

**UTAH JUDICIAL COUNCIL
STANDING COMMITTEE ON PRETRIAL RELEASE AND SUPERVISION
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
May 3, 2018 – 12:00 p.m. to 2:00 PM

Members Present

Judge George Harmond – Chair
Lt. Cory Kiddle (for Undersheriff Scott Carver)
Pat Kimball
Cara Tangaro
Marshall Thompson
Wayne Carlos
Kimberly Crandall
Reed Stringham
Judge Brook Sessions (for Judge Rick Romney)
Judge Brendan McCullagh
Ray Wahl (for Rick Schwermer)

Staff

Keisa Williams
Minhvan Brimhall – Recording Secretary

Members Excused

Undersheriff Scott Carver
Judge Angela Foncesbeck
Brent Johnson
Judge Rick Romney
Rick Schwermer
Jacey Skinner

Guests

Dyon Flannery
Rena Cowley
Tony Schow

WELCOME AND INTRODUCTION OF NEW MEMBERS

Judge Harmond welcomed committee members to the meeting. As new members are participating in today's meeting, Judge Harmond asked for a brief introduction from all those in attendance. Judge Harmond welcomed the new members and thanked them for their participation in this committee.

APPROVAL OF MINUTES

Judge McCullagh made a motion to approve minutes from the January 11 meeting. Mr. Stringham seconded motion. With no further discussion, the minutes were approved unanimously.

UPDATES

PSA Training and Implementation:

Ms. Williams has been traveling to various districts throughout the State in providing training on the PSA program. The new go live date is roughly between now and June 30. Ms. Williams has received primarily positive responses to the new PSA program. Once the program is fully functioning, Ms.

Williams believes the PSA program will provide better information in how jurisdiction can improve services to constituents.

Utah Rules of Criminal Procedure 7 and 9:

Judge McCullagh provided an update on the amended Utah Rules of Criminal Procedure that came out from the Rules of Criminal Procedure Committee. Having been adopted by the Utah Supreme Court, the effective date of these rules was May 1, so these rules are now in effect.

Rule 7 and 7A discusses initial processes as appropriate to each level of court. Judge McCullagh provided explanation about the rules.

Rule 9 discusses procedure for arrest without a warrant. If no information has been filed; a defendant may be released by end of business day on the fourth day after the day of their arrest. If the fourth day is a holiday or weekend, the defendant will be released on the next business day. This is, in essence, a statewide filing deadline requirement. A magistrate may extend the deadline for good cause based upon an adequately supported request from the prosecutor.

Ms. Tangaro is on the committee that addressed Rule 9. The committee has voted to make a minor change to Rule 9A in response to some judicial feedback. The minor change does not affect the outcome of the rule, but merely makes a minor language change.

Ms. Williams would like the time frame to file to go down to 72 hours as this could be an issue with resources for incarcerated defendants, as well as allowing longer time for defendants to receive counsel in preparation for a hearing. A defendant could potentially be incarcerated longer than necessary if counsel is unable to prepare to address bail at the initial hearing. This could amount to multiple weeks of incarceration prior to a solid bail hearing.

Judge Harmond commented that this piece of legislation will allow for both parties an opportunity to be heard at the initial hearing and potentially allow defendants to avoid longer than necessary jail time. Many courts throughout the state are already implementing the rules. Because of video arraignments that are being used in several jurisdictions, judges can hold certain hearings much more quickly. Monetary bond will still be a very important part of the decision most judges make during the initial hearing.

NEXT PROJECTS FOR THE COMMITTEE

Customized DMFs (Decision Making Framework):

Ms. Williams discussed the DMF report that judges see when making probable cause determinations. Recommendations at the bottom of the page provide a guideline to assist judges in deciding monetary bail, length of jail time, etc. Judges around the state were interested in having customized DMFs that reflect the supervision programs and release conditions available in that particular jurisdiction. As always, the DMF is a tool that judges may consider in making release decisions. Nothing in the tool mandates a particular outcome.

Pretrial Supervision Programs

The DMF process will assist judges in pretrial supervision programs. Judge Harmond commented that it is ideal to have conditions of release will be the same throughout the state; however that is not feasible at this point due to disparity in pretrial release services. Several specific examples of pretrial supervision programs employed around the state were discussed. Each jurisdiction is addressing this issue as it works best for their region.

Ms. Williams has invited stakeholders from all levels of government to these trainings and educate them in this process. The difficulty at this stage is finding a process that will work throughout the state, throughout the different regions, and having a process that will accommodate judicial fairness across the board. Interest has been good from local governments to learn more about pretrial supervision. Funding is an ongoing concern.

Ms. Williams has shared outcome variables from each region with judges. They are surprised by the outcome of the data provided and are able to see disparities among the regions. Once the program launches, for this process to work, each region needs to participate, use the PSA program and make rulings based on recommendations made on the DMF. Otherwise, there is no ability to determine if the PSA provides better outcomes than in cases where over-supervising is taking place (including continued detention). The committee discussed why race isn't included as part of the data studied in the PSA / DMF. The PSA was designed to be race-neutral, so that is the biggest reason why race isn't included. There may be a way to reverse engineer that in a roundabout way to see whether these tools result in a disparate racial impact.

Mr. Carlos asked what is being accomplished when bail is set a higher amount. Judge Harmond states that typically it is to have an opportunity to collect more information that can be provided to the courts. This is not always the case but for the most part this is the only option that most courts have when trying to assess the situation. Prosecutors want to keep people in until some important issues can be resolved. Mr. Carlos notes that high bail affects the person who is signing the bail contract (moms, dads, family, friends, etc.) and the courts should look at whether that is the right result. Most regions do not have the right tool or resource to address pretrial supervision right now. Judge Harmond welcomes ideas from this Committee and those in the public in finding a solution to address these issues. The committee discussed other ramifications and complications associated with how to determine the right amount of bail. Based upon some questions and the conversation, Ms. Williams reviewed the PSA process and initial bail determination process, and the limitations of the PSA system to address cases that do not involve booking on a PC arrest. The group discussed the ability to manually calculate a PSA.

Tracking Pretrial Outcomes:

Pat Kimball provided information that his group uses in performance outcome measures and review of mission critical data. They review their success rate by looking at how many people in their supervision do not fail to appear or have not been rearrested or have new technical violations or release conditions. They also look at safety measures based on how many are not rearrested under their supervision. They scored some of their PSA and compared to the SLPRI score. Those who are higher risk tend to score higher in the PSA. The people in the middle tend to be all over the place. They will continue to assess the differences.

Ms. Williams reports that they will be looking at PSA scores that come in under the new program and compare them to the scores provided by Mr. Kimball's group, though that isn't officially part of the study. What WILL be studied is whether the static PSA tool alone provides sufficient outcomes when compared to the same static PSA combined with interview responses.

Ms. Williams shared a chart that will be used to track outcomes and measures as used in the PSA. They are looking at a Harvard study as a guideline to compare overlap in outcomes and measurements. The Harvard study looks at failure to appear rates, did they miss court dates and how many they had before sentencing, how many arrest warrants they were issued, appearance rates (percentage of those who made all court appearances), new criminal activity, number of new charges, engagement in violent criminal activities, pretrial incarceration, number of days spent incarcerated, etc. There is good baseline data for FTAs, but other factors haven't been tracked in any uniform way. Ms. Williams states it is hard to get clear rates from certain jurisdictions due to not knowing how they track their rates. The new PSA program will assist in gathering that information, though there are still gaps in data tracking. For instance, we currently know, for each court appearance, whether a person is in custody. But we don't know how much time between court appearances a person remained in jail because the date a person is actually released from jail is not data that has been communicated to the court. So that data needs to be collected from the jails. Harvard is working through that as they architect the study. Other examples are provided by Ms. Williams (including what recommendations are made to the judge and of those, which are ordered by the judge). The Harvard study will need to be adjusted so that their rates and comparisons are accurate. Ms. Williams will discuss with the PSA working group on including a tracking measurement. The committee discussed what the various pretrial dispositions exist: entry of guilty / no contest plea, plea in abeyance, diversion, dismissal, and fail to file. The committee discussed how long a person should be under pretrial supervision when there is a release followed by a fail to file (as opposed to a fail to file release).

Fine Schedule:

Judge Harmond inquired about a meeting was held where "Bail/Fine Schedule" was changed to "Fine Schedule." Mr. Thompson reports that this change has not officially been made as the committee over this change is awaiting for the electronic PC and electronic PSA to be in place and will meet again to make official changes to this name.

Prioritization of Committee's charge:

Judge Harmond previously asked this committee to consider its prioritization and charge. In his opinion, this committee should be focusing on customizing the DMF and helping to structure the pretrial supervision programs. Ms. Tangaro likes the idea of educating and getting the statistics to show evidence based results. Ms. Williams has gone over the research with judges at conferences about the research that has been done across the country on risk assessments and how they can reduce dangers in the community. It will take time for judges to understand how to use the new PSA tools. It is the mid-range individuals that pose the greatest challenge for judges, especially in the absence of supervision programs. Being educated about research is important, but supervision options make taking action on that education possible. Ms. Williams believes the most important area to focus on would be statewide pretrial supervision services. It was suggested that the committee may look at the federal supervision programs. Ms. Williams agreed to ask the federal offices for additional information. The committee discussed whether bail assist in public safety.

Ms. Crandall suggests that if judges had more options regarding pretrial, prosecutors are more likely to stipulate to release on condition that certain supervision services are provided. Ms. Williams states that some counties already have this process in place (including how these programs are funded), but there is much left to accomplish statewide.

NEXT MEETING POINTS OF DISCUSSION

Judge Harmond reviewed this committee's charge under CJA 3-116. This committee is to assist counties with the implementation and development of pretrial supervision programs. Also, more about training for judges.

Ms. Williams would like to have this committee review at the next meeting:

- results of Ms. Williams' survey regarding pretrial programs around the state
- what services are out there, where the services are available, and costs associated with implementation of those services
 - Mr. Kimball notes that his cost for pretrial supervision per person is \$6.80 per day
 - Lt. Kiddle notes that the cost to incarcerate a person is \$100.84 per day
- bring back and review data from Mr. Kimball's group
- review monetary bail forfeiture process, so that bail can be a more effective tool
- obtain additional information from judges regarding their individual ability to consider the information that is being provided by the PSA

ADJOURN

There being no further business, Judge McCullagh made motion that the meeting adjourn. With no opposition, the meeting adjourned at 1:50 pm.