

Pretrial Release and Supervision Committee
Matheson Courthouse
Council room
450 South State St.
Salt Lake City, Utah 84111

November 3, 2016

Members Present

Judge Paige Petersen- Chair
Brett Barratt
Wayne Carlos
Patrick Corum
Judge George Harmond
Robert Hilder
Senator Hillyard
Brent Johnson
Pat Kimball
Judge Brendan McCullagh
Rick Schwermer
Judge Todd Shaughnessy
Jennifer Valencia
Sheriff Jim Winder

Members Excused

Representative Eric Hutchings
Judge Angela Fomesbeck
Adam Trupp
Judge Rick Romney

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

Judge Matthew Bates
Dan Becker
Ray Wahl
Kim Allard
Tom Langhorne
Zachary Dal Pra
Billie Grobe
Chris Griffin
Shane Bahr

(1) Welcome.

Judge Paige Peterson welcomed the committee to the meeting. Judge Peterson introduced herself as the new chair of this committee. The committee then addressed the September 8, 2016 minutes. With one change (changing minimize to maximize), Rick Schwermer moved to approve the minutes. Judge Brendan McCullagh seconded the motion. The motion carried unanimously. The three members from the Arnold Foundation were introduced: Zachary Dal Pra, Chris Griffin, and Billie Grobe.

(2) Laura and John Arnold Foundation PSA Tool Overview.

Zachary Dal Pra presented information on the Arnold Foundation, the creation and validation of the Public Safety Assessment (PSA), criminal pretrial statistics throughout the country, etc. A 2-year study has been completed showing that when low-risk defendants spend just a day or two in jail, their recidivism rates are much higher than those released immediately.

The committee wondered if there was a way to create pretrial services for smaller, more rural counties. Mr. Dal Pra stated yes, that most of the smaller counties in Arizona have pretrial service programs, with supervision and reporting. Mr. Dal Pra stated that there have been multiple studies proving the effectiveness of simple court reminders or call-ins, on appearance rates. However, there isn't a general consensus on whether call-ins to live people vs. automated systems are more successful.

Mr. Dal Pra said, as always, it's important to remember these people are not convicted. Some of the monitoring items can be phone-in for lower risk defendants or reporting in person depending on the risk score. The other options are alcohol monitoring, ankle monitors, or even house-arrest.

Mr. Dal Pra said the Arnold Foundation will work with the committee's working-group to create the decision framework that will accompany the PSA. The defendant's score determines what type of monitoring will be recommended.

Mr. Dal Pra said there isn't an interview component to the PSA. That instead, the information is static and pulled from various databases. Dan Becker asked how many jurisdictions have been given access to the PSA, but are not using it appropriately. Mr. Dal Pra said there isn't a study on how consistently judges are complying with the recommendation.

Brent Johnson asked why violence against property isn't included in the PSA risk factors. Mr. Dal Pra explained that it wasn't deemed as predictive as the 9 factors ultimately included. The risk factors include: age, current violent offense, pending charge at the time of offense, prior misdemeanor or felony convictions (these are only yes or no, they do not count each conviction), prior failure to appear, and prior sentence to incarceration. It was asked whether the sentence was suspended or not. Mr. Dal Pra stated that it doesn't matter whether the sentence was suspended or not. Judge Peterson asked about the date of filings in comparison to new charges. Mr. Dal Pra said that it's based on the filing date not the date of the crime. Judge Brendan McCullagh asked what defines failure to appear. Mr. Dal Pra stated only pretrial failures to appear are counted.

Mr. Dal Pra explained to the committee that the ultimate goal is to automate the system so a live person does not need to populate or score the PSA. Keisa Williams mentioned that Ron Bowmaster has met with various entities and believes that our court system can fully automate this program.

Mr. Dal Pra stated there are four steps: 1) complete the PSA; 2) determine if any charges or circumstances are present in which the majority of the time a recommendation of detention would be appropriate regardless of the risk (these are the serious offenses such as murder, rape, robbery, abduction). If the defendant is a violent offender, they should not be released; 3) if the defendant is eligible for release, the outcome depends on the type of pretrial services available in each jurisdiction; and 4) determine if any charges or circumstances are present that would need an increase in the risk level (these are domestic violence, stalking, etc.).

Judge Shaughnessy asked about over-supervision. Mr. Dal Pra stated that over-supervision is a common problem for new pretrial programs. Studies show more failures when a defendant is over-supervised. Judges will need to be trained to prevent over-supervision.

Senator Lyle Hillyard asked how this would all work as far as defendants who might be suicidal or other civil commitments that a judge believes are necessary for mental health reasons. Mr. Dal Pra stated that the PSA is not validated to assess those situations.

Mr. Dal Pra next discussed implementation. He stated the purpose of this visit was to determine Utah's unique strengths and weaknesses. The group will then prepare a report for the Arnold Foundation recommending whether Utah should be granted access to the PSA and including any necessary requirements for implementation. Once the MOU is drafted, negotiated and signed, JSP will begin the implementation process. This would start by training, identifying violent offenses and customizing a decision-making framework.

Mr. Carlos asked if the Foundation has approached the bail industry to see what impact this would have. Mr. Dal Pra stated he has not and does not know if the Foundation has discussed this or not. What he does know is that the Foundation does not want monetary bail included in the decision matrix.

Mr. Dal Pra was thanked for his time.

(3) PSA Randomized Control Trial

Chris Griffin was welcomed. Mr. Griffin said that the Harvard Access to Justice Lab has received a grant from the Arnold Foundation to study the effectiveness of the PSA. This would be accomplished through a randomized control trial (RCT). On the same date the PSA is implemented, the RCT would begin. Mr. Griffin stated judges would receive the PSA in a completely random manner - for example, judges would only receive the PSA for odd-numbered cases. The study would last approximately 2 years and would assess the effectiveness of the PSA in Utah specifically. In Utah, it has been determined that if Utah participates in the RCT, the trial would be conducted in 2nd and 4th districts only.

The committee discussed how the RCT might affect the rights of those for whom a PSA is not provided. Mr. Griffin stated that while the PSA has been validated to predict FTA and recidivism, its effectiveness as compared to the effectiveness of a pretrial program alone has not been studied. No scientific benefit has been proven, especially in regard to Utah specifically. Therefore, there would not be an equal protection violation for those who do not receive the PSA unless and until we can prove the PSA provides a benefit to defendants.

Dan Becker asked if the Foundation was paying the various states to do studies. Mr. Griffin said some counties have received limited funding. Those are primarily counties that are in need of assistance. He said the goal is not to cost the states money.

Mr. Griffin said the judges are the test subjects in the RCT. Patrick Corum stated from a defense standpoint the concern isn't the person who gets the PSA, but it's the person who doesn't. Judge McCullagh asked whether an issue would arise if a judge didn't follow the recommendations of the PSA, especially if the defense attorneys and prosecutors have access to the report. Mr. Griffin said the court has discretion to make a determination outside the recommendations of the PSA. The RCT will track those decisions for accuracy.

(4) Other Business.

The next meeting was scheduled for January 5, 2017. There being no further business, the meeting adjourned at 2:09 pm.