

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

**Friday September 12th
1:00 – 3:00 PM**

**Governor's Office of Crime Control & Prevention
300 E. Joppa Rd. Ste.1105
Towson, MD 21286**

Participating Subcommittee Members:

Senator Christopher Shank (co-chair)

Angela Talley (co-chair)

Cherise Burdeen

Paul DeWolfe

Dorothy Lennig

Additional Commission Members present:

Tammy Brown

Wendell (Pete) France

Judge Alexandra Williams representing Judge John Morrissey

Jacqueline Robarge

Scott Shellenberger

Staff:

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

Guests:

Amy Devadas, Maryland Department of Legislative Services

Christopher Flohr, Attorney at Law

Kevin Loeb, Department of Public Safety and Correctional Services

Claire Rossmark, Department of Legislative Services

Rachel Sessa, Department of Public Safety and Correctional Services

Drew Snyder. Maryland Judiciary

I. Welcome and Introductions

Angela Talley called the meeting to order at 1:05 pm. She provided an overview of 3 handouts including the agenda, previous Subcommittee meeting minutes and the risk assessment matrix provided by GOCCP. The minutes from the August 7th meeting were approved.

II. Lessons Learned from other States

Tammy Brown provided an overview of the Commission's visit to Kentucky Pretrial Services. Funding was provided by BJA to send 6 members of the Commission to attend this visit. Two delegates and one senator represented the legislative branch, two members from the judiciary attended and as well as a correctional administrator. Representatives from GOCCP and DPSCS represented the Executive Department. Tammy stated that it is possible that Kentucky could accommodate additional representatives in the future to attend a similar visit.

Tammy Brown added that she brought back several important ideas from the Kentucky visit. Senator Shank added that he thought the visit was very valuable and was intrigued by Kentucky Pretrial Services ability to capture data and track performance.

Scott Shellenberger asked if there are any weaknesses to the Kentucky model. Tammy Brown replied that Kentucky has a judge call which expedites the process for some low risk defendants. Pretrial Services calls the judge at various times throughout the day, provides them the defendants risk score and some charging information to which the judge makes a release determination over the phone. The judge does not always have all of the information on the defendant or the case information in front of them. Probable cause determinations are also not made at this time. Kevin Loeb added that there is an expedited public defender process in Kentucky where there is one public defender representing the entire docket of defendants

Scott Shellenberger asked how this judge call process would fit in with the Court Commissioner system in Maryland. Judge Williams responded that defendants are interviewed by Pretrial Services, compile all information and then the defendant is sent back to their cell. The judge call is made some time that evening. The defendant is waiting in a cell during that time. Dorothy Lennig asked why the judges are not called right away and there is a waiting process for defendants. Tammy Brown responded that that judge calls are scheduled at certain times of the day so all cases can be heard at that time.

Senator Shank and Tammy Brown also attend the National Association of Pretrial Services Agencies (NAPSA) conference in Colorado and learned about how they run pretrial. Colorado is more similar to Maryland's process than Kentucky. A risk assessment tool score and printout of defendant information is presented at a face to face meeting with the judge. Each jurisdiction's judges make determinations on how the risk assessment coincides with bail. Some jurisdictions also have a bond schedule in place. Defendants have 48 hours to be seen by a judge to make a pretrial release decision. Senator Shank explained that there is no counsel provided before a judge in Colorado.

Scott Shellenberger commented that the judge call would not be feasible with Maryland's current system and that the Colorado model would not satisfy the 24 hour rule in Maryland. Kevin Loeb added that the judge call would trigger Richmond in Maryland.

Some representatives from DPSCS and GOCCP also made a visit to DC Pretrial Services. The way that DC implements their risk assessment is different because the judges don't ever see the score, they only receive a release recommendation from pretrial services. A lot of information on each defendant is provided to the judges on the front end to help them make informed decisions. Dorothy Lennig responded that there is duplicate data entry in the Maryland pretrial system and there needs to be a way for all agencies to have access to the same databases. The prosecutors also screen all cases before they go before a judge in DC.

Scott Shellenberger provided the idea of the DC model but backing it up to the Court Commissioner stage so there is no duplicate data entry. Kevin Loeb added that you can duplicate DC's program for a lot less than its \$55 million budget. Scott Shellenberger mentioned that adding 24/7 State's Attorneys would be expensive. Paul DeWolfe said that before we discuss the cost, we must agree on the pretrial program we want to design because the current system under Richmond is not working. Tammy Brown added that Kentucky's statewide pretrial budget is only \$12 million but their salary scale is much lower than in Maryland. Getting better information on the front end is important for any effective pretrial services program. Scott responded that any budget in Maryland would still need to include the \$10 million for attorneys.

Kevin Loeb mentioned that DC has different diversion strategies for low risk offenders including citation offenses and some defendants paying a minimal court fee for low level offenses so they can be released.

Judge Williams asked what is the problem is that we are trying to fix. She explained that although the implementation of the tool in Kentucky is very fast, it is not efficient as judges are not given enough explanation about why a defendant scored the way he/she did. Paul DeWolfe replied that evidence shows that pretrial risk assessment work all over the country including Kentucky where their pretrial failure rates are low. Scott Shellenberger added that there will be no savings with any pretrial reform unless Richmond is also addressed.

Senator Shank and Jacqueline Robarge said that supervision to match risk is another crucial step to an effective pretrial program to ensure that defendants show up for court and do not commit any new offenses. Tammy Brown added that over supervising low to moderate risk defendants is a waste of resources and can also have worse outcomes on the defendant. Angela Talley explained that defendants are assessed twice before the judge in Montgomery County to determine the appropriate supervision needed.

Going back to the cost discussion, Paul DeWolfe explained that an improved pretrial program will have cost savings due to a reduction in the jail population. Senator Shank provided examples both in Kentucky and Colorado on justice re-investment. It costs \$150 per day in Baltimore jail. Tammy Brown stated that the jails in Kentucky are making money by selling their jail space to

other entities. Pete France replied that it is possible to save money and enhance pretrial services statewide.

Angela Talley asked the Subcommittee if they agree that implementing a pretrial risk assessment instrument is a good idea. Judge Williams replied that the system is working in Baltimore County where the Court Commissioner releases 50% of pretrial defendants. Pete France replied that over 80% of the Baltimore City jail population is pretrial and that the current pretrial system is backing up the jail population. Kevin Loeb added that there are a bunch of poor black men stuck in the Baltimore City jail simply because they cannot make bail.

Tammy Brown noted that there needs to be universal risk based decision making in Maryland. The courts may be making decisions based on risk but there is no data to track the outcomes on the decisions they are making.

III. Risk Assessment Tool Matrix

Jeff Zuback from GOCCP provided an overview of a matrix on pretrial risk assessment tools. A total of 9 tools were included (Baltimore City and Montgomery County locally, Colorado, Florida, Kentucky, Ohio, Virginia, Sonoma County, and the federal model). All of these tools incorporate a defendant interview except for Kentucky and Sonoma County. The matrix had 3 tabs including the risk levels of each tool, the factors that each tool uses, and the court appearance rate and public safety rate of the risk levels associated with each tool. Generally, all of the tools incorporate low, medium, and high risk defendants. All 9 of these tools also shared some of the same risk factors including prior criminal history, number of FTAs, current charge, and residence information. Other factors such as substance abuse history, mental health, and employment were found in about half of the tools.

IV. Open Discussion

Scott Shellenberger proposed that we use the Kentucky risk assessment tool with the Colorado model, use it before the Court Commissioners, expand pretrial in local jurisdictions, and allow them to be heard by a judge within 48 hours. You could create this pilot program for 6 months and examine the jail populations in each local jurisdiction.

Tammy Brown proposed that we have local intake run a risk assessment tool and compare the score to the outcomes made by the judges and court commissioners. Senator Shank added that we don't want the commissioners to see the score but continue to make pretrial decisions they way they always have. Senator Shank also recommended that we survey the judges on what factors they use to determine pretrial release decisions.

Tammy Brown stated that GOCCP is meeting with the National Institute of Corrections (NIC) next week to choose a risk assessment tool to pilot in several local jurisdictions. Angela Talley recommended developing a tool that does not use self-reported data. This tool will be compared to the pretrial outcomes made by the judges and court commissioners.

Judge Williams re-iterated that the judge call that occurs in Kentucky would not work in Maryland. She mentioned that a thorough review of which risk factors to include in the tool should be complete. She also felt that supervision is an important component of pretrial.

Tammy Brown and Kevin Loeb both provided the concept that pretrial does not need to show the judge the risk score, rather just the information on the defendant as well as a release recommendation. This is similar to how it is done in DC.

Tammy Brown asked the Subcommittee to consider a preventive detention statute which basically states that a defendant cannot be detained pretrial just because they don't have the money to post bail.

Both Senator Shank and Tammy Brown added that it does not matter what branch of government pretrial falls under as long as that agency has the infrastructure to develop and sustain a pretrial program.

V. Next Steps

GOCCP will meet with NIC to pick a validated pretrial risk assessment tool and begin to pilot it in 6 or 7 jurisdictions.