

Pretrial Release and Supervision Committee

Matheson Courthouse
Council room
450 South State St.
Salt Lake City, Utah 84111

March 16, 2017

Members Present

Judge Paige Petersen– Chair
Brett Barratt
Wayne Carlos
Undersheriff Scott Carver
Judge George Harmond
Senator Lyle Hillyard
Brent Johnson
Pat Kimball
Judge Rick Romney
Judge Todd Shaughnessy
Jennifer Valencia (by phone)

Members Excused

Patrick Corum
Judge Angela Foncesbeck
Robert Hilder
Representative Eric Hutchings
Judge Brendan McCullagh
Adam Trupp

Staff

Keisa L. Williams
Jeni Wood - recording secretary

Guests

Dan Becker
Ray Wahl

(1) Welcome.

Judge Paige Petersen welcomed the committee to the meeting. Judge Petersen welcomed Undersheriff Scott Carver to the committee. Mr. Carver will replace Sheriff Jim Winder on the committee. Judge Petersen said Robert Hilder is quite ill and may need to be replaced.

(2) Update on PSA and Harvard Study.

Keisa Williams updated the committee on the Arnold Foundation PSA risk assessment. Ms. Williams said the MOU and contracts have been signed and on May 12, 2017, the Working Group will meet with Justice System Partners (JSP) for the first implementation meeting. Ms. Williams noted several people from the court's IT staff will attend as well. The anticipated go-live date is November 13, 2017 for Davis, Morgan, Weber and Utah Counties. Salt Lake County will follow. Ms. Williams said Salt Lake County Pretrial Services has decided to use the PSA instead of the SLPRI. If the Harvard Access to Justice Lab determines that a study will be viable, they will conduct a side-by-side comparison of the PSA and the SLPRI. A side-by-side comparison of a dynamic tool versus a static tool has not been done before in any state that Ms. Williams is aware of. Ms. Williams said the comparison study will be free and will answer the debate in the Pretrial Industry right now about the effectiveness and necessity of offender interviews. Judge Petersen explained that the working group's task is to conduct the actual implementation of the PSA tool.

(3) Subcommittee Updates.

Ms. Williams noted that Judge Foncesbeck and Patrick Corum were unable to attend the meeting; therefore Ms. Williams will be updating the committee on the Data Collection and Risk Assessment Tool and Monitoring Subcommittees.

Risk Assessment Tool & Monitoring Subcommittee. Ms. Williams said the subcommittee is reaching out to districts/counties throughout the state to gather information about current or planned pretrial programs. Ms. Williams discussed a few current programs. Judge George Harmond discussed the Carbon County pretrial program and said it's difficult to get detailed information on this program because the majority of the individuals

under supervision are coming through the justice courts. Judge Harmond said one of the issues they are working to address is what to do with individuals who violate the terms of their pretrial release. Judge Petersen said Summit County is confronting the same problem. Pat Kimball said Salt Lake County Pretrial has been trying to find a solution to that problem for 40 years. Unfortunately, there isn't a perfect universal answer for every defendant. Salt Lake County usually tries to get defendants back on track and in compliance. Judge Todd Shaughnessy said one of the challenges is finding the right pretrial employees to be in charge of the defendants. Those people need training and the right mindset. Undersheriff Scott Carver said supervision and the importance of training is so important because each defendant is different and officers' response should be considered on a case by case basis. Mr. Carver said recently an officer wrote three (3) warrants on the same four (4) defendants in one month. They kept being released and then absconding. Ms. Williams said her hope is that in that example, a pretrial risk assessment would have indicated that those individuals presented a high risk for failing to appear and specific release conditions could have been tailored for them to avoid that problem.

Data Collection. Ms. Williams discussed the data collection subcommittee. She noted the first meeting was mostly an overview and explanation of the PSA and pretrial practices because several members were not on the committee and had never seen any of the data or presentations on the PSA. Ms. Williams and Judge Fannesbeck are working to develop a more in-depth agenda for the next meeting including specific assignments.

Legal & Processes. Brent Johnson updated the committee on the legal & processes subcommittee. Mr. Johnson said the initial meeting was a basic discussion and introductions. Mr. Johnson said much of the subcommittee's work will be to develop a pretrial release guide for judges and revising rules necessary to accomplish those goals. Mr. Johnson staffs the criminal procedure advisory committee and that committee has nearly completed a revision to Rule 7 which will apply to pretrial release. Mr. Johnson said the subcommittee will need to wait to see what the Legislature does during the interim session in regard to the legislative audit before they can address many of the recommendations therein.

(4) Legislative Audit. A Performance Audit of Utah's Monetary Bail System.

Mr. Johnson provided an update on the recent legislative session. Two bills affecting pretrial release passed during the session. The first involved jail release orders. Currently jail release orders are only used in domestic violence cases. They will now be required in some sexual abuse cases as well. The other bill was SB 167. Early on, it was suggested that the bill took away the ability of judges to use cash only bail, at which point the Legislative Liaison Committee noted that they would oppose the bill. Ultimately, the committee took no position on the bill because it did not eliminate the ability to use cash only bail. The bill, as passed, requires surety bonds and cash bail to be set at equal amounts. For example, a judge couldn't order a defendant released on a \$5,000 surety bond or \$500 cash bail. The judge in that example would be required to set cash bail at \$5,000; thus incentivizing defendants to use a surety agent in order to post the lower cash amount.

Mr. Johnson reviewed the legislative audit. He stated that this is the second of two legislative audits on cash bail. The first legislative audit, completed last year, addressed whether the use of cash bail was lawful. That audit concluded that the use of cash bail is lawful. This second audit was ordered to determine the effectiveness of cash bail versus surety bail. Mr. Johnson said the surety bond companies opposed the audit's results because they felt it wasn't comprehensive enough. Wayne Carlos agreed. The audit was presented during a hearing at the beginning of the legislative session and ultimately, it was sent to the interim committee for a detailed review this summer.

Mr. Johnson highlighted the three (3) main provisions of the audit. Area 1: Is cash bail effective? Mr. Johnson noted there seems to be a lack of understanding on the part of the legislature regarding the definition of various terms. Specifically, cash bail and cash only bail are commonly misunderstood and used interchangeably when, in fact, they are different. Mr. Johnson said when someone mentions cash bail, for the most part, they mean cash only bail. Mr. Johnson said in answering the first question as to whether cash bail is effective, the audit concluded that while cash bail was used infrequently, when used, it resulted in higher appearance rates than surety bonds. The auditors sent a survey to judges throughout the state. A survey of judges indicated that the

Court's rules and the statute are ambiguous and may be conflicting regarding the use of cash bail. Therefore, judges are confused about their ability to order cash bail. Mr. Johnson said his subcommittee will review those rules.

Area 2: Pretrial release decisions need to be evidence-based and account for risk. Mr. Johnson said the audit recommended a process for adopting a validated risk assessment instrument and provide this instrument to all judicial officers in the state. Additionally it recommended the development of a case management system that incorporates a pretrial service module to track mission-critical pretrial data. The audit also recommended collecting and reporting key outcome metrics. Mr. Johnson said this Committee is on track to address those recommendations. Any inconsistencies in the statutes and rules will be addressed and revised. This will give guidance to not only judges but clerks as well.

Area 3: Bail forfeiture processes. The audit recommended reducing statutory timeframes for processing forfeitures from six months to between one and three months to better align with other states. It also recommended requiring all forfeiture notifications to be processed electronically. The third recommendation was to design a forfeiture process that improves court appearances and reduces the number of automatic bond exonerations. The fourth recommendation was to provide ongoing training. The fifth and final recommendation was to adopt a court date reminder notification system.

Judge Shaughnessy asked Senator Hillyard how the interim legislative session will work. Senator Hillyard provided a detailed explanation of the interim session, including dates and times of the meetings.

Bret Barrett discussed terminology and said there is clearly an issue with terms being misunderstood by the insurance department, the judiciary, the judges, and the bail bondsmen. Mr. Barrett said the Insurance Department issued a bulletin last fall because people, other than licensed bail bondsmen, were creating their own loans with defendants and bailing them out. Judge Shaughnessy agreed that term clarification would be a good idea in order to create consistency. Judge Shaughnessy stated that judges may prefer setting cash only bail because the forfeiture process is more efficient. Judge Shaughnessy noted cash bail is only returned to the person who posts it, not to the defendant. Senator Hillyard said he thinks there should be a reasonable amount of bail set. He was concerned that some of the bail amounts were set incredibly high, leaving defendants with no option to bail out of jail. Judge Shaughnessy noted there is a percentage of the arrested population that has the financial ability to post bail; however, there is also a group that has absolutely no resources to bail out no matter how low the bail is set. Judge Harmond said he believes there are a considerable amount of people who fall in the second category. Wayne Carlos said many people have additional resources through friends and family.

Mr. Johnson said the auditor directed some of the recommendations to the Administrative Office of the Courts and some of the recommendations to the Legislature.

(5) Adjourn.

Ms. Williams discussed the July 6th meeting date. Ms. Williams suggested moving the meeting to July 13th to avoid absences due to the 4th of July holiday. The next meeting is scheduled for May 4, 2017. There being no further business, the meeting adjourned at 1:10 pm.