

**Governor's Commission to Reform Maryland's Pretrial System**

**Tuesday July 15, 2014**

**2:00 – 4:00 PM**

**House of Delegates Building**

**6 Bladen St.**

**Annapolis, Maryland 21401**

**Participating Members:**

Richard Karceski (Chair)  
Andy Alperstein (on behalf of Brian Frank)  
Sheriff Jesse Bane  
Tammy Brown  
Delegate Luke Clippinger  
Paul DeWolfe  
Wendell France  
Dorothy Lennig  
Ryan Lhotsky (on behalf of Senator Zirkin)  
Mary Lou McDonough  
Capt. Michael Merican  
Hon. John Morrissey  
Tim Murray (on behalf of Cherise Burdeen)  
Hon. Steven Platt  
Angela Talley  
Senator Christopher Shank  
Scott Shellenberger  
Rev. Dr. Sheridan Todd Yeary

**Guests:**

Mark Adams, Bail Bondsman  
Spike Bradford, Pretrial Justice Institute  
Amy Devadas, Maryland Department of  
Legislative Services  
Delegate Kathleen Dumais  
Pamela Harris, Maryland Judiciary  
Kevin Loeb, Department of Public Safety and  
Correctional Services  
Richard Montgomery, Maryland State Bar  
Association  
Karen Morgan, Maryland Department of  
Legislative Services  
Shirleen Pilgrim, Maryland Department of  
Legislative Services  
Claire Rossmark, Maryland Department of  
Legislative Services  
Janene Scelza, National Criminal Justice  
Association  
Rachel Sessa, Department of Public Safety and  
Correctional Services  
Drew Snyder, Maryland Judiciary  
Dave Weissert, Maryland Judiciary

**Staff:**

Lisa Smith, Governor's Office of Crime Control & Prevention  
Alex Staropoli, Governor's Office of Crime Control & Prevention  
Jeff Zuback, Governor's Office of Crime Control & Prevention

## **I. Welcome and Introductions**

The meeting was called to order by the Chair at 2:12 PM. Commission members briefly introduced themselves by name and agency/organizational affiliation. The Chair asked the Commission to review and approve the minutes. The minutes were approved.

Ryan Lhotsky stated that Senator Zirkin sends his apologies for not being able to attend the meeting. Mr. Lhotsky read Senator Zirkin's statement into the record.

*Members of the commission, I apologize for being unable to attend this meeting today. Unfortunately my wife is having surgery at this time and need to be there for obvious reasons. I have sent my chief of staff in my place. This remains a critical issue as we move toward the next legislative session and I look forward to being at the next meeting.*

*I had the opportunity since our last meeting to attend a number of hearings before district court commissioners so that I could observe the interaction with new attorneys. I had the opportunity to speak with a number of appointed attorneys as well as commissioners to get their feedback of how the new system is working.*

*I believe that Chief Judge Morrissey and his staff are owed a huge debt of gratitude for the incredible work that they have done in putting together a schedule of attorneys throughout the state. I also believe that as we deliberate any changes to our system, if any shall be necessary, that we all take a hard look at how the new system is working. I believe that the impression of the court commissioners would be enlightening to this process.*

*Once again, thank you all for your hard work on this issue and you your understanding on my absence and look forward to seeing you at the next meeting.*

Richard Karceski stated that he recently attended pretrial hearings and that Judge Morrissey is owed a debt of gratitude for the hard work of the judges and the Court Commissioners with regards to Richmond implementation that began on July 1<sup>st</sup>. Mr. Karceski noted that he and Tammy Brown recently took a trip to Central booking to watch the intake process. They also spoke with 3 judges about the Richmond implementation.

## **II. Review of Last Meeting and Data Requests**

Richard Karceski reiterated that the purpose of the Commission is to create an ideal pretrial system. An ideal pretrial system is one that appropriately identifies the risk of a defendant, is both efficient and cost effective, and also protects the fundamental rights of individuals. Mr. Karceski recapped the following data requests:

- How many individuals who are ROR'ed or bailed (so released) FTA or get re-arrested?
- FTA statistics by bail type by jurisdiction;
- A breakdown of court commissioner pretrial decisions vs. judge pretrial decisions;

- The number of citizen applications by jurisdiction including those result in an arrest warrant or a summons;
- The number and percentage of cases nolle prossed by jurisdiction;
- The number of citizen and police complaint cases screened by a State's Attorney;
- Daily snapshots of the pretrial detained population in various jurisdictions;
- The length of time defendants are detained pretrial by jurisdiction;
- The average wait time to see a Court Commissioner;
- Pre and post Richmond statistics by jurisdiction including initial appearance waiting time, and pretrial release decision making
- Information regarding pretrial diversion programs

Mr. Karceski stated that the purpose of the Commission is to identify ways to achieve the characteristics of an ideal pretrial system. Mr. Karceski then proposed the formation of three subcommittees to complete the work of the Commission and noted that the subcommittees will be described and discussed in greater detail later on in the meeting.

### **III. Characteristics of an Ideal Pretrial System**

Richard Karceski used PowerPoint to present three characteristics of an ideal pretrial system and the potential methods for achieving those characteristics. The three characteristics are as follows:

1. Pretrial detention decisions are based on risk
2. Efficient and cost effective
3. Fundamental rights are protected

#### ***1. Pretrial detention decisions are based on risk***

Risk is defined as a defendant's risk of re-offense (either violent or non-violent) as well as their risk of failing to appear for court. Mr. Karceski asked the Commission what they could do as a group to form a recommendation to the legislature regarding pretrial system reform. He recommended four methods to ensure pretrial detention decisions are based on risk including the following:

- The availability of diversion programs and services for low risk individuals;
- Better information for pretrial decision makers;
- The use of an objective risk assessment tool;
- Increased objectivity to eliminate disparities in pretrial outcomes;

#### ***Citizen Applications***

Mr. Karceski stated that one issue with the current pretrial system in Maryland is the number of cases that are statted, nolle prossed, or dismissed. He noted the need to improve processing times for defendants. He stated that all cases, including citizen complaints, should be screened by a prosecutor. Dorothy Lennig stated her concern about this recommendation for the victim

population because citizen complaints are how a large number of domestic violence victims access the criminal justice system. Mr. Karceski responded that there can be an open discussion regarding the recommendations and it is certainly an issue that should be discussed at greater length in a subcommittee.

Scott Shellenberger explained the citizen complaint process in Baltimore County. In Baltimore County, a citizen who makes a complaint usually sees the prosecutor within 3-5 days. This process however, does not affect the service of process of a warrant or summons that is issued by the Court Commissioner. Mr. Shellenberger estimated that to do early screening on all cases, he would need 12 additional prosecutors which would cost \$800,000. Mr. Karceski asked Scott Shellenberger if there are transportation issues with the victim making it to a prosecutors' office within 5 days. Scott responded that there are some transportation issues as Baltimore County covers a large geographic area.

Scott Shellenberger suggested that an alternative solution would be to wait 3 days to issue the summons in citizen complaint cases. Dorothy Lennig responded that this would be a problem for crime victims, especially domestic violence victims, who predominantly ask Court Commissioners to issue a statement of charges through citizen applications. This could put the victim back into immediate contact with their abuser. Mr. Shellenberger responded that it does have a deterrent effect to serve a summons right away rather than waiting to serve it.

Richard Karceski added that there are a few people who abuse the system and give domestic violence victims a bad name. In addition, he reminded the Commission that a domestic violence victim can also apply for a peace order as an alternative to a summons or arrest warrant. He further added that when individuals receive a summons, it does not indicate what they are being charged with people get a summons before they know what they are being charged with.

Scott Shellenberger suggested that another potential solution would be to require a police report be for every single case. Dorothy Lennig responded that there are always going to be some individuals who lie. Mr. Shellenberger added that domestic violence defendants are usually not the ones who sit in the detention center. Rather, these defendants are usually given low bail and are not the individuals affected by Richmond. Richard Karceski responded that the purpose of this Commission is to make the pretrial system the best it can be and it is not only about addressing the Richmond decision.

## ***2. Efficient and Cost Effective***

There were five methods presented to ensure that a pretrial system is efficient and cost effective. These methods include the following:

- Early screening;
- Improve processing times;
- Effectively manage pretrial populations;
- Utilize pretrial supervision when appropriate
- Better transparency & accountability: data collection

- Arrests and booking
- Initial appearances
- Bail hearings
- Jail populations
- Case outcomes

**3. *Fundamental rights are protected***

There were three methods presented to ensure that the fundamental rights of individuals are protected pretrial:

- Uphold right to counsel;
- Maintain presumption of innocence
- Equal protection

**IV. Data Requests**

Richard Karceski went over the various data requests that pertain to the three characteristics of an ideal pretrial system. Tammy Brown added that there will be a discussion of three subcommittees that will look further into the data.

***Pretrial detention decisions are based on risk***

Data	Status	Source
How many individuals who were ROR or bailed (so released) FTA or got rearrested?	GOCCP received data from Judiciary and is working on analysis.	Judiciary
FTA statistics by bail type by jurisdiction (2012 and 2013).	Completed	Judiciary
Copy of rule that includes the factors court commissioners consider to determine pretrial release.	Completed. Subcommittee will review.	Maryland Rule 4-216
A breakdown of court commissioner pretrial decisions vs. judge decisions	GOCCP received data from Baltimore City only.	Judiciary

Research on harm reduction models and survey of local pretrial diversion programs statewide.	GOCCP will coordinate with Sen. Shank (NCSL, CSG), PJI, MSAA, MCAA to gather information.	MSAA, DPSCS, MCAA, Judiciary
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***Efficient and Cost Effective***

Data	Status	Source
Citizen application breakdown for the past 2 years including summonses and arrest warrants	GOCCP will reach out to JIS. Detailed information may not be available. GOCCP will coordinate w/ Dave Weissert.	Judiciary
Number and percentage of nolle pros and dismissal cases by jurisdiction	State's Attorneys receive annual report from District and Circuit Court.	Judiciary, MSAA
How many citizen and police complaint cases are screened by a State's Attorney	MSAA (Scott)	MSAA
Average wait times to get to the court commissioner initial appearance	Survey of local jails with central processing; LE	MCAA
Length of time defendants are detained pretrial by jurisdiction	2 maps were created using monthly jail data to be distributed to the Commission on 7/15	MCAA
Daily jail snapshots of the detained pretrial population	7 of 24 jurisdictions have sent their data, received from MCAA. GOCCP will analyze.	MCAA
Pre and post Richmond statistics by jurisdiction: average initial appearance waiting time, RORs, and bail amounts	Subcommittee will investigate different jurisdictions. Dave Weissert is collecting some of these data.	Judiciary
Assess the impact on Richmond by jurisdiction (indigency determinations)	Subcommittee will investigate different jurisdictions.	DPSCS, MCAA, MSAA, Judiciary, law enforcement, OPD

***Fundamental rights are protected***

Data	Status	Source
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A sample of court commissioner decisions by demographics of the defendant, crime charged, and criminal history		Judiciary
What branch of gov't/agency should be responsible for providing counsel?	Subcommittee will research options, make recommendation.	Subcommittee #3
Geographic standardization		

## V. Formation of Subcommittees

Mr. Karceski discussed the proposal to form three subcommittees.

Risk Assessment Subcommittee: The purpose of this subcommittee would be to consider the development and validation of a pretrial risk assessment tool. GOCCP has been in contact with multiple organizations regarding the implementation of their risk assessment tool.

Evaluation of Richmond Compliance Subcommittee: This subcommittee will review the initial appearance process that has been going on since July 1<sup>st</sup>. They will examine what systems are being used, how matters are processed, and whether or not the new system is effective.

Fundamental Rights of those Charged and Arrests Subcommittee: The purpose of this subcommittee is to ensure that all defendants receive fair and equal treatment.

Tammy Brown stated that these three Subcommittee ideas stemmed from discussion at the first Commission meeting and were organized into overarching themes and principles.

Tim Murray suggested that the Risk Assessment Subcommittee should not just focus on using a risk assessment tool, but should also address strategies to mitigate risk such as monitoring, supervision, and other pretrial restrictions. Once a risk is identified, how do you respond to it?

Judge Platt thought that breaking into subcommittees makes sense. He noted however, that to accomplish the goals of the three subcommittees, the group must think about what branch of government will be responsible for carrying out the proposed mission. For example, which branch of government will be administering the risk assessment tool?

Dorothy Lennig asked which Subcommittee would be responsible for addressing the citizen complaint issue. Richard Karceski responded that it would fall under the Evaluation of Richmond Compliance Subcommittee.

Senator Shank proposed a different idea for the Subcommittees. He proposed creating subcommittees based on three criminal justice values:

1. Outcomes on individuals charged
2. Public safety: who is cut loose and who is detained
3. Efficacy: Include the cost and how efficient it will work

Tim Murray proposed to leave the three Subcommittees as suggested by the Chair and Tammy Brown but also asked if they could incorporate each of the three values proposed by Senator Shank. Richard Karceski responded that this was a good idea.

Paul DeWolfe mentioned that the Governor's Executive Order has seven goals that align with the three values proposed by Senator Shank. Mr. DeWolfe also mentioned that the previous work of the Indigent Defense Task Force looked into some of the same values including whether or not we are releasing the right people.

Judge Morrissey asked if the three Subcommittees could be reorganized around the three values. Tammy Brown responded that there a large overlap between the three recommended Subcommittees and the three values proposed by Senator Shank.

Judge Platt noted that the Commission ought to be mindful of the differences by jurisdiction within Maryland when making recommendations in the subcommittees. For example implementing a pretrial risk assessment tool in one jurisdiction may involve a slightly different process that it would in another jurisdiction. Pretrial does not exist in every jurisdiction and the costs are different per jurisdiction.

Angela Talley asked the Commission how we know a pretrial risk assessment tool will work in Maryland if it has not been tested. Richard Karceski responded that we could test a risk assessment tool in a pilot jurisdiction first before we make it statewide. Tim Murray stated that any pretrial risk assessment tool implementation goes through a validation process on a particular sample population. There is always a cost involved in any validation study.

Dr. Sheridan Yeary asked what is the question the Commission is trying to address. What is the essential task involved? This would help guide the discussions of the Commission. Richard stated that all of the objectives are in the seven goals of the Executive Order. Paul DeWolfe read each of the seven goals. Dr. Sheridan Yeary responded that he would like clarity on what the Subcommittees are going to accomplish and to make sure there is synergy amongst the three groups.

Paul DeWolfe asked if there is enough time to conduct a pilot program with a risk assessment tool in a particular jurisdiction and report out on the findings by the December report. Tim Murray responded that the data points are likely available to conduct a validation study. The results of a validation study would show the likelihood of success or failure among the sample population.

Scott Shellenberger suggested that the Pretrial Risk Assessment Subcommittee should not re-create the wheel as there has been a lot of work done in this area and there are many pretrial risk assessment tools in existence including the Arnold Foundation tool. Mr. Shellenberger further added that the issue last legislative session was not about whether implementing a pretrial risk assessment tool was a good idea, but rather how will it be implemented. Should the tool be used as guidance for a judicial officer or should it have an administrative release component?

Tammy Brown stated that the Risk Assessment Tool Subcommittee would examine all data requests from the Commission and also determine whether an interview component of the tool is necessary. Mrs. Brown explained that dividing the entire task of the Commission into smaller Subcommittees is a good approach and that it is crucial to have the expertise of the different Commission members on the appropriate Subcommittee.

Scott Shellenberger proposed an email be sent to all of the Commission members notifying them of the three Subcommittees so that they can decide which one they want to be a part of. A motion was made for the three Subcommittees and it was accepted.

## **VI. Data Elements**

Lisa Smith from GOCCP began reviewing the data elements from the PowerPoint with the Commission. Ms. Smith confirmed that MSAA could provide data on Diversion programs. Scott Shellenberger replied that MSAA should have information on Diversion programs but that NCSL and CSG would also have information. Captain Mike Merican cautioned the group on how they are defining diversion as it has different terminology depending upon the agency the defendant comes into contact with. Mike Merican emphasized that the Commission is asking for a laundry list of all diversion programs.

Lisa Smith asked which agency could provide data on citizen applications broken down by summons and arrests warrants. Dave Weissert responded that he has data on just citizen applications or just warrants and summons issued but not the two paired together.

Lisa Smith then asked for data on the number of cases nolle prossed. Pete France responded that they have that data in Baltimore City because it is coded as a release reason (meaning those released without charges). That only includes nolle pros data on those detained however. Scott Shellenberger responded that the State's Attorney's have a report that includes steted and nolle prossed cases. He also replied that there is a data gap because it will not show the pretrial outcome for those who were released from jail pretrial.

Lisa Smith asked who would have data on the percentage of cases screened by a prosecutor. Scott Shellenberger stated that he will follow up with MSAA to see if this data is available.

Lisa Smith asked who would have data on the wait time before court commissioners. Tammy Brown mentioned conducting a survey of the local detentions centers. Mary Lou McDonough pointed out that you could only survey jurisdictions that have central booking. Scott Shellenberger stated that there may be a delay before a defendant goes to central booking as well.

Lisa Smith let the Commission know that 7 out of 24 local jails have sent a daily population snapshot to GOCCP.

It was noted that it will be important to track the percentage of defendants who waived counsel.

Lisa Smith asked Dave Weissert if the court commissioners are collecting any data on court commissioner outcomes post Richmond. Mr. Weissert responded that they are collecting some data on pretrial outcomes post Richmond but it is all paper-based.

Paul DeWolfe asked Dave Weissert if he tracks data on the number of indigent defendants. Mr. Weissert replied that he has that data.

Mary Lou McDonough stated that her experience with Richmond so far is that it has not affected her overall jail population, but it has affected the processing times of defendants.

Delegate Clippinger asked Dave Weissert if he has data on the main charge of each defendant. For example, are defendants charged with more serious crimes more or less likely to waive counsel? Dave Weissert stated that he could track data on this but it would not be retroactive.

Judge Morrissey responded that electronically tracking this data would require a program change that would take time and cost money to change, as their current system is part electronic and part manual. Mary Lou McDonough pointed out that the data is very lengthy as a 1 day snapshot from her jail population was 260 pages.

Richard Karceski thanked the Commission for their participation and accomplishments of the day.

The meeting adjourned at 4:06 pm.

**Next Meeting**

The next Task Force meeting will be held on Thursday, August 21, 2014 from 10AM-12PM in Annapolis, MD (location TBD).