

**Agenda**  
**Pretrial Release & Supervision Committee Meeting**  
September 8, 2016  
12:00 – 2:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Judicial Council Room, Suite N31

12:00	Welcome	Discussion		Chief Justice Durrant
12:10	Member Introductions	Discussion	Tab 1	Judge Shaughnessy Committee Members
12:25	Committee Organization <ul style="list-style-type: none"><li>• Duties</li><li>• Recommendations</li><li>• Subcommittees</li></ul>	Discussion	Tab 2	Judge Shaughnessy
1:25	Risk Assessment Tool Subcommittee <ul style="list-style-type: none"><li>• Arnold Foundation PSA Tool Update</li><li>• Monitoring &amp; Supervision</li></ul>	Discussion	Tab 3	Keisa Williams
1:45	Set Future Meeting Schedule	Action		Judge Paige Petersen
1:55	Other Business			

Meeting Schedule: TBD

	<b><u>For Review Prior to Meeting:</u></b> <ul style="list-style-type: none"><li>• <a href="#"><u>Pretrial Study Committee's Report, 11-23-15</u></a></li><li>• <a href="#"><u>New Webpage for Committee</u></a></li></ul>	Review		Committee Members
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# Tab 1

## Pretrial Release & Supervision Committee

Updated September 1, 2016

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# Tab 2

## **PRETRIAL RELEASE AND SUPERVISION COMMITTEE**

### **Committee Membership**

(2) district court judges	(1) representative of a county pretrial services agency
(1) juvenile court judge	(1) representative of the Utah Insurance Department
(2) justice court judges	(1) representative of the UCCJJ
(1) prosecutor	(1) commercial surety agent
(1) defense attorney	(1) state senator
(1) county sheriff	(1) state representative
(1) representative of counties	(1) court's general counsel or designee

### **CJA Rule 3-116. Pretrial Release and Supervision Committee.**

The committee shall study pretrial release and supervision practices, and make regular reports and recommendations concerning those practices to the Judicial Council.

**(1) Duties of the committee. The committee shall:**

- (A) work to implement the recommendations of the Report to the Utah Judicial Council on Pretrial Release and Supervision Practices;
- (B) study and make recommendations regarding pretrial release and supervision generally, including the following:
  - (i). studying current pretrial release and supervision practices, the efficacy of such practices, and making recommendations for changes to those practices as necessary;
  - (ii). developing and recommending written guidelines to the Judicial Council to be used for setting financial and non-financial conditions of pretrial release;
  - (iii). assisting and advising counties on implementing a statewide pretrial risk assessment tool and developing procedures for distributing the assessment results to judges;
  - (iv). assisting and advising counties to develop pretrial supervision programs;
  - (v). determining what pretrial release and supervision data are necessary to accurately assess pretrial release and supervision practices, and making recommendations on how pretrial release and supervision data collection practices can be improved including which organizations should collect the data and how it should be collected;
  - (vi). recommending training for judges, lawyers, and other stakeholders on pretrial release and supervision practices;
  - (vii). recommending, if necessary, appropriate statutory and rule changes; and
  - (viii). providing ongoing monitoring and assessment of Utah's pretrial release and supervision practices; and
- (C) on an annual basis, the committee shall report its progress to the Judicial Council.

## **Pretrial Release Study Committee Recommendations**

1. Persons arrested for or charged with crimes are presumed innocent. There should be a presumption in favor of pretrial release, free from financial conditions.
2. Individuals arrested for or charged with minor offenses should not be held in custody pending the resolution of their cases.
  - a. For example, class B and C misdemeanors, other than DUI, domestic violence, and offenses involving a continued breach of the peace, should be initiated by issuance of a citation and release on recognizance with reporting instructions.
  - b. When these types of charges are filed by Information, service should be by summons, rather than a warrant.
3. Uniform and consistent practices for making pretrial release and supervision decisions should be promulgated, and judges throughout the state should review those decisions as the case progresses.
  - a. The recommendations of the Board of District Court Judges regarding pretrial release and monetary bail practices should be promptly implemented.
4. Each person booked into jail should receive a pretrial risk assessment, using a validated instrument, and current assessment results should be available at each stage where a pretrial release and supervision decision is made.
  - a. Judges should evaluate pretrial release and supervision, taking into account the assessment and all other relevant factors.
  - b. Individuals who present a low pretrial risk should be released on their own recognizance without any conditions other than appearance in court.
  - c. Individuals who present a moderate pretrial risk, or for whom conditions to release are necessary, should be released with the least restrictive conditions necessary to meet the pretrial risk presented.
  - d. For individuals who present a high pretrial risk, the court should determine whether the offender can be held without monetary bail. If so, the court should order no pretrial release and revisit that decision as appropriate. If not, under current law, the court must set monetary bail and should order the least restrictive conditions necessary to meet the pretrial risk presented.
5. Pretrial supervision practices and procedures, that are appropriate to the size and needs of the community involved, should be developed and implemented.
  - a. Because release conditions will be imposed, and alternatives to jail detention ordered, a mechanism to monitor and enforce them should be implemented.
  - b. The court or local governments should consider an automated system that uses phone calls, texts, or other technology to remind defendants of upcoming court dates.

6. Pretrial release is an individualized decision. Judges should not set monetary bail based solely on the level of offense charged.
  - a. The Uniform Fine and Bail Schedule should not be used to set monetary bail. Rather, the schedule should be used only to determine the amount of fines a defendant should remit to avoid the need for a court appearance in non-mandatory appearance cases (traffic citations, for example).
  - b. The Uniform Fine and Bail Schedule should be renamed “Uniform Fine Schedule.”
7. Prosecutors and defense counsel should provide more and better information at pretrial release or bail hearings to help judges make informed, individualized evaluations of the risk of pretrial release.
8. The laws and practices governing monetary bail forfeiture should be improved and updated so that when monetary bail is used, the incentives it is designed to create can be furthered.
9. The Council should create a standing committee on Pretrial Release and Supervision Practices that includes representatives of all stakeholders to stay abreast of current practices in this area, develop policies or recommendations on pretrial release and supervision practices, to assist in training and data collection, and to interface with other stakeholders.
10. Uniform, statewide data collection and retention systems should be established, improved, or modified.
  - a. Accurate risk assessments require correct and easily accessible data. Existing data systems are inadequate. They should be improved to permit these tools to operate effectively.
  - b. All stakeholders should collect and share consistent data on pretrial release and supervision to facilitate a regular and objective appraisal of the effectiveness of various pretrial release and supervision practices.
  - c. The committee on pretrial release and supervision practices should help determine what data should be collected, how to collect it, and how best to study the efficacy of release and supervision practices.
11. Judges, lawyers, and other stakeholders should receive regular training on current best practices in the area of pretrial release and supervision practices.
12. The public in general and the media in particular should be educated about pretrial release and supervision practices issues.

## **Board of District Court Judges Recommendations for a Uniform Process for Setting Bail**

The Board recommends that the judiciary adopt a more uniform process for probable cause review and the setting of bail throughout the State. Any uniform process should include the following components:

- **Schedule for Probable Cause Review.** Probable cause statements for warrantless arrests should be reviewed electronically within 24 hours of arrest<sup>5</sup>. URCrP 7(c)(1). To meet the twenty-four hour deadline, district court judges must review probable cause statements two times per day, once in the morning and once in the afternoon. This must occur both on weekdays and weekends.
- **Bail Set at The Time of Probable Cause Review.** If the judge finds probable cause, the judge shall immediately make a bail determination. URCrP 7(c)(3)(B). Any electronic system should allow (1) the reviewing magistrate to see the Uniform Bail Schedule amount for the offense; (2) the reviewing magistrate to enter a bail amount, and impose conditions of release; and (3) the arresting officer to enter information relevant to the setting of bail, including those factors enumerated in the Utah Constitution and in the Utah Code. See, Utah Const., art. I, sec. 8; Utah Code § 77-20-1(2)(a)-(d).
- **Informations Filed Within 72 Hours of Booking (Failure to File Deadline).** If the prosecutor decides to file charges, she should do so within 72 hours of booking. Failure to file timely shall result in release of the detained person unless the prosecutor obtains from the Court an order extending the time to file.
- **Orders for Release Upon Declination of Prosecution.** If the prosecutor declines to file charges before the date scheduled for initial appearance, the prosecutor shall provide proof of declination to the clerk and the court should enter a written order authorizing the release of the arrestee.
- **Automatic Right to Readdress Bail Set at Time of Probable Cause Review.** At the initial appearance, the arrested person shall have the right to readdress the bail amount set by the magistrate at the time of probable cause review or to wait to readdress bail upon notice to the prosecutor. This allows the arrested person the opportunity to be represented by counsel and to be heard regarding factors relevant to the setting of bail.
- **Subsequent Motions to Modify Bail.** After a bail hearing has been held and bail set, any further motion to modify the bail must be made in advance of a hearing, with notice to the prosecutor, and “may be made only upon a showing that there has been a material change in circumstances.” Utah Code § 77-20-1(5) and (6).

Finally, the Board believes that two broader concerns merit consideration by the subcommittee and the Council.

- **Limited Information at The Time Bail Is Set.** When bail is set immediately upon a finding of probable cause, the reviewing magistrate has no information or indictment, no recommendation from pre-trial release, and no other reliable records. By statute, conditions of release are imposed in the discretion of the magistrate to ensure the appearance of the accused, ensure the integrity of court processes, prevent contact with victims and witnesses by the accused, and ensure the safety of the public. But the probable cause statement alone generally includes little information that might guide the

discretion of the magistrate in setting conditions of release designed to serve these important objectives.

- **The Uniform Bail Schedule and Excessive Bail.** The federal and state constitutions forbid the setting of excessive bail. Section 77-20-1 grants the court broad discretion in making bail determinations. However, Rule 7 requires that the bail amount coincide with the Uniform Bail Schedule absent a substantial cause for deviation. For an arrestee with no prior criminal history and substantial ties to the community, bail which coincides with the Uniform Bail schedule may be excessive.

# Tab 3



## PUBLIC SAFETY ASSESSMENT: RISK FACTORS AND FORMULA

The pretrial phase of the criminal justice process should aim to protect public safety and assure defendants' appearance in court, while honoring individuals' constitutional rights, including the presumption of innocence and the right to bail that is not excessive. Yet research shows that low-risk, nonviolent defendants who can't afford to pay often spend extended time behind bars, while high-risk individuals are frequently released from jail. This system causes significant harm to too many individuals and is a threat to our communities.

A growing number of jurisdictions are now reforming their pretrial systems to change the way they make pretrial release and detention decisions. These communities are shifting away from decision making based primarily on a defendant's charge to decision making that prioritizes the individual's level of risk—both the risk that he will commit a new crime and the risk that he will fail to return to court if released before trial. This risk-based approach can help to ensure that the relatively small number of defendants who need to be in jail remain locked up—and the significant majority of individuals who can be safely released are returned to the community to await trial.

### PUBLIC SAFETY ASSESSMENT: AN EVIDENCE-BASED TOOL TO EVALUATE RISK

In partnership with leading criminal justice researchers, the Laura and John Arnold Foundation (LJAF) developed the Public Safety Assessment™ (PSA) to help judges gauge the risk that a defendant poses. This pretrial risk assessment tool uses evidence-based, neutral information to predict the likelihood that an individual will commit a new crime if released before trial, and to predict the likelihood that he will fail to return for a future court hearing. In addition, it flags those defendants who present an elevated risk of committing a violent crime.



## DEVELOPMENT

LJAF created the PSA using the largest, most diverse set of pretrial records ever assembled—1.5 million cases from approximately 300 jurisdictions across the United States. Researchers analyzed the data and identified the nine factors that best predict whether a defendant will commit new criminal activity (NCA), commit new violent criminal activity (NVCA), or fail to appear (FTA) in court if released before trial.

## RISK FACTORS

The table below outlines the nine factors and illustrates which factors are related to each of the pretrial outcomes—that is, which factors are used to predict NCA, NVCA, and FTA.

## RELATIONSHIP BETWEEN RISK FACTORS AND PRETRIAL OUTCOMES

Risk Factor	FTA	NCA	NVCA
<b>1. Age at current arrest</b>		X	
<b>2. Current violent offense</b>			X
<b>Current violent offense &amp; 20 years old or younger</b>			X
<b>3. Pending charge at the time of the offense</b>	X	X	X
<b>4. Prior misdemeanor conviction</b>		X	
<b>5. Prior felony conviction</b>		X	
<b>Prior conviction (misdemeanor or felony)</b>	X		X
<b>6. Prior violent conviction</b>		X	X
<b>7. Prior failure to appear in the past two years</b>	X	X	
<b>8. Prior failure to appear older than two years</b>	X		
<b>9. Prior sentence to incarceration</b>		X	

*Note: Boxes where an “X” occurs indicate that the presence of a risk factor increases the likelihood of that outcome for a given defendant.*

**The PSA relies solely on the above nine variables. It does not rely on factors such as race, ethnicity, or geography.**



## FACTOR WEIGHTING

Each of these factors is weighted—or, assigned points—according to the strength of the relationship between the factor and the specific pretrial outcome. The PSA calculates a raw score for each of the outcomes. Scores for NCA and FTA are converted to separate scales of one to six, with higher scores indicating a greater level of risk. The raw score for NVCA is used to determine whether the defendant should be flagged as posing an elevated risk of violence.

## HOW RISK SCORES ARE CONVERTED TO THE SIX-POINT SCALES AND NVCA FLAG

Risk Factor	Weights
<b>Failure to Appear (maximum total weight = 7 points)</b>	
Pending charge at the time of the offense	No = 0; Yes = 1
Prior conviction	No = 0; Yes = 1
Prior failure to appear pretrial in past 2 years	0 = 0; 1 = 2; 2 or more = 4
Prior failure to appear pretrial older than 2 years	No = 0; Yes = 1
<b>New Criminal Activity (maximum total weight = 13 points)</b>	
Age at current arrest	23 or older = 0; 22 or younger = 2
Pending charge at the time of the offense	No = 0; Yes = 3
Prior misdemeanor conviction	No = 0; Yes = 1
Prior felony conviction	No = 0; Yes = 1
Prior violent conviction	0 = 0; 1 or 2 = 1; 3 or more = 2
Prior failure to appear pretrial in past 2 years	0 = 0; 1 = 1; 2 or more = 2
Prior sentence to incarceration	No = 0; Yes = 2
<b>New Violent Criminal Activity (maximum total weight = 7 points)</b>	
Current violent offense	No = 0; Yes = 2
Current violent offense & 20 years old or younger	No = 0; Yes = 1
Pending charge at the time of the offense	No = 0; Yes = 1
Prior conviction	No = 0; Yes = 1
Prior violent conviction	0 = 0; 1 or 2 = 1; 3 or more = 2



FTA <b>Raw Score</b>	FTA <b>6 Point Scale</b>	NCA <b>Raw Score</b>	NCA <b>6 Point Scale</b>	NVCA <b>Raw Score</b>	NVCA <b>Flag</b>
<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>No</b>
<b>1</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>No</b>
<b>2</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>No</b>
<b>3</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>No</b>
<b>4</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>Yes</b>
<b>5</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>Yes</b>
<b>6</b>	<b>5</b>	<b>6</b>	<b>4</b>	<b>6</b>	<b>Yes</b>
<b>7</b>	<b>6</b>	<b>7</b>	<b>5</b>	<b>7</b>	<b>Yes</b>
		<b>8</b>	<b>5</b>		
		<b>9-13</b>	<b>6</b>		

### JUDICIAL DISCRETION

The PSA is a decision-making tool for judges. It is not intended to, nor does it functionally, replace judicial discretion. Judges continue to be the stewards of our judicial system and the ultimate arbiters of the conditions that should apply to each defendant.

### NONPROFIT IMPLEMENTATION AND OWNERSHIP

LJAF provides the PSA at no cost to jurisdictions that adopt it and funds technical support to help localities integrate the tool into their operations. The PSA cannot be implemented by a jurisdiction, incorporated into software, or otherwise used or reproduced without LJAF's express, prior written consent.

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