

**Governor's Commission to Reform Maryland's Pretrial System
Managing Public Safety through Risk-Based Decision Making Subcommittee**

**Thursday August 7, 2014
1:00 – 3:30 PM**

**James Senate Office Building
11 Bladen St.
Annapolis, Maryland 21401**

Participating Subcommittee Members:

Senator Christopher Shank (co-chair)
Angela Talley (co-chair)
Cherise Burdeen
Delegate Luke Clippinger
Paul DeWolfe
Capt. Michael Merican
Dorothy Lennig

Additional Commission Members present:

Brian Frank
Richard Karceski
Paul Kemp
Judge John Morrissey
Scott Shellenberger

Staff:

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

Guests:

Mike Canning, Manis Canning & Associates
Douglas Colbert, University of Maryland School
of Law
Philip Cronin, Maryland State Bar Association
Amy Devadas, Maryland Department of
Legislative Services
Delegate Kathleen Dumais
Terry Kokolis, Anne Arundel County Department
of Detention Facilities
Kevin Loeb, Department of Public Safety and
Correctional Services
Jordan More, Maryland Department of
Legislative Services
George McBride, Office of the Lt. Governor
Natasha Mehu, Maryland Association of
Counties
Kelley O'Connor, Maryland Judiciary
Suzanne Pelz, Maryland Judiciary
Rachel Sessa, Department of Public Safety and
Correctional Services
Darleen Underwood, Pretrial Justice Institute

I. Welcome and Introductions

Angela Talley called the meeting to order at 1:05 pm. She provided a brief overview on the mission of the Subcommittee which is to define risk, research the history of pretrial risk assessment instruments, look at various pretrial risk assessments, and determine whether or not the state of Maryland should use a statewide pretrial risk assessment tool.

II. Presentation: Cherise Burdeen, Pretrial Justice Institute, An Overview of Pretrial Risk Assessments

Cherise Fanno Burdeen from the Pretrial Justice Institute provided a presentation on pretrial risk assessments. Cherise mentioned that in her experience on pretrial research, the first few days of pretrial confinement are the most crucial to a defendant's likelihood of failing pretrial due to employment and family disruptions. There has been a long history of pretrial risk assessments as the first one can be traced back to the 1960's from the VERA Institute. Jurisdictions all across the country are moving towards pretrial risk assessments. Currently, there are 330 counties that have pretrial risk assessment tools in the country. The purposes of risk assessments are threefold:

1. Sort people into the correct risk category
2. Improve discretionary decision making but not replace it
3. Guide the level of supervision needed to ensure pretrial compliance

Cherise stressed that over-supervising low risk defendants is a waste of valuable resources. There are three desired pretrial outcomes which include:

1. Maximizing public safety
2. Maximizing court appearance
3. Maximizing appropriate placements

Cherise showed a model of a pretrial risk assessment tool used in Virginia that includes prior criminal history, FTAs, pending charges, current charge, drug abuse history, current residence, and employment history as predictive risk factors. Cherise mentioned that this tool is used in urban, suburban, and rural counties in Virginia and is weighted the same in all three counties.

Scott Shellenberger asked if you can take a pretrial risk assessment from one state and transfer it to another. Cherise responded that the Virginia tool has been exported to Multnomah County Oregon. Once the tool was implemented in Oregon, it was revalidated using Multnomah County population data.

Senator Shank asked Cherise to describe a standard risk assessment tool validation process. Cherise explained that you first need to gather a large enough sample size from a local or state level and run various items or factors (criminal history) etc. on this population. You also must gather data on pretrial failures (new offense, new violent offense, or FTA) of this population. Then using linear regression analysis, you assess the predictability of each factor on a defendant's likelihood of not appearing for court or committing a new offense under pretrial supervision. Factors that are statistically significant and predict pretrial failures are included in

the risk assessment. You must also then validate the tool by running it on the local population to develop risk intervals (low, moderate, high etc.).

Judge Morrissey asked if you could validate a risk assessment tool based on historical data. Cherise responded that you can do this if the data are available. Judge Morrissey also asked if you can do a study where you compare what a live body is doing compared to what the risk assessment tool is doing. Cherise mentioned that a study like this was conducted in Lee County, Florida. The results showed that the validated risk assessment tool was more predictive. This was especially evident for the low risk population.

Dorothy Lennig asked if we could look at one jurisdiction and implement a pretrial risk assessment tool. Jeff Zuback said that Maryland must compile the necessary data. Cherise responded that Maryland is not the only state with pretrial data issues.

Paul DeWolfe asked if we could do a prospective study. Angela Talley responded that her pretrial service agency has public safety and FTA data, but only on those defendants that they supervise.

Cherise Burdeen discussed that any pretrial program must be able to measure its success rate based on FTA and new offense rates. Cherise also added that an interview component is important to a risk assessment tool. The Virginia model incorporates an interview component as does the risk assessment tool used by Montgomery County.

The next couple slides from Cherise’s presentation discuss risk levels of the Virginia tool (low, below average, average, above average and high) associated with pretrial outcomes.

Risk Level	Success	FTA	New Arrest	Technical Violation
Low	92.9%	3.7%	1.2%	2.2%
Below Average	87.5%	5.6%	1.6%	5.3%
Average	82.2%	6.7%	2.7%	8.4%
Above Average	76.3%	7.0%	4.2%	12.5%
High	68.0%	7.8%	6.2%	18.0%
Total Success/Failure Rates	82.0%	6.2%	2.9%	8.9%

Cherise also presented a slide regarding pretrial risk mitigation recommendations by risk level. For low risk defendants, a simple court reminder may be all that is needed, while moderate to high risk defendants should receive more stringent supervision strategies such as curfews and GPS monitoring. The highest risk defendants should not be released and instead should be detained preventively.

In Virginia, the low risk and medium risk defendants represent 46% and 48% of the pretrial population respectively while high risk defendants comprise only 6% of the pretrial population.

The next few slides presented by Cherise showed the use of pretrial risk assessments instruments around the country including those called for by state legislation, as well as various county tools. Cherise also included associations/organizations that have provided technical assistance in creating pretrial risk assessment tools.

Cherise’s final slide showed the public safety and court appearance rates based on the pretrial population in Colorado. These results are found below.

Risk Category	Point Score Range	Public Safety Rate	Court Appearance Rate	% of Defendants
Low	0-2	91%	93%	50%
Medium	3-5	79%	82%	40%
High	7-10	61%	68%	10%

III. Open Discussion

Scott Shellenberger asked if Montgomery County Pretrial Services makes recommendations to the judge. Angela Talley responded that this is the case. Scott also asked if a pretrial risk assessment tool is used anywhere in the country without an element of human discretion. Cherise replied that human discretion is an important part of the pretrial system and that there is no jurisdiction that replaces human discretion completely. In addition, Scott asked if Pretrial Services can still make informed decisions when money bond has been set, to which Cherise responded yes.

Kevin Loeb asked if the concept of administrative release is used in pretrial agencies around the country. Cherise replied that this concept is only utilized in the juvenile population. Kevin also asked if there is any Pretrial Services agency in the country that falls solely within the Executive Branch. Cherise responded that there is not such an agency anywhere in the country.

Brian Frank asked Cherise Burdeen what an acceptable FTA rate is nationwide. Cherise replied that PJI does not track that and that each individual jurisdiction/state sets what they determine to be acceptable. Brian then commented that any agency should have certain assumptions or numbers based on desired outcomes.

The Subcommittee then collectively started to talk about tracking pretrial failure data (FTA and new offense) in Maryland. Senator Shank asked if other jurisdictions around the country have data on pretrial outcomes such as FTAs and new arrests. Cherise replied that you need this data to do any pretrial risk assessment tool validation study. Jurisdictions that have completed validation study studies around the country have this data readily available. Terry Kokolis added that any validated program requires a very labor intensive process, and it may be difficult to determine FTA data.

Paul DeWolfe asked if we know the pretrial detention rate in Maryland. Jeff Zuback responded that we do not know the exact rate, but there are roughly 7,000 – 7,500 defendants detained in jail pretrial at any given time.

Brian Frank mentioned that defendants who receive a money bond are more likely to show up for court than defendants who are ROR’ed with no money bond. Delegate Dumais added that the court may have other options than money bond for low risk defendants and that there are some low risk defendants sitting in jail on low money bonds. Brian also responded that some defendants will stay detained pretrial to earn time served credits.

The Subcommittee started to talk about the Richmond Decision and ideas for future legislation. Judge Morrissey briefly described the Maryland Judiciary workload since Richmond. Dorothy Lennig responded that we should first adopt a risk assessment tool that we think works and then address the Richmond decision. Judge Morrissey added that the Judiciary does not have additional resources.

Scott Shellenberger mentioned that the concept of administrative release to address the Richmond decision will not pass in the legislature. He further added that many defendants are waiving their right to counsel and that there is a better way for the state to spend \$10 million. Senator Shank asked if risk assessments work when presented to judicial officers other than judges. Cherise Burdeen responded that pretrial service agencies conduct risk assessments and prepare information for the Court in different jurisdictions, regardless of whether it is a judge, magistrate or other type of judicial officer.

The Subcommittee asked Judge Morrissey what data the Judiciary has tracked since the Richmond decision. Judge Morrissey replied new data is tracked manually by paper and is not yet available for release.

Brian Frank asked if there is any thought from the legislature to overturn the Richmond decision. Scott Shellenberger responded that this will not happen. Paul DeWolfe replied that we need to minimize pretrial punishment and reform the system rather than solely address the Richmond decision. Senator Shank responded that the purpose of this subcommittee is to talk about risk and risk assessments and that another subcommittee will be addressing the Richmond decision.

Doug Colbert asked Cherise Burdeen her opinion of the federal risk assessment. Cherise responded that the federal tool is similar to other risk assessments around the country, in that they share some similar predictive factors.

Lisa Smith asked Cherise how you start the process of creating a pretrial risk assessment instrument in a jurisdiction like Maryland. Cherise responded by asking the following questions, How much time do you have? How much money do you have? What are you trying to solve? You can adopt an existing risk assessment tool and track the risk levels for a year and also monitor the release decisions that were made by the Judiciary.

Delegate Dumais did some research on validation studies around the country, including Colorado where they had two phases of data collection over a 16-month period. Florida conducted a validation study from 2011 – 2012 on data from 6 counties including interviews over a 6-month period. Kentucky has had a statewide pretrial services agency since 1976 and has changed risk assessment tools and re-validated its tool many times. Ohio validated a pretrial risk assessment tool in 2008 based on data from 1,800 defendants from a 2006 population cohort. Virginia has also re-validated its instrument multiple times.

Capt. Merican added that you need to collect pretrial information from multiple data points in the system. Jeff Zuback provided the idea to pilot a county in Maryland with a pretrial services agency that screens all defendants. A risk assessment tool could then be adopted based on this population of defendants. Capt. Merican added that counties with Central Booking are starting to get access to the Department of Public Safety & Correctional Services' (DPSCS) Offender Case Management System (OCMS). This system has many of the factors that would be needed to run

a risk assessment tool (FTA history, criminal arrests etc.) Jurisdictions with access to OCMS could run the factors and present the results to the Court Commissioners.

Kevin Loeb brought up the idea to have an independent researcher conduct the risk assessment validation study. Judge Morrissey recommended David Soule from the Sentencing Commission located at the University of Maryland.

Judge Morrissey asked Cherise Burdeen if risk assessment instruments include the current charge of a defendant, to which she responded that all risk assessments include this as a factor.

Judge Morrissey added that using a pretrial risk assessment instrument before a Court Commissioner would still not address the Richmond decision as lawyers would still need to be present at the initial appearance.

Scott Shellenberger asked if there is a change in the number of pretrial defendants detained after a risk assessment tool has been implemented. Cherise Burdeen responded affirmatively. Cherise also added that supervision needs to be set to mitigate risk, and risk assessment is incomplete without supervision guidelines.

Judge Morrissey commented that you need to know the profile of your jail population. He also asked what you do with a homeless defendant or someone who is mentally ill. Senator Shank mentioned that there is a good pretrial diversion program in Seattle. Cherise Burdeen added that there are a variety of mental health courts and pretrial diversion programs around the country.

Cherise Burdeen urged the subcommittee to start collecting data to begin a validation study. We could first start with a consensus building model and implement another tool such as the one used in Kentucky or Virginia. The next step would be to collect data and complete an 18-month validation study.

Paul DeWolfe said that we should pick some jurisdictions in Maryland to conduct a pilot study on a risk assessment. Scott Shellenberger mentioned that we need to have geographic diversity in the pilot sites we choose.

Scott Shellenberger also mentioned that the Court Commissioners are already using eight different databases to compile data. Cherise Burdeen asked the Judiciary if the Court Commissioners could run a tool and record answers to the questions. Judge Morrissey replied that the MDEC system is the priority right now; currently any data collection by the Commissioners is manual. The Commissioners are already overloaded with the new system as a result of Richmond. Angela Talley and Capt. Merican asked if we could have central booking jurisdictions with access to OCMS run the necessary data.

IV. Conclusion and Next Steps

Angela Talley began to wrap up the meeting and for the next meeting, the Subcommittee will discuss which instrument they would like to use, and who is going to fund it. For the initial step, we could use someone else's tool rather than build our own.

For the next meeting, Cherise Burdeen offered to bring copies of various risk assessments tools for the subcommittee to review. Jeffrey Zuback also mentioned that GOCCP has compiled a matrix of factors and risk categories from various pretrial risk assessment instruments.

The meeting concluded at 3:30 pm.