

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

Webex video conferencing  
January 7, 2021 – 12 p.m. (noon) to 2 p.m.

<b>MEMBERS</b>	<b>PRESENT</b>	<b>EXCUSED</b>	<b>GUESTS</b>
Judge George Harmond, Chair	X		Chief Matthew Higley
Heidi Anderson		X	Dep. Chief Shanda Gonzalez
Wayne Carlos		X	Tucker Samuelsen
Judge Keith Eddington	X		Brody Arishita
Josh Graves	X		Paul Barron
Rep. Eric Hutchings	X		Chief Matthew Dumont
Andrea Jacobsen	X		Jojo Liu
Comm. Lorene Kamalu	X		Sheriff Rosie Rivera
Judge William Kendall		X	Josh Esplin
Cpt. Corey Kiddle	X		Yvette Rodier-Whitbe
Joanna Landau	X		Dep. Jeff Greenwell
Rich Mauro	X		Clay Carlos
Judge Brendan McCullagh		X	Sheriff Kelly Sparks
Judge Jeanne Robison	X		Weber County Sheriff
Reed Stringham	X		Lt. Tyler Fails
Cara Tangaro	X		Sgt. L. Bealer
			Rena Cowley
<b>STAFF:</b>			Brian Fletcher
Keisa Williams			Cpt. Shan Hackwell
Minhvan Brimhall			Rep. Stephanie Pitcher
			Judge Mary Noonan
			2 unknown call-ins

**1) Welcome and Approval of Minutes (Judge Harmond):**

Judge Harmond welcomed committee members to the meeting. The committee considered the minutes from the December 3, 2020 meeting. Lorene Kamalu noted that the acronym for the Utah State Association of County Commissions and Councils on page 2 should be USACCC. With no objections or further discussion on the minutes, Ms. Kamalu moved to approve the minutes as amended. Rich Mauro seconded the motion. The committee unanimously approved the minutes.

## **2) Update: New Salt Lake County Time-to-File and Initial Appearance procedures:**

Mr. Graves: The effort started this week. Every morning the DA's office gets a list from the jail of everyone booked into the jail within the last 24 hours, but prior to 7:45 am that morning. The list then gets forwarded to a judge in the Third District who determines the filing deadline based on the offense(s) for which the individual was booked. For someone booked on a violent felony, as defined in Utah Code 76-3-203.5, the time-to-file deadline is the four calendar day period outlined in URCrP rule 9. For all other offenses, the judge changes the pre-filing release date to 48 hours. In those cases, the charges must be filed by 3 pm on the day following the booking date; otherwise, the individual will be released on pretrial services or on his own recognizance. We've just started, but it seems to be working well so far.

Cpt. Kiddle: Over the last couple of weeks, the SLCo jail hasn't received many of the 96 hr filings by 3:00 pm. We've been getting them between 6:00-8:00 pm at night, almost 5 hours after the deadline has passed. This is happening on a wide range of offenses, including domestic violence and 2<sup>nd</sup> degree felonies. We have been paying attention to this issue, and trying to communicate when we see a problem.

Mr. Graves: That is problematic. We need to continue to have those discussions with our special victims unit to make sure we are not missing our filing deadlines.

Mr. Mauro: It seems to be going well from our perspective. Cpt. Kiddle has arranged for us to have access to our clients for about 45 minutes prior to the hearing. We are very appreciative of that. I have been receiving positive feedback from my folks thus far. We are only on day four, so we'll see it how goes moving forward.

Cpt. Kiddle: It would be helpful to get the list from SLLDA earlier. With court ending when it does, sometimes we have to rush to get a person down to the courthouse to allow your guys time to access the client. If we could get the list sooner that would be helpful.

Mr. Mauro: The sooner we can get the list to you the better off we will be.

Rep. Hutchings: Have we done enough to provide the jail with the technology they need to be able to do any of this virtually? Are there any additional "asks" that we should be making to help fill in the gaps?

Mr. Mauro: I think Cpt. Kiddle and Jojo Liu have procured some laptops that can be utilized for that purpose from the CARES Act fund. I know Cpt. Kiddle and Lt. Warnick have been letting people use their own personal computers, but I think new laptops would expand our ability to be able to communicate with clients. Ideally, when it is safe, we can have those visits in person several hours before a hearing, if not the day before, but in the meantime having the laptops would help greatly.

Cpt. Kiddle: We have not received the computers yet. For the time being, we are able to manage by using my and Lt. Warnick's laptops for court hearings. If things get bigger, it could cause a problem.

Rep. Hutchings: The legislature has a ton of them in surplus that have been turned in with very little usage. If you contact the legislative IT group they can get you set up with them.

Chief Dumont: We recently received a quote for the laptops and will be using funding from the CARES Act. We hope to get those soon. We will be meeting with our fiscal team this week.

Judge Harmond: This really is a team effort and I appreciate the jail's cooperation in facilitating the process. We all may have to get used to doing things a little differently. Thank you everyone.

### **3) URCrP Subcommittee:**

- Rule 7 and 7A drafts for review
- Working on new pretrial detention hearing rule

Ms. Williams: The rules subcommittee was asked to look at procedures and evidentiary issues related to pretrial detention hearings, and to consider both the legal and practical aspects of providing additional information to judges at the probable cause phase. The subcommittee completed proposed amendments to URCrP rules 7 and 7A. Judge Kendall, Josh Graves, and Rich Mauro will be working on a new rule on procedures for pretrial detention hearings. The subcommittee hopes to have a draft prepared for the committee's consideration at the next meeting.

In rule 7, the language about notice (starting at line 30) under release conditions was stricken. We received a lot of feedback that the language was confusing and unnecessary because the notification requirements are clearly spelled out in code. The least restrictive and ability to pay language matches what's in the code, and accounts for existing and emerging caselaw.

A lot of the feedback the committee received indicated a need for clear timelines. The new pretrial detention motion section begins at line 65. That change is consistent in both rule 7 and 7A. Those rules address what happens at initial appearance. If a prosecutor filed a motion for pretrial detention, the first appearance court must set a pretrial detention hearing without unnecessary delay, but no later than seven days after the initial appearance. Upon application and a showing of good cause by either party, the court may allow up to a three-day continuance. After that, the court may allow another three-day continuance with the consent of the defendant. The language in (e)(2) was pulled directly from the code.

Mr. Mauro: We looked at a couple of options on time limits. Generally, under the federal statute, they have five days, excluding weekends and holidays. We thought a seven-day period, including weekends and holidays, was a reasonable amount of time, and it's consistent with what a lot of other states do.

Mr. Graves: I think seven days is reasonable after the initial appearance.

Judge Harmond: In light of virtual hearings, it seems to be a little more nimble.

Judge Eddington: I don't see any problems, at least not for rural districts. We don't have the same time challenges.

***Judge Eddington moved to approve the proposed changes to rules 7 and 7A and submit them to the Rules of Criminal Procedure Committee for consideration. Judge Robison seconded and the motion passed unanimously.***

#### **4) Providing additional information from LE & pretrial at PC phase (mechanics):**

Judge Harmond: Ms. Jacobsen and Cpt. Kiddle have been working on some of the mechanics involved in law enforcement and pretrial services providing more information to judges at the pretrial phase.

Ms. Jacobsen: The first question was to identify the information we have that judges aren't getting. That would be active warrants, NCIC hits, federal detainers, and recent criminal history. Now we need to determine what information everyone wants, and during what timeframe? The last two years or four years? Past compliance with supervision? Whether the person is active with AP&P? Whether the person is going to be released to the Board of Pardons?

The most concerning scenario is when a client gets booked and released before the case is filed (arrest #1), and then gets booked again shortly afterward on a new offense (weeks or days later) (arrest #2), but because prosecutors haven't filed on arrest #1 yet, the judge is not aware of arrest #1 when making a release decision on arrest #2. If a case hasn't been filed, judges can't see it. Pretrial can see that a client has been booked four times in the last month, but that is not accessible to a judge.

As for what is appropriate to share, I am going to leave that for someone else to decide. I am happy to share what I can. I think the simplest place to start would be the no-bail eligible offenses in Utah Code 77-20-1(2). If the client is being booked on a felony and we have information that he was already released on a felony, that is simple for us to share. How we are getting things to judges right now is purely reactive. Pretrial met with Judge Kouris and Cpt. Kiddle's team about this. We have a couple of options. I can quickly pull up a report in pretrial's database, showing where clients are and the status of their workflow. It will show if the client has been screened and if pretrial decided to release or detain them (based on

our release authority). I sent a copy of that report over to Judge Kouris to ask if it's something he would like to see from a judge's perspective. Would it trigger a judge to ask for additional information like, why was he released, or why was he detained, or was it an appropriate release? Judge Kouris asked about something as simple as sending an email to the on call judge.

We are looking at moving one or two of our screeners to the jail to communicate with the jail staff when pretrial has already seen the person and plans take them on as a client, so they don't need to be seen by a judge. It would require judges' buy-in and would take us back to the paper-process before the electronic PC system.

Cpt. Kiddle: The idea is to put pretrial on the calendar and have them work closely with the PC clerk and the booking clerk to quickly identify the clients pretrial wants to take, so we are not doubling up on work. One of the trends I see is that pretrial will have someone up front and will start working with them, and then the judge issues a determination that is contrary to what pretrial is doing. I think implementing this process will save time and will be a little more streamlined.

Ms. Williams: The sequencing (of decisions) issue is a big issue. It's been on our radar for quite a while and it's something we've been wanting to fix, but it would require fairly extensive programming. In Salt Lake County, the 3<sup>rd</sup> district court granted release authority to pretrial services up to, and including, non-violent third degree felonies. In the paper world (before the electronic PC system), the on-call judge would receive a stack of printed PC affidavits every morning. Arrestees already released by pretrial were not included in the pile. In the new system, all PCs are sent to the on-call judge electronically in real time, and there is no mechanism for pretrial to indicate that they have already released (or plan to release) a person, meaning those PCs remain in the judge's electronic queue. Judicial release decisions and pretrial release decisions are frequently happening at the same time. We want and need to fix that.

I am not necessarily opposed to Ms. Jacobsen's idea of the jail not submitting an electronic PC on an individual that pretrial has released, but there are some downsides that you need to be aware of. You would be reducing judicial workload to some extent, because judges wouldn't have to review PCs for individuals that pretrial chose to release, but you'd be adding to the judicial assistants' workload. And the issue of getting more information to judges on the PCs they do have to review would still exist.

If a PC wasn't submitted through the electronic system, a PSA could not be generated, and the probable cause affidavit, PSA, and release order would not be available to the public or to attorneys in Xchange. Those documents would also not automatically attach to the case, once filed. They would have to be sent to the court in some other way (email?) and then manually loaded into the file by a clerk. In addition, pretrial would have to manually calculate a PSA on every PC not submitted through the system.

Ms. Williams summarized her proposal in the committee's packet, noting that the AOC's IT Department has not reviewed the proposal.

My idea would come with a price tag and the programming time would be substantial. However, I think it's the right way to do it, especially given our need and desire to capture data so that we can track what's happening in the pretrial arena. Right now, when pretrial makes a release decision and sets the conditions of release, the AOC doesn't have that data.

Cpt. Kiddle: Would that be an addition to our current process, or would it be a new process?

Ms. Williams: Under that proposal, the process for law enforcement wouldn't change. Law enforcement would submit their PCs just like they do now. This would affect the court and pretrial services.

Judge Harmond: Because of the unique nature of Salt Lake County's pretrial program, if a judge decides they want more information from pretrial services about a particular individual, an email would be an appropriate means. Concerning the additional information listed at the bottom of Ms. Jacobsen's proposal, I don't see any problems, legally, with providing that information to a judge, and it would be extraordinarily helpful. If we could find a way to incorporate that kind of information as a first step, it would certainly be helpful to judges in general. The process Ms. Williams is describing is big and would affect Salt Lake County more than anyone else. I am not sure that the IT department should be trying to do that, if it is not applicable go everyone.

Mr. Mauro: We had discussions about making pretrial's information available to the party's defense attorney and the prosecution. That would be immensely helpful in preparing for a hearing, and would streamline many first appearance calendars.

Judge Eddington: I would certainly appreciate that information.

Ms. Jacobsen and Mr. Mauro discussed the mechanics of sharing SLCo pretrial's information with all parties. Mr. Arishita recommended the use of Google Sheets.

Judge Harmond: Is it possible to modify the current PC system to add a couple of check boxes with like, the individual is out on AP&P, or the client is on pretrial services? Those could easily be checked when a PC is being prepared by law enforcement, and it would be extremely helpful to everyone. I don't know how much programming that would take or how much work it is for the jail staff.

Mr. Arishita: For Ms. Williams' idea, we would have to design the system to be accessible by pretrial services across the state. But as a spin up, we could start with SLCo pretrial so judges are not making determinations concurrently while somebody is being released.

Deputy Greenwell: Our PC system is going fairly well. I attend initial appearance court. We don't have the staff to do what Ms. Jacobsen is describing. Most patrol officers put as much information as they can about the case and charges in their PC statements.

Ms. Williams: For Deputy Greenwell and other smaller programs, if the goal is to get more information out to judges at the PC phase, Judge Harmond's idea of adding checkboxes to the PC system would probably work best. The boxes would be added to the law enforcement side of the PC system. It would take programming time and money, but it would allow law enforcement agencies to get more information to judges without adding it to the PC affidavit itself.

Judge Harmond: A general question to law enforcement participants, do you think it would be difficult to have a checklist in the PC system that would allow you to note whether an individual is on a probation hold, or Board of Pardons hold, or already with pretrial services? Do you have that information readily available in the jail?

Cpt. Kiddle: We don't have that information readily available. We depend on pretrial or probation for that information. If the checkboxes were added to the PC system on the law enforcement side, in SLCo, we could have pretrial sitting next to my PC team, making it very easy to communicate back and forth if pretrial was taking someone out or not. And if pretrial release wasn't granted, we could have a list of items that they could check saying, currently the person has pending charges, etc.

Cpt. Hackwell: We don't usually know whether someone has an immigration hold when we're submitting a PC to the judge, so I don't know if adding that checkbox would be helpful.

Judge Harmond: We obviously need to do some more work, but this is a good place to start.

Ms. Williams: I would recommend asking the subcommittee to put together what the information in those check boxes should be on the law enforcement side and get a quote from DPS and our IT team to see how long it would take and the costs involved. That would give us an idea of whether it's an idea the committee wants to pursue. This was with the rules subcommittee, but at this point, it might be a better fit for the data collection subcommittee.

Rep. Hutchings: I reached out to Rep. Anderegg to see if would be willing to champion this funding-wise, not necessarily a building block request for any agency, but doing it internally as a funding request. He is absolutely interested if we are able to create a wish list and dollar amount request. I would be happy to help push this.

Judge Harmond: Great. If the data collection subcommittee wouldn't mind taking it on, focus on a checklist function rather than a narrative to simplify it for jail staff. It should be available for the whole state.

## 5) Data Collection Subcommittee Update:

- SLCo Jail Dashboard
- SLCo Bail/Pretrial Dashboard

Ms. Liu: Tucker Samuelsen and I are from the Salt Lake County Mayor's Office of Criminal Justice Initiatives. In that capacity, we are staff to the Criminal Justice Advisory Council and much of what we do to support the Council's decision-making is with data. Some of the work we're doing aligns with the data collection subcommittee under the leadership of Rep. Hutchings. We have been wanting to create an integrated pretrial dashboard to track performance outcomes in real time. It wouldn't just be a static, quarterly or yearly report. As we are implementing new practices, it would alert us to where things might be problematic and where we might need to put up additional guardrails. Mr. Samuelsen will show you what we have so far and what the data collection subcommittee has identified as future next steps. We are also hoping for some input from this group.

Mr. Samuelsen: One of the inherent challenges in doing this work is that the pretrial process is not contained within one agency. You have to get data from the court, the jail, and the counties. Being able to gather people from all of those different agencies in a virtual room has been useful and has helped guide us through the process. Essentially, our goal in building the dashboard is to identify key metrics to track system performance moving forward, and as a platform to share data and inform about the system in general. A dashboard is a very good tool to show aggregate looks and to inform about a whole process. The goal is to figure out the metrics and to inform about policy on a real time basis. We wanted to create something that would be useful to stakeholders who are familiar with this process.

Mr. Samuelsen walked the committee through the pretrial dashboard and preliminary data.

Ms. Williams: Does anyone have feedback on things that you think would be important for us to track? Policies and procedures change from year to year. We need something that will allow us to track data and provide an analysis for policy makers, no matter what the policy happens to be.

Feedback:

- Filter by people detained pretrial vs. people supervised/released on own recognizance
- Filter by people held without bail specifically, as opposed to other holds
- Filter by warrants, non-warrants, warrant type (failure to appear?)
- Filter by hold types (AP&P, fugitive)
- Filter by race, ethnicity, socioeconomic status (address?)
- Filter by number of bookings in certain time periods (30 days – 12 months)
- Capture the time between release and re-arrest. How long were they out before they were rebooked?

Rep. Hutchings: It is remarkable that we at a point where we can run a query and really look into these things. This gives us a great place to start. I think the legislature would be very interested in the breakdown of violent crimes or crimes against persons, and anything related to whether the rules and regulations are addressing the right population.

Ms. Liu: That's an important point. When we are trying to inform other stakeholders and the public, the significance of the way we break down some of the offense categories may not necessarily align with the takeaways. We can take a look at how we break down charge types so that it means something to those outside of the system.

Judge Harmond: Is there a way to capture the number of arrests within a 12-month period? One of the things this Committee struggles with is public safety concerns when someone is released and arrested again in a short period of time. Is there a way to capture data to shed light on the issue?

Mr. Samuelson: We have the number of prior bookings. Currently, it isn't limited by a specific period of time, but that's certainly something we could do. A tool like this is intended to be an aggregate view. We could show the number of prior bookings in the past 12 months - for this population of over 400 people, but not how many bookings a specific individual had over 12 months.

Ms. Williams: How do we duplicate these efforts across the state? Is the programming behind this dashboard something that can be shared? Is it expensive?

Ms. Liu: We use Microsoft Power BI and it is something we pay for. I am not aware of other dashboard software that is open-access. Salt Lake County holds a license and it's used across all of the entities in the county, so I don't know what the entry costs might be. We can find out and report back. I imagine getting a license to use Microsoft Power BI is not cost prohibitive. It's more about what it takes in terms of staff to create the queries and infrastructure to build a dashboard, and then what it takes to maintain it.

Mr. Samuelson: Once an entity purchases the software, we can help by sharing code/instructions on how to put their data and the software together to create a dashboard. We could cut out a lot of their legwork and they wouldn't have to reinvent the wheel.

Ms. Liu: The Davis County jail uses Spillman and they are looking to do essentially the same thing we did. We can learn from them to see how transferrable it is.

Rep. Hutchings: There is a precedent for the State to step up to help with funding on stuff like this. A couple of years ago we did it for prosecutors, helping provide statewide software. Would this committee support the data collection subcommittee in making a request to the State to look at whether there was a possibility of purchasing a statewide license so all jails could participate?

Comm. Kamalu: Anything we can do to simplify the process for counties, with a template or funding, would be amazing.

Rep. Hutchings: CCJJ is still looking at the definition of recidivism. I'm wondering if we could flag, not just re-arrests, but re-arrests for certain types of offenses. For example, a DV offender that re-offends on another DV offense, or violates a protective order. I think that could be very informative. Using our own State data, how consistently is somebody who has been convicted, or is waiting to go to trial on a certain type of crime, reoffending? And if they do, on what type?

Judge Harmond: That kind of data would allow us to have discussions based on facts, rather than anecdotal information.

Mr. Samuelson: That is much easier to track when you're getting data from different entities as well, like the court.

Ms. Williams: Is there a way to know whether someone has been booked in another county in the state? In a perfect world, if every jail in Utah had a dashboard like this, would there be a way to share that data? For example, if someone is booked in SLCo this week, you could see that they were booked into the Utah County jail last week?

Mr. Barron: It's possible, but the lag time in terms of querying multiple databases around the state to get that information would be a challenge.

Rep. Hutchings: That makes a great argument, though, for statewide support of the availability of this type of data. Otherwise, if we're jumping from county to county, we're missing a massive amount of very informative information for the judges. Isn't one of the criticisms of this reform that we don't know what people have done in other places?

Ms. Liu: We shouldn't become too wedded to the idea that the dashboard is the only product that can provide data analysis. It is true that we would not be able to integrate BCI information into something like this in real time, but we are on the cusp of also starting to get data from them in order to do a backward-looking analysis. Even though it's not real time, I think it would still give us a lot of insight about how our system is functioning.

Judge Harmond: I am sure decision-makers would appreciate 3, 6, or 12-month data if real-time data isn't possible. At least they would have some good, hard information from which to make decisions. The data can still be very useful even if it takes a bit of time to generate.

**Adjourn:**

There being no further business, the meeting was adjourned at 1:50pm with no motion. The next meeting is scheduled for February 4, 2021 at 12 pm (noon) via Webex.