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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 and Raquel Rodriguez
November 5, 2015
1:30p.m. – 4:45 p.m.
Videoconference (Carson City, Las Vegas)

Members Present

Chief Justice James Hardesty, Chair
Judge Heidi Almase
Assemblyman Elliot Anderson
Judge David Barker
Judge Stephen Bishop
Judge Joe Bonaventure
Jeremy Bosler
Heather Condon
Kowan Connolly
Judge Gene Drakulich
Tad Fletcher
Judge David Gibson, Sr.
Joey Orduna Hastings
Judge Douglas Herndon
Chris Hicks
Dana Hlavac (Proxy for Judge Kerns)
Judge Bitu Khamasi
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
Judge John Tatro
Judge Alan Tiras
Judge Ryan Toone
Judge Natalie Tyrrell
Anna Vasquez
Jeff Wells
Steven Wolfson

AOC Staff

Jamie Gradick
John McCormick
Raquel Rodriguez

- I. Call to Order
 - Chief Justice Hardesty called the meeting to order at 1:30 p.m.
- II. Call of Roll
 - Ms. Jamie Gradick called roll.
 - Approval of September 30, 2015 meeting summary. Judge Michael Montero moved to approve the meeting summary; Mr. Jeremy Bosler seconded the motion, the meeting summary was unanimously approved.
- III. Opening Remarks and Discussion of Committee Goals and Objectives
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- IV. Guest Speaker Presentation—*Kathy Waters, Director of Adult Services, Arizona Supreme Court*
 - Ms. Waters provided a brief summary of her background working for the state of Arizona. She also provided information regarding the Arizona Supreme Court five-year agenda.
 - Ms. Waters stated Arizona had modeled their strategic agenda after the COSCA white papers.
 - The pretrial foundational concepts honor a presumption of innocence, a right to bail that is not excessive, legal and constitutional rights for persons awaiting trial, and balancing the individual's rights with a need to protect the public and the assurance of a court appearance.
 - The focuses for judicial officers in setting release conditions include a person's likelihood of reoffending, committing a violent crime or failure to appear in court.
 - The purpose of pretrial was to assist the court in making informed pretrial decisions, effectively supervise defendants, and ensure that defendants meet court obligations and uphold legal and constitutional rights of the defendants.
 - 61% of people waiting are in jail pretrial, not adjudicated. Many do not have the ability to make bail.
 - There are many supporting agencies nationally which include COSCA, Counsel of Chief Justices, the ACLU, the National Association of Counties, the Associations of Chief of Police, prosecuting attorneys, the American Bar Association, etc.
 - The goal is to provide current research regarding evidence based pretrial practices and provide the courts as much information as possible on future release.
 - Other goals are to expand the use of validated, research based risk assessments and establish the pretrial services.
 - Arizona's Juvenile Probation System has adopted evidence-based practices.
 - Ms. Waters provided highlights for using a Public Safety Assessment (PSA) which includes a three-part breakdown; a score for failure to appear, a score for new criminal activity, and the propensity a person, if released, would be of risk of committing a violent offense.
 - The PSA does not require an interview of the defendant; it is based on criminal history and court access records.
 - Judge Scott Pearson asked for more information regarding validation for the use of the PSA. Ms. Waters would forward information of studies regarding the PSA to the Committee.
 - Ms. Waters stated the PSA is a tool which is only one piece of information but it does not prevent the court from considering other factors.

- Mr. Steven Wolfson asked if most judges in Arizona use additional information to the PSA, if so, how could it be determined that information from the PSA is valid. Ms. Waters stated additional information is given to judges upon their request; judges would need to trust the information in the PSA but would not need to solely depend on one source of information, although information in the PSA may be sufficient.
- Chief Justice Hardesty noted the fact that judges in Arizona are using additional information in making their pretrial release decision would be germane as the validation of the PSA which was based upon the prior validation that was built on evidence-based practices. Ms. Waters stated more information would be available as data is revealed.
- Judge David Gibson, Sr. asked if Arizona has released more individuals. Ms. Waters stated the numbers would not be available until the data is received to know how many individuals are being released. Chief Justice Hardesty shared information from Kentucky and Washington D.C. which shows the substantial increase in release percentages.

V. Public Comment

- Chief Justice Hardesty invited public comment in Carson City.
- Mr. Steve Krimel (1:18:00)
 - Thank you your honor. My name is Steve Krimel; I'm a California lawyer since 1981. I am presently the president of the Nevada Bail Agents Association. I own two bail agencies here in Northern Nevada; Action and Annie's. I have the executive summary from (1:18:27 inaudible) 2007 publication for Luminosity Incorporated; I don't know who they are, but in looking at it she relies, first of all, there is no such thing as corporate bail in her assessment. In looking at this she relies upon a 1927 article against corporate bail and a 1954 article against commercial bail. She says that she worked from the presumption that money bail was basically both color biased and racially biased, then noted that Hispanic and Black defendants were more likely to be held on bail due to an inability to post bail. Since she is not, in any way, assessing the (1:19:52 inaudible) bail system, apparently what she is referencing is the existing OR system which we would take great disagreement with, because we don't think the system has structure as racially biased. We have a tremendous amount of data and research from various studies previously done that contradict many of the assessment components that you've been introduced to. And as the bail industry would like the opportunity to submit those to the Committee. Thank you.
- Mr. Jeff Clayton
 - Good afternoon, my name is Jeff Clayton; I'm a licensed attorney in the great state of Colorado, here today on behalf of the American Bail Coalition. I'm the national policy director for the American Bail Coalition, which is a coalition of the bail insurance companies; I work on bail issues across the country. Happy to be here today as I said. I was a former federal civil rights lawyer, I also served in a political and legislative capacity on behalf of the two prior chief justices of the Colorado Supreme Court, Justices Mullarkey and Bender. ABC is working on best practices in bail around the nation, there's a lot of information, there's a lot of misinformation and there's a lot of things to understand as you go through this process. What I want to offer you is that we're here to help, we're here to provide a resource to you, we are here to provide any information or any perspective that we can. We have amongst our members companies and lawyers and the agents who write on our paper,

expertise and bail issues from around the country, and I think we can provide a unique perspective to you on these issues. I think it's important not to make this a money, bail, versus the world conversation, it's not productive. And I don't think it's productive in any of the states where we are seeing these reforms, I think the reality is to simply admit that money, financial conditions, do have a place in the bail system and go from there. I think there's a lot of reforms, I think that can be made, there's reforms that the American Bail Coalition has agreed with, things like individualized bail setting like Pennsylvania, no bail schedules, things like that. I think risk assessments have a role, information to judges has a role to help judges make better decisions and so we are here to be part of that conversation and part of the process. I will offer you all of the resources of our member companies, of our association to help you in your road forward and I'll fly out to meet with any one of you if you'd like to talk about bail, that's what I do for a living. I think if given the opportunity, we can prove the worth of financial conditions and that they should be a mix in the system. As I always tell folks, it's about sorting people in the right categories, that's the essence of what we are doing here. We don't think a computer will ever replace judicial discretion; it's only a way to determine who's risky. None of these risk assessments are validated to set bail, that's the reality, that's your job as judges and none of this will replace that. I'd also encourage you to listen to victim's groups, a lot of times what we see nationally is that these policies are not victim driven and that's entirely important in this area. I have two requests. My first request and I think this panel would be unusual to not include representatives from our industry, the American Bail Coalition and/or a (1:23:21 inaudible) company member. I would ask to have a seat at this table. I would also ask that one of the agents, the several agents in here, also be afforded a seat at this table. I think nationally that's been important, it's been an important conversation to have that voice and this Committee would be unusual nationally to not include that voice. The second thing I would ask is an opportunity to come back out here, either at the next meeting or the meeting after, to provide a different perspective on the issues nationally. I and our member companies would come out here and give you our best shot at what we think is going on and some things to think about and reforms and other issues to consider as you move forward. But like I said, we're here to help, we're here to be a resource to you and if there's anything I can do or information I can provide to help you move forward, I'd be glad to do so. Chief Justice, thank you so much.

- Chief Justice Hardesty thanked Mr. Clayton and welcomed the input. Chief Justice Hardesty stated Mr. Clayton would be added to the agenda for the December 3rd meeting to make a presentation. Chief Justice Hardesty clarified that the purpose of the Committee was focused on bail versus no bail. The purpose of the Committee would be on how to best address improved practices for judges who are ultimately responsible for making the decisions. Chief Justice Hardesty also invited Mr. Steve Krimel to present at the December 3rd Committee meeting.
- Chief Justice Hardesty invited public comment from Las Vegas. There was no public comment in Las Vegas.

VI. Review of New York Pretrial Release Initiatives—*Ms. Heather Condon and Ms. Anna Vasquez*

- Ms. Heather Condon introduced herself to the Committee and provided a brief background. (*See meeting materials packet for PowerPoint*)

- The Second Judicial District Pretrial Services have established common goals which include providing timely, unbiased reports and supervising with the least restrictive conditions with the goal of reducing failure to appear and re-offense.
 - The Second Judicial District Pretrial Services have many stakeholders including seven courts. Pretrial Services have access to all their court databases and the jail's database and report to all seven courts.
 - Pretrial Services have an assessment team located at the jail which operate almost 24 hours a day and interview almost everyone, although a few individuals are not interviewed because those candidates are in transit or in holding.
 - Pretrial Services are able to assess and release defendants; they have authority to release certain misdemeanor defendants. Pretrial Services provide a written report for each defendant that is interviewed; the report makes it to court within 24-48 hours. A written report is also provided to the public defender and the defendant is also reported to video court. Pretrial Services also run criminal histories which do take up much time. At times the defendant needs to be re-interviewed and Pretrial Services also conducts those follow up interviews. Pretrial Services also work closely with Specialty Courts; enter after-hours TPO's, weekends and holidays, and alcohol test defendants on supervision.
 - Each person who enters the jail will be interviewed by Pretrial Services. There are two supervision teams; one located at the Sparks Justice Court and one located in District Court.
 - There are about 120-140 defendants on each Pretrial Service officer's caseload.
 - Pretrial Services have referred defendants to social services, which is a new concept for them within the last few years. This has been a great resource to guide defendants to community resources.
 - Ms. Condon stated she had been working on a data report through the sheriff's office to find information regarding how many people are in custody. The report utilizes a three day snapshot to identify what happens with a defendant's case within three days after the arrest; which defendants have been released, released on OR, released with supervision and without, who has been bailed with and without supervision and who has been sentenced. The information will help in identifying the population.
 - Pretrial Service has seen a decrease in the amount of individuals that are monitored rather than supervised and have also seen a good success rate in closed cases.
- Ms. Anna Vasquez introduced herself to the Committee and provided a brief background. *(See meeting materials packet for PowerPoint)*
 - The Las Vegas Pretrial Services was started under an LEA grant. Ms. Vasquez provided a brief overview of staff hours and tasks. Discussion was held regarding disparity in staff with respect to pretrial functions workload.
 - The purpose of beginning Las Vegas Pretrial Services was to help decrease the population in detention centers and reduce overcrowding.
 - Another purpose for developing Las Vegas Pretrial Services was to provide information to the court for release determination.
 - Las Vegas Pretrial Services operates with a points system.
 - Las Vegas Pretrial Services handles court related functions including processing arrest paperwork, arrest reports, separate court information, verifying posted bail, etc.

- The length of stay in custody prior to being released is, on average, 19 days with a minimum of two days, this includes many jurisdictions within Clark County
- Ms. Vasquez provided a snapshot of information for the Clark County Detention Center for October 2015 which showed how many releases, bookings, inmates in custody, and interviews had been recorded.
- Discussion was held regarding points system used in administrative releases; point system designed into defendant management system and managed electronically.
- Discussion was held regarding differences and disparities between pretrial services in the urban counties; Chief Justice Hardesty informed attendees that this is an issue that the Committee will need to look at further. There is not uniform approach to this in the state.
- Discussion was held regarding capturing stats; currently switching to a new system so statistics will be forthcoming on high-risk.

VII. Pretrial Release Processes

- Judge Stephen Bishop discussed processes for pretrial release used in the rural counties and explained that the lack of a uniform system generally leads most rural jurisdictions to “guessing.”
 - In most cases, once he receives the PC sheet, Judge Bishop will reassess the bail; it’s initially set by the Sheriff’s office based upon the bail schedule.
 - Because of the first appearance/arraignment schedule, the defendant can go anywhere from 2-6 days in jail if he/she doesn’t post bail in that time.
 - At arraignment/first appearance, defendant may ask for OR release or bail reduction; Judge Bishop suggests they file a written motion for a bail reduction.
 - No formal tools to assess bail; only uses PC sheet but does consider priors. This process generally works because of the small size of the jurisdiction.
 - Judge Bishop has spoken with the district court judges in his county and they basically follow the same process.
 - Discussion was held regarding a statewide computer system for conducting risk assessments and communicating data and risk assessment results on a statewide basis.
- Judge Melissa Saragosa provided an overview of the pretrial release processes used in her court.
 - Jurisdiction uses a standard bail schedule; bail is set at arrest. Step number one is to assess whether defendant is eligible for an administrative OR.
 - At 48 point the only tool available is the PC sheet.
 - The 72 hour point (arraignment) takes place 3-6 days after arrest; at that time, the Judge does have access to criminal history and a pretrial information sheet with charges and current bail amount and FTA. If interviews were done (approx. 50% of cases) can get additional verified info about employment and/or living arrangements. No point system or recommendations are in place.
 - Many judges don’t review bail unless the defendant’s attorney asks them to do so (usually via motion).
 - Discussion was had regarding which courts use the Las Vegas Justice Court bail schedule.
- Judge Natalie Tyrrell provided an overview of the pretrial release processes used in her court.
 - North Las Vegas Justice Court interacts with two jails which leads to inconsistencies.

- No pretrial services or information reports. During the week, the judges are provided with whatever background information/criminal history the JEAs can find along with the PC sheet; on the weekends, only the PC sheet is provided.
- It’s a balancing act; supervision is utilized often. House arrest is not a feasible option for many defendants since many people do not have landlines anymore
- Discussion was held regarding ability to post bail during limited hours and the “transport status limbo” that occurs and interferes with the ability to post bail during transport process.
- A risk assessment tool would be welcome when setting and assessing bail.

VIII. Review of Risk Assessment Tools

- Chief Justice Hardesty asked those in attendance to provide input on the risk assessment tools provided in the meeting material packet (Kentucky, Virginia, Ohio, Arizona, and the District of Columbia).
 - Attendees were asked to start thinking about what should be included in a risk assessment tool utilized in Nevada.
 - Concern was expressed regarding the ability of achieving a statewide uniformity in terms of data collection and communication.
 - Discussion was held regarding the Ohio instrument; Mr. Bosler suggested a presentation by Dr. LaTessa would be beneficial to the Committee. The fact that the tool is validated and available free of cost is significant; Dr. LaTessa is a “pioneer” in the field.
 - Discussion was held regarding the feasibility if validating a tool at this early point in the process and the need for a tool that can be reviewed and updated as necessary.
 - Discussion was held the feasibility of setting up and maintaining a statewide system to maintain data; Judge Pearson and Heather Condon discussed the development of a case management system that would have to be developed as part of a unified pretrial risk assessment tool and process.
 - Chief Justice Hardesty asked the judges in attendance to complete a “homework” assignment: Look at the tools and have a discussion with your local IT department to determine possible compatibility concerns and issues. Additionally, the Committee needs to identify possible “pilot sites” around the state to test this ability to communicate; if willing to be a pilot site, please let the Chief Justice know as soon as possible.

IX. Next Meeting Date - December 3, 2016 at 1:30 p.m.

X. Adjournment

- Chair Hardesty adjourned the meeting at 4:45 p.m.