

**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
October 3, 2019 – 12:00 p.m. to 2:00 p.m.

| MEMBERS: | PRESENT | EXCUSED | GUESTS: |
|--------------------------------------|----------------|----------------|---|
| Judge George Harmond <i>Chair</i> | x | | Mark Ebel, Triton Mgmt Svcs Renae Cowley, Foxley & Pignanelli STAFF: Keisa Williams Minhvan Brimhall (recording secretary) |
| Wayne Carlos | x | | |
| Kimberly Crandall | | x | |
| Judge Keith Eddington | x | | |
| Rep. Eric Hutchings | x | | |
| Brent Johnson | x | | |
| Comm. Lorene Kamalu | | x | |
| Judge William Kendall | x | | |
| Lt. Corey Kiddle | | x | |
| Pat Kimball | x | | |
| Richard Mauro | x | | |
| Judge Brendan McCullagh | | x | |
| Judge Jeanne Robison | X | | |
| Reed Stringham | x | | |
| Cara Tangaro | x | | |
| Marshall Thompson | | x | |

Welcome and Approval of Minutes (Judge Harmond):

Judge Harmond welcomed committee members and guests to the meeting. The committee considered the minutes from the September 9, 2019 meeting. With no objections or further discussion, Judge Kendall moved to approve the minutes. Reed Stringham seconded the motion. The minutes were unanimously approved.

Update: URCrP 9 and 9A:

The Rules of Criminal Procedure Committee created a subcommittee to review amendments to URCrP 9 and 9A in light of emerging pretrial caselaw. Judge Kendall will be participating in the meeting as a representative from the Pretrial Release & Supervision Committee. The first subcommittee meeting is scheduled on October 30, 2019. The subcommittee will be staffed by Brent Johnson. Keisa Williams will be attending.

Ms. Williams spoke with the Board of District Court Judges regarding pretrial caselaw, rules 9 and 9A, and the creation of the subcommittee. The Board noted that if they knew about the caselaw they would have gone in a different direction with the rules. They were supportive of the subcommittee. Judge Sam Chiara will be the Board of District Court Judges' representative on the subcommittee. The Board asked Ms. Williams for regular updates on the Pretrial Committee's work, as well as copies of the monthly meeting materials. The Board would like to be as actively involved in these discussions as possible.

The Committee discussed its desire to learn about Boards of Judges' future interest in rules and issues related to pretrial release and supervision earlier in the process, as a means to better address their concerns and take action sooner.

Mr. Carlos asked about the process for rule changes. Ms. Williams explained that it depends on the rule. The Judicial Council approves Code of Judicial Administration rules, and the Supreme Court approves rules of procedure and evidence. The Council has standing committees, like this one, that make recommendations regarding rule changes under its purview. The Supreme Court has advisory committees who do the same. Proposed rule amendments go out for public comment.

Update: Washington County Pretrial Monitoring Services:

Ms. Williams was in St. George last week working with Washington County Court Support Services (CSS). The program is managed by county attorney, Brock Belnap. The county recently funded a new position to provide pretrial monitoring services. Washington County District Court judges have approved their decision-making framework with customized release conditions, developed procedures for release, and completed court forms. To start, the program will be small, providing basic services like call ins, check ins, and court reminders. CSS is starting with one FTE dedicated to pretrial monitoring and hopes to get a second one soon. Ms. Williams met with CSS staff, jail staff, and judges over a few days. The jail is very supportive. Court support services are currently training staff, determining whether they can drug test without a fee, researching software that will allow call-ins through an app, and considering other costs. The program will begin November 1st and services will be provided at no cost to defendants.

Commissioner Kamalu was not able to attend today's meeting but is working on getting Ms. Williams on a UAC agenda to discuss emerging caselaw and seek input.

List of Technical Fixes for Legislature:

At the last meeting, Representative Hutchings asked for a "wish list" of items that this committee may recommend if funding for technical changes becomes available. Ms. Williams believes he is primarily focused on Salt Lake County right now, but there may be opportunities for other counties.

Cara Tangaro discussed a current case in which the bail amount is beyond what the client is able to pay. The judge has confined the client to his home and he is already paying for ankle monitoring. Ms. Tangaro believes the judge's orders are unconstitutional.

Ms. Williams noted that the scenario Ms. Tangaro shared is an example of one of the concerns found in caselaw that this committee is working to address. Ms. Williams will be talking to judges at their local bench meetings to make them aware of the caselaw and this committee's work.

Rich Mauro noted that his office has started to staff arraignment courts. They have found that some judges will not consider addressing bail or releasing a defendant at first appearance, even if the PSA score suggested they were okay to do so. Defendants are not always represented at arraignments and in early stages of the case. This is frustrating to defense attorneys. Indigency should be determined early on in the case to ensure defendants are afforded due process. Is there a way for defense attorneys to get a copy of the PSA score at first appearance? Is there a way for defense attorneys to access all case-related documents prior to first appearance hearings, including criminal histories? Ms. Williams noted that PSAs are publicly available on Xchange as soon as they are generated, and most are generated within 24 hours of arrest.

Judge Harmond suggested creating a special docket calendar for initial appearances that attorneys can access that would pull up PSA scores, along with probable cause statements, indigency determinations, and other case documents. This would be separate from Xchange.

Rep. Hutchings met with the Budget Committee and discussed funding for pretrial services. Rep. Hutchings would like a list of what this committee sees as specific needs. Rep. Hutchings will take the list to the committee to see how far they can go to fulfill the recommended items. Rep. Hutchings stated that the Budget Committee is very interested in meeting the goals of this committee and helping to provide funding to meet those goals. Rep. Hutchings asked that the committee not make an assumption of what cannot be done, but allow his committee to see what they can do.

Mr. Mauro noted that SLCo Pretrial Services is hand-scoring PSAs due to technical issues. Pretrial is trying to find better ways to get the manually-calculated PSAs to defense attorneys. Ms. Williams noted that the Judicial Council allocated significant one-time funding to address the NCIC issue and programming has begun. It should be completed earlier than anticipated.

Judge Kendall noted that starting in January 2020, juvenile court judges will begin handling first appearance calendars in the 3rd District. Judge Harmond noted it would be helpful for Ms. Williams to meet with the Juvenile Court bench to review initial appearance processes, pretrial caselaw, and the PSA. Judge Kendall stated the juvenile judges could also attend one of this committee's meetings. Brent Johnson noted that it will take both written and oral training. Judge Kendall has a checklist and script to share if desired.

Judge Harmond reminded the Committee about its discussion at last month's meeting regarding the difference between indigency determinations for the purpose of appointing counsel, and ability-to-pay analyses when setting monetary bail. Technological upgrades will need to be made to current systems in order to provide judges with financial information at the time they

are reviewing PC affidavits and warrants, and making initial bail sets. Judge Harmond noted that in Duchesne County the Sheriff will often have defendants fill out an affidavit of indigency at booking. That information is made available to all parties.

Rep. Hutchings noted that counties would save a lot of money if people had all of the information they needed ready to properly file before their hearings. That would reduce the amount of continuances and make the calendars more manageable because judges wouldn't have to wait or take recesses in order for parties to get organized. Mr. Kimball stated that defendants will often be more willing to respond honestly to questions when the forms are filled out with pretrial services, rather than a member of law enforcement. Ms. Williams suggested that the committee, in developing model pretrial programs, consider adding case management as one of the recommended supervision service options. A pretrial staff member could be housed at the jail to assist defendants with getting proper forms and indigency affidavits filled out, in addition to traditional supervision services like court reminders and check ins.

The committee reviewed the list of technological requests to Rep. Hutchings:

1. Indigency Affidavits filled out by jail screening unit and submitted through the automated probable cause system.
 - The committee discussed and agreed to recommend programming updates to UCJIS, CORIS, and several jail management systems (SLCo, Washington County, Utah County)
 - Rep. Hutchings recommended creating a “dashboard” for initial appearances that would inform judges and all parties of the current status of a case. The dashboard would be color coded, with the colors indicating certain levels of readiness prior to the hearing. Green would indicate that all documents are filed and the case is ready to be heard. Red would indicate that documents or other information is missing and the case is not ready to proceed.
 - The dashboard should interface with the calendars or electronic dockets somehow so that the judge and parties could easily access it.
 - Individuals should be placed at the door to help defendants as they walk in. That person could update the dashboard that defendants are present, input information about readiness, and direct defendants on where to go and what to do to “get to green.”
 - The dashboard should note whether the following are available:
 - Financial Statement for ability-to-pay
 - Indigency affidavits for counsel appointment
 - PC affidavit
 - PSA
 - Others?
 - Judge Harmond noted that electronic docketing is available for attorneys. That would allow attorneys to determine the case start time and courtroom location.

2. Providing judges with information about other holds or warrants across the State.
 - With an SID number, judges can look up all cases related to an individual, but the system does not indicate whether a warrant is outstanding in any of the listed cases. The Sheriff's office has warrant information. The committee discussed the option of linking the Sheriff's information with the SID number and case-related information viewable by judges in Judicial Workspace.
 - Judges need a list of outstanding warrants, where the warrant is located, the bail amount of the warrant, and whether the warrant is pre- or post-conviction.
 - CORIS needs a field when the court is issuing a warrant that notes whether it is a pre- or post- conviction warrant. The clerks would check the right box.
 - Ms. Williams will create a list of additional data fields judges might want.
3. #3 was deleted from the wish list
4. (Combined with #2 above) Providing judges with information from pretrial service interviews regarding housing and ties to the community, etc.
 - Pretrial services in SLCo conduct a comprehensive interview with each arrestee. That information is not included at the time of the PC review, but in SLCo it is provided to judges at first appearance verbally, if requested.
 - Is there a way for pretrial to provide information prior to initial appearance, but not with the PC?
5. Making more fields required in the E-filing system to allow documents to attach to case files.
 - Currently, the court's system will link PC affidavits, release orders, and PSAs (when available) to case files when they are opened in CORIS – upon the filing of an Information by prosecutors.
 - However, several data fields in the PC submission and the Information must match in order to link the documents to the files.
 - Currently, the only required field in the e-filing system for prosecutors when filing an Information (opening a case) is a defendant's last name. Without more fields, documents will not link to case files automatically and must be searched for and manually linked by a clerk.
 - We need more required fields in the e-filing system.
 - URCrP 4 requires that prosecutors include several data elements in the Information, but because the fields aren't required in the e-filing system it doesn't happen often. The committee discussed creating a form based on the Rule 4 requirements. It could also be used to redesign the electronic filing page.
 - Rep. Hutchings agreed to champion the e-filing issue.
6. Providing PSAs to prosecutors and defense counsel prior to docket
 - There needs to be a way to send PSAs to parties electronically before hearings (outside of Xchange), including any manually-calculated PSAs from pretrial services.

The committee discussed different indigency affidavit forms and financial statements. Ms. Williams will check the requirements in the Indigent Defense Act, talk to the Forms Committee,

and review forms from other states. The committee could draft its own form or financial statement for recommendation to the Forms Committee. The Forms Committee would provide feedback and if approved, send the form on to the Judicial Council for consideration.

The committee discussed creating a mechanism for jails to electronically fill out and submit jail release agreements to the court. Judge should have a button in the PC system to order jail release agreements as a condition of release. Jail release agreements and pretrial protective orders should be amended using plain language, and should more clearly list the do's and don'ts. The weapons restriction language (e.g., no weapons in the house) should be bolded and prominent.

The committee discussed manpower, costs, and budget issues associated with the items discussed above. Representative Hutchings recommended looking at other legislation to see whether we could piggy-back or combine requests with related fixes, or fixes in the same systems. The committee needs to identify and recommend funding streams in any legislative proposals. Rep. Hutchings noted that in order to fast track some of the technological changes, it might be better to consider hiring or contracting with part-time programmers to do work quickly using one-time funding.

Ms. Williams and Heidi Anderson will discuss programming timeframes and costs associated with the various items on the wish list to identify items that could be done in the short term vs. items that would be expensive, long-term projects.

Pretrial "Ability to Pay" Caselaw:

- **BDCJ Update** – Ms. Williams met with the Board of District Court Judges, and will meet with them again after the Rules of Criminal Procedure Subcommittee meeting to discuss rules 9 and 9A.
- **TCE, CoC, Bench Meetings** - Ms. Williams will continue to schedule meetings with each group to update them on pretrial caselaw and rules 9 and 9A, where appropriate
- **New Case** – Ms. Williams provided an overview of the new case included in the packet out of Galveston County. On September 11, 2019, the U.S. District Court for the Southern District of Texas, Galveston Division, entered a preliminary injunction requiring Galveston County to provide all indigent felony arrestees with counsel at the initial hearing addressing conditions of pretrial release.
- **Short & Long Term Goals** – Ms. Williams reviewed, and the committee discussed and prioritized, the proposed short and long term goals for pretrial reform efforts.
 - Model pretrial program – The Committee will work to outline model pretrial supervision programs for both urban and rural jurisdictions. The Committee will discuss the need for such programs with UAC.
 - Ms. Williams will add technology systems and/or updates to the list as the second priority short-term goal
 - Identify local pretrial practices – removed as a separate short-term goal item. It will be rolled into the item comparing caselaw and practices in other states to Utah.

- Research pretrial practice in other states – consider federal model as mentioned by Judge Kendall, Rep. Hutchings can send information from NCSC, reach out to PEW and PJI, review research studies and other state laws/practices.
- Ms. Williams will ask the Vera Institute for information about their pretrial ability-to-pay calculator pilot program in NY.
- How are other states incorporating indigency into bail decisions? Is it legal to consider family members' income in determining indigency?
- Compare caselaw to Utah law and practices.

Adjourn:

There being no further business, the meeting was adjourned at 2:10 pm. The next meeting is scheduled for November 7, 2019, at 12:00 pm in the Judicial Council room.