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

Webex video conferencing
October 1, 2020 – 12 p.m. (noon) to 2 p.m.

MEMBERS:	PRESENT	EXCUSED
Judge George Harmond, Chair	x	
Heidi Anderson		x
Wayne Carlos		x
Judge Keith Eddington	x	
Josh Graves	x	
Rep. Eric Hutchings	x	
Andrea Jacobsen	x	
Brent Johnson	x	
Comm. Lorene Kamalu	x	
Judge William Kendall	x	
Cpt. Corey Kiddle	x	
Joanna Landau	x	
Richard Mauro	x	
Judge Brendan McCullagh		x
Judge Jeanne Robison	x	
Reed Stringham	x	
Cara Tangaro	x	

GUESTS:

Josh Esplin
Rep. Pitcher
Lt. Cole Warnick
Dyon Flannery (for Wayne Carlos)
Jojo Liu
Paul Barron (for Heidi Anderson)
Brody Arishita (for Heidi Anderson)
Yvette Rodier-Whitbe
Renae Cowley

STAFF:

Keisa Williams
Minhvan Brimhall (recording secretary)

Welcome and Approval of Minutes (Judge Harmond):

Judge Harmond welcomed committee members and guests to the meeting. The committee considered the minutes from the August 6, 2020 meeting. With no objections or further discussion on the minutes, Judge Kendall moved to approve the minutes. Judge Robison seconded the motion. The minutes were unanimously approved.

Updates:

- **Various training sessions**
- **Feedback from stakeholders and training sessions**
- **Pretrial guide, forms, memos**
- **Unsecured Bond status**
- **JAG grant status**
- **Rules of Criminal Procedure**

Ideas for future Pretrial Reforms:

- **Data collection, sharing, and reporting issues**
- **Shorten time-to-file deadline**
- **Amend 77-20-1(2) to broaden categories of no-bail holds**
- **Hold initial appearances remotely within 48 hrs of arrest**
- **Community pretrial support**

Ms. Williams: I have been conducting various presentations and training sessions around the state over the last several weeks, including at the Annual Judicial Conference, local bench meetings, boards of judges, clerks of court, justice court clerks, the Department of Public Safety, Utah Association of Counties, Utah Prosecution Council, SLCo pretrial services, and with various other stakeholder groups. Ms. Landau will be hosting a CLE on October 30th for public defenders and criminal defense attorneys around the state.

Commissioner Kamalu: Ms. Williams' presentation on HB206 and Ms. Landau's presentation on the indigent defense commission were both effective. It was new to some of the rural counties but it was helpful for them to have an opportunity to express their thoughts with their peers.

Rep. Hutchings: In regard to training, when we were organizing real ID's with drivers' licenses, we made a bunch of videos. In-person training is great because you can ask questions, but it might be a good idea to create snippet videos or record of one of Ms. Williams' training sessions and post them somewhere so people could refer back to them.

Ms. Williams: I have a few videos of my trainings and I can send the links out to anyone who wants them. Please let your stakeholder groups know that I am happy to do local trainings for individual offices, local bar associations, etc.

Mr. Graves: Ms. Williams did a training for the SLDA's office. It was very insightful and the materials were great. We received many positive comments. A couple of weeks ago Will Carlson and I conducted an office-wide training covering what to expect starting today and I think it was well received. There is trepidation on our side given how significant of a shift this will be in how we approach prosecution, but I think everyone generally understands what is expected and required from our end of the bill. As far as implementation goes, it will just be a matter of

working out the unexpected problems that arise. I am developing a 10-15 minute presentation for dissemination across our law enforcement agencies, identifying the need for more detailed probable cause affidavits to assist magistrates making initial pretrial release decisions. That is something we hope to roll out in the next week or two.

Ms. Williams: Mr. Graves developed an amazing packet of materials for prosecutors that includes a guide, draft orders, etc., and he has been gracious enough to share those materials with all of the prosecuting agencies across the state.

Cpt. Kiddle: One of the biggest issues we've had is in getting arresting agencies to start providing SID numbers when they submit their PC affidavits. Last week we had 77% SID submission rate and we are working to get that number even higher.

Ms. Williams: I don't interact with arresting agencies as much as I do with the jails. I am happy to meet with them and provide the same training I did for the Department of Public Safety. I focused on the need for SIDs and explained how SIDs assist us in providing public safety and appearance information to judges. A lot of people don't realize that at the PC phase, judges don't have access to criminal history information. All judges have is the PC affidavit and a PSA if we can generate one.

Mr. Graves: I can incorporate some of the SID training materials in the presentation we are putting together for our officers. I'm not sure how many of them know where to locate the SID or if it is easily accessible.

Judge Kendall: When I'm on signing duty, having an SID streamlines the process. When I don't have a PSA or it's a questionable case and I'm considering detention, I can jump over to judicial workspace and look the defendant up to see their active cases and any warrants in our system.

Judge Harmond: Our bench has a bi-monthly meeting with defense attorneys, prosecutors, and jail staff from both Carbon and Emery counties. When we started talking about unsecured bonds and HB 206 there were a lot of blank stares. I think they have been working hard to be ready to go. Carbon County has a pretrial supervision program that has been a blessing because it gives us an option that we wouldn't otherwise have to release people who should be released.

Ms. Williams: All of the jails in the Seventh District are ready to process unsecured bonds. I have been surprised that many prosecuting agencies haven't trained or even informed their local law enforcement agencies on HB206 and related changes to pretrial practices. Law enforcement agencies have been upset, saying: Why didn't you tell us? Why did the courts wait until the last minute? Does anyone have thoughts on how we could improve communication to ensure the information is relayed, and relayed timely?

Mr. Graves: Our challenge in Salt Lake County is the sheer number of agencies. We hold a monthly meeting with all of the chiefs, where we pass down information, but we are relying on

15 different individuals to pass that information on to their staff. It doesn't always trickle down the way it needs to. It is certainly something that needs to be improved upon with training. Many of our agencies have their own counsel and they like to be included, but given their lack of connection to criminal prosecution, I'm not sure they are best suited to provide that type of training. I am hoping by releasing the 15-minute educational video that they can watch on their own time, we can start spreading the word better.

Commissioner Kamalu: The Davis County prosecutor may not see training law enforcement agencies as their responsibility. We also have 15 agencies and unless the county attorney is asked to do so, I'm not sure they would.

Ms. Williams: That makes sense, although if prosecutors aren't training their law enforcement agencies, it puts me in an awkward position. I cannot give legal advice. I provide information and then encourage them to talk to their county attorneys.

Ms. Tangaro: Look at the public comments for URCrP rule 16. Prosecutors from almost every agency responded. Each agency has identified a person in charge of legislative rules and changes.

Ms. Williams: I will take a look at that. That may be the answer. If I can get an email distribution list for those key people in agencies across the state, when something like this comes up I can send a mass email letting them know what we're working on and leave it in their hands.

I have been asking for and receiving substantive feedback on HB206-related reforms. Data is a common theme, with several people suggesting that we collect data and monitor the effects of the reforms on criminal activity, but not just criminal activity. The questions have been more granular – broken down by the charge type and severity, including what release decision was made. The data collection subcommittee will be studying those issues.

Rep. Hutchings: I haven't heard much or seen any data on crime rates, but one thing that keeps coming up is homelessness. Homeless individuals aren't being arrested as often, or maybe they are being booked and immediately released. If so, released to where? Released to the Jordan River? That is a pretty common threat and it hasn't slowed down. In a meeting this morning, people expressed concerns about 7200 South between State Street and the Jordan River. I don't know that there has been an uptick in crime, but people have been camped out everywhere. A lot of municipalities are frustrated. That element should be a part of the data we're tracking.

Judge Robison: It's difficult to get jurisdictions to become part of the solution. We run a homeless court and some jurisdiction won't participate. We are constantly working with centers to get that population into treatment, housing, employment, etc. So many of the municipalities want nothing to do with the homeless issue and they won't participate in such programs. It frustrates their efforts if they want those individuals out of their jurisdictions and off the streets. When people get housing vouchers, they can take advantage of employment offers. If

municipalities help us get cases resolved, those people won't come up with a warrant on a background check and things of that nature.

Mr. Mauro: I met with Chief Brown this morning to discuss those same issues. In conjunction with the DA's office, our office can do creative things to address the homelessness. Our initial meeting this morning was to discuss alternatives to the kinds of things Judge Robison is talking about. We need service providers in the same room to help us problem-solve on people who are habitually homeless and suffer from mental illness and drug addiction.

Mr. Graves: What specific data points do we need to capture to illustrate the outcomes? One concern I have is that the pandemic will skew the data. Jail spaces are opening up, but that's because of precautions related to booking. To the extent that we do collect data, we need to be aware that those numbers may not be entirely reflective of normal operations, and we may never get back to normal. I'd like to track the number of pretrial detention motions filed and the outcomes in those cases. One issue I'm curious about as it relates to the homelessness issue is how we are dealing with the lack of an address. We are asking for small monetary bail amounts as a means to notify those folks of a pending case, but we obviously don't have an interest in holding them. We need to figure out some kind of mechanism to address that issue, even if it's just a quick book and release to obtain their contact information.

Ms. Williams: I agree. It's going to be really hard to make a causal connection even if we get granular. Mike Jones, a prominent researcher in the pretrial field, has been working in conjunction with the National Institute of Corrections to update their "Measuring What Matters" document, and he was kind enough to send us a copy. The data collection subcommittee can use it as a guide to identify the outcomes that are important to Utah, and from that, determine what data is needed to accurately measure those outcomes.

One example of overlap between pandemic-related initiatives and HB206-related reforms are $119 warrants. In response to COVID-19 (and unrelated to HB206), the Third District bench began issuing $119 warrants. When a defendant fails to appear at their first remote hearing, the goal is to get them reengaged with the court. By issuing a warrant in the amount of $119.00, the court is instructing arresting agencies not to arrest the person, but to let the person know that they missed a court appearance and they need to contact the court. The problem has been in getting the word down to all of the line officers in the various arresting agencies in Salt Lake County. People are being arrested and taken to the jail, which has created a nightmare for the jail and pretrial services.

Ms. Jacobsen: The biggest problem is that $119 warrants usually aren't the only thing an individual is arrested for. They also incur new charges…and have an outstanding $5,000 warrant on another case, three AP&P holds, etc.

Mr. Graves: If a person is booked on a $119 warrant and they have other outstanding holds, you could release them on the $119 warrant, but they will be held until they can address the probation issue or the new offense. If they are booked solely on the $119 warrant, we should

get good contact information and just provide them with a promise to appear. It would be great to have case managers out in the community making contact with people, documenting that contact, and working with the court to get a hearing date scheduled.

Ms. Jacobsen: Our office is getting contact information from individuals brought in on a $119 warrant and letting the jail know that they can be released as soon as any other holds have been cleared, but we don't have court dates to give them. We just tell them they need to contact the court.

Mr. Mauro: We worked with Judge Kouris to develop the concept of $119 warrants. They are intended to be a solution to what Mr. Graves is talking about. In regard to data, it would be interesting to know how many people on $119 warrants are actually getting notice. The goal is to save jail days, get cases on calendars, and provide reasonable notice and time to report.

Judge Kendall: When someone doesn't show up, we issue a $119 warrant in conjunction with setting a court date six weeks out. Notice is sent using whatever information we have. If they don't show up on the second court date, we issue a more substantial warrant.

Ms. Williams: These are great ideas and not just for COVID. Any time a large-scale reform like HB206 is implemented, we should be paying attention to what's happening and be flexible enough to make adjustments. The victims' council and several prosecutors have expressed public safety concerns related to the gap of time between an initial release decision (24 hrs after booking) and an initial appearance (could be a week later). Judges making the initial release decision have very little information. That was an issue pre-HB206. The difference is that pre-HB206, high monetary bail amounts were commonly used as a method to detain. Prosecutors were less concerned about safety because there was a high probability that the person wouldn't be able to pay for their release. Now we know that practice is unconstitutional.

Because of the presumption of own recognizance release, least restrictive conditions, and ability-to-pay analyses, victims' advocates and prosecutors fear more people will be released, posing a significant danger to victims. That, to me, highlights the infrastructure issue we've been discussing. In the very least, I think the time-to-file deadline should be significantly reduced and initial appearances should be held within 48 hours of arrest. That would mean holding initial appearances 6 days a week, but judges could delay making that initial decision until all parties were present and they have much more information about the danger a person poses to a victim or the public. Under HB206, prosecutors could file a motion for detention in serious cases and, if granted, would have a little more time to prepare a case.

Another idea is something Judge McCullaugh brought up at the last meeting. A few years ago, the legislature expanded the no-bail hold eligible offenses to include misdemeanor DV offenses. Other states have expanded their ability to hold someone without bail by eliminating the charge-based component. Those states allow judges to hold someone without bail, regardless of the severity of the charge, provided the judge makes a substantial evidence/clear and convincing finding that the person poses a significant public safety or flight risk. I think if we

were going to make that recommendation, it would need to be coupled with the right to counsel and a very quick detention hearing with full due process rights.

Rep. Hutchings: I would love to see us explore that. With all of the stakeholders here, there is an opportunity to identify ways to move cases along with more timely appointments of counsel and more timely hearings. Counties would be the biggest benefactors of a streamlined system that frees up jail beds. This is a good time to look at the system as a whole and make improvements, but we need to be very specific with our "asks" at the legislature, including the amount of money required to accomplish it. We should also look to see whether grant funds are available.

Mr. Mauro: When a person is charged with a class B misdemeanor DV offense, or even a third degree felony domestic assault, what should the release/detention decision process look like under those circumstances, and what are the mechanisms a prosecutor needs to have in place (or wants to have in place) to indicate a public safety risk? How quickly can we accomplish everything? What are those hearings going to look like, and what kind of evidence is admissible? Our lawyers are really concerned about reasonable monetary bail sets. Before, monetary bail was set high as a means of detention because we don't know the answers to those questions. With the way HB 206 is written now, there must be consideration of reasonable bail very early in the process. If a public safety risk is alleged and detention is sought, the burden of proof should be on the prosecutor.

Judge Harmond: That seems to conflate the purpose of monetary bail with public safety risk. Those are two different things. Monetary bail is there to ensure someone will come to court. Public safety risks are addressed by other criteria set out in HB 206. We need information from prosecutors about criminal history and other factors to assess public safety. If a person is detained, it's because they pose a public safety risk. Monetary bail wouldn't be set because money only ensures appearance. Data collection will allow us to see how this works on the ground. Is it adequate or do we need a bit of time to see how it's going to work?

Mr. Mauro: I agree. They are supposed to be and should be two separate considerations, but judges are continuing to conflate the two and are setting high monetary bail amounts to address public safety. We are also seeing judges kick the ball down the road to the next hearing, which may be 10 days later.

Ms. Tangaro: I echo the same frustration. That has been my experience in Salt Lake as well. It is not my experience in a lot of other jurisdictions, but those jurisdictions have been issuing summonses. Salt Lake is unique in both how judges deal with it and how the DA's office deals with it.

Mr. Graves: Starting next week that should change. There will still be outstanding warrants with high bail sets from cases filed before October 1st, but not moving forward. The biggest challenge is getting the information to the court. In any criminal investigation, a patrol officer makes the arrest and someone is booked, but the officer isn't the detective. They aren't doing the follow-

up investigation, checking in with the victim 24 hours after the trauma has passed and they can reflect more clearly on what occurred to them, etc. The case takes time to build, especially in cases involving a violent crime or a sex case. I understand the 48-hour window and I think we need to work on the turnaround time to at least get the information needed for an educated decision. The question is how?

We also need to work out when the detention hearings are going to occur. Our interpretation is that if we file a motion for pretrial detention within the 96 hours of arrest, we need to make a proffer that states a reasonable case for detention. I am nervous about having detention hearings at initial appearance for several reasons. First, the assigned prosecutor, assigned defense attorney, and assigned judge aren't at initial appearance. How soon can the court get someone subject to these detention hearings before the assigned judge? Friday or the next Monday? These are the kinds of gaps that need to be addressed. I think the courts are generally good at getting a person on the next available scheduling conference before the assigned judge.

Ms. Williams: If I'm remembering correctly, New Jersey sets detention hearings 5 days following the initial appearance, but allows for a three-day extension. HB 206 doesn't address specific timelines. That may be something the committee could recommend for next session.

Ms. Tangaro: I think the court should hire special criminal magistrates that only handle detention hearings, and one or two magistrates to sign warrants. The hearings could be held remotely and could be statewide.

Committee members discussed concerns raised about the potential for an over-reliance on pretrial detention, or a continued use of high-bail sets as a means of detention, due to a lack of timely information.

Judge Kendall: There are certain categories in federal court that trigger the ability to request detention. In all my years of practice in federal court, I don't recall seeing monetary bail once. A person is either a risk to the public, a risk of nonappearance, or both, or neither. If they pose a risk they are detained, and if not, they are released with or without pretrial supervision. If we expanded the no-bail categories, it would help us get further away from using monetary bail as a mechanism to hold someone. The trick is in how to get information to the judge at 6 am Saturday morning for a booking Friday at midnight? Having a criminal magistrate or two, whose sole responsibility is to make those determinations and handle detention hearings, would be very helpful in getting people a timely hearing and quick determination of the issues.

Ms. Williams: Along with that would be a need for additional public defender resources. Holding initial appearances so quickly, all defendants would need representation at least provisionally.

Ms. Landau: The early appointment of counsel is extremely helpful, but not if defense counsel isn't given notice and time to prepare.

Judge Harmond: We need to a way to get information to the court, but we are much better off than we were a few years ago. I think we need to trust judges a little bit because they take these things seriously. From this discussion, it sounds like the real hang up is in getting information to the prosecutor and defense counsel. We probably ought to be thinking in terms of what data and mechanisms are available that would allow us to get as much information as possible about an individual defendant to those two parties so that they can, in turn, present that evidence to a judge in a manner that is consistent with the rules of evidence and whatever rules are appropriate at these hearings. What is your typical source of information? How can we modify that process or make it electronic and more efficient? That's where you're going to see some real improvement in early representation.

Ms. Williams: In looking at other states, one uses an on-call prosecutor that law enforcement can call to triage and help make arrest determinations, including whether to release the person on a summons or book them into jail. Law enforcement has a list of offenses that they can cite and release, and a list of offenses that they have to book. It was one way of streamlining the process. Another way is to have a 24/7 shop like SLCo pretrial that can research criminal history and provide information to all parties electronically.

Mr. Graves: I think the idea is workable in theory, but it's a resource issue and something that would need to be restructured. We have on-call attorneys to advise detectives and review warrants in the middle of the night.

Ms. Williams: I have been researching possible solutions to our lack of funding for statewide pretrial services. In one state, a non-profit community organization provides support and pretrial services (in a sense) at no cost. Volunteers from the community organization attend court proceedings. Before a defendant's case is called, the public defender stands up and says, "Who is here for defendant X?" The volunteer meets family and friends of the defendant in the hallway and uses a questionnaire to learn more about the defendant and his or her circumstances. Do they have a job? Are they the primary breadwinner? Do they have a place to stay? What are the consequences if they aren't released today? Is anyone willing to provide support to the defendant like rides to work, childcare, or rides to court? That is a way for defense counsel (who otherwise wouldn't have time to do it themselves) to humanize the defendant and provide the judge with much more information.

Adjourn:

There being no further business, the meeting was adjourned with no motion. The meeting adjourned at 2 pm. The next meeting is scheduled for November 5, 2020 at 12 pm (noon) via Webex video conferencing.