler to develop a more appropriate rule for Nevada.
 - Justice Hardesty tasked Mr. Kohn, Mr. Hicks, Mr. Wolfson, and Mr. Bosler with working together to find a rule for Nevada and report back to the full-Committee at the next meeting.
- Discussion was held regarding the impact of limited staffing/resources on the pilot sites.
 - Justice Hardesty commented that it’s still too early to quantify the needs.
 - Mr. Wolfson commented that he has reservations about staffing and lacks the “comfort level” to “sign-off” on anything at this point; he would prefer

to have more dialog with pretrial services and stakeholders in Clark County before moving forward.

- Justice Hardesty commented that he is willing to meet and discuss this with the Clark County Commission.
- Heather Condon commented that she also has staffing concerns regarding her team in Washoe County and she is working on “borrowing” some staff to help in the beginning. It’s going to be an issue for Washoe but, at this point, there are too many variables to determine what the impact will be at this point.
- Justice Hardesty would like to find a time during the training sessions to meet with Clark County staff to discuss this. Mr. Wolfson will contact Mr. Wells about this and set up a time to discuss.
- Judge Pearson expressed concern regarding judges “over-ordering” supervision conditions and adversely impacting budgets. Discussion was held regarding the need to “learn as we go” through this process.

VIII. Next Meeting Date

- Justice Hardesty informed attendees that the next meeting will be tentatively set for October 2016.

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 6:03 p.m.