

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

ROBIN SWEET  
Director and  
State Court Administrator



JOHN MCCORMICK  
Assistant Court Administrator  
Judicial Programs and Services

RICHARD A. STEFANI  
Deputy Director  
Information Technology

**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 Espinoza and Jamie Gradick*

November 18, 2016

3:00 p.m. – 5:20 p.m.

Videoconference (Carson City, Las Vegas)

**Members Present**

Justice James Hardesty, Chair  
Judge Stephen Bishop  
Judge Joe Bonaventure  
Jeremy Bosler  
Heather Condon  
Kowan Connolly  
Judge Gene Drakulich  
Tad Fletcher  
Judge Douglas Herndon  
Chris Hicks  
Judge Kevin Higgins  
Dana Hlavac (Proxy for Judge Cedric Kerns)  
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 Ryan Toone  
Judge Natalie Tyrrell  
Anna Vasquez  
Steven Wolfson  
Judge Bitu Yeager

**Guests**

Jennifer Adair  
Jim Austin  
John Boes  
Tracy DiFillippo  
Judge Elizabeth Gonzalez  
Adam Hopkins  
Angela Jackson-Castain  
Kim Kampling  
Steve Krimel  
Stephen Rickman

**AOC Staff**

Raquel Espinoza  
Jamie Gradick  
Hans Jessup  
Kandice Townsend

- I. Call to Order
  - Justice Hardesty called the meeting to order at 3:00 p.m.
  - Roll call was not taken.
  - The summaries of the 7-13-16 and 8-08-16 meetings were approved.

## II. Opening Remarks

- Justice James Hardesty welcomed attendees and explained that the purpose of this meeting is to discuss pilot site progress and data and to address concerns and issues arising from the pilot program.

## III. Pilot Site Program Status Updates

- Judge Stephen Bishop provided attendees with a status update on Ely Justice Court's experiences as a pilot site. *(See meeting materials for PowerPoint)*
  - Judge Bishop explained the charts in the Power Point and stated the statistics listed for each pilot court's release percentages.
  - Judge Bishop stated he had released a person on their own recognizance (OR) although a prior conviction for Driving Under the Influence (DUI) causing death had not shown up on the Pretrial Risk Assessment. That would be an issue that would need to be looked into.
  - Judge Bishop recommended the community be educated on the Pretrial process. Judge Bishop stated he would need someone to monitor Moderate Risk Defendants to make them comply with certain conditions and identified that as an issue.
  - It would be ideal to have a staff person monitor conditions such as making sure the defendants have been drug tested, not possessing or using drugs, alcohol, or controlled substances without prescriptions, not driving, or contacting their attorney on a weekly basis.
  - Judge Bishop reported there had not been any major issues for anyone regarding the use of the Risk Assessment Tool and it has helped to speed up the process in court.
- Justice Hardesty thanked Judge Bishop for his report. Justice Hardesty asked Judge Bishop to update the PowerPoint and present the information in January before the Nevada Limited Justice Association Conference.
- Justice Hardesty stated he and Ms. Jamie Gradick would put together a list of areas of concern to track and follow up on.
- Ms. Kowan Connolly shared some observations with the Committee. Ms. Connolly was not able to provide statistics to Doctor Austin due to training, vacancies, questions received from Judges, and making modifications to the form, amongst some other issues.
  - Ms. Connolly perceived the judges were becoming more comfortable using the Risk Assessment Tool after having the opportunity to ask questions and assess the forms.
- Justice Hardesty requested Mr. Dana Hlavac and Judge Bishop to ask the judges in their courts what the range of conditions are that they would need available to them to consider releasing moderate risk offenders.
- Mr. Steve Wolfson asked what other kinds of charges defendants were being considered for release that had not previously been released by an administrative order or otherwise. Ms. Connolly stated domestic and DUI charges were not released, all misdemeanor charges were considered for

release. Justice Hardesty stated there would be more information on crime type when the statistics were available.

- Ms. Connolly stated there was an overwhelming amount of information and statistics. Justice Hardesty suggested it may be a good idea for the pilot courts to modify the way the program works in order to be able to track the information more effectively. Justice Hardesty also suggested the courts could contact the Boyd School of Law to help facilitate some of the work.
- Ms. Heather Condon provided four graphs to the Committee in the materials for reference. Ms. Condon stated Washoe County implemented the Risk Assessment on September 1<sup>st</sup>, 2016 and on November 1<sup>st</sup>, 2016 they implemented Judicially Imposed Bail.
  - Overall the status was good. Every arresting agency that books into the Washoe County Jail was included. Many meetings occurred between the courts, the jail, and pretrial staff. BCC was updated twice and Reno City Council would be updated on December 7<sup>th</sup>, 2016.
  - One challenge that arose was implementing a secure way to transfer documents between Pretrial Services and the courts. That challenge was accomplished by creating a shared drive. Another challenge which was accomplished was obtaining Probable Cause (PC) sheets with the declaration for the arresting agencies. Mr. Scott Sosebee was able to facilitate the process to be able to have judges process the paperwork electronically.
  - One challenge that had not been accomplished was having enough staff to keep the process moving. Another challenge that had not been accomplished was making sure everyone that was booked was addressed by a judge within 24 hours. Ms. Condon worked with Washoe County Sherriff's Office in regards to a booking recap sheet that is automated and goes out to just about everyone, she asked for a condensed version of that so that her staff could keep track of the paperwork that was sent to the court to ensure they had received a response back.
  - There was work being done on the Case Management System that would create reports to record success and failure through the Measuring What Matters document.
  - There is a mandatory judicial review list that the judges had agreed upon that even if the defendant is low risk, with those charges, the judges would rather see in lieu of Ms. Condon's team letting them out. With the 24 hour review the judges are seeing the defendants in a short period of time, but that mandatory review list is limiting the ability for Ms. Condon's team to release low risk defendants.
  - Ms. Condon listed many positive outcomes that have happened for the courts, jails, and arresting agencies since the implementation of the program in Washoe County.
  - Ms. Condon stated that overall things were going well.
- Mr. Chris Hicks stated there had been a significant increase in bail requests which has become problematic for the Washoe County District Attorney's

Office because bail hearings were being requested to challenge the score on the scoring sheet.

- Mr. Hicks would like this to be added on the list of areas of concern due to slowing down the efficiency of the Washoe County DA's Office.
- Justice Hardesty asked if Mr. Hicks had been tracking data to determine the impact the bail hearings were having on efficiency of the office or on the decisions made in regards to the Assessment Tool. Mr. Hicks stated he did have data and had seen a change since the implementation of the Tool and having defendants trying to challenge the score received from the tool in order to get released on recognizance or get a lower bail set.
  - Justice Hardesty stated this issue was discussed in depth as part of the training to the attorneys and stated the motions could and should be made but they need to be made based on factual information not only because someone did not agree with the score they received.
  - Justice Hardesty stated the point of the Risk Assessment Tool was not to continue setting dollar amounts; the Tool was implemented in order to release or retain people without regard to bail. Justice Hardesty asked Mr. Hicks to maintain statistics to take up the issue. Mr. Hicks stated they would continue to maintain the statistics.
- Mr. Jeremy Bosler stated he had seen many scenarios which ended in judges saying there had to be fidelity to the instrument and not releasing low risk offenders or District Attorneys saying they would withdrawal previous negotiations if a defendant wants to have a bail hearing. Mr. Bosler stated he was told that information from the shared drive would not be communicated with the Public Defender's Office; Mr. Bosler wanted those issues to be added to the list of areas of concern.
- Judge Elliott Sattler stated there was a list that was created in Washoe County regarding certain defendants on certain offenses that would be let out on Administrative Early Release and there was a list of other offenses that would not qualify for Administrative Early Release even though the offense may be a misdemeanor or if the defendant was low risk. This list would be modified since it was a pilot program, it would be continued work.
- Judge Sattler stated there is information being shared from the Risk Assessment Tool that, in accordance to statute, should not be shared with all agencies as it had been done. The Second Judicial District was concerned with their risk of losing the ability to utilize NCIC and CJIS if invalid information sharing is disregarded.
- Judge Thomas Perkins stated he would not review information that was withheld from the defense, it is essential to cases to have all parties review all information that is important to the case. It would be useful to add this issue to the list of areas of concern.
- Justice Hardesty stated he would look into the issues which were brought up by the Committee.
- Judge Kevin Higgins reported he has released more people on supervision than ever before.

- Judge Scott Pearson stated he felt confident that the issues would be assessed and worked through and communication would be improved.
  - Ms. Condon clarified that the Public Defender’s Office had been receiving the Risk Assessment Tool the entire time and they have had the information for the hearings
- Ms. Anna Vasquez reported there were some issues in Clark County as well such as: timing to get verification of residence and cell phones, staffing issues, timing for probable cause reviews, and some training issues. Ms. Vasquez stated that calling defendants that are scheduled for court appearances has been very helpful.

IV. NPRA Preliminary Analysis Results (*See meeting materials for PowerPoint*)

- Dr. James Austin and Ms. Angela Jackson-Castain provided an overview of the NPRA tool data gathered to date.
  - Dr. Austin commented that the need to “tweak” instruments is normal at this stage; the data is still very preliminary at this point.
  - The first table summarizes the results but is skewed towards Las Vegas Justice Court since, so far, a majority of the results have come from that jurisdiction.
  - Discussion was held regarding “noise” in the variables and the possibility of “downgrading” or removing items that are troublesome or not reliable (cell, employment, residential status).
  - Discussion was held regarding the second table and the significant change in results in comparison to the validation test. Justice Hardesty commented that these results aren’t necessarily surprising given that Las Vegas doesn’t assess misdemeanors.
  - Discussion was held regarding incomplete data in terms of release percentages; subsequent analysis will fill in that gap.
  - Discussion was held regarding an increase in jail populations; Dr. Austin commented that this isn’t related to the NPR tool or pilot site program.
- Concern was expressed regarding the use of “arrest” versus “conviction”. Dr. Austin commented that the issue is that there isn’t complete conviction data available throughout the state. The different jurisdictions are pulling criminal history from different sources.
- Justice Hardesty expressed concern regarding limited access to criminal history and which databases can “share” information under statute and which cannot.
  - Discussion was held regarding statutory compliance; does a “summary” still violate the statute? Judge Sattler commented that his team has been told that even a summary would be prohibited because it pulls info from the protected source; Judge Sattler will look into this.
- Judge Bonaventure expressed concern regarding a lack in staffing for verification of residence, employment etc., and the additional points this adds.

- Dr. Austin commented that he would put a model together that doesn't use these factors; it would still be effective.
- Justice Hardesty commented that this is something that seems to be an issue in both Clark and Washoe and should be addressed quickly.
- Concern was expressed regarding possible need for additional training; courts need to be reminded of the proper purposes of the tool - it shouldn't "bleed" into sentencing.
- Justice Hardesty commented that he has some thoughts/suggestions pertaining issues in individual jurisdictions and he will reach out to the appropriate parties individually. Justice Hardesty thanked everyone for their efforts in the pilot program.

V. NPRA Tool Overrides Discussion

- This agenda item was tabled for a future meeting.

VI. COSCA 2015-2016 Policy Paper Discussion

- This agenda item was tabled for a future meeting. Justice Hardesty asked attendees to review this report; there will likely be recommendation in this area released in the future. Nevada needs to "get ahead of this curve."
- Judge Bishop commented that some of these fines/fees statistics can be pulled from CourtView.

VII. Subcommittee to Study Bail Schedules Status Update

- This agenda item was tabled for a future meeting.

VIII. Other Items/Discussion

- Discussion was held regarding the length of the pilot program; attendees agreed to continue the program until the next meeting (in March) and then decide if the program needs to continue on.
- Discussion was held regarding whether the Committee would consider DUI and DV specific risk assessment tools; Justice Hardesty commented that he is working on getting samples of these tools and they will be likely be discussed at a future meeting when the time is appropriate.
  - Mr. Bosler commented that there is a "public defender fees" element to this discussion that should also be considered.

IX. Public Comment

- Mr. Steven Krimel, Nevada Bail Agents' Association, addressed the Committee and presented concerns regarding "hardships" reported to his organization by family members of incarcerated individuals.
  - "... the reason for that is not to be critical of anything you folks have been doing but it's seeming to generate problems that can only addressed through an Eighth Amendment or Nevada Constitution Art. I, Sec. 7 provisions, and federal litigation would be something that we all want to avoid for taxpayers. The initial problems that are being reported to us,

and I've surveyed defendants, criminal defense bar, and family members of defendants, and maybe the cause may be that the Kentucky risk assessment model was enacted well after surety bail stopped in Kentucky so there's no mention in any of these documents or discussions about the 40% of criminal defendants... released on surety bail bonds. The Kentucky, without taking undue time, the Kentucky system for release, was... keeps... Kentucky was a great format for it because they kept data on a standardized basis statewide. And, even under that system, they were showing a 26% pretrial detention rate. And I don't know what the standard is in Nevada but that seemed fairly high. Kentucky's risk assessment validation is included in the materials I filed with your Committee a year ago."

- Justice Hardesty confirmed that the Committee has those materials.
- Mr. Krimel continued: " Ok, and if one looks at the Kentucky risk assessment, it doesn't factor in substance abuse, mental health, violations of conditions of prior release; there's a lot of things missing that I think could be upgraded. I worked with Dr. Austin in the early 1980's with the National Council on Crime and Delinquency and found him to be extremely flexible and understanding of the problem. What we've got now is a matter goes for judicial review at 24 or 36 hours, what have you, it comes back where it was the bail schedule called for \$500 bond, when it gets back to the jail is been reviewed and now it's, for pretrial release, it's 5,000 cash bail. Well, the families are outraged, if nothing else, because this individual is going to lose his or her job, if they have one. So what was suggested to me by several of the defense bar was that, there's a standardized bail schedule as of 2012 in Washoe County signed by all the judges, and the proposal was that that would be the... if a bond company offered a surety bond, in a proper format to the court, to the jail, that individual would be let out. He could then, if it's a defendant for the... integrity of the research, in the pilot project, he could be ordered to go to pretrial services and fill out their forms so their (inaudible) let out of custody, he hasn't lost his residence, he hasn't lost his job. So, what we're asking, I think, is that between now and March, the cash bail process can stay in place so long as defendants can bail out so they don't lose their job pursuant to the traditional, standardized bail uniform schedule Washoe County adopted four years ago. So I ask Justice Hardesty, I know that you're well-versed and vested in this process but there's a lot of things out there that are really hurting because of the fact that the Kentucky model doesn't address surety bail. And the reason, of course, is it didn't exist. So I wanted to bring that to the Committee's attention, I appreciate your time. I appreciate what you guys are doing, trying to do. And what we're trying to do is be an information source to you so you know what's going on with families of defendants. So, with that, if you have any questions, I'm certainly willing to answer them.

- Justice Hardesty thanked Mr. Krimel for his comments as asked for information regarding those instances when judges were imposing cash bail for amounts that were at or above bail schedule. This is something the Committee should look at; Justice Hardesty asked Mr. Krimel to provide this data to the Committee and asked Ms. Condon to look into this same issue and whether/how often it occurs in Washoe County. Mr. Krimel commented that he would supply the data by the following week.
- Justice Hardesty commented that, although this Committee has looked at examples of pretrial release programs from various other states, this is a Nevada-specific program and is not modeled off of any other state.

X. Adjournment

- Justice Hardesty adjourned the meeting at 5:18 p.m.