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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

February 12, 2016

1:30p.m. – 4:00 p.m.

Videoconference (Carson City, Las Vegas)

**Members Present**

Justice James Hardesty, Chair  
Judge Heidi Almase  
Judge David Barker  
Judge Stephen Bishop  
Judge Joe Bonaventure  
Jeremy Bosler  
Heather Condon  
Kowan Connolly  
Judge Gene Drakulich  
Tad Fletcher  
Joey Orduna Hastings  
Judge Douglas Herndon  
Chris Hicks  
Judge Kevin Higgins  
Judge Cedric Kerns  
Phil Kohn  
Judge Victor Miller  
Judge Michael Montero  
Judge Scott Pearson  
Judge Melissa Saragosa

Judge Elliott Sattler  
Judge Mason Simons  
Dagny Stapleton  
Judge John Tatro  
Judge Ryan Toone  
Judge Natalie Tyrrell  
Anna Vasquez  
Jeff Wells  
Steven Wolfson (Chris Lalli-Proxy)  
Judge Bitia Yeager

**Guests**

Dr. James Austin  
Dana Hlavac  
Angela Jackson-Castain  
Kim Kampling  
Ryan Sullivan

**AOC Staff**

Jamie Gradick  
Robin Sweet

- 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. Approval of Prior Meeting Summary
  - The summary from the January 8, 2016 meeting was approved.

#### IV. Opening Remarks

- Justice Hardesty welcomed attendees and thanked them for their attendance.
- Justice Hardesty informed those in attendance that both Mr. Clayton and Mr. Krimel (bail bond representatives) have provided follow-up information in response to the questions they received during their respective presentations to the Committee. Justice Hardesty extended an invitation to both Mr. Clayton and Mr. Krimel to attend this meeting should they have any additional input to share.
- Justice Hardesty asked attendees for approval to appoint a subcommittee (consisting of both members and nonmembers) to study bail bond schedules throughout the state and offer suggestions/analysis on why discrepancies exist, how bail schedules are used, and what steps could be taken to address discrepancies/issues.
  - The motion was made and approved unanimously.
  - Justice Hardesty invited public participation on the subcommittee and informed attendees to send an email expressing their interest to Ms. Gradick within the week.
- Justice Hardesty informed those in attendance of the CCJ/COSCA Western Region Pretrial Justice Reforms Summit being held in New Mexico in May; the conference will be attended by Chief Judge Bonaventure, Mr. Jeff Wells, Ms. Heather Condon, Ms. Robin Sweet, Chief Justice Parraguirre, and himself.
  - Nevada has received praise for the progress it has made in this Committee
  - Those attending the conference will provide a brief recap to the Committee membership at the next meeting.

#### V. Public Comment

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

#### VI. Guest Speaker Presentations

- Justice Hardesty informed those in attendance that the Department of Justice, OJP Diagnostic Center has agreed to provide technical assistance to this Committee.
- Justice Hardesty introduced Dr. James Austin, JFA Institute, and Ms. Angela Jackson-Castain, OJP Diagnostic Center.
- Ms. Jackson-Castain provided a brief overview of the OJP Diagnostic Center.
  - *(See PowerPoint included in meeting materials)*
  - Currently working with Las Vegas Metro PD on inmate population management; LVMPD is seeking technical assistance to “improve inmate population management through the evaluation of the inmate classification system and the exploration of pretrial analysis framework, while leveraging existing reentry and social service programs to reduce recidivism.” Four recommendations come from this process, one of which being the implementation of a tested, validated evidence-based pretrial risk management system and assessment.
  - The Diagnostic Center applies a three-phased process – Diagnose, Implement and Assess – for providing assistance to communities. This approach enables the Diagnostic Center to identify the factors (organizational issues, legal mandates, fiscal resources, etc.) contributing to criminal justice challenges and align them to strategies and solutions that have demonstrated success in addressing similar challenges.

- During the “assess” phase, the Diagnostic Center works with the “community” to adopt data collection strategies to measure the effectiveness of program put into place - it’s important to understand the “nuances” of each community in order to accomplish this.
- Dr. Austin provided a brief overview of his background in this field and provided a presentation on the proposed Nevada-specific pretrial risk assessment tool and associated timeframe for implementation.
  - *(See PowerPoint included in meeting materials)*
  - This instrument is “customized” to the data available in this state and will be a “blend” of those tools this Committee has already been looking at but can also include elements not found in other tools (example: age, gender-specific FTA rates). Scales, risk levels, design will be based on Nevada’s population needs, data, resources, etc. These can be refined/adjusted to meet needs and produce most beneficial data set.
  - The proposal is to retroactively apply this tool to cases (in the pilot sites) dating back through 2014. This analysis will look at which items are accurate predictors and will also look at failure to appear and rate of rearrest while on pretrial status. This will be a large, random sample of 1,250 cases across the three pilot-site counties: suggestion is 500 in Clark, 500 in Washoe, 250 in White Pine. Other sites/counties are welcome to participate in the testing.
  - Dr. Austin emphasized that the tool (NPRA) is still very much in draft form and welcomed any input and suggestions from attendees. The data gathered from this testing will be analyzed and presented to the Committee at the next meeting.
  - Discussion was held regarding the distinction between prior “arrests” and “convictions.” Dr. Austin explained that he has been informed that Nevada has access to “arrest” data but not necessarily accurate data on prior “convictions.” Ideally, Nevada would need to “bring its data system up” to a point where it could accurately report prior conviction data before this element can be incorporated into the tool. Until then, “prior arrest” will have to be the element used to address prior criminal record.
    - Discussion was held regarding the ability of Washoe and Clark Counties to get accurate conviction data; Nevada has a problem with entering “good data” in this area. There is a problem in this state with “instability of reporting” of convictions.
    - Concern was expressed regarding consistency of how these elements are treated; every jurisdiction will need to define and enter the data the same way in order to validate the data.
  - Discussion was held regarding the inclusion of race information on the tool; this will not be a scoring item and is only included for testing racial bias for tool validation purposes and will provide protection from challenges to the tool based on gender/racial bias.
  - Dr. Austin explained that the testing process will test the tool in two ways: reliability and validity; 100 of the 1250 cases will be randomly selected and rescored (by a different individual) to see if the original scoring remains consistent.

- Discussion was held regarding whether the tool should address allegations in terms of severity. This is currently not incorporated into the tool as a “scoring item” because it wasn’t part of the Ohio or Kentucky tools that this tool is based on. Research shows that the more serious the charge, the lower the FTA rate; “Most serious charge” is included on the tool so it can be tested.
  - Similarly, “bail amount” is also included on the tool as a “non-scoring” item so that the correlation of bail amount to the other elements can also be tested.
  - Discussion was held regarding the use of SCOPE in Clark County versus NCIC or NCJIS in Washoe - there will be a need for compatibility in order to get adequate, accurate information statewide but this isn’t feasible at this time. Discussion was held regarding Washoe’s ability to use SCOPE or Justware (since it tracks FTA) but only the DA has access to Justware in Washoe, not the court; Justware (in Washoe) has only been in place 3-4 years.
  - Mr. Hicks pointed out that the databases Washoe uses do not contain complete information on convictions, only arrests, so the tool would need to be based on arrests rather than convictions for the tools to work in Washoe. A suggestion was made that the testing be done “both ways” - once with just arrests and again using convictions- to see if there’s a difference in results. Given the differences in databases/resources between Washoe and Clark, the tool will be tested on a county basis instead of statewide basis - use a convictions test in Clark and arrests in the other pilot site counties.
  - Dr. Austin pointed out that this testing can be applied to any other elements the Committee believes should be included - just let Ms. Jackson-Castain or himself know what other items to include.
- Discussion was held regarding “override reasons” included in the tool. Would there be a value in having certain, egregious offenses listed included in this section?
  - Dr. Austin explained that there are three types of overrides. Mandatory overrides are set by the court. The other two types are discretionary overrides that allow the pretrial agency to override up or down based on specific case circumstances.
  - Overrides can be included in the testing; it will be up to the Committee to determine which overrides to utilize and how to do so. Discussion was held regarding including the overrides in the testing or to develop the overrides based on the results of the testing; this was primarily included on the form to bring attention to the fact that overrides can be part of the tool. Mr. Bosler expressed concern regarding the inclusion of a “balanced” field of overrides. Dr. Austin can provide a list of testable overrides (up and down) to address this.
- Judge Pearson asked for clarification on “preexisting pending criminal case” - this just means “open” case. There was discussion regarding tracking parole/probation when scoring a defendant. Ms. Condon explained that probation/parole would come up as a DAWNS hit at booking; however, because this testing is being done retroactively, it may be difficult to test this particular element going backwards. Dr. Austin suggested that this element could be

included on the tool but with the understanding that it could be applied to cases going forward and then evaluated at some later point. The consensus was to attach this element as a “predictor” and examine results in 2017.

- Judge Pearson asked for clarification on why the tool does not include a differentiation for “top charge”? Dr. Austin explained that the tool follows the statute but, moving forward, the tool can differentiate among charge/case types.
- Judge Pearson asked for clarification regarding the definition of “violence”? What crimes would fall under this category? Dr. Austin explained that determining this definition would be up to the Committee.
- Judge Pearson asked for clarification regarding whether incarceration in jail versus prison was a relevant element and should be considered. Dr. Austin explained that research in other states did not indicate that this was a significant predictability factor; it can be included for testing if the Committee wishes, but most tools consider prior convictions as a “more accurate” indicator.
- Judge Bishop expressed concern regarding limited resources and support in the rural counties - his county does not have a pretrial services department so who will complete these assessments in the rural counties? Given the small case load, a discussion should be had with the jails regarding having the jail staff trained to complete the tool. Judge would still be responsible for making the final decision; the tool is just a “guide.” Discussion was held regarding the pilot site testing be expanded to include additional rural counties in order to reach the proposed number of 250 cases (from rural counties). This is an issue that will impact other rural counties so a solution will need to be addressed.
- Judge Tyrrell asked for clarification on the substance abuse portion of the tool; this is a section of the tool that could aid in imposing release conditions. Discussion was held regarding the tool providing a level of liability security by giving judges something to support the release decisions they make.
- Justice Hardesty asked Ms. Condon to look into residency of Washoe County inmate population; discussion was held regarding “residential status” role on the tool.
- Discussion was held regarding the ability of this tool to test whether current administrative release processes in place “make sense.” Additionally, there was general consensus that there is value in testing misdemeanors separately in Clark (and perhaps Washoe) as a portion of the 500 sampling.
- Ms. Condon asked for clarification regarding whether there will be statewide conditions established for each level - this will likely have to be a local decision depending upon resources but the discrepancies can’t be significant - this is something the Committee will have to keep in mind.
- Concern was expressed regarding the language of #9 on the tool - will training be provided that defines the terminology used on the tool? Discussion was held regarding “drug of choice” and whether this is something that can be retroactively tracked for the testing or if it can only be addressed on current/future cases.
- Dr. Austin addressed the proposed timeline/work plan (*See PowerPoint in meeting materials*)
  - Will work directly with pilot site teams/staff to draw samples for the testing, and provide training on completing the tools.

- Once results are gathered, Dr. Austin will analyze and prepare to present results to the full Committee for approval prior to “rollout implementation” of the tool.
- Discussion was held regarding integrating the tool into case management systems and associated technology concerns; until these are addressed, the tools will be in hardcopy format.
- Justice Hardesty asked whether the DOJ’s “technical assistance” includes training judiciary and court/pretrial staff on proper usage of the tool once validation is complete and the tool is ready to be implemented? Ms. Jackson-Castain responded that, at this time, the technical assistance includes Dr. Austin’s efforts/expertise; the training element is something that can be addressed at a later time.
  - Mr. Kohn suggested that training also be made available to prosecutors and public defenders.
  - Justice Hardesty informed attendees that an ADKT hearing before the Nevada Supreme Court on this will also need to take place; there will be an opportunity for public input and asked the Committee members for preferences regarding moving forward with Dr. Austin’s plan.
- Mr. Kohn made a motion to formally accept the DOJ/ OJP Diagnostic Center’s technical assistance, as outlined by Dr. Austin’s presentation, and the NPRA tool, with modifications. The motion was seconded by Judge Bonaventure and was unanimously approved by the Committee. Justice Hardesty will appoint a subcommittee to work with Dr. Austin to modify and work on preparing the instrument for implementation.
- Justice Hardesty asked for a motion to approve the timeline put forth by Dr. Austin. Mr. Kohn made a motion to approve the timeline with any necessary modifications; Mr. Wells seconded the motion. The motion was unanimously approved.
- Justice Hardesty asked the Committee to extend the Chair the authority to appoint a subcommittee to implement the plan. Judge Barker made a motion to extend said authority to the Chair; Judge Kerns seconded the motion. The motion was unanimously approved.

## VII. Discussion of Outcome Measures

- Justice Hardesty asked attendees for additions and/or edits to the Outcome Measures presented/discussed and approved during the January 8, 2016 meeting.
  - Ms. Stapleton suggested that outcomes take resource limitations of rural counties into consideration and thanked the Committee for being sensitive to the needs of the rural counties.
  - Ms. Hastings informed the Committee that she has kept county commissioners and budgeting team apprised of the Committee’s progress in anticipation of future discussions/needs. A suggestion was made that municipalities be brought into the conversation as well.

## VIII. Jail Statistics

- This topic was deferred until a future meeting.

IX. Other Items/Discussion

- The next meeting will be scheduled for May; Dr. Austin and the pilot sites will be given the opportunity to present the results of the NPRA tool testing during that meeting. An email will be sent out with the details.
- Justice Hardesty asked Mr. Hicks, Mr. Wolfson or Mr. Lalli, Mr. Bosler and Mr. Kohn to confer and identify a list of “override crimes.”

X. Additional Public Comment

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

XI. Adjournment

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