

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

Judicial Council Room (N31), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
May 2, 2019 – 12:00 p.m. to 2:00 p.m.

MEMBERS:

PRESENT EXCUSED

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

GUESTS:

Deputy Jeff Greenwell – Sanpete County
Deputy Jesse Fausett – Carbon County
Sargent Victor Turner – Carbon County
Judge Samuel Chiara – Duchsene County
Patty Fox – Davis County
Emily Golombek – Davis County
Pat Kimball – Salt Lake County
Frank Piganelli
Clay Quigley - AOC
Ray Wahl - AOC

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

Welcome (Judge Harmond):

Judge Harmond welcomed everyone to the meeting and introduced two new members. Rich Mauro is the Executive Director of the Salt Lake Legal Defenders Office and a member of the Indigent Defense Commission (IDC). He will be representing the IDC on this Committee. Commissioner Lorene Kamalu is a Davis County Commissioner and she will be representing the Utah Association of Counties.

Approval of September 6, 2018 Meeting Minutes (Judge Harmond):

The committee considered the minutes from the September 6, 2018 meeting. With no changes or further discussion, Judge Kendall moved to approve the minutes. Reed Stringham seconded the motion. The motion carried unanimously.

Introduction of Speakers and Purpose of Presentations (Keisa Williams):

Ms. Williams introduced each speaker. The focus of today's meeting is to learn about all of the various pretrial supervision services and programs across Utah. The PSA has been implemented and judges find them very helpful, however, they've expressed a need for corresponding pretrial supervision programs. Without those services judges often impose monetary conditions of release, even though that may not be necessary, just due to a lack of minimal supervision options. Each of the counties represented here today operate a unique pretrial supervision program based on local resources, funding, and practices. There is no one way to run a successful pretrial program. The goal is to become better informed as a Committee before we reach out to counties and stakeholders to encourage the creation of these programs across the rest of the State.

Sanpete County Pretrial Services (Deputy Jeff Greenwell):

The Sanpete County Pretrial Program is run by the Sanpete County Sheriff's Office. Deputy Greenwell is the only pretrial officer. He is also the probation officer and drug court tracker. The program began in 2017. Since then, they've supervised approximately 120 clients, with a success rate of 76% - no new crimes committed and no failures to appear from arrest to adjudication. The program supports the 6th District Court under Judge Bagley and Judge Lee. They supervise, on average, 14 people on pretrial at any given time. The majority of the clients report directly to Deputy Greenwell on a weekly basis in his office, but he also makes home visits.

Deputy Greenwell has arrest authority as a deputy sheriff. To qualify for pretrial release, clients must sign a pretrial supervision agreement granting officers the authority to search the client and their home or property. He has not had to issue a warrant for a failure to appear (FTA) on anyone under his supervision, as opposed to numerous FTA warrants issued for individuals not under supervision.

Deputy Greenwell uses Automon as a pretrial case management system. Clients receive text message reminders of court hearings, office visits, and drug tests. Other supervision services include call-ins, in-person check-ins, UAs, and they are working on getting ankle monitors for higher risk clients. The pretrial program is funded solely by the Sheriff's Department. Clients are only required to pay for a \$60 set-up fee, which includes the costs of supervision, drug testing and equipment. There are no monthly fees. To include ankle monitoring services, there would be a \$250 security fee up front, plus a monthly service fee. Right now, if a judge is very adamant about ankle monitoring, Deputy Greenwell calls a local private provider who provides the equipment, and they allow him to access their program to track the client. Those costs are much higher than what he would be able to offer.

When a PSA is available, the judges are good about using those recommendations to order pretrial services. The County Attorney will sometimes request pretrial supervision. When they don't have a PSA, the County Attorney will advise the judge of the criminal history, previous FTAs, etc. Deputy Greenwell sits in the courtroom at Initial Appearance. When an individual is released to pretrial, the judge points out Deputy Greenwell to the defendant. During a recess, Deputy Greenwell meets the client in the holding cell, gets their contact information, has them sign the pretrial release agreement, and then hands it to the judge who signs it. The agreement is immediately filed into the case by the court clerk. The client is provided with Deputy Greenwell's contact information and told when and where to meet with him.

If law enforcement officers look in Xchange when they pull someone over and see a pretrial agreement in the case file, they will call Deputy Greenwell to let him know they've picked up one of his clients. If the client violates a condition of release (other than a minor traffic violation), Deputy Greenwell will typically go to the jail and file a 72-hour hold, an order to show cause, a warrant, or new charges.

Senator Hillyard asked about whether Sanpete County has private probation providers and whether they have arrest authority. Deputy Greenwell said the closest provider is in Nephi and private probation providers are unable to arrest on scene and would need to contact a local law enforcement agent. Senator Hillyard asked about the accuracy of criminal records in BCI. Deputy Greenwell reported that as long as there are four positive identifiers, they are confident that the person being arrested or charged is the same person identified through BCI. If there are discrepancies, the person is responsible for contacting BCI to correct their information. Ms. Williams noted that when the AOC first began working with BCI to create the automated PC System, they were told by prosecutors and defense counsel that the criminal records weren't always up-to-date. The latest charges or case dispositions may not have been captured yet. That is one of the reasons the Court's system, when generating a PSA, will review BCI, NCIC, and CORIS to ensure the information is as accurate as possible. Judge Chiara and Cara Tangaro noted that it is rare for a person's criminal record to be inaccurate or missing updated information; approximately 1% of cases. Kim Crandall noted that when things are inaccurate, it's typically because they were arrested on a more serious charge but then pled to a lesser offense. Judge McCullagh noted that the criminal histories are really hard to understand so it may more often be an issue of training on how to read them.

For Sanpete County, it costs roughly \$52.84 per day to house an inmate in jail; approx. \$19,286 per year for one inmate. The pretrial program (1 FTE) costs roughly \$85,000 per year for salary, benefits, equipment, and supplies. It only takes 4 clients per year on pretrial supervision to cover the entire cost of the program and break even. Since Feb 2017, Deputy Greenwell has supervised 121 clients, saving the county almost \$1.5 million dollars.

Rich Mauro asked whether a public defender is available at initial appearance and what their involvement is in the process. A public defender is available in the courtroom to advise clients at initial appearance. There is no indigency waiver for the \$60.00 pretrial supervision set-up fee, but Deputy Greenwell will work with them to make payments. Individuals are not revoked

or arrested for lack of payment. They have not set up a collection process. They've never had a client unable to come up with the money. Wayne Carlos asked whether individuals not offered pretrial supervision have the opportunity to bond out of jail. Deputy Greenwell stated that individuals can bond out if the judge orders it. If they're on pretrial supervision, they typically see a reduction in their bail amount or an own recognizance release.

Carbon County Pretrial Services (Deputy Jesse Fausett and Sargent Victor Turner):

Carbon County began offering pretrial services around 2014. The program was revamped in September 2018. The program is made up of two bailiffs who work double-duty as pretrial trackers, and bailiffs in Carbon County Justice Court or 7th District Court. The client pays for UA's and electronic monitoring services. Those services were offered for free under a JRI grant originally, but when the grant went away the sheriff's office couldn't afford to cover the costs. Starting in September, pretrial officers are a lot less "hands on" and are focused primarily on call-ins, in-person check ins, and tracking electronic monitors. Success is defined as showing up to court and not committing another crime. Judges typically order pretrial supervision based on the PSA and clients sign the agreement for services before they are released from the jail.

There are certain offenses that they try to avoid supervising pretrial, mainly sex offenses. Cara Tangaro asked if they ever consider supervising individuals charged with sex offenses because those individuals rarely reoffend and typically show up in court. Judge McCullagh noted the issue is more likely about the severity of a potential violation. Judge Harmond said those decisions are made on a case-by-case basis. Sgt Turner said the Carbon County Attorney made the decision that they should not supervise on sex cases unless ordered by the court. Deputy Greenwell said the individuals he supervises with sex offenses are usually the best clients as far as showing up and not committing new offenses, but he checks in with them often.

The officers attend 90% of court appearances and work directly with the County Attorney regarding each client's compliance or status. The officers will review the docket with the County Attorney before they go into court. They identify arrestees on the docket who might be appropriate for pretrial supervision, and those who may have been on pretrial before and whether they were successful/unsuccessful. The officers have arrest powers, but they do not arrest for violating pretrial conditions. Violations are tracked and officers notify the County Attorney, but they don't arrest or search their homes or property unless it's something in plain sight or egregious. They will arrest on an FTA warrant or new charges. They will do home visits, but only for individuals who are higher risk (PRL 3 and above).

Carbon County's success rate is roughly 60%. Since September 2018, 32 people out of 186 would be considered failures due to obtaining new charges or failing to appear in court. They supervise roughly 100 people at any one time – counting both justice and district court. The Sheriff's Office funds the entire program. It costs approximately \$52 per day to house an inmate in jail. They didn't have the numbers with them, but Sgt Turner was certain the program saves the county money. There are no set-up fees. Clients are referred to a private provider for UAs and ankle monitoring. UAs cost about \$20 depending on what the client is being tested for. That amount covers the cost of the UA tester as well. Clients are given a list of providers to

contact and are required to check in on a daily basis. Judge Harmond noted that UAs and monitoring are rarely ordered as a condition of release.

Senator Hillyard asked whether the commission of new crimes counts as a failure. Sgt Turner said yes, approximately 10% of the 60% who failed to comply committed a new offense. Pat Kimball asked whether they felt individuals failed to appear because they forgot or were willfully avoiding prosecution. Sgt Turner said typically clients who are new to the system will check in and go to court. For those who are in and out of jail a lot, it's probably a function of lifestyle, history, habits, etc. Judge Harmond noted that a large percentage are confused because they have several cases in different courts and they aren't sure where they're supposed to be. Judge Chiara noted that a lot of it is a function of serious addiction. Wayne Carlos noted that an additional component to failures to appear is being surrounded by an enabling system that doesn't hold them accountable.

Rich Mauro asked if public defenders are contacting pretrial officers and asking whether pretrial services are available to their clients at a later stage in the process. The judge considers it at initial appearance, but are public defenders asking about pretrial release later in the life of the case in lieu of doing a bond hearing? Judge Harmond said public defenders appear via video conference. Pretrial decisions are usually made at an initial video appearance and are not often revisited. Rich Mauro noted that Salt Lake Legal Defenders interact frequently with pretrial services about their clients and asked whether that was happening in other counties. Deputy Greenwell said no, the public defenders speak directly with the County Attorney.

Duchesne County Pretrial Services (Judge Samuel Chiara):

Pretrial services in Duchesne County started early with a JRI grant. Judge Chiara worked with the prosecutor's office, a public defender, the county commission, and the sheriff's office to look at the program and determine how best to distribute the funds. Before they started using PSAs, if a person made it to their initial appearance and hadn't bailed out, they would be appointed a public defender who would go back to holding to visit with them. Many times public defenders would stipulate with the county attorney to pre-trial release.

The way the original program was developed, pretrial release was still considered "in custody" because arrestees were in the custody of the sheriff's office and the program was operated by the sheriff's office. The judge authorized an individual's participation in the pretrial release program, much like a work release program except outside the jail. To qualify, individuals were screened for violent offenses. The client signed a pretrial release agreement consenting to searches and were put on an ankle monitor. They were put in contact with a local mental health facility case worker who would help line up services in the community, including substance abuse and mental health assessments, employment opportunities, evaluations, etc. The sheriff's office conducted UAs.

In the first two years, 122 people participated and 6,520 inmate days of incarceration were avoided. It costs \$63.09 (without capital expenses) or \$72.40 (with capital) per day to house an inmate. The cost of having an inmate out with an ankle monitor, including administration,

deputy trackers, and UAs is \$40.72 per day. The county saves \$32.00 per day, even if the client is wearing an ankle monitor and being drug tested. In two years, the county saved over \$200,000. Aside from that, clients were charged an initial fee. With a 50% collection rate, the county saved an additional \$100,000 because half of the costs were borne by the supervised individuals themselves.

Because they were supervised by the sheriff's office, if a client violated they were brought back into the jail and the jail followed a violation procedure (lower-level of due process), where the individual was allowed a hearing similar to when an inmate violated a jail rule. Judge Chiara trained the jail on drug addiction, proximal and distal goals, and other public safety behaviors so that the jail could exercise some discretion. The sheriff's office would occasionally pull someone in for a violation, hold them for a couple of days, and then let them back out, but it was all within the discretion of the sheriff.

50% of people placed on pretrial supervision made it successfully to disposition without a new offense. Of those, 50% have not had a new offense since 2017. If all of those individuals released to pretrial had remained in custody, the cost to the county would have been \$472,000 to keep them incarcerated, as opposed to \$172,000 to have them out on pretrial.

When the PSA was implemented, the program changed a little. Pretrial release levels, PRL 1-3 look similar to Carbon County. PRL 4-5 are essentially the original program outlined above with an ankle monitor and more serious supervision. There were a number of people who cut off their ankle monitors, so Judge Chiara started advising them that if they cut it off they would be charged with a new 3rd degree felony because it's an escape from official custody. Under the PRL 4-5 program, clients are still in the custody of the Duchesne County Sheriff's Office. One of the conditions is that they reside in the county because the sheriff's office is unable to arrest outside of Duchesne County.

There are various fees for pretrial services ranging from \$20-\$70 per month based on the level of supervision, and a potential \$100 warrant amount for failing to call in. The fee amounts are included in the contract, but they have never been enforced. People who don't pay have not been brought back in for failing to pay and they haven't been pursued by the county for collection. It doesn't go to state debt collection. The collection rate is about 50%, but the county hasn't been too concerned because of the amount of savings from the pretrial program in general.

Judge Chiara has asked that pretrial officers begin tracking the success rate based on the new PSA conditions. Anecdotally, so far the success rate has been pretty good and new crimes are most often possession of controlled substances. Judge Chiara isn't sure how pretrial came up with this number, but 30% of clients who get into treatment while out on pretrial release stay in treatment once they are released.

Judge Chiara expressed that there are not nearly enough PSAs generated. He hopes that those numbers can be increased. It's very helpful to judges to be able to see those when reviewing

probable cause statements. Judge Chiara said he loves it when he has a PSA because he does not have to guess and he can either release or hold someone. Otherwise, when he doesn't have a PSA he's not sure what to do so he just sets the monetary bail amount on the bail schedule because there isn't enough information to make another decision. If the individual is still in front of him the following week, then he can make a better decision. The judge feels there are a number of people he could be releasing if he had the PSA to help guide him. Ms. Williams stated that she is working with jails to get SID rates up when PC affidavits are submitted, which would increase PSA generation rates. In addition, Ms. Williams outlined a permanent statewide solution the AOC will begin programming that will fix an issue related to unrecognizable national criminal history information. The new programming fix would dramatically increase PSA generation rates, particularly in bordering counties.

Davis County Pretrial Services (Patty Fox):

The Davis County commission approved and supported funding to create a new pretrial supervision program in 2018. They are currently in the implementation phase and are hoping to begin supervising individuals before the end of the year. There are 3 FTEs; a coordinator and two case managers. They've obtained office space in the Layton courthouse. The biggest challenge so far has been passing the UCJIS audit and FBI requirements to access criminal history records. That process has taken about 7 months because the Davis County IT network and the pretrial case management provider, Automon, had to meet and pass the BCI audits as well. Currently, pretrial is working with the judges, county attorney, and public defender to finalize the PSA release condition levels for Davis County, and are trying to determine initial capacity for the program.

Automon will allow pretrial to track data and performance measures based on national best practices for pretrial efficiencies (NIC Measuring What Matters). One of the most important measures is to decrease the amount of time a person spends incarcerated pretrial. Success will be defined as no FTAs or new criminal activity during the pretrial phase. Pretrial services will also be conducting self-evaluations focusing on results-based accountability; asking not only how much did pretrial do, but how well did they do it and are clients better off. Services anticipated are FTA reminder calls and texts, post FTA calls and texts, UAs, ankle monitoring, and check-ins.

Pretrial plans on attending central arraignment court 3 days per week. In Davis County, it costs \$70 per day to house an inmate in jail. Davis Behavioral Health has been contracted to provide substance abuse assessments for each participant at no cost. The plan for now is that each participant will be required to participate in treatment for 6 months, or as long as there is funding available. There will be no fees for pretrial supervision, but drug testing will include a fee. UA tests will continue to be done by the sheriff's office and the results relayed to pretrial services.

Salt Lake County Pretrial Services (Pat Kimball):

Salt Lake County's pretrial program began in 1974. It is a county agency housed in Criminal Justice Services, and it is fully funded by the county. All of the employees are nationally

certified through the National Association of Pretrial Service Agencies (NAPSA). There are 29 FTEs and 2 PTEs. Pretrial runs a 24/7 operation at the jail, staffed with 14 jail screeners and 2 supervisors. The jail screening unit interviews approximately 36,000 people every year. In addition, there are 10 case managers and 2 supervisors in the county office. They supervise approximately 4,000 people per year and are currently supervising just over 1,000 defendants (100-120 per case manager). There are two district court representatives that attend initial appearance court and arraignment. They are available in the courtroom to answer any questions about a client's compliance or provide recommendations when requested.

The average supervision time was about 99 days in 2018. There are three ways individuals are released from the Salt Lake County jail:

1. Released by pretrial services (own recognizance or supervised release) based on the PSA score. Pretrial has release authority up to, and including, non-violent 3rd degree felonies pursuant to a memorandum of understanding with the 3rd District Court.
2. Supervised release as ordered by a judge (monetary and/or non-monetary).
3. Overcrowding release by the jail. This is not facilitated by pretrial services.

Overcrowding release (OCR) is a big problem for pretrial services because if someone has failed to appear and a warrant is issued, they get picked up and kicked right back out without supervision. The OCR decision is based on the charge, not the risk level. People are getting released regardless of: the number of OCRs, no bail warrants, multiple probation violations, absconding for a year, failing to appear in court, etc.

Pretrial will make a decision based on the PSA score and the following release criteria:

- Individuals with risk scores above 4/5 are only released with approval from a supervisor
- Charge does not constitute a threat to public safety
- Require a judge's authorization for violent F3s, and all F2 and F1 offenses
- Individual cannot be under any supervision. Do not release if currently under AP&P supervision, pretrial supervision, or another private provider. If they are rearrested, it constitutes a violation of pretrial conditions so they don't release them again.
- Jail interviews determine whether the client has a support system. Participants are not denied if they do not have a residence, but those with DV charges must have a verified alternate residence.
- Pretrial will provide release recommendation reports to the court upon request by a judge.

Supervision options are listed on the Salt Lake County DMF on the court's website. Additional conditions can be ordered by a judge, including weekly UAs, but clients are required to pay for those. UA fees are \$15 for a 5 panel test.

Pretrial services offer in-house anger management classes, substance abuse classes, and journaling. Electronic monitoring is available if ordered, but clients are required to pay. In January pretrial began a gender-informed needs assessment (GINA) for women who are PRL 2

and above. The assessment takes 1-2 hours and determines individual needs; housing, education, trauma, drug abuse, etc. Case managers develop a case plan based on that assessment. Females between the ages of 24-44 have higher rates of failure than any other demographic. This program was created to try and focus on those high-risk individuals.

Individuals placed on pretrial release will be supervised for 90 days. If charges are never filed, pretrial sends a letter to the DA's office stating the person has been under supervision with no filing, and noting whether the individual has been compliant. Those not charged and released from pretrial services will be charged the \$35 screening fee. If someone is out of compliance, pretrial sends a revocation request to the court, defense counsel, and prosecutors. Pretrial does not have arrest authority.

Pretrial offers a surrender program for individuals with an outstanding district court warrant. A screener assesses the person for eligibility, arranges a court date, and drafts a release order with conditions for the person to take with them to court. If the judge agrees, the person can be released to pretrial without having to go through the entire arrest process (which can take up to 8 hours). The screener will help coordinate with the jail for booking if required. This benefits the defendant, law enforcement, and the jail.

Pretrial tracks a lot of data; success rate, safety rate, FTAs, # of releases, total # of clients, avg # of clients per case manager, # of clients by risk score, time from release to intake, etc. Pretrial has its own county-based case management system and will be upgrading to a new one this summer.

There is no supervision fee, but clients pay for UA testing and ankle monitoring. Pretrial supervision costs \$5.71 per day vs. approx. \$90 per day to house an inmate in jail per day.

Adjourn:

There being no further business, Judge Harmond thanked the presenters for their time. The meeting was adjourned at 1:57 pm. The next meeting is scheduled for July 11, 2019, at 12 pm in the Judicial Council room.