

**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  
September 6, 2019 – 12:00 p.m. to 2:00 p.m.

**MEMBERS:**

PRESENT    EXCUSED

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Judge George Harmond, <i>Chair</i>	•	
Wayne Carlos	•	
Kimberly Crandall	•	
Judge Keith Eddington	•	
Sen. Lyle Hillyard	•	
Rep. Eric Hutchings	•	
Brent Johnson	•	
Judge William Kendall	•	
Lt. Corey Kiddle		•
Pat Kimball		•
Judge Brendan McCullagh		•
Judge Rick Romney		•
Reed Stringham	•	
Cara Tangaro	•	
Marshall Thompson	•	
Adam Trupp	•	

**GUESTS:**

Rena Cowley  
Machi Johnson  
Rick Schwermer  
Ray Wall  
Jacey Skinner  
Jim Peters  
Shane Bahr  
Keisa Williams

**STAFF:**

Michael Drechsel  
Minhvan Brimhall (recording secretary)

**(1) WELCOME AND INTRODUCTION OF NEW MEMBERS**

Judge Harmond welcomed committee members and guests 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.

**(2) APPROVAL OF MINUTES:**

The minutes from the previous May 3<sup>rd</sup> meeting were considered. With no further discussion of changes, Judge Eddington motioned to approve minutes. Cara Tangaro seconded that motion. The minutes were approved unanimously.

### **(3) PSA AND PC WORKING GROUPS UPDATE:**

Mr. Jim Peters provided the Committee an update on the Public Safety Assessment (PSA) and Probable Cause (PC) systems.

- PC System Launch – Since the May 3 meeting, Cache (May 7), Uintah (mid-June), and Wasatch (mid-July) Counties have started using the PC system. Utah County is continuing to work on their implementation, updating their current program to allow for compatibility for the statewide system. It is anticipated that Utah County will be online in the next week or so. Washington County is set to go live on September 19.
- PC/PSA Statistics – Since launch of the PC system, over 10,000 probable cause statements have been submitted statewide. The committee reviewed statistics regarding the cumulative use of the PC system since implementation. Mr. Peters discussed the SID (State Identification number), a unique number issued by the state to each individual booked into jail. 3,500 PCs were submitted without an SID. The committee asked whether there are efforts to work with the counties with low SID rates. The AOC is making efforts to contact those locations to see if improvements can be made on entry of SIDs. There are other reasons that a PSA might not be generated (other than no SID), the most common of which is that there is out-of-state criminal history. The judicial council has determined that the courts would not attempt to interpret the out-of-state data programmatically, and so PSAs are not generated under those circumstances. The most recent statistics show that approximately 30% of defendants had out-of-state hits. Finally, as it relates to PSAs, some counties do not have PSA's in otherwise eligible cases because of a study that results in randomization that excludes the PSA from being generated (for study purposes).

Mr. Peters report that the Harvard study has not been launched. A memo regarding the study was included in the meeting materials. The purpose of the Harvard study is designed to assist in determining if the PSA results are helpful to the courts. The study will take several years to collect and analyze the data. In Weber, Morgan, Davis, and Utah Counties, the study will be having the PSA vs. not having the PSA. In Salt Lake County, the study will be on having the PSA vs. having the PSA plus responses to questions asked by Salt Lake Pretrial.

The committee had additional discussion about how to improve SID rates to get additional PSAs generated. Sen. Hillyard asked whether the judges are aware of why a PSA was not generated. Judges are not informed about the reason for no PSA in any given case (out-of-state data match, no SID, randomization, etc.). This will be the case for at least the two years that data is being collected for the Harvard study.

Mr. Drechsel explained that a more thorough review of out-of-state criminal history is always possible at a bail hearing later in the process (outside of the 24-hour window available for the initial PC determination), when the prosecutor or defense attorney raise the issue at a later bail hearing.

Mr. Peter states that the next step in the implementation of the PSA is to work on the creation of customized decision making frameworks. Ultimately, each county would be have that county's customized pre-trial release services shown to the judge at the time the judge is making release decisions.

Mr. Peters identified some of the challenges in Salt Lake County regarding the sequencing of release decision-making between the judge, Salt Lake Pretrial, and over-crowding release (OCR). Rick Schwermer pointed out that regarding OCR processes, the current decision-making is based on charge, not risk of the individual. There are conversations underway to see if the Salt Lake County jail will move to a risk-based tool for making the OCR decisions.

The committee discussed bail and bond issues related to release, including conversation about whether family members who post bail for an individual are notified if the person fails to appear or if there is a bail forfeiture.

Finally, the committee discussed the length of time the study will be running and the court's independent efforts to track data and ensure that the programs are not harmful to the administration of justice in Utah. Marshall

Thompson asked about whether after the adherence to best practices will continue after the study concludes. In other words, while the study is pending, there may be greater adherence to good practices, but who will monitor compliance after the study has concluded? Rep. Hutchings was concerned that the legislature would likely take actions in the next years that may have impact on the processes underlying the study. Rick Schwermer was clear that the study is not the priority. He explained that the PSA tool has already been validated and the Harvard study isn't about seeing if the tool works. The study is about what effect the PSA has on judicial decision-making (i.e., if a judge is provided the PSA information, are the decisions made by that judge impacted in a positive way – positive meaning, better case outcomes in the form of less failure to appear and less criminal activity). If the data (the state's or Harvard's) shows that the processes are not helpful, then the study or the PSA will not continue to be used. As far as the study is concerned, it is a nice add-on, but if it ever inhibits public safety and the courts' ability to serve the public, then the study will not continue in Utah.

#### **(4) SALT LAKE COUNTY PRETRIAL SERVICES:**

Mr. Drechsel provided an update on Salt Lake County's pretrial services (on behalf of Mr. Pat Kimball who wasn't able to be present today). Mr. Drechsel explained that Mr. Kimball had met with him to prepare for the meeting today. Mr. Drechsel explained the decision-making framework in use in Salt Lake County, which is information provided to the judge to help correlate pretrial release services with risk level. Higher risk = more pretrial services; lower risk = less stringent services. This allows judges to better determine the correct course of action for each defendant. The higher the level of offense will require a higher level of supervision. As judges are provided with a customize list of services available, they can better determine the level of supervision needed for each defendant. Ideally, each community will generate a similar list of services available in that area and make a determination of what services are tied to each risk level. Salt Lake Pretrial regularly assesses outcome tracking data to determine how effective services in each level are. This has been a work in progress for many years.

There was some discussion about various pretrial release programs currently in existence around the state.

Mr. Drechsel reviewed data tracked by Salt Lake Pretrial (materials included in committee materials packet). The committee discussed the data (including risk level group population sizes, how long pretrial services are typically provided, how often people are successful while on pretrial services, etc.). Mr. Drechsel discussed the "safety rate" data provided by SL Pretrial.

During this conversation, the committee discussed booking practices and how citations may impact getting services to individuals who are not booked. Rep. Hutchings was interested in ensuring that screening for pretrial services is thorough enough that even individuals who aren't initially booked still get assessed for risk level and appropriate services.

Mr. Drechsel encouraged the committee to view this data, not because it is specific to Salt Lake Pretrial, but rather the lessons that the rest of the state should be trying to learn as we move forward. What data should be collected around the state and why?

Brent Johnson asked if Salt Lake Pretrial has looked at what services are effective (in the universe of possibilities) at each level. Ms. Williams noted that Salt Lake Pretrial has carefully scrutinized the services that are in place to try to get the best outcomes from the services provided. Brent Johnson asked about technology and whether there are other practices that might work well (either in Salt Lake County or in other counties throughout the state). Mr. Drechsel noted that there are national entities that look at best practices, and Salt Lake Pretrial is constantly seeking out training on the most recent developments. The committee discussed the need to have the subcommittee canvas the state for what practices are in use, or what practices should be in use.

Mr. Drechsel encouraged all of the new members of the committee to review the Judicial Council's 2015 report that underlies the existence of this committee. Rep. Hutchings pointed out that the committee's work also aligns with indigent defense initiatives that becoming increasingly common.

## **(5) SUBCOMMITTEE CREATION AND ASSIGNMENTS**

Judge Harmond discussed the need to form subcommittees for the Pretrial Release and Supervision Committee. The subcommittees would attempt to assemble standardized processes throughout the state, and identify similarity of resources for urban and rural districts. Some counties will not have as many resources as others. The subcommittees would be task in meeting to research available resources and provide references as such. Judge Harmond sought volunteers for these subcommittees. The courts also are interested in finding ways to continue to assist in implementing technological solutions to some of these challenges.

- **Pretrial Supervision Programs Subcommittee** – The subcommittee will: identify what pretrial supervision programs exist across the state; what is the associated cost to supervise vs. cost to incarcerate in each program?; are existing programs tracking outcomes? if so, what data is available?; how are these programs funded (sheriff, county, community, etc.)?; what lessons can be learned from those programs?; what gaps in supervision services exist in those programs (if any); and make recommendations to the full committee

Rep. Hutchings would like Washington County to be invited to be involved in the subcommittee's work. Those who have volunteered to be on this subcommittee are Judge Eddington (who will be chair), Rep. Hutchings, Kim Crandall, Cara Tangaro (as voted on by the committee because she has a defense attorney perspective), Pat Kimball, and Keisa Williams. Mr. Drechsel will be staff to the subcommittee.

- **Indigency Determinations Subcommittee** – The subcommittee will: identify what indigency determinations processes exist across the state; are there any helpful national models / studies (e.g., New York's "counsel at first appearance" (CAFA) study, etc.); identify a process for indigency determination at time of pretrial release decision (video appearances within 24-48 hours of arrest? how to have counsel appointed and present?); review emerging caselaw across the country; and make recommendations to full committee.

The subcommittee members will be Reed Stringham, Marshall Thompson, Sen. Hillyard, Keisa Williams (will act as chair), and Brent Johnson. Mr. Drechsel will be staff to the subcommittee.

## **(6) MISCELLANEOUS:**

Mr. Drechsel reviewed committee meeting dates for the 2019 calendar year. Though no motion was made to approve the 2019 dates (no quorum present at this point in the meeting), all present committee members agreed on the proposed dates.

## **(7) ADJOURN**

There being no further business, Judge Harmond motioned the meeting to adjourn. Mr. Stringham seconded the motion. With no opposition, the meeting adjourned at 1:50 pm.