Alaska Criminal Justice Commission
Pre & Post Trial Laws and Processes
Staff Notes April 24th, 2015, 1:30 PM to 3:00 PM
Atwood Conference Center Room 1270, Anchorage

Commissioners attending:	Stephanie Rhoades, Quinlan Steiner, Trevor Stephens (web)
Staff Present:	Susanne DiPietro, Mary Geddes, Teri Carns, Giulia Kaufman (note-taker)
Participants:	Phil Cole (ADOC), Leslie Hiebert

Future Meetings: **TBD**

The meeting opened at 1:40 PM.

1. Review Bail Survey Results (attached)

Steiner noted that the results of the bail survey confirmed previous assumptions. He noted that as a whole high monetary bails and the TPC requirement are generally seen as conditions which inhibit defendants to make bail. He said he agrees with the suggestion that judges should take a defendant's personal income into account when considering the bail amount. He added that without considering a defendant's personal resources a second layer of indecency which drives bail release is added. He also pointed out that if a defendant cannot make bail, the pressure to plea increases.

Next, the discussion turned to adding 24/7 as a condition of bail. It was pointed out that even though, the program has good prospects it has become a pile-on condition. Steiner said that, in a way, the program sets up people for failure. He said that it was intended to be a bail or probation condition, but if defendants violate the monitoring program they are not merely remanded but charged with a new crime. Rhoades pointed out that substance abuse is one of the main drivers of crime and posed the question, how it is possible to ensure that people do not consume those substances when they are out on bail. She said that there would have to be an alternative to 24/7. She also said that she would like to know the characteristics of the people who are unable to make bail.

Afterwards, the discussion turned to the bail schedules. It was established that there are multiple bail schedules across the state, which vary widely. For example, the bail schedule for a first-time DUI (and no priors) in one district may not require any monetary bail, but in another district the bail is $1500. Stephens said a court can overwrite a bail schedule based on an officer's request. Rhoades said, that a good place to start would be to unify the bail schedules, as it is unfair to defendants to have different bail schedules across the state. It was agreed that DiPietro would obtain all the bail schedules in the state and they would be discussed at the next meeting.

There was also discussion on how defendants and police are notified of bail conditions. There is a project in Fairbanks by which the police have electronic access to bail information. Stephens said that in his jurisdiction a defendant's conditions of release are routinely forwarded to the local PD. This is not the case in Anchorage.

2. Proposal to require clear and convincing evidence for conditions other than OR, and to loosen requirements for TPCs (attached)

Steiner's bail statute proposal was discussed. Rhoades said that she thinks, the group should consider completely revamping the bail statute, possibly rewriting from scratch rather than try to fix a few things, which are already known not to work (e.g., TPC requirement). She also said that she would like to hear presentations from national bail experts. The discussion was shelved until the next meeting.

3. Data expected on incarcerated unsentenced prisoners

Carns reported that Mike Matthews from DOC will be able to provide the group with more data with regards to people who are incarcerated because of bail violations by the time of the next meeting. Steiner also pointed out that the percentage of unsentenced offenders is actually higher than 40% if half-way houses are not counted.

Rhoades said she would like to first review PEW's data results before the group moves forward with specific recommendations.

Memorandum

To: Pre-and Post-Trial Laws and Processes

CC: Mary Geddes

From: Giulia Kaufman, Susanne DiPietro

Date: April 20, 2015

Re: Bail Survey Analysis - Public Defenders & Prosecutors

In the spring of 2015 an electronic bail survey was distributed to 38 prosecutors and public defenders who had been identified by their agency leaders as key informants with good perspective and strong experience in pretrial practice.

Around 15 prosecutors identified as office chiefs and supervisors were invited to take the electronic bail opinion survey. By the April 1 deadline, nine respondents who identified themselves as prosecutors had participated in the survey. Of the nine prosecutors, 2 were from the First District, none from the Second District, 6 from the Third District (5 in AN; 1 outside of AN), none from Fairbanks, and 1 from the Fourth District outside of FA. The following provides a general overview of reoccurring themes to questions in the bail survey distributed among prosecutors.

Around 23 defenders were invited to take the electronic bail opinion survey. Twenty public defenders participated in the survey. Of the twenty, 3 were from the First District, 2 from the Second District, 10 from the Third District (5 in AN; 5 outside of AN), and 4 from the Fourth District (2 in FA; 2 outside of FA).

The following provides a general overview of reoccurring themes among public defender and prosecutor respondents.

Q1: In your opinion, which court-ordered condition poses the greatest obstacle for the pretrial release of defendants in your caseload (please choose one)?

Over half (60%) of defenders said third party custodians (TPC) pose the biggest obstacle to pretrial release; 40% of respondents said monetary bonds pose the biggest obstacle to pretrial release. Two respondents said they believe that TPC requirements in addition to monetary bail pose the biggest obstacle.

In contrast to defense attorneys, about half (N=5) of the prosecutors said that monetary bond posed the biggest obstacle to pretrial release. Three of the nine prosecutors identified TPC requirements as the biggest obstacle, while one had no opinion.

Q2: What programs or services in your court location help defendants secure pretrial release?

In areas where services are available, defenders said that pre-trial services and programs, such as 24/7 and electronic monitoring as well as TPC help defendants secure pretrial release.

In areas where services are available, prosecutors agreed that pre-trial services and programs, such as 24/7 and reliable electronic monitoring help defendants secure pretrial release. One rural prosecutor reported that the inpatient treatment program in that community sometimes agrees to take pre-trial defendants.

Q3: What effect(s), if any, does a third party custodian requirement have on the ability of defendants in your court location to bail out (please list positive and negative)?

Many defenders pointed out that a TPC is supposed to be used instead of monetary bail, but in practice it is used in addition to or to supplement monetary bail. Defenders said that TPC is generally overused. Defenders complained it is often difficult to find a TPC because defendants either do not have anybody who would meet the criteria or the person who would meet the criteria is unavailable (e.g., at work). For this reason, defenders felt that a TPC requirement mostly hinders pretrial release. Some defenders indicated that the TPC requirement helps defendants charged with serious crimes to secure pretrial release, but hinders defendants charged with less serious crimes.

By contrast, prosecutors generally felt that TPC requirements helped defendants bail out. However, several prosecutors said that delays in proposing and scheduling bail hearings to approve TPCs contributed to lengthier pretrial detention. Prosecutors' comments further indicated that they carefully scrutinize proposed TPCs, and a few indicated that they are not always happy with the performance of those who are appointed ("I have had plenty of court approved TPC who would violate their oath and let the defendant do whatever they wanted (until they got caught)").

Q4: In your opinion, are cash bonds used effectively and appropriately in your court location (why or why not)?

Most defenders said that cash bonds are not used effectively because they are often too high and set without considering the defendant's income or the availability of case or bail bondsmen in the region. Another concern was that they are often arbitrary and biased and depend on the judge. However, some defenders said cash bonds are used effectively and appropriately, but did not elaborate.

Several prosecutors said that cash bonds were not common in their court locations. Those with experience of cash bonds were generally positive about their use, particularly cash performance bonds. Two prosecutors complained that judges are too lenient on bond forfeiture when the money has been posted or loaned by the defendant's friends or family.

Q5: Do you have any special issues/concerns with respect to pretrial release in domestic violence cases? If so, what are they?

Almost 80% of defenders stated that have special issues/concerns with DV cases. The two main concerns raised by the defense were the TPC requirement for DV cases and protective orders prohibiting the defendant from returning to the resident which defenders felt potentially lead to homelessness and destroy families.

Five of the nine prosecutors also expressed special concerns with pretrial release in DV cases, but their concerns were different from defenders'. The prosecutors' main concern was intimidation or coercion of the victim by the defendant who ignores the "no contact" condition of release. Prosecutors reported this problem to be especially acute in rural villages where no local law enforcement officer is available to enforce the order. One prosecutor mentioned a concern about victims who insist that the defendant can return to the home.

Q6: What effect(s), if any, has the statutory 48 hour detention period permitted by AS12.30.006(b) have on the timing of pretrial release for defendants in your caseload?

Most defenders said that the statutory 48 hour detention period has no to little effect; some said that it is either not followed or not used in practice. However, a few defenders said some defendants do not get bail review within 48 hours and that prosecutors try to restrict bail hearings. In addition, some defenders complained of scheduling difficulties caused by high volume.

Prosecutors agreed that the statutory 48 hour detention period has no to little effect, because in practice the courts arraign every 24 hours. One prosecutor complained that judicial officers in his/her location are "reluctant" to allow the extra time authorized by the statute.

Q7: (For Defenders only)n For your clients who remain in custody longer than 48 hours after their initial appearance, what is your practice or approach to requesting a first bail review hearing for them (e.g., requested as a matter of practice, case by case, timing of request, etc.)?

Most defenders indicated that they decide how to proceed on a case by case basis. Some indicated that they try to schedule a bail review hearing as soon as possible; it was mentioned again that prosecutors try to restrict bail hearings. Also, defenders said that they try to see the defendant in person, prepare a strong proposal, and possibly determine a TPC.

Q8: (For Defenders only). For your clients who remain in custody after their first bail review hearing, what factors typically prevent you from scheduling a second or subsequent bail review hearing (e.g., prosecutor will not agree: new information not available, etc.)?

The overwhelming answer to this question was that there is often no new information. In addition, defenders indicated that their clients either do not have the money to post bail or

that there is no TPC. Most defenders said judges generally will agree to a second hearing, if there is a new proposal. However, a few respondents stated that some judges make it difficult to get a second hearing.

Q9: In your opinion, how important is the 7-day waiting period between bail review hearings?

Defenders saw no value in the 7-day waiting period between bail review hearings. They argued, among other things, that the waiting period is unnecessary, because a defender whose client gets a plan together shouldn't have to wait to present it to the judge, while a defender whose client can't get a plan together generally won't waste the court's time with a weak application.

In contrast, prosecutors characterized the waiting period as an important safeguard against large numbers of frivolous bail hearing requests where there is no new information. Two prosecutors said the waiting period was important for victim notification or impact on victims. Two reported that they waive the waiting period if the circumstances warrant.

Q10: What effect(s), if any, does the statutory rebuttable presumption against bail in AS12.30.011(d)(2) have on pretrial release practice in your court location?

Few defenders thought that the statutory rebuttable presumption against bail had much effect on the pretrial release decision. Defenders reported that judges seldom relied on the statutory rebuttable presumption against bail, choosing instead to keep people in jail for longer periods of time simply by setting high bail amounts and unreasonable bail conditions.

Prosecutors agreed that the rebuttable presumption had little or no impact on practice. One prosecutor said that "no bail" orders are problematic because "we are a bail state."

Q11: What aspects of pretrial release practice in your court location seem to be working well?

<u>Defender Responses</u>

- Increase in performance bonds
- 24/7 monitoring program
- Small amount of cash performance bail combined with TPC
- A defender from the First District reported that most misdemeanor cases and some felony cases receive OR release. This respondent also reported that judges are occasionally open to allowing someone a day or two of release to gather the money to post bail. Rarely, a First District judge might permit a "down payment" with future scheduled payments. Another 1st District defender reported that judges generally are allowing "continued" bail hearings, in other words, allowing the hearing to be

completed during a series of two or more court sessions until a release proposal is approved.

- A defender from the Second District reported that "a fair number of people" get OR release, and that seems to work well. This defender observed that people on OR release do not seem to break conditions any more often than those on monetary bail.
- A defender from the Third District (outside of Anchorage) reported that misdemeanants in his/her court location are able to be released, if not at arraignment then usually after a first bail hearing. Many felony clients also are able to be released, and if they do well on bail, the judge often will relax the conditions.

Prosecutor Responses

- Two prosecutors noted that requiring monetary bail was very likely to result in reporting violations because the person posting the money (who usually is someone other than the defendant) has a strong incentive to report violations.
- Prosecutors praised the 24/7 provider for reporting violations.
- One prosecutor liked judges who require defendants on pretrial release for felonies to be present for pretrial conferences.

Q12: What are the problems?

- The system of setting a bail initially, then automatically lowering it at the next hearing does not make sense. Many third-party custodians are not trustworthy. We do too many bail hearings (subsequent bail hearings even if circumstances have not changed).
- The Misdemeanor Bail Schedule should not include VCRs. Officers are arresting individuals for VCRs then setting their bail pursuant to the bail statute so the defendants are immediately released with any judicial review or any opportunity for the state to address bail on the underlying offense before they are released. 24/7 is not working. Judges are releasing defendants to 24/7 WITHOUT any alcohol or drug restrictions. Judges are releasing felony DUI offenders to 24/7 which does not keep the community safe (defendants have been caught driving to 24/7 to blow). Public Defender Agency is now filing motions to suppress breath results from 24/7 seeking to keep defendants from being charged with VCRs.
- Bonds are diminished to nearly ineffective when the rules for forfeiture, reinstatement and exoneration only receive nominal consideration.
- The problems include TPCs not reporting violations, lack of law enforcement to observe or enforce violations, victims being intimidated into not reporting, and the length of time that it takes to get a case resolved once a defendant us out on bond.
- There are a small number of defendants who cannot stay out of trouble no matter what bail is set whether it is cash, third-party custodian, or combination.
- Too many bail hearings in probation violation cases.

- The public defender agency's position is that the 24/7 programs testing constitutes a violation of the privacy rights of the defendant and should not result in new Violating Conditions of Release charges
- TPC requirement is relied upon too heavily for misdemeanor offenses that are alcohol related. Not enough weight is given to a defendant's lack of criminal history. Example: First time DUI with a high BAC say .121 may be required to have a TPC to ensure sobriety in lieu of a simple "don't consume alcohol" condition with monetary bail.
- Bail is too high, especially in misdos. Also bail is too often, even for misdos, cash and a third party.
- Some people remain in jail as pretrial detainees. That should be a very rare thing, reserved for serious violent offenses. We're doing a better job getting people out here [First District] compared to other areas of the state, but we still consistently have people say the word 'guilty' just to get out of jail. That is a complete failure of the system, even though it happens everywhere in the country.
- Courts very liberally assign TPC requirement; current Electronic monitors are expensive, DAs are given too much liberty to threaten clients who wish to remain out of custody pre-trial.
- Generally speaking, the judges and magistrates don't give enough weight to the bail factor that instructs the court to consider the assets available to a defendant and whether they can actually meet the monetary conditions of release. As a public defender I represent people the court has already determined to be indigent, but this rarely factors into their decision. For example, $2,500 cash bond may be reasonable for a state employee, but that same amount means something completely different to my clients. Most of the time, that $2,500 bond means my client pleads out, or remains in custody until trial.
- The primary problem is using bail as a form of "pretrial probation" -- imposing onerous conditions that would never be permitted to be imposed upon someone who was convicted of a crime. For example, our local judge regularly requires that people released on bail be subjected to warrantless searches of their residence. This clearly runs afoul of the Fourth Amendment. Yet, as a defense attorney, I don't challenge it very often because the court's response will be to increase the monetary bond. Recently, [a Second District] magistrate ordered that a defendant charged with a class B misdemeanor would only be let out of jail if she got a shot of Vivitrol and submitted proof of the shot to the court. (Vivitrol is a prescription medication that inhibits the desire to consume alcohol.)
- An over reliance on third party custodians. Monetary bail that ignores an individual's ability to pay. Conditions that restrict movement and prevent clients from obtaining work or attending treatment. Release that prevents defendants from returning home despite the protestations of the alleged victim. A tendency, while completely human, to unofficially set bail at a given price for a given offense without regard to 12.30.011(a) and (b). The courts have completely ignored that the drafters of

12.30.011(a) and (b) realized that the individual with whom the statute references would be charged with a crime, and instead use that fact as the justification for overcoming the presumption for unsecured release. A review of the number of individuals given an unsecured release will demonstrate this fact.

- The judges use TPCs, 24/7, conditions and monetary conjunctively rather than in substitution for one another. The threshold for the use of TPCs in misdemeanors and B & C felonies should be set much higher. The monetary figures that the bench officers set don't seem to be tied to reality in any way. The department of law opposes bail release for the hell of it without evaluating whether they truly believe the defendant to be a flight risk or public safety threat.
- Lots of clients don't have a close friend who can babysit them 24 hours a day. Lots of clients can't afford the roughly $200/week that it costs to be electronically monitored, or the $50/visit cost of having a urinalysis test done.
- Monetary bonds are too high and TPC requirement is used too often and in cases where it is not needed.
- I think it is more difficult than it should be to get misdemeanor clients out of custody. I think the court is still struggling to grasp the idea of presumptive OR release.
- There are no pretrial services out here, no bondsmen, and bail is often set to [sic] high on felony charges.
- The inability/unwillingness of [First District] treatment providers to perform substance abuse evaluations for incarcerated clients. Also, the unreasonable restrictions imposed in accusations of domestic violence.
- Judges routinely require third-parties where it is not necessary or warranted. Judges do not consider the finances of my clients when fashioning monetary bail.
- Some DAs oppose all bail arguments just for fun I think.
- Too many third party custodians ordered plus a cash posting.

Q13: Any recommendations you would like the workgroup to consider to improve pretrial release outcomes in your court location/statewide?

- The DOC issue of facilities being full should not dictate how the rest of the criminal justice system does business. That is the tail wagging the dog. Protection of the public must still be a consideration. More thought should be put into the initial setting of bail. Judges over-utilize the third-party custodian requirement. Most states do not even have that - they set a reasonable bail, and defendant makes it or does not. Promoting a timely resolution of cases (adhering to motion deadlines, not granting continuances, etc.) would free up jail space just as well, if not better.
- Remove VCRs from Misdemeanor Bail Schedule.
- If forfeiture rules are more reasonably applied, those posting bonds would be more invested in securing their collateral - and exercising more initiative in encouraging compliance, and reporting non-compliance.

- We have no pretrial services here: no EM, no pretrial release review, and no bail bonds people.
- The main problem is the long time from initial court appearance until the case is resolved either with a sentencing or release of the defendant.
- Recommend establishing parameters for bail for probationers so we can avoid third party custodian analysis.
- More testing programs like 24/7 ... my estimation is that 90% of my violent crimes involve alcohol/drug abuse. If the offenders are not impaired by substances many of them do not violate the law. Testing programs that are strict enforcers and reporters allow offenders release but ensure that they don't endanger the community by using and committing new crimes.
- The courts should be more willing to lower bail especially when the defendant has already served the mandatory minimum.
- A bail bondsman in town [First District] would be nice.
- There should be a burden on the State (a significant one) to present evidence demonstrating why a TPC is necessary.
- Has there been any study of the relationship between bail setting and bail violations? Since we've gotten away from the O/R presumption, we at least owe it to ourselves to see whether increased bail requirements actually improves bail performance.
- Work with the appropriate treatment agencies, governing licensing boards, etc. to permit and encourage treatment providers to provide substance abuse evaluations to incarcerated clients - grant courts more discretion in imposing restrictions in domestic violence cases.
- More training on following the bail statute and allowing people out OR or on unsecured bonds.
- More distinct rules regarding when OR release is appropriate. There are many offenses that should not prohibit individuals from being released, regardless of criminal history.
- The only difference between OR release and posting monetary bail is person stays in jail longer or until trial. The overwhelming majority of persons do not violate bail conditions. Some do violate and they face new charges (VCOR). That is much more of a deterrent than $500, $1000, $5000. Repeal AS 12.30.011(d)(2).
- More accommodation should be made for the defendants who are actually working. The system is designed for unemployed drug addicts. If someone has a job, we should make an effort to keep them working. Work is its own therapy.
- I think that Judges should be trained on the importance of an OR presumption in misdemeanor cases and that bench materials should emphasize the presumption. I also think the state should collect data concerning racial disparities in bail release in Alaska and present that information to Judges and Legislators.
- Abolish the ability for the prosecution to request third-party custodians. Require judges to make factual findings on the record as to why an O/R release, unsecured bond or low monetary appearance or performance bond won't reasonably ensure the return to court

of the defendant and the safety of the public. Provide easier access to appellate review of bail decisions.

- …. [Copy other jurisdictions that have pretrial services. Good pretrial services programs include] regular telephone contact… periodic office visits, mail-in reports, drug testing and monitoring, mental health or substance abuse evaluations, and domestic violence evaluations.
- I would like the judges to be periodically reminded that bail is not an adjudication of guilt, it is not "pre-probation". If a person is found guilty, then an appropriate punishment can be fashioned. But suspending the Fourth Amendment or requiring that someone receive shots of a psychoactive medication is not appropriate for someone who has been merely accused of a crime.
- Add a bail factor to 12.30.011(c) that instructs the court to consider the defendant's approximate annual salary and if the court is going to set a monetary bail condition that exceeds 25% of a defendant's annual salary, the court needs to make a specific finding as to why a higher bail amount is necessary to protect the public. Also, the presumptions against bail should not apply to individuals charged with misdemeanors, unless the current charge is a DV offense charged under 11.41.
- DOC EM should be available to clients pre-trial. This would get many people out of jail and at their jobs, at their own cost. DOC EM costs less than the for-profit companies, is more secure, and gives defendants credit toward any potential sentence.
- Unsecured performance bonds; Payment schedules for secured bonds; pretrial EM/house arrest; Strengthen the OR presumption that already exists; reclassify minor non-violent misdemeanors as infractions (MCA/DWLR); reclassify possession of drugs as a misdemeanor.
- Prevent the imposition of cash and a third party except for Unclassified, A, or B felonies, and C felonies which are not the first felony (with perhaps an exception for recidivist assault felonies and felony DUI's).
- Recommend a reducation [sic] of Third-Party requirements for low-level offenses, unless no bail can be posted.
- Defendants should have counsel at their initial appearance. Conduct an individualized risk assessment of defendants awaiting their initial appearance. Unsecured bonds should be employed instead of secured bonds in many cases. Eliminate bail schedules. Fewer warrants, more summonses. Encourage citation releases.

Memorandum

To: Sentencing Alternatives Workgroup

CC: Mary Geddes

From: Giulia Kaufman, Susanne DiPietro

Date: April 20, 2015

Re: Bail Survey Analysis - Judicial Officers

Twenty-eight judicial officers participated in a survey about pretrial release issues during the spring of 2015, including 18 judges and 8 magistrate judges. Nine respondents were from the First Judicial District, five from the Second, eight from Anchorage, three from Fairbanks, and one from the Fourth District outside of Fairbanks. We did not receive any responses from the Third District outside of Anchorage. The following summarizes reoccurring themes in the responses received.

Q1: What programs or services in your court location help defendants secure pretrial release, and why?

If judges and magistrates had programs or services available in their location, those typically included alcohol and drug monitoring services, such as 24/7, electronic monitoring services, 3rd party custodians, bail bondsmen, and mental/behavioral health services. A few relied on police departments willing to perform daily sobriety checks. Respondents stated that these programs or services either help defendants to be released or to comply with their bail conditions.

One judge noted that performance bonds can help ensure a person follows conditions of release, but court rule prohibits their forfeiture absent a request from the prosecution. This judge said that prosecutors do not often request forfeiture or follow the necessary procedure.

Q2: What programs or services (other than those currently available to you) would allay your concerns about a defendant's appearance or performance (for example, weekly check-in, automated phone reminder, etc.)?

Most respondents pointed out that appearance and performance are two separate issues. With regards to defendants' appearances, most respondents stated that there are very few defendants who fail to appear and that it is generally not an issue. However, respondents welcomed the idea of reminder calls.

With regards to performance, respondents stated that drug and alcohol testing, electronic monitoring, ignition interlock devices, and mental health services would help, and those could include weekly check-ins.

Q3: To what extent would alternate arrangements for posting money bail (credit cards, ATMs, etc.) help defendants in your courtroom meet monetary bail requirements?

Some judges seemed confused about whether bail can be paid by means other than cash (i.e., credit card, ATM, check). Some thought it was already possible, others thought it was not possible, and some thought it was only possible via court order. With few exceptions, the idea of posting bail via credit card was welcomed.

Q4: What aspects of attorney's advocacy and practices are helpful/not helpful to your bail decisions?

Judicial officers do not find it helpful when the attorney is not engaged with the client or is very inexperienced ("bail slave") and not familiar with the bail statute. Arguments such as, *the defendant does not have money*, were perceived as unhelpful.

Judges and magistrate judges find it helpful, if the attorney is engaged with the client and is familiar with the bail statute. It is also perceived as helpful, if the attorney has a plan for the client (i.e., employment, housing), knows his criminal history, personal information, and family situation, and is aware of the victim's position regarding the client's release.

Q5: For what reason do you typically require a third-party custodian as a condition of pretrial release?

Several judges said they use third party custodians as a condition of pretrial release if the defendant has no monetary means to post bail, or to lower or supplement bail. Further, judicial officers stated they consider the defendant's criminal history, his previous success with complying with conditions of release, public safety, and the victim's safety (if there was a victim). Most respondents indicated that they use third party custodians for violent and drug offenses, and DUIs.

Q6: What effect(s), if any, has the statutory 48h waiting period permitted by AS12.30.006(b) had for felony defendants in your courtroom?

Overall, judicial officers believed that the statutory 48h waiting period has little or no effect.

Q7: AS12.30.006(d) imposes restriction on a defendant's ability to get a second bail review hearing. What effects, if any does AS12.30.006(d)(1) have for defendants in your courtroom?

Overall, judicial officers believed that these restrictions have little to no effect for defendants. Several judges indicated that they are fairly flexible about what qualifies as new information.

Q8: What effects(s), if any, does the statutory rebuttable presumption against bail in AS12.30.011(d)(2), have for defendants in your courtroom?

Most respondents believe that the statutory rebuttable presumption against bail has no to little effect for defendants. Judges who reported ordering "no bail" also reported that the defendants sometimes successfully overcame the presumption. Several judicial officers noted that prosecutors do not often ask for it. When no bail is ordered, however, judicial officers believed that it causes people to be incarcerated longer, higher bail, and the use of third party custodians.

Q9: Any recommendations you would like the Commission to consider to improve pretrial release outcomes in your court location or statewide?

Most judges said they would like to have more pretrial services, such as drug and alcohol testing and electric monitoring.

A judge suggested that defenders who conduct bail hearings should be experienced, should know the law, and should be prepared to discuss the defendant's particular situation.

Allow a defendant to continue working and post a cash bond incrementally pay day to pay day.

Allow village defendants to pay bail over the phone to avoid transport.

In order to decrease unnecessary pretrial delay, allow a maximum of two Rule 45 waivers. This judge observed that traveling attorneys move hearings to accommodate their own schedules while defendants remain on strict conditions of release and victims feel they are not being heard.

Steiner Proposed Changes to Bail Statute
March 16, 2015

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. **A judicial officer shall not impose additional conditions on release unless the judicial officer determines by clear and convincing evidence that release under (a) of this section will not reasonably assure the person's appearance and protect the victim, other persons, and the community**. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment or, if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the prosecuting authority within two business days after any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community;

(18) require the person to comply with a program established under AS 47.38.020 if the person has been charged with an alcohol-related or substance-abuse-related offense that is an unclassified felony, a class A felony, a sexual felony, or a crime involving domestic violence.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, a sexual felony, or a felony under AS 28.35.030 or 28.35.032;

(B) charged with a felony crime against a person under AS 11.41, was previously convicted of a felony crime against a person under AS 11.41 in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) charged with a felony offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) personally, by telephone, or by other technology approved by the court, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian's being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been convicted in the previous three years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on **felony** probation in this state or another jurisdiction for an offense;

(5) the proposed custodian **is likely to be** ~~may~~ be called as a witness in the prosecution of the person**, unless the judicial officer concludes that the proposed third-party custodian and defendant will comply with a court order not to discuss the case;**

~~(6) the proposed custodian resides out of state; however, a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.~~

(d) Proposed third-party custodians shall be permitted to appear telephonically at the judicial officer's discretion.

Pre- and Post-Trial Laws & Processes
Staff Notes March 16, 2015, 3:00 PM to 4:30 PM
Attorney General's Office, 1031 W. 4th Avenue, 5th floor, Room 502, Anchorage

Commissioners attending: Stephanie Rhoades, Quinlan Steiner, Trevor Stephens (web), Ronald Taylor (phone)

Staff Present: Susanne DiPietro, Giulia Kaufman

Participants: Bob Linton, Nancy Meade (part of mtg.; phone), Steve Williams (part of mtg; phone)

Future Meetings: Tuesday, April 28, 2015, 1:30 PM to 3:30 PM

The meeting opened at 3:15 p.m.

Follow up from parole issues from last meeting –any action items?

The group discussed that 503 people were eligible for discretionary parole, but the Executive Director of the Parole Board pointed out that some had not applied, many of whom were eligible but not likely to be granted discretionary parole because of the seriousness of the offense. Commissioner Taylor said he would expect to see only about 50 of those 500 actually apply.

Steiner brought up the issue of dual supervision of offenders who are simultaneously on probation and parole. He pointed out that these people have to follow two separate sets of rules that are often similar but not identical, and this is often overwhelming and confusing. In his experience, almost everyone who comes to the PDA for representation on a petition to revoke probation is also on parole. These violations must be litigated both in court and before the parole board. Commissioner Taylor and Linton pointed out that because of this system, people get "double credit" for any time that is imposed as a result of a violation. Steiner agreed to draft a proposal to combine parole and probation.

Kentucky's bail statute and its pretrial release program (Judge Stephens to lead discussion)

Judge Stephens reported that he reviewed many bail studies and generally found that the OR release standard is not happening (please refer to his memo for more detail). He said that pretrial services could enable people to be released without increasing their risk of reoffending and without sacrificing public safety.

Judge Rhoades reminded the group that the largest group of offenders entering DOC custody are MICS IV.

Commissioner Taylor stated that as soon as the session ends, the DOC plans on looking into the barriers to expanding its EM program, so that EM may be used as bail alternative. Judge Rhoades pointed out that in the past EM had been used for wellness court participants on bail

status. The group discussed what it would take to build a pretrial EM program. The group decided that they wanted to hear from Billy Houser on the issue.

Discuss results of bail survey (previously sent)

The results of the judge survey were sent to the group earlier. Susanne will review them for any common themes and brief the working group.

Since the DOL has not yet sent out the bail survey, Bob will follow up with DOL leadership. After the results are received, staff will summarize them and identify common themes.

Discuss suggestions for changing the bail statute (previously sent)

In the interest of time and with regards to the fact that the bail survey has not been completed by all entities, the discussion on changing the bail statute was postponed to the next meeting. However, Judge Rhoades encouraged commissioners and participants to review the bail statute.

Recommendation about Judicial Education

Judge Rhoades suggested that judges could benefit from training on pretrial release procedures, including discussion of best practices, what is evidence-based, and the data showing that unsecured release is highly effective. The group agreed that judicial education on this topic would be a good idea. Judge Rhoades volunteered to draft a recommendation for the working group's review. The group agreed to review the recommendation by email with the goal of having it ready for the Commission's consideration at its meeting on 3/31.

Moving Forward

The group decided to invite Billy Houser of DOC to discuss the parameters for using EM for pretrial release.

The next meeting is set for Tuesday, April 28, 2015, from 1:30 PM to 3:30 PM.

ACJC Workgroup on Pre- and Post- Trial Laws and Processes
Staff Notes and Member Assignments
February 20, 2015 meeting, 2- – 4:30 PM,
Attorney General's Offices in Anchorage, Juneau and the Ketchikan Superior Court

Commissioners Present:	Alex Bryner (tel.), Greg Razo, Quinlan Steiner (2nd half of meeting), Stephanie Rhoades (tel.), Trevor Stephens (video)
Commissioners Not Present:	Jeff Jessee, Ron Taylor
Staff:	Mary Geddes (notetaker) , Teri Carns, Giulia Kaufman
Participating:	Bob Linton; Debbie Miller (DOC); Jeff Edwards (DOC-Parole); Nancy Meade

Next Meeting: Monday, March 16, 2:00 PM to 4:00 PM
AG's office, Room 502, Anchorage, and video w Ketchikan Superior Court

Bail Survey. Workgroup members discussed the bail survey which has now been distributed to judges (by Stephens and Rhoades) and to PDs (by Steiner) Survey Monkey has been used for electronic distribution. Linton indicated that John Skidmore had decided it would be better for him to decide on distribution, and Linton had not heard back.

Report from the Governor. Alex Bryner reported that he and Susanne DiPietro had met with the Governor and Marcia Davis. The Governor was very well informed, supportive of the Commission's work and concerned about many topics. One concern was with the impact of peremptories in rural areas. He had heard that the practice was a big drag on the system. Peremptories would be a topic for this workgroup to consider. Either the Governor or Davis also mentioned a possible overreliance on third party custodians.

Presentation/discussion with Debbie Miller. Debbie is the Superintendent of the Anchorage Correctional Complex, although she is presently detailed to the Central Office. Because of her job at ACC, she was aware of barriers to release for many individuals.

She stated that magistrates did not seem willing to consider third party custodian proposals over a weekend even when a good candidate was available. It seems the consequential delays (getting appointed, getting a hearing) in going forward with that proposal would often take a week, and people could lose their housing, their jobs inside of that week.

She perceived that third party custodian requirements were rather routinely imposed in addition to money bails. It is difficult to find someone who can supervise 24/7. Anchorage Pretrial Services is a private option but it does charge for its services as supervisors and custodians.

Debbie also thought that:

- there were a lot of individuals in custody for failure to complete their CWS. She asked if we knew that the city (Anchorage) requires an $85 monitoring fee be paid by everyone assigned to do CWS. She has also seen people end up in custody for failure to pay insurance and to satisfy judgments.
- There are too many intoxicated persons ending up in jail beds under the authority of Title 47. If the sleep-off (detox) center is full, the officers bring them to the jail. No one seems willing to spend the resources to help find a sober adult to take care of them. So instead jail beds are used.
- We all ought to encourage more facilities like Karluk Manor, an Anchorage housing program for chronic inebriates.

- She has wondered at the imposition of lengthy probation terms so far in excess of maximum jail terms. A frequent example is a five year probation term for a class C felony, theft 2. She isn't bothered by a lengthy term if the purpose of it is to accommodate restitution payment.
- There should be pretrial diversion for a front-end probation kind of arrangement.
- The number of probation conditions is confusing and defeating.
- Some probation terms seem excessive and set people up for failure. If a person is getting clean UA's, is there utility in also requiring treatment? Not everyone needs treatment. And its a burdensome requirement: its difficult to obtain in terms of time, location, and money.
- The use of video court should be expanded to allow people to stay closer to their communities where they may have better support systems, and to keep travel costs down.

Mike Mathews' Data Requested. Teri Carns reported that she is in communication with Mike Matthews who is working to get her more information on the pretrial incarcerated population, including those whose cases are ultimately dismissed.

Tasc. Rhoades asked about the early 80's program called TASC, a pretrial intervention.

Electronic Monitoring. HB 15, undergoing revisions, is tackling the questions of whether to allow statutory good time for people in treatment, and for people released pretrial on electronic monitoring. There was a hearing on the bill and changes are being made.

The electronic monitoring program run by DOC is a program for sentenced offenders only, not for those who are on bail. DOC probation officers closely supervise the participants and their remands do not involve either a court or a parole board.

With respect to the the pretrial population released on EM, they are not supervised by a PO and the cost is high for the service. [Pioneer Peak charges $180/week for EM.]

Existing Court System Pretrial Services. These services do not involve pretrial supervision, only the determination of financial eligibility for representation.

There was mention of whether phone calls could be made to defendants' cell phones reminding them of court dates.

Presentation/discussion with Parole Board Director Jeff Edwards: Jeff is the Executive Director of parole board. He has been with DOC for 15 years, 8 of that with the Parole Board. The Parole Board is not 'under' the DOC but has semi-independent status. Mary introduced him and asked two questions. Can he explain stats indicating that there are hundreds of who are eligible for discretionary parole? Are inmates being released on medical parole? Mary also asked him for information regarding a recent 'best practices' approach to setting conditions of probation and parole.

There are 5 Paarole Board members who are appointed by the Governor. They live in Kenai, Soldotna, Southeast, the Valley and Anchorage. Most are retired law enforcement or from DOC. Board members are compensated. There are three kinds of hearings: mandatory release parole violations, regular parole violations, and discretionary parole. The parole Board conducts about 50-60 hearings total a week. The quorum is three. The members travel to each correctional facility at least twice a year.

Re discretionary parole numbers. They look big because they include everyone who will eventually be eligible for discretionary release. People have to be educated about applying for discretionary parole and the process, then they have to apply, and then some decide they don't want to talk to the Board and withdraw their request. 95% of those released on discretionary parole never come back.

60% of the persons revoked because of mandatory release violations are re-released after a hearing. The current Board members are very open to giving more chances.

Jeff had some additional observations:

- In most cases, supervision should be no longer than than two years as most people who recidivate do that in the first year or two. Because of that the parole board often grants early termination when it is asked.
- He also though that parole and probably probation conditions should be reduced in number. Research shows that burdensome conditions can cause recidivism. The Parole Board currently has 40 possible conditions it can impose and there are two pages of "general" conditions – which are statutorily required and imposed in every case. A national expert (NIC Richard Stoker) will hopefully help the Board winnow down the conditions imposed.
- As a result of SB64, PACE is now being implemented for use in parole- a first, nationally. This is an important development. It's a way to avoid the typical 3 month day for revocation hearing. Because they use only one Board member, the delay in getting a hearing is only 3-5 days.

A discussion followed between Steiner and Edwards. Steiner said PACE was a good model as long as the judges and decision makers stayed away from the higher stepped up terms.

Medical parole, while a hot topic, is a non-issue as there are not a lot of applicants. We have a pretty good statute requiring that each institution have a liasion that identifies and track potential candidates. Inmates with medical issues are often released instead on EM, and qualify on their own for Medicaid.

Asked about expanding parole for the release of older inmates, Jeff indicated that he is not involved in the strategic planning process at DOC and is not sure what's being discussed with respect to that population.

Assignments and next meeting.

- Stephens will discuss the Kentucky bail statute and its pretrial release program.
- Rhoades wants to re-visit her previous suggestion (for bail reform?).
- Steiner had indicated he had ideas for re-writing the bail statute.
- The workgroup wanted to invite Billy Houser (DOC-EM) to meet with them in March, but Rhpades asked that the speaker come close to the end of the meeting so the group could get some work done.

PRE- AND POST- TRIAL LAWS AND PROCESSES
WORKPLAN & PRIORITIES--DRAFT FOR REVIEW (*previously circulated 2-9-15)*

1. Bail

Bail survey	Finalize and deploy before next mtg (should take a month)
Pretrial Risk Assessment Tools	Discuss at next meeting
Review/Survey of possible reforms	End of Feb.
Technical barriers to release (review statues and presumptions)	During month of March, complete by March 31 (Steiner and Rhoades)

Discussion: Ultimately we will need to synthesize information. Questions to be addressed: can our pretrial population safely be reduced and how; does pretrial detention disproportionately impact certain groups (i.e., mentally ill); are pretrial detention practices fair; any information about the rate of offending on pretrial release (sources: FTA's, bail forfeiture, VCR); what is the average length of stay pretrial (time-to-disposition). NB: Hornby Zeller has length of stay information. NB: Both MOA and Southeast DAs file VCR. Perhaps we need a small study of those to gauge rate of re-offense. Nancy Meade can obtain # of VCR charges.

2. Title 12

Obtain report commissioned by MHTA	mid-March due date
Review and develop recommendations	March – April (DOL, Rhoades, Steiner)

3. Probation & Parole

Eligibility for discretionary release/ Delay in discretionary parole	Next meeting
Use of PACE for parole violations (invite Parole Board member)	?
Steiner proposal to restructure parole	March – April
Medical parole and elderly inmates	April

Discussion: There have been reports of delays in the processing/release of eligible persons on discretionary parole. Linton indicated he would like to find out more about parole and if cases are not getting processed, why not. There was also interest expressed in learning more about medical parole and handling of aged inmates. Steiner reiterated his interest in changing the manner by which revocations of mandatory parole (good time release) are handled. Mary will contact Ron Taylor and Parole Board staff for more information.

4. Other Pretrial Release Topics

Identify additional topics	End of Feb.
Electronic Monitoring- invite Billy Houser What are barriers to its use for pretrial?	March meeting
What other programs could enable pretrial release? Intensive pretrial release monitoring?	February (Stephens will discuss/distribute info from KY)

ACJC Workgroup on Pre- and Post- Trial Laws and Processes

Staff Notes and Member Assignments

January 27, 2015 meeting, 2- – 4:00 PM,

Denali Commission, 510 L Street, 4th Floor

Commissioners Present:	Alex Bryner, Quinlan Steiner, Stephanie Rhoades, Trevor Stephens (tel.)
Commissioners Not Present:	Jeff Jessee, Ron Taylor
Staff:	Susanne DiPietro (Notetaker), Mary Geddes, Teri Carns
Participating:	Bob Linton, Nancy Meade,

Next Meeting: Friday, February 20, 3:00- 4:30 PM AG's Offices (Anch and Jun) and Ketchikan Court

The next workgroup meetings (all in Anchorage) will be rescheduled so as not to conflict with the judiciary committee meetings.

Bail Survey. Workgroup members discussed the bail survey methodology and the questions. It was agreed that AJC staff will rework the questions and load them into Survey Monkey for electronic distribution. Steiner, Linton, Stephens, and Rhoades will distribute the survey via email to a number of "key informants" within their organizations chosen to give the most informative views of bail problems and practices from a variety of geographical areas within the state.

Linton indicated that he was tentatively planning to send them to all DA's and Anchorage staff. Stephens said that he was going to be meeting with other judges on February 7and would discuss survey with them.

Unsentenced Inmates. The group agreed it needs more information about the 40% of DOC inmates who are unsentenced, i.e. that the percentage alone did not identify or analyze the problem. Comparisons to other jurisdiction is not always helpful but some statistics do not necessarily show there is a particular problem in AK in the percentage of unsentenced prisoners. Rhoades agreed that we need more data. Are they mostly violent or nonviolent? Do they have FTAs? What is the impediment to pretrial release for them? Are they being sentenced to time served or less? Are some of them Title 12 restoration people? Susanne noted that if inmates are serving most/all of their sentence prior to sentencing, they won't get needs assessments done and they won't get referred to or participate in programs. She also noted that the high success rate of 24/7 (low number of dirty test and few remands) indicates that we are overincarcerating on a pretrial basis.

Rhoades indicated that one focus has to be on the misdemeanants population. There is no opportunity for programming, they don't get probation, highest rate of recidivism.

Workplan development. See next page. Please review for errors and assignments.

PRE- AND POST- TRIAL LAWS AND PROCESSES
WORKPLAN & PRIORITIES--DRAFT FOR REVIEW (2-9-15)

1. Bail

Bail survey	Finalize and deploy before next mtg (should take a month)
Pretrial Risk Assessment Tools	Discuss at next meeting
Review/Survey of possible reforms	End of Feb.
Technical barriers to release (review statues and presumptions)	During month of March, complete by March 31 (Steiner and Rhoades)

Discussion: Ultimately we will need to synthesize information. Questions to be addressed: can our pretrial population safely be reduced and how; does pretrial detention disproportionately impact certain groups (i.e., mentally ill); are pretrial detention practices fair; any information about the rate of offending on pretrial release (sources: FTA's, bail forfeiture, VCR); what is the average length of stay pretrial (time-to-disposition). NB: Hornby Zeller has length of stay information. NB: Both MOA and Southeast DAs file VCR. Perhaps we need a small study of those to gauge rate of re-offense. Nancy Meade can obtain # of VCR charges.

2. Title 12

Obtain report commissioned by MHTA	mid-March due date
Review and develop recommendations	March – April (DOL, Rhoades, Steiner)

3. Probation & Parole

Eligibility for discretionary release/ Delay in discretionary parole	Next meeting
Use of PACE for parole violations (invite Parole Board member)	?
Steiner proposal to restructure parole	March – April
Medical parole and elderly inmates	April

Discussion: There have been reports of delays in the processing/release of eligible persons on discretionary parole. Linton indicated he would like to find out more about parole and if cases are not getting processed, why not. There was also interest expressed in learning more about medical parole and handling of aged inmates. Steiner reiterated his interest in changing the manner by which revocations of mandatory parole (good time release) are handled. Mary will contact Ron Taylor and Parole Board staff for more information.

4. Other Pretrial Release Topics

Identify additional topics	End of Feb.
Electronic Monitoring- invite Billy Houser What are barriers to its use for pretrial?	March meeting
What other programs could enable pretrial release? Intensive pretrial release monitoring?	February (Stephens will discuss/distribute info from KY)

ACJC Workgroup on Pre- and Post- Trial Laws and Processes

Staff Notes and Member Assignments

January 5, 2015 meeting, 3 – 4:30 PM,

Denali Commission, 510 L Street, 4th Floor

Commissioners Present:	Alex Bryner, Stephanie Rhoades, Ron Taylor, Trevor Stephens (tel.)
Staff:	Mary Geddes, Teri Carns
Participating:	Nancy Meade, Natasha Pineda, Bob Linton
Presenters:	Kevin McCoy, Matt Jedrosko

Next Meeting: January 27, 2015 2:00 – 4:00 p.m.
ANCHORAGE location to be announced

The meeting commenced at 3:00 PM.

INFORMATION

Presentation: Federal bail law and practice

The meeting opened with U.S. Magistrate Judge Magistrate Kevin McCoy describing federal bail law and practices. He said that the presumption is that defendants will be released, although the judge may impose a variety of restrictions. No financial condition that prevents release can be imposed. Bail hearings are held under a variety of circumstances, at the request of the defendant or the government. Judges can detain defendants without bail for a limited number of reasons, which must be documented in a written order.

Ms. Geddes asked Judge McCoy to describe the principal differences between the state and federal bail systems. Judge McCoy said that the state system does not appear to have as strong a preference for release. While the federal courts rarely require any sort of monetary bond, although they might ask for a property bond, state judges seem to require more frequently require monetary bail.

Mr. Jedrosko said that federal probation officers work for the court, not the Executive Branch. The office segregates the PO's with the Supervision function from those with the Investigation function, and Pretrial PO's are instructed to view pretrial defendants very differently from convicted persons subject to supervision. Pretrial officers invest a significant amount of time in handling pretrial bail matters. They research prior criminal histories, interview defendants, inspect homes and compile written reports and recommendations prior to the court's bail decisions; after a defendant's release, they provide supervision of defendants who are on bail. When defendants are interviewed in advance of a bail decision, the PO's specifically tell them not to mention their offense, and refer them to their attorney for such discussions. The probation officers do use a risk assessment tool, for internal use only; the judges aren't aware of any scoring, They complete the form based on information from outside sources, not from a defendant interview.

Judge McCoy said that defendants are usually indicted before their first appearance in federal court. About 10% arrive in court based on a summons or complaint. Justice Bryner noted that this is very different from the state system where most people appear because of an arrest or summons.

Draft bail survey

Mary Geddes distributed a proposed draft survey of practitioners to determine bail practices and problems throughout the state. Judge Rhoades said that she could call the judges to invite them to complete a survey, and Mr. Linton offered to contact the heads of each district attorney office. Ms. Geddes said the draft survey should be offered to the PD as well, because it had been expanded from the initial and more informal survey conducted by Jay Hochberg.

Judge Stephens agreed. He said that, after hearing from Jay Hochberg, the Assistant Public Defender at the prior meeting, he contacted judges in his district and found that they had very different perceptions of some of the cases discussed. He said that he would prefer to have written answers from all sides, to be sure that every member of the committee was seeing the same thing.

Members agreed that Judge Rhoades, Quinlan Steiner, and Bob Linton should work together as a subcommittee to draft a survey. Justice Bryner suggested that a shorter survey was likely to get a better response. Ms. Geddes said that she would schedule a meeting for the group, and that they could plan to have a draft survey completed before the Presiding Judges' meeting on February 4.

Pretrial risk assessment instruments

Ms. Geddes said that she has been adding pretrial assessment information to the ACJC web "Resources" page, including a document from the Pretrial Justice Institute that outlines the most current evidence-based work. A result from Hawaii's Justice Reinvestment Initiative was a statutory change requiring mandatory use of a pretrial assessment tool for defendants who remain jailed after three days. One purpose of their project was to expedite the pretrial process. She said that the Arnold Foundation was working to validate an instrument that could be used by any jurisdiction within the United States, rather than each jurisdiction having to validate and norm the tool for each local population. The PSA tool requires no defendant interview, and supposedly no additional staff and expense. The Arnold Foundation hopes to make their non-proprietary instrument available in 2016. Several Commissioners expressed doubt as to the availability of future funding for any new function, e.g. a required pretrial asessment tool or agency function.

Ms. Geddes said that we could focus on pretrial tools not requiring substantial investments, such as automated telephone calls regarding scheduled court dates, which have proven effective in obtaining compliance with pretrial release conditions. Justice Bryner emphasized that need to be sure that any new programs were faithful to the model that had been shown to be successful.

Court disposition times

Ms. Meade discussed the data presented in her table of disposition times in superior and district courts for different types of dispositions.

QUESTIONS:

Judge Rhoades asked if it were possible to learn/link the types of cases being disposed of in district court to the disposition times.

ASSIGNMENTS:

Judge Rhoades, Mr. Linton and Quinlan Steiner (the 3 members of the 'bail survey subcommittee') are going to (1) finalize the questions for the bail survey and then (2) recommend to the larger Workgroup who should receive it. There was a specific concern expressed that the survey reach actual bail practitioners, not just their bosses. If any other member of the Workgroup wishes to weigh in on the surve, contact staff or Judge Rhoades by the end of this week.

FUTURE MEETING DATES (LOCATIONS TO BE ANNOUNCED)

- January 27, 2 – 4 p.m.
- February 20, 2 - 4 p.m.
- March 16, 2 - 4 p.m.
- April 28, 1:30 - 3:30 p.m.

THE MEETING ADJOURNED AT 4:40 pm.

Notes by Teri Carns (MG ed.)

ACJC WORKGROUP ON RURAL CRIMINAL JUSTICE
Staff Notes and Member Assignments (TC)
From December 10, 2014 Meeting, 10:00- 11:30 AM @ Denali Commission

Commissioners Attending: Quinlan Steiner, Alex Bryner (tel.), Greg Razo, Terry Vrabec (tel.)
Staff Attending: Teri Carns (TC), Mary Geddes (MG)
Also Participating: Gregg Olson (Law); Jay Hochberg, Public Defender

The next workgroup meeting is: Wednesday, January 12, 9:00 AM- 11:00 AM
Denali Commission, 510 L Street, 4th floor, Anchorage

INFORMATION

The meeting opened with a telephonic presentation by Jay Hochberg, Assistant Public Defender, about bail issues in rural areas of the state. Mr. Hochberg said that at Mr. Steiner's request he surveyed Public Defender agency staff about their concerns regarding bail practices. Mr. Hochberg made the following points:

- Third party custodians are used in the majority of rural cases, including misdemeanors. They are often layered on top of secured bail requirements, rather than substituting for money bail as was originally intended.
- Poverty is also keeping people in jail. Mr. Hochberg wondered why isn't the court/DOC allowing credit card payment.
- In rural areas, the issue is not 'flight.' Pretty much everyone knows where a defendant can be found. Other issues can interfere with appearance, i.e. forgetting a hearing or not having auirfare to come into town.
- Even when a third party custodian is available, some judges require a signed affidavit, rather than allowing confirmation on the telephonic oral record. Requiring signed paper work from a remote custodian following court often adds one to three days of incarceration before release.
- In a few communitiies, judges permit lengthy (30 to 60 minute) aggressive cross-examinations of proposed third-party custodians, focusing on relatively minor and remote past incidents.
- In many communities in the past, it has been acceptable to release the defendant and permit him/her to make their way home (typically to a village), and have the third party custodian meet them at the airport. Some prosecutors are objecting to that practice, apparently preferring that the custodian come to the court and leave with the defendant.
- In some communities, judges or magistrate judges are requiring that defendants post the amount of a return ticket to court in advance of release to assure that the defendants are able to get back to the court for further hearings/trial.
- Some judges/magistrate judges will not release a defendant back to a small community because of perceived danger to the victim or others in the community even when there is a third-party to supervise.

- Mr. Hochberg noted that there is substantial support for the 24/7 program. He stated that he is in the minority as he objects to the 24/7 program on several grounds. It is unconstitutional as a warrantless search under Scott (9th Cir. 2006). He is also concerned that it will be used in addition to third-party custodians and secured bonds rather than in lieu of them. The requirements are burdensome and onerous. In larger communities, getting to the center where breath tests are administered can be very difficult because of lack of transportation. He noted that despite his objections many attorneys like and use the program. Many rural communities could use their VPSO for their own kind of 24/7 program.
- Mr. Hochberg said that because defendants are unable to find third party custodians or meet other bail conditions, they often plead guilty at an early opportunity, because the offense was minor and they know that they'll be released with no further time to serve. He said that judges do not perceive this as coercing pleas, but he believes that many defendants, if released, would have a chance to obtain witnesses and evidence to defend themselves against the charges. He suggested that one piece of evidence is that followup bail hearings at which changes in bail conditions are denied are often followed almost immediately by a change of plea that disposes of the case.
- Mr. Hochberg noted that both Alaskan studies (e.g., Judicial Council Alaska Felony Process: 1999) and others show that people who spend time incarcerated before disposition are significantly more likely to have longer sentences, bail conditions that are less likely to obtain release are costing the state substantial amounts of money. He suggested that the commission could review a bail policy in Kentucky that allows the defendant a $100 credit against a required bail amount for every day of pre-trial incarceration. When the bail amount has been reached, via these credits, the defendant is released until disposition of the case. Mr. Hochberg suggested that the Kentucky arrangement particularly makes sense in terms of 2nd DUI offenders. It is very typical that they will otherwise sit in jail because of a 3rd party requirement. When they have been sitting in jail like this for a while, defendants will typically plead out even though there is no discovery, even though no review for motions is possible, and judges will let them out after they have sat in jail for the minimum mandatory sentence.
- Mr. Hochberg said that he had appeared before Judge Jeffrey early in his practice and that he observed the Judge release a defendant on an installment plan so that he could keep his job. S. Carolina also allows bail on the installment plan, after a down payment.

Members discussed Mr. Hochberg's presentation. Mr. Razo said that he hesitated to limit practitioners' creativity. Mr. Steiner concurred, but said that he favored codifying some changes. He noted that public safety was not enhanced by keeping people, especially many misdemeanants, incarcerated until they plead, and then releasing them immediately with no supervision. He added that evidence shows that even short jail stays increase the likelihood of recidivism among low-risk offenders.

Ms. Geddes said that the federal system uses very few secured bonds, and that Alaska could consider using more unsecured bonds.

Mr. Vrabec said that the Troopers must pay to transport people who they have arrested to court and back (if the person is in the custody of DOC, that department pays). Mr. Steiner said that the cost of transport to trial and court events is being litigated. Apparently some people voluntarily remand themselves in the villagfe so they can get transported back to court in Bethel. Some courts have refused to remand. Mr. Hochberg said they should consider the costs of a airfare versus the costs of daily incarceration.

Mr. Razo said that the new Governor is likely to focus on the cooperative system of rural justice, and there may be a willilngness to enter into into agreements with more locallized jsutice systems. Perhaps we should have TCC come in for presentation, necause there is perhaps as much needs to change policy as statutes. Natasha Singh, general counsel for the TCC may be a good resource, and offer prespective on cooperative agreements.

Quinlan Steiner said that he would like to better understand the barriers to establishing tribal courts, and the realistic prosepects of establishing and maintaining the courts. Mr. Razo stated that money has to be spent either on district courts or tribal courts.

Mr. Olson asked if there is an intermediate step to tribal courts, such as an elder council or community group. He noted that back in 1989, the Bethel's DA office did lots of diversions to such groups, resulting in dismissal of cases if there was successful performance by a defendant. In Emmonak, 90% of the young adult cases were handled by diversion, right at arraignment. It also happened in DL cases, too, e.g. charges can be reduced or dismissed if driver gets straightened out in 30 days.

Certainly there has been a history of diversion efforts in Alaska. The Alaska pretrial diversion program was a state-wide program with six offices was shut down in 1986. A 1990 evaluation of the Barrow and Minot diversion efforts showed that the single most important factor contributing to that option was a source of referrals.

Gregg Olson indicated that the Washington State diversion program is run by a non-profit. He wondered about law school resources to study some of the questions raised concerning pretrial diversion. Staff referred him to www.pretrial.org, the website for the Pretrial Institute. MG found a survey of diversion prgrams at that wwebsite. Here is the link. No Entry A National Survey of Criminal Justice Diversion.

The group briefly discussed Criminal Rule 11(i) on Restorative Justice. See Alaska Criminal Rule 11.

RESOLUTIONS/ASSIGNMENTS

Members agreed that they wanted to pursue the following topics:

- Members will explore agreements between executive branch and tribes (including Mike Geraghty's draft agreement). Staff or Mr. Razowill Invite Natasha Singh of TCC to speak with

the committee. The workgroup should siscuss barriers to creating and sustaining tribal courts. Consider less formal ways for tribes/villages to work with criminal justice process.

- Mr. Steiner and Mr. Olson will collaborate on a paper discussing bail related issues.

- All should review Walker/Mallott Transition team recommendations when they become available.

- Members shall review the ABC Board's recommended changes to Title 4 with respect to criminal provisions, including interdiction.

- The workgroup should further discuss appropriate and available diversion possibilities, including use of non-profit corporations, tribal councils, and so forth for alternative dispute resolution.

- Discuss state's broad definition of domestic violence, and unintended consequences, especially in rural areas. Mr. Steiner said that he would draft a paper covering the issues, to guide discussion.

ACJC WORKGROUP ON PRE- AND POST- TRIAL LAWS AND PROCESSES

Staff Notes and Member Assignments

November 21, 2014 Meeting, 1:30 PM – 4:30 PM

510 L Street, 4th Floor, Foraker Conference Room

Commissioners Attending: Quinlan Steiner, Alex Bryner, Stephanie Rhoades, Trevor Stephens (tel.), Brenda Stanfill (tel.)
Staff Attending: Susanne DiPietro, Mary Geddes (MG), Teri Carns
Also Participating: Nancy Meade (Courts), Bryan Brandenburg (DOC), Bob Linton

The next workgroup meetings (all in Anchorage) are as follows:

Thursday, December 11, 9:00-11:00 AM

Monday, January 5, 3:00-4:30 PM

NEWS AND INFORMATION

Pretrial detention has been a focus of several national organizations. Several states have pursued the idea of using risk assessments for bail setting. These assessments are similar to, but not exactly the same as, tools used for other purposes.

Bryan Brandenburg, Director of Institutions at DOC, gave a presentation about inmate screening procedures, risk/needs assessments, use of programming, and release planning routinely employed by DOC.

DOC now uses evidence-based practices wherever possible in its programming and screening functions, with the goal of reducing recidivism. Initial reviews of recidivism rates suggest that they are trending down from levels existing when programming was absent or not evidence-based: recidivism is down 4%; remands are 4000 less than previously (out of a total of roughly 42,000) per year; and successful discharge from probation/parole supervision has increased 20%. DOC recently hired a contractor to review all its programs, including re-entry programs, for evidence of effectiveness in reducing recidivism.

How does DOC Screen Inmates?

1. Initial screen of inmate within 24 hours for medical and mental health problems also for compliance with the federal prison rape elimination act.

2. Determine CRC eligibility assessment mostly for unsentenced misdemeanants. NB: unsentenced misdemeanants who are transferred to CRCs do not get further risk/need screening, nor is treatment available there.

3. Within 5 days of remand, inmates receive a custody classification for risk level and custody. Any inmate who has minor children will be referred to a parenting class. An inmate without a high school diploma will be referred to a further assessment for educational programming. A substance abuse-related charge or history will result in further screening with possible follow on referrals to the LSSAT

(Life Success Substance Abuse Treatment) program (90 days with no special housing assignment) or RSAT (six months in a dedicated housing area). Both programs have wait lists at all times.

4. For offenders sentenced to 30 days or more, the 54 question LSI-R (Level of Service Inventory- Revised) assessment is given. For others, the LSI-SV is first given. The LSI-SV is an eight-question screening version of the LSI-R. If a person scores in the medium to high risk rangess, he or she is given the full LSI-R. If release is imminent, these offenders are referred to community programs.

5. For those whose release is not imminent, an offender management plan is developed. The Offender Management Plan documents what the medium- or high-risk offender needs in the way of programming, and also documents what programming was received during the inmate's stay. Later a release plan is developed, and closer to release a transition plan. Note: Only 25% of departing inmates are released to probation or parole supervision. For those released to no supervision, DOC refers to them to community re-entry coalitions. Low-risk offenders are unlikely to re-offend and excessive supervision could actually increase recidivism.

What is the LSI-R and how is it used?

It is a tool designed to assess an offender's criminogenic risk of returning to custody and needs. Includes dynamic and static factors (refer to handout MG sent before this meeting for details). Of the 7 dynamic factors, the first four are most predictive: criminal thinking, emotional instability, substance abuse, family and marital relationships. The score an offender receives is translated to a risk level, and there are five categories of risk ranging from low to high.

A review of our existing bail statute shows that many of the conditions listed as being associated with criminogenic risk are actually listed there: seriousness of offense, criminal history, housing, ties to the community, etc.

What programming does DOC offer?

All DOC programs are designed to address the most predictive criminogenic risks – procriminal attitudes, substance abuse, and antisocial personality pattern. Parenting skills also are emphasized in an effort to prevent offenders' children from growing up to repeat antisocial patterns of behavior.

Anger management is assigned based on the offender's score on the "Hostile Interpretation Questionnaire". Three levels are available, and offenders are re-tested after completion to check for decreases in hostile interpretation.

Criminal attitudes program is assigned based on scores received on the "Criminal Sentiments Scale, Modified". DOC reports a 7% reduction in recidivism for those who complete the program versus those who did not attend but were eligible.

Substance Abuse: LSSAT and RSAT. DOC reports that the LSSAT program shows a 6% reduction in recidivism for those who complete compared to those who did not attend but were eligible. There are many more eligible inmates than treatment slots for these two programs.

DV programs are provided in four facilities.

DOC wants to provide more programming but funds are limited.

Electronic monitoring capacity is 500 but actual use has never risen above 430. DOC wants to maximize EM.

Staff Training

DOC staff receive extensive training including a 40-hour orientation, a 252-hour academy, and annual retraining. The training is being revised to increase emphasis on positive communication including motivational interviewing, and encouraging positive inmate behavior.

QUESTIONS:

Is there a way to reduce the number of pretrial defendants in custody that would be acceptable to defenders, judges, and prosecutors?

Is risk/needs assessment a viable approach to separating out those pretrial defendants who could safely be released from those who cannot? What are other states' experiences in this regard? What does the research show?

If risk/needs assessment is a viable approach, what tools are available and who would use them (ie judges or others?).

If risk/needs assessments were used to inform judges about the in/out decision, how might the information be elicited and shared in such a way as not to reveal incriminating or negative information to the prosecution?

In what ways does our bail statute align with what research shows to be the criminogenic risk factors, and are there items missing?

RESOLUTIONS
Continue this discussion.

ASSIGNMENTS:
No individual assignments. Group assignment to review literature and information previously provided.