

## **Pretrial Release and Supervision Committee**

Matheson Courthouse  
Executive Dining Room  
450 South State St.  
Salt Lake City, Utah 84111

January 5, 2017

### **Members Present**

Judge Paige Petersen- Chair  
Brett Barratt  
Patrick Corum  
Judge Angela Foncesbeck (via phone)  
Judge George Harmond  
Robert Hilder  
Senator Lyle Hillyard  
Representative Eric Hutchings  
Pat Kimball  
Judge Brendan McCullagh  
Judge Rick Romney (via phone)  
Rick Schwermer  
Judge Todd Shaughnessy  
Jennifer Valencia (via phone)

### **Members Excused**

Wayne Carlos  
Brent Johnson  
Adam Trupp  
Sheriff Jim Winder

### **Staff**

Keisa L. Williams  
Jeni Wood - recording secretary

### **Guests**

Jack Darrington, Intern for Senator Hillyard

### **(1) Welcome.**

Judge Paige Petersen welcomed the committee to the meeting. The committee addressed the November 3, 2016 minutes. Patrick Corum moved to approve the minutes as written. Judge McCullagh seconded the motion. The motioned carried unanimously.

### **(2) Update on PSA and Harvard Study.**

Keisa Williams updated the committee on the Arnold Foundation onsite assessment. The assessment was a success and the Arnold Foundation has agreed to grant Utah a license to implement the PSA, provided Utah agrees to pay Justice System Partners to assist with implementation. Ms. Williams stated the Judicial Council has approved Utah's participation in the Harvard Randomized Control Trial (RCT) in Davis, Morgan, Weber and Utah counties, as well as working with the Arnold Foundation to implement the PSA. The Memorandum of Understanding is still in the draft stage. Representative Eric Hutchings questioned whether the funding was a one-time deal or whether there would be on-going funding required. Ms. Williams stated that the funding to implement the PSA was a one-time deal. No on-going funding is necessary to utilize the PSA moving forward.

Judge Petersen mentioned that the team from Justice System Partners (JSP) was very impressed with Utah's court structure and data systems. Judge Petersen noted she and a few members of the committee met with the presiding judges in the Harvard RCT counties. The judges each agreed to participate in the study. Ms. Williams said some of the judges expressed concern about potential equal protection violations when a judge receives the PSA score for one defendant, but not another. Ms. Williams said Chris Griffin from the Harvard Access to Justice Lab explained that while the PSA is validated to predict risks for FTA, NCA and NVCA, the effectiveness

of the PSA, separate from pretrial programs, has not been studied or determined. Because there is no data yet suggesting that the PSA, alone, provides one defendant with a benefit over another, there is no equal protection violation. The RCT will study the effectiveness of the PSA here in Utah. Once that study determines that the PSA – by itself – provides a benefit, we will terminate the study and judges will receive a PSA for all defendants. Ms. Williams said Harvard needs baseline data from all four (4) counties before they can make a final determination about the viability of conducting the RCT here in Utah. Ms. Williams said that Ron Bowmaster has been working on gathering the necessary data. Ron is hoping to have all the data to Harvard by the end of January. Judge Shaughnessy said the time table is basically to sign the MOU, start the onsite meetings with the working group and then in six months be up and running.

Ms. Williams said originally, the plan was to use Arizona for training in order to cut costs. However, the cost estimate was low enough that we may not need Arizona's assistance. Rick Schwermer said that if we used Arizona, we would most likely need to pay them a fee for their time and travel expenses. Ms. Williams has been in contact with the Arizona group and said they are more than willing to assist with whatever we need, even simple questions, regardless of whether we utilize them for training. Mr. Schwermer suggested not using Arizona since JSP is able to conduct the training at a much lower cost than was anticipated.

Representative Hutchings noted that this could be an opportunity for the Utah courts to train other states in the future. Pat Kimball said Salt Lake County Pretrial is in the process of revalidating the SLPRI. Judge Shaughnessy wondered about the cost of interfacing with the Department of Public Safety (DPS). Mr. Schwermer stated the courts would cover the DPS data costs through a CORIS rewrite. Senator Lyle Hillyard said he was concerned about what defendants might disclose during their initial interviews. Ms. Williams explained that the PSA does not require an interview with defendants, but uses static information only that will be pulled automatically from criminal history and CORIS data. Mr. Schwermer said he isn't sure how the algorithm scores pending charges.

The committee discussed the difficulty in obtaining contact information for defendants in order to provide automatic court reminder notices. Ms. Williams noted it could be part of the release decision/agreement, that defendants are required to give contact information for future court notices. Representative Hutchings noted there are quite a few citations where there is never a court appearance. Judge McCullagh said many times those defendants have multiple charges where they end up in court anyway. Mr. Corum said Utah County has found many of the defendants are high-risk but have had very little court involvement. Judge Shaughnessy said the Third District Court may be getting fingerprint equipment for the courthouse. This is especially important for defendants who have not been booked into jail yet. This would allow a report to immediately be generated.

Ms. Williams mentioned that she has been asked to provide an update on the PSA/Pretrial initiative to the Bail Bond Oversight Board meeting next week. Ms. Williams will update the committee after the meeting.

### **(3) Rule Amendments – Time to File Information.**

Ms. Williams said that the Judicial Council has tasked the Pretrial Committee with creating or amending a rule or rules to establish a consistent statewide timeline for the filing of an Information. However, the Rules of Criminal Procedure Committee has already begun work on those rule changes, so Ms. Williams suggested that this committee allow the Rules of Criminal Procedure Committee to complete their amendments and present them here for review/edit prior to submission to the Judicial Council. Patrick Corum, Judge McCullagh and Brent Johnson are all members of the Rules of Criminal Procedure Committee. Judge McCullagh briefly described the potential changes and the reasoning for the changes and how this may affect the constitutional rights of individuals. A couple of the rule drafts have been completed already. Right now the Rules of Criminal Procedure Committee is working on URCrP Rule 7. This rule affects those who are booked without warrants. Judge Shaughnessy noted that one of the Arnold Foundation requirements is that an initial pretrial release decision be made within 24 hours. Judge McCullagh said they are working on including this requirement. Mr. Schwermer said Senator Hillyard has a bill file open to clarify this as well. The committee discussed exactly which defendants this rule would apply to, including individuals whose case was initiated with a warrant. The

committee agreed that they didn't want to mold the rules to fit high risk defendants, but instead the rules should apply to everyone. Judge Petersen expressed concern that there wouldn't be an OTN number assigned for defendants who appear in court without having been booked into jail. Currently defendants must schedule an appointment with the jail to be booked and unfortunately, the jail is six weeks out for scheduling. Judge Shaughnessy said he believed it may work best to have the jails provide a list of all defendants who were booked within the past 24 hours and the court could address all of them at once. Judge McCullagh noted that the Rules of Criminal Procedure Committee would be meeting in a couple of weeks to push this along. Patrick Corum and Judge McCullagh will report back to the committee with the proposed rules.

#### **(4) Subcommittee Direction.**

Ms. Williams mentioned there are currently three (3) subcommittees: Data Collection, chaired by Judge Fannesbeck; Legal and Processes, chaired by Brent Johnson; and Risk Assessment Tool & Monitoring Program, chaired by Patrick Corum. Ms. Williams said she is available to meet individually with the chairs to discuss each subcommittee charge in detail and help determine the process and direction each chair would like to take. Judge Angela Fannesbeck stated she is still fairly new to this committee and would like to meet with the subcommittee to discuss goals. Judge Petersen said she would like to be kept informed of the status of each subcommittee and will attend the subcommittee meetings in person or by phone, as her schedule allows. Judge Petersen encouraged the subcommittees to meet during the committee's off months. Ms. Williams will send out Doodle calendars to schedule each subcommittee meeting.

Senator Hillyard encouraged the committee to accomplish as much of its work as is appropriate through court rules rather than legislation. Judge Petersen asked the Legal and Processes Subcommittee to quickly review and report if there are any legislative issues that need to be addressed during this legislative session. Judge McCullagh does not believe there are any immediate legislative concerns. Judge Petersen will ask Brent Johnson to research the issue and report back. Mr. Schwermer said there are several bail bond industry-initiated issues before the legislature this term.

Judge Petersen asked the chairs of the subcommittees to notify her of their meeting dates and times.

#### **(5) Adjourn.**

The next meeting is scheduled for March 16, 2017. There being no further business, the meeting adjourned at 1:44 pm.