

**Pretrial Release and Supervision Committee**

Matheson Courthouse  
Council room  
450 South State St.  
Salt Lake City, Utah 84111

January 11, 2018  
12:00 – 2:00 p.m.

**Members Present**

Judge George Harmond – Temporary Chair  
Brett Barratt  
Jacey Skinner  
Lt. Cory Kiddle, attending for Undersheriff Scott Carver  
Pat Kimball  
Judge Brendan McCullagh  
Katie Miner, attending for Senator Lyle Hillyard  
Dominic Sanone, attending for Wayne Carlos  
Judge Brook Sessions, attending for Judge Rick Romney

**Staff**

Keisa L. Williams  
Jeni Wood - recording secretary  
Rick Schwermer  
Judge Matthew Bates

**Members Excused**

Wayne Carlos  
Undersheriff Scott Carver  
Judge Angela Fonnesbeck  
Representative Eric Hutchings  
Brent Johnson  
Judge Rick Romney  
Adam Trupp  
Senator Lyle Hillyard

**Guests**

Renea Cowley, Foxley & Pignanelli

**(1) Welcome.**

Judge George Harmond welcomed the committee to the meeting. Judge Harmond noted he is the temporary chair. Judge Harmond addressed the committee vacancies. Judge Harmond welcomed Lt. Cory Kiddle, Katie Miner, Dominic Sanone, and Judge Brook Sessions, who are present on behalf of members who were unable to attend.

**(2) Approval of Minutes for January 5, 2017 and March 16, 2017.**

Judge Harmond next addressed the minutes from the previous two meetings. There being no changes to either set of minutes, Judge Brendan McCullagh moved to approve the January 5, 2017 and the March 16, 2017 minutes. Brett Barrett seconded the motion and it passed unanimously.

**(3) Update on PSA Education Efforts.**

Keisa Williams updated the committee on her efforts to educate stakeholders across the state. The Utah State Bar sponsored two trainings on the PSA. There will be a special CLE in Second District in February including judges, defense counsel, and prosecutors practicing in 2<sup>nd</sup> District. That CLE will be interactive using hypothetical case studies. Implementation of the PSA has been temporarily paused. The PSA will be implemented, but we do not have a new go-live date yet. Jacey Skinner noted it has been helpful to educate legislators on the PSA. Ms. Williams presented two mock-ups of the Public Safety Assessment Report. Ms. Williams explained how

the PSA will be used and where the information used to calculate the score will come from. Ms. Williams noted that judges must make a release decision within 24-hours after arrest with very limited information. The PSA will be provided at the same time as the probable cause affidavit to fill this informational gap. The PSA will be made publicly available on Xchange alongside the probable cause affidavit as soon as a judge determines that probable cause exists. The report will also become a part of the court record if the prosecutor chooses to file charges and a case is opened in CORIS.

Ms. Williams described the new automated probable cause system.

Ms. Williams noted the Judicial Council has approved the Harvard randomized control trial studies in Davis, Weber, and Utah counties. Lt. Cory Kiddle questioned whether a new PSA will be generated when the charges filed by the prosecutor are different from the original charges at the time of arrest. For example, an arrestee is charged with multiple offenses – one of them being violent – and then the prosecutor decides not to file charges on the violent offense. The judge’s release decision would have been based on the original PSA including the violent offense. Any future release decisions made during the life of the case would need to take that into consideration. From the jail’s perspective, the arrestee (now possibly deemed low risk) would be taking up bed space that could be used for a violent offender. Rick Schwermer asked the committee whether they felt the working group should consider including the ability to calculate a new PSA in this scenario. The committee discussed the question at length. Judge Harmond said this is a topic the PSA Working Group should address. Ms. Williams will take the question to that group at their next meeting.

#### **(4) National Pretrial Landscape.**

Ms. Williams stated that the national pretrial landscape is changing. There is a lot of national movement toward pretrial reform. Ms. Williams provided an overview of reform efforts in many states and described the differences between those states and what Utah is doing. Several states have passed constitutional and statutory amendments allowing for preventative detention, eliminating or severely limiting the use of monetary conditions of release, changing court procedures, and conducting indigency determinations. Utah is taking a more measured approach to pretrial reform. There are several ongoing federal court cases involving pretrial reforms. Ms. Williams provided an overview of those cases. The preliminary decisions in those cases have been in favor of pretrial reform efforts and some consider the absence of indigency determinations when setting monetary conditions of release to be unconstitutional in “right to bail” states. Utah is a right to bail state. Mr. Sanone read an excerpt from a research paper indicating that pretrial risk assessment tools, including the PSA, are ineffective. Mr. Barrett said in the past the fear was that the state would be sued because the tool was unconstitutional. Judge Harmond stated that many offenders sitting in jail pretrial cannot afford to post bail. Ms. Williams will continue to monitor pretrial release reforms in other states.

#### **(5) Proposed Rules of Criminal Procedure.**

Judge McCullagh discussed the public comments received for proposed amendments to rules 7, 7A, 7B, 7C, 9, and 9A of the Utah Rules of Criminal Procedure. Judge McCullagh said rule 7 and rule 9 were too complicated so the Rules of Criminal Procedure Committee split the rules.

Rule 7 has been split into four rules and rule 9 has been split into two rules. Judge McCullagh explained each of the rules.

**(6) Priority List for Committee.**

Judge Harmond addressed the committee's charge and duties under CJA Rule 3-116. Judge Harmond would like the committee to create a priority list. Ms. Williams stated although she is not a voting member, she has reviewed the requirements and recommends having court services and law enforcement attend future meetings to provide pretrial data. The committee should work with the jails to determine what data they collect, including the date/time upon which offenders are released from the jail, whether the detainees are awaiting trial or serving a sentence, and whether bond sureties are bringing defendants who violate pretrial conditions to the jail. Ms. Williams noted subcommittees can be created to address specific issues. The court has already programmed to capture pretrial outcome data once the PSA has been implemented and some is being captured now, such as FTAs and the date/time from arrest to the initial bail decision. Ms. Williams informed the committee of the court's automated court-reminder system. Mr. Sanone recommended eventually obtaining defendants' email addresses as well as their phone number. Judge McCullagh said CORIS has a place for the email address now. Judge Harmond would like the committee to review the document under Tab 4 and return to the next meeting with a proposed structured approach.

**(7) Adjourn.**

Mr. Sanone thanked the committee for allowing his participation. Mr. Barrett noted he is willing to help where the committee feels he will be best utilized. Ms. Williams has posted the committee vacancies with the Utah State Bar. Judge Harmond thanked Rene Cowley for her attendance.

The next meeting is scheduled for March 1, 2018, however, the committee would like to meet after the legislative session. Ms. Williams will send out a Doodle poll to establish the new meeting date. Judge Harmond noted the four other 2018 meetings will remain the same, May 3, 2018; July 12, 2018; September 6, 2018; and November 1, 2018. There being no further business, the meeting adjourned at 1:33 pm.