



Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

**Ad Hoc Committee on Bail & Pretrial Services**

**September 16, 2016**

**AGENDA**

- I. Welcome and Introductions
- II. Approval of July 22, 2016 meeting notes
- III. Presentation by Kerri Defibaugh, Summit County Pretrial Services
- IV. Presentation by Michelle Butts, Lucas County Common Pleas Court, Regional Services
- V. Work Group Reports
  - a. Evaluation/comparison of statutes, Constitution, court rules & ABA standards and definitions
  - b. Data Collection
    - i. Utilization of pretrial services & screening tools
    - ii. Prosecutorial diversion availability, use
    - iii. Responses to release violations & alternative release options
    - iv. jail data and money map
  - c. Identification/evaluation of the Clerk of Court processes & process of release
  - d. Representation for the defendant and funding for the public defender
  - e. Identification of bondsmen processes, concerns and opportunities for collaboration
- VI. Tim Schnacke, National Institute of Corrections
- VII. Next Steps
- VIII. Adjourn



CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

**Ad Hoc Committee on Bail & Pretrial Services**

July 22, 2016

**Meeting Notes**

Attendees: Lara Baker-Morrish  
Michele Mumford  
Julie Doepke  
Penny Underwood  
Paul Dobson  
Susan Sweeney  
Kari Bloom  
Dan Peterca  
David Phillips  
Kari Bloom  
Jeff Clayton  
Jo Ellen Cline

Judge Cynthia Rice  
Brenda Willis  
Mike Kochera  
Judge Ken Spanagel  
Judge Beth Root  
Chrystal Alexander  
Diana Feitl  
Branden Meyer  
Judge Ronald Adrine  
Mary Smith  
Sara Andrews

- 1. Introductions:** Ms. Cline welcomed everyone and introductions were made.
- 2. Selection of Ad Hoc Committee Chair**

Ms. Cline pointed out that the Ad Hoc Committee lacked a chairperson and solicited volunteers. Judge Spanagel and Mr. Dobson agreed to serve as co-chairs of the Ad hoc Committee.

- 3. Presentation by Mary Smith, Ohio Bail Agents Association**

Mary Smith, representing the Ohio Bail Agents Association, spoke with the Ad Hoc Committee about the surety industry. Her presentation included the process of bonding, statistics from Franklin County, Ohio showing that surety bonds result in greater court appearance rates and the regulatory system that surety companies are subjected to in Ohio.

- 4. Presentation by Jeff Clayton, American Bail Coalition**

Jeff Clayton, Policy Director for the American Bail Coalition, addressed the Ad Hoc Committee giving a current national picture of reform efforts from the bail industry's



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perspective. He indicated that the Coalition is not adverse to risk assessment but noted that most jurisdictions reforming their systems are not eliminating all financial conditions of bail. He noted that risk assessment is another tool in the toolbox. He encourage the Ad hoc Committee to gather Ohio specific data and to determine, separately from national trends, what works and does not work for Ohio.

## **5. Work Group Updates**

Ms. Cline updated the Ad hoc Committee on the progress of the various work groups, focusing mainly on the completion and dissemination of surveys from several work groups. Ms. Underwood discussed the work of the Clerk work group in putting together a flow chart or description of processes in the clerk of courts offices regarding bonds.

## **6. New Business**

Mr. Kochera discussed the possibility of Ohio becoming a statewide pilot project for the Arnold Foundation to implement use of a risk assessment tool statewide. Ms. Feitl, Ms. Smith, and Judge Adrine talked about the ongoing discussions in Cuyahoga County regarding bail. Ms. Feitl also discussed Summit County's use of the Luminosity assessment. The ad hoc committee discussed the differences between municipal courts handling misdemeanors and common pleas courts handling felony defendants. Although it may, at some point, become necessary to think along two parallel tracks the ad hoc committee agreed that while data collection is ongoing everything can be considered together.

The Ad hoc Committee will invite someone from Summit County, Lucas County and the Arnold Foundation to address the committee in September.

## **7. Adjournment**

There being no further business, the committee adjourned at 12 p.m.

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**NEXT MEETING: SEPTEMBER 16, 2016  
HILTON @ EASTON**

**States**

<b>Reforms</b>	Alabama	Alaska	Arizona	California	Colorado	Connecticut	Delaware	Florida	Georgia	Idaho
Use of *Arnold Tool Risk Assessment			X	X				X		
Use of Other Risk Assessment Tool		X			X		X	X		
Contains a *SJC Site			X	X	X	X		X		X
*EJUL Case to Challenge Bond Schedules				X					X	
*EJUL Case/Other Efforts to Promote Bail Reform	X					X				
*Smart Pretrial State/Site					X		X			
Rewritten Bail Statutes					X					
*EBDM Practices		X			X					

\*Arnold Tool: Entirely objective risk assessment tool developed to help judges make accurate evidence-based decisions about which defendants should be released or detained pending trial

\*SJC Site: State that promotes the Safety and Justice Challenge initiative to reduce overpopulation in jails through the establishment of more effective and just alternatives to excessive incarceration

\*Smart Pretrial State/Site: States/sites participating in the Pretrial Justice Institute Smart Pretrial Demonstration initiative to research effective ways to reduce jail costs, while maintaining public safety, through the improvement of pretrial policies and practices

\*EJUL: Cases represented by the non-profit Equal Justice Under the Law organization that provides pro bono legal representation to individuals in extreme need

\*EBDM: Evidence-based decision making

### States

<b>Reforms</b>	<b>Illinois</b>	<b>Indiana</b>	<b>Kansas</b>	<b>Kentucky</b>	<b>Maine</b>	<b>Maryland</b>	<b>Massachusetts</b>	<b>Mississippi</b>	<b>Missouri</b>	<b>Nevada</b>
Use of *Arnold Tool Risk Assessment	<b>X</b>									
Use of Other Risk Assessment Tool				<b>X</b>						
Contains a *SJC Site	<b>X</b>								<b>X</b>	
*EJUL Case to Challenge Bond Schedules									<b>X</b>	
*EJUL Case/Other Efforts to Promote Bail Reform					<b>X</b>	<b>X</b>		<b>X</b>		
*Smart Pretrial State/Site										
Rewritten Bail Statutes										
*EBDM Practices				<b>X</b>						

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**States**

<b>Reforms</b>	<b>New Jersey</b>	<b>New Mexico</b>	<b>New York</b>	<b>North Carolina</b>	<b>Ohio</b>	<b>Oregon</b>	<b>Pennsylvania</b>	<b>Tennessee</b>	<b>Texas</b>	<b>Utah</b>
Use of *Arnold Tool Risk Assessment				<b>X</b>	<b>X</b>		<b>X</b>			
Use of Other Risk Assessment Tool					<b>X</b>					<b>X</b>
Contains a *SJC Site			<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
*EJUL Case to Challenge Bond Schedules									<b>X</b>	
*EJUL Case/Other Efforts to Promote Bail Reform	<b>X</b>		<b>X</b>	<b>X</b>						<b>X</b>
*Smart Pretrial State/Site										
Rewritten Bail Statutes	<b>X</b>	<b>X</b>								
*EBDM Practices										

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**States**

<b>Reforms</b>	Virginia	Washington	Washington D.C	Wisconsin						
Use of *Arnold Tool Risk Assessment				<b>X</b>						
Use of Other Risk Assessment Tool	<b>X</b>									
Contains a *SJC Site		<b>X</b>		<b>X</b>						
*EJUL Case to Challenge Bond Schedules										
*EJUL Case/Other Efforts to Promote Bail Reform		<b>X</b>								
*Smart Pretrial State/Site		<b>X</b>								
Rewritten Bail Statutes										
*EBDM Practices	<b>X</b>			<b>X</b>						

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## State Constitution Provisions on Bail

### **Alabama:**

#### **Article 1 §16 Right to bail; excessive bail**

That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required.

### **Alaska:**

#### **Article 1 §11 Rights of Accused**

The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great.

### **Arizona:**

#### **Article 9 §22 Bailable offenses**

A. All persons charged with crime shall be bailable by sufficient sureties, except for:

1. Capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.
2. Felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge.
3. Felony offenses if the person charged poses a substantial danger to any other person or the community, if no conditions of release which may be imposed will reasonably assure the safety of the other person or the community and if the proof is evident or the presumption great as to the present charge.

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.
2. Protecting against the intimidation of witnesses.
3. Protecting the safety of the victim, any other person or the community.

**California:**

**Article I §12**

A person shall be released on bail by sufficient sureties, except for:

- (a) Capital crimes when the facts are evident or the presumption great;
- (b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
- (c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required.

In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

**Colorado:**

**Article I §19 Right to bail exceptions**

(1) All persons shall be bailable by sufficient sureties pending disposition of charges except:

- (a) For capital offenses when proof is evident or presumption is great; or
- (b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that proof is evident or presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such person is accused in any of the following cases:

(I) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;

(II) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence, as may be defined by the general assembly, alleged to have been committed after two previous felony convictions, or one such previous felony

conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony; or

(c) (Deleted by amendment.)

(2) Except in the case of a capital offense, if a person is denied bail under this section, the trial of the person shall be commenced not more than ninety days after the date on which bail is denied. If the trial is not commenced within ninety days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set the amount of the bail for the person.

(2.5) (a) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by statute as enacted by the general assembly; except that no bail is allowed for persons convicted of:

(I) Murder;

(II) Any felony sexual assault involving the use of a deadly weapon;

(III) Any felony sexual assault committed against a child who is under fifteen years of age;

(IV) A crime of violence, as defined by statute enacted by the general assembly; or

(V) Any felony during the commission of which the person used a firearm.

(b) The court shall not set bail that is otherwise allowed pursuant to this subsection (2.5) unless the court finds that:

(I) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and

(II) The appeal is not frivolous or is not pursued for the purpose of delay.

(3) This section shall take effect January 1, 1995, and shall apply to offenses committed on or after said date.

**Connecticut:**

**Article 1 §8**

In all Criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by information, to a speedy, public trial by an impartial jury.

**Delaware:**

**Article I §12 Right to bail; access to accused**

All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is positive or the presumption great; and when persons are confined on accusation for such offenses their friends and counsel may at proper seasons have access to them.

**Florida:**

**Article I §14 Pretrial release and detention**

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

**Georgia: (General bail statute)**

**Article I Paragraph XVII Bail; Fines; Punishment; Arrest, Abuse of Prisoners.**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; nor shall any person be abused in being arrested, while under arrest, or in prison.

**Idaho:**

**Article I §6 Right to Bail – Cruel and Unusual Punishments Prohibited**

All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excess fines imposed, nor cruel and unusual punishments inflicted.

**Illinois:**

**Article I §9 Bail and habeas corpus**

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person.

**Indiana:**

**Article I §17**

Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

**Kansas:**

**§9 Bail**

All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great.

**Kentucky:**

**§16 Right to bail – Habeas corpus**

All prisoners shall be bailable by sufficient securities, unless for capital offenses when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it.

**Maine:**

**Article I §10 Bailable Offenses; habeas corpus**

No person before conviction shall be bailable for any of the crimes which now are, or have been denominated capital offenses since the adoption of the Constitution, when the proof is evident or the presumption great, whatever the punishment of the crimes may be. And the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

**Maryland: (General bail statute)**

**Article 25**

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law.

**Massachusetts: (General bail statute)**

**Article 26**

No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

**Mississippi:**

**Article 3 §29**

Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses (a) when the proof is evident or presumption great; or (b) when the person has previously been convicted of a capital offense or any other offense punishable by imprisonment for a maximum of twenty (20) years or more.

**Missouri:**

**Article I §20 Bail exceptions**

That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

**Nevada:**

**Article I §7 Bail**

Bail; exception for capital offenses and certain murders. All persons shall be bailable by sufficient sureties; unless for Capital Offenses or murders punishable by life imprisonment without possibility of parole when the proof is evident or the presumption great.

**New Jersey:**

**Article I §11**

No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.

**New Mexico:**

**Article 2 §13 Bail; excessive fines; cruel and unusual punishment**

All persons shall, before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great and in situations in which bail is specifically prohibited by this section. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted

**New York: (General bail statute)**

**Article I §5 Bail; fines; punishments; detention of witnesses**

Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

**North Carolina:**

**§39**

All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great.

**Ohio:**

**Article I §9 Bail; cruel and unusual punishments**

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

**Oregon:**

**Article I §14 Bailable offenses**

Offenses, except murder, and treason, shall be bailable by sufficient sureties. Murder or treason, shall not be bailable, when the proof is evident, or the presumption strong.

**Pennsylvania:**

**Article I §14 Prisoners to be Bailable; Habeas Corpus**

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

**Tennessee:**

**Article I §15**

That all prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great. And the privilege of the writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion, the General Assembly shall declare the public safety requires it.

**Texas:**

**Article I §11 Bail**

All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

**Utah:**

**Article I §8 Offenses Bailable**

(1) All persons charged with a crime shall be bailable except:

- (a) persons charged with a capital offense when there is substantial evidence to support the charge; or
- (b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or
- (c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law.

**Virginia: (General bail statute)**

**Article I §9 Prohibition of excessive bail and fines, cruel and unusual punishment, suspension of habeas corpus, bills of attainder, and ex post facto laws**

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder, or any ex post facto law.

**Washington:**

**Article I §20 Bail When Authorized**

All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

**Washington D.C.: (General bail statute)**

**Amendment VIII**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Wisconsin: (General bail statute)**

**Article I §6 Excessive bail; cruel punishments**

Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishments inflicted.

# Pretrial Services Utilization Survey

## Summary of Results

### Common Pleas Courts

45 responses out of 244 surveys sent  
Variety of jurisdiction sizes from 15,000 to 1.26 million

### Pretrial Services

57% of respondents report having a pretrial service department and for those that reported not having a “department” 65% report having someone or another department handling pretrial or bail supervision. What is missing is a person or department handling bail investigation (only 34% of those without a pretrial service department report having anyone doing this).

Most pretrial services are “housed” in the probation department (72%) or the court (22%). The size of pretrial staff varied widely up to a maximum of 15-20 in the probation department. The caseload for the staff was reported as also varied from 3,593 overall cases to “a handful”. A lot of judges answering the survey did not know caseloads on pretrial services. 64% of the staff are receiving training specific to pretrial services.

Pretrial service departments or employees doing pretrial services are making recommendations to the court 83% of the time. 18% of respondents indicate that only a report is done (no recommendation made). Pretrial services are providing a lot of information to the court but the least often provided information is whether the defendant owns real estate, their income level and references.

### Screening of Defendants

Universal screening is not occurring in Ohio. Only 34% of respondents reported that all defendants are screened pretrial. Those being screened the least include minor misdemeanants and misdemeanants. Also, 37% reported that not all those charged with felonies are being screened. Public safety hearings are also not utilized regularly. Only 13% of respondents reported routinely holding a public safety hearing to determine if an offender should be detained.

### Bail Decision

Respondents reported using a variety of factors in making the initial bail/detain decision. Most respondents use the nature of the offense, prior record, prior failures to appear, Crim.R 46 factors, ORAS pretrial reports, residence stability and mental health or substance abuse history in making their determination. Only 36% of respondents use

a validated risk assessment tool and those not using such a tool look at the nature of the offense, prior record and prior failure to appear in individualizing their bail decisions. The least often used factors in risk assessment are income level and whether or not someone is expected to accompany the defendant to their first hearing. 45% of the risk assessment tools are reportedly validated.

52% of respondents indicated that defendants are treated specially because of their charge (e.g. domestic violence).

66% of respondents indicated that the defendant is interviewed. The interview itself, however, varies widely. Not all interviews are done by the court so respondents did not have a lot of information. How much time was utilized varied by many responded that they were fairly short (20 minutes or less). Many report utilizing the ORAS pretrial questions and some jurisdictions reported having the defendant self-report by filling out a questionnaire. 48% of respondents said that defendants are assessed for mental health and developmental disabilities at the time of booking.

Most pretrial service departments do not have any delegated release authority (only 9 % do) and those that do may only release non-violent, low level offenders based upon criteria issued by the court.

Only 20% of respondents re-review bond decisions after a time period for those that remain in custody initially.

### **Supervision and Data**

86% of respondents reported that pretrial supervision is provided. Supervision seems to be done either by the pretrial service department or by probation about equally. Supervision usually includes stay away orders, drug testing and/or electronic monitoring. The least used method was third party custody to a community organization and day reporting. 67% of respondents report having supervision if a defendant is out on a surety bond.

Defendants are notified of upcoming hearing dates although a lot of respondents indicated that was done simply in open court when the hearing is set. A few indicated notification at the defendant's reporting times or through counsel. Only a couple of respondents indicated that they notify using a telephone call or email. Only 25% of respondents said victims were notified of a defendant's pretrial release.

Not a lot of data is being collected. Only 11% of respondents calculate FTA rates and none collect pretrial crime rates. Comparisons between those released OR and those released on money bond are non-existent as well. Only 4 courts reported calculating release rates.

## **Municipal Courts**

62 responses out of 252 surveys sent

90% of respondents use a bail schedule and for those that do not they utilize the statutory and rule factors and ORAS. 60% of respondents report utilizing an ability to pay assessment.

### **Pretrial Services**

Only 33% of respondents report having a pretrial service department and for those that reported not having a “department” 37% report having someone or another department handling pretrial or bail supervision and 34% of those without a pretrial service department report having anyone doing bail investigation.

Most pretrial services are “housed” in the probation department (60%) or the court (23%). The size of pretrial staff varied widely up to a maximum of 45. The caseload for the staff was reported as also varied from “very few” to “huge”. 60% of pretrial services employees are receiving pretrial-specific training.

Pretrial service departments or employees doing pretrial services are making recommendations to the court 73% of the time. 27% of respondents indicate that only a report is done (no recommendation made). Pretrial services are providing a lot of information to the court but the least often provided information is length of time at a prior address and whether someone is expected to accompany the defendant to the first hearing.

### **Screening of Defendants**

Universal screening is not occurring in Ohio. Only 36% of respondents reported that all defendants are screened pretrial. Those being screened the least include minor misdemeanants and misdemeanants. Public safety hearings are also not utilized regularly. Only 18% of respondents reported routinely holding a public safety hearing to determine if an offender should be detained.

### **Bail Decision**

Respondents reported using a variety of factors in making the initial bail/detain decision. Most respondents use the nature of the offense, prior record, ORAS pretrial reports, LEADS report, and prior FTA history in making their determination. Only 13% of respondents use a validated risk assessment tool and those not using such a tool look at the nature of the offense, prior record and prior failure to appear in individualizing their bail decisions. Some respondents did indicate that jail overcrowding is a factor considered in their determination. Only 18% of the risk assessment tools are reportedly validated.

75% of respondents indicated that defendants are treated specially because of their charge (e.g. domestic violence).

47% of respondents indicated that the defendant is interviewed. The interview itself, however, varies widely. Not all interviews are done by the court so respondents did not have a lot of information. 59% of respondents said that defendants are assessed for mental health and developmental disabilities at the time of booking.

Most pretrial service departments do not have any delegated release authority (only 12 % of respondents did).

Only one-third of respondents re-review bond decisions after a time period for those that remain in custody initially.

### **Supervision and Data**

70% of respondents reported that pretrial supervision is provided. Probation departments do the majority of supervision (53%). Supervision usually includes stay away orders, drug testing and/or electronic monitoring. Many departments reported utilizing SCRAM. The least used method was day reporting. Half of respondents report having supervision if a defendant is out on a surety bond.

Defendants are notified of upcoming hearing dates and utilize telephone, e-mail and personal (at reporting) notification. 51% of respondents said victims were notified of a defendant's pretrial release.

Again, not a lot of data is being collected. Only 7% of respondents calculate FTA rates and only one court reported collecting pretrial crime rates. Comparisons between those released OR and those released on money bond are non-existent as well. Only 2 courts reported calculating release rates.

## Prosecutor Diversion Surveys

### General

Surveys were sent to Municipal and County Prosecutors and to Municipal Court judges.

62 Responses from judges

13 responses from prosecutors

A previous survey to county prosecutors (asking the same questions) provided several more responses.

### Judge Survey

Of the 62 responses received 67% indicated that their prosecutor's office had a diversion program. The program types varied, however, most often cited were OVI diversion, license intervention, underage consumption, first offender diversion, marijuana diversion, and theft diversion. The eligibility for these diversion programs also varied but most require that the defendant be a first time offender and that the offense be non-violent. Only 3 of the responding courts offer juvenile diversion for first time offenders.

58% of the respondents offer a specialized docket. The most common types of dockets were drug, mental health, veteran's court, human trafficking and OVI dockets. The vast majority of those dockets are post-conviction, only 3 courts reporting that they offer a pre-conviction specialized docket. 60% of respondents also offer intervention in lieu of conviction.

Almost half of the courts report having some type of diversion in their court outside of their specialized docket or ILC. Many of these diversion programs are similar to those offered in the prosecutors' offices, including first offender, theft, underage consumption, and marijuana. Some reported differing diversion programs including leadership development and emotional intelligence.

### Prosecutor Survey

A survey was sent to county prosecutors in early 2016. A follow-up survey was sent when the judge survey was sent and was also sent to municipal prosecutors through their association. Responses were limited. Of the 9 responses received from municipal prosecutors, 5 indicated they offer diversion. 3 of the 4 responding county prosecutors indicated offering juvenile diversion programs.

## Jail Administrator Survey Summary

### General

92 surveys were sent out and we received 61 responses. The survey was sent to full-service jails.

### Population

Jail capacity varied, as might be expected, from the ability to hold 1 individual to 1,700. The average daily population for 2015 varied but it appears that most jails were operating close to capacity if not exceeding capacity. Only 25% of respondents were able to separate pretrial defendants from convicted defendants. Of those that could many do not track the average daily number or percentage of pretrial defendants and for those that did the numbers were quite varied from 0 to 95% of their population. 69% of respondents are regularly reporting jail population information to their local judges.

The average length of stay for the jails varied from hours to three months. It appears that a month or less was common among the answers provided. For pretrial detainees specifically many jails do not track the average length of stay but those that did report reported less than 24 hours to over two months. Most of the respondents do not track how many people made bail or the amount of bail.

57% of the respondents report holding individuals who are not considered pretrial nor convicted.

### Costs

Jails are charging others to house inmates at their jail at varying rates but the average appears to be \$50 - \$100 per day. These numbers also reflect the actual per diem to house those inmates. 68% of respondents indicate that they do utilize a bail schedule at their jail.

### Services

Most jails reported offering mental health services and medical services. Less than a quarter of the respondents said that employment services are offered.

24% reported using electronic monitoring. Most respondents indicated that electronic monitoring is run through the courts so they do not know the cost but for those that did the reports were wide ranging. The average cost per person, per day for electronic monitoring appears to hover around \$10/day.

100% of the respondents said that they do not offer day reporting at their jail. 90% of respondents do not offer any other program outside of secure confinement. 4 jails are operating other pretrial programs including work release, process-only, veterans' programs, reentry program, and a drug/alcohol treatment program.

## **Miscellaneous**

8 courts report that they have a plan with their local court regarding pretrial detainees or bed allocation. Those plans include diversion plans, using specialized dockets and having the judge look at lists of potential releases if the jail is full. Only 3 courts reported being under any order regarding a maximum number of incarcerated individuals leading to mandatory releases.

Less than half (40%) of respondents think that more reforms are needed to keep pretrial detainees out of the jails. Of those that do think reforms are needed they suggest bond reform and pre-detention diversion screening.

Finally, respondents noted that mental health issues, including a lack of facilities and beds at existing facilities, and staffing issues are the systematic issues that are interfering with getting inmates to their proper place.

## Clerks Survey Summary

### General

67 % CP

32% Municipal

Sent to 217 people and we had 106 responses.

### Approval of Surety

Variety of responses (most popular)

- Judge approval
- Filing of appropriate paperwork (POA, Certificate of Authority, Compliance)
- Utilize Department of Insurance
- Follow RC 3905.87

**Number of bonds issued (Q. 4) – varied**

**Copy of Bond Schedules – most respondents included a bond schedule and they are varied.**

- Some Common Pleas courts have bond schedules although not required to have them under the Revised Code.

### Hearing on bonds

- Many clerks were unable to provide this information
- Some reported # of violations with no hearings held
- From Q. 6 it appears most hearings are either finding no violation or resulting in a change in the conditions of release

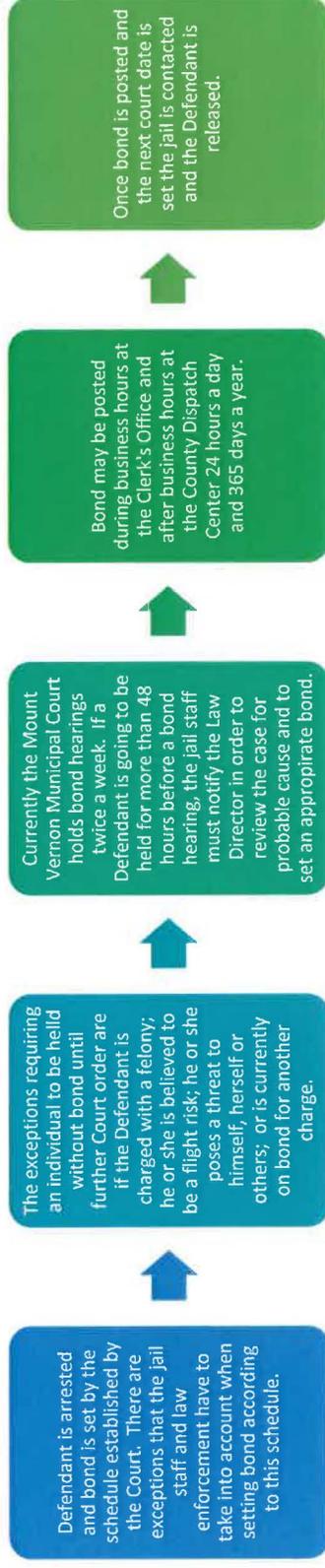
### Surety forfeitures

- Follow 2837.35 and 2937.36
- Refer to prosecutor
- If forfeiture ordered the surety is barred from writing bonds until paid

### Delays in system

- Most said no
- One concern about the DOI updating their records

## MOUNT VERNON MUNICIPAL COURT BOND PROCESS



## **Pretrial Justice in America**

Overall, I think you can say two things about the state of pretrial justice in America. First, it has grown beyond our ability to adequately summarize it. Things are happening organically that we have no real control over.

Second, it's likely easier to point out states having no real significant pretrial reform happening, as this is probably less than 10 states.

Here are some highlights of things that have happened, many in the last two or three years;

**Litigation** – Equal Justice Under Law cases (Georgia, Alabama, Mississippi, Louisiana, Tennessee, Texas, Missouri, Kansas, California)

**Litigation** – other states with significant cases (Colorado, Arizona, New Mexico, Maryland)

**Litigation** – potential (Illinois), ACLU, NACDL, and other national groups developing national litigation strategies, the usual cases brought up by public and private lawyers in individual bail cases; Colorado public defender case.

**States changing their constitutions:** New Mexico, New Jersey, Delaware. This list will only get longer due to the nature of bail reform.

**Two components of pretrial justice have taken off on their own:** racial justice and defense representation at bail.

**Demonstration Sites** – NIC EBDM Framework States (7 counties, 5 states – Colorado, Indiana, Oregon, Virginia, Wisconsin); Smart Pretrial (DOJ/PJI) – Yakima County, City and County of Denver, Delaware); MacArthur Safety and Justice Challenge (20 jurisdictions selected to participate in the “Challenge Network;” Arnold Foundation – training on use of the PSA Court in more than 20 sites; Justice Reinvestment Initiatives are including pretrial components in several jurisdictions; PJI 3DaysCount campaign;

**Other state initiatives caused by other things:** Missouri (significant bail reform due to Ferguson); Texas (significant bail reform due to Sandra Bland case); New York (significant bail reform due to a variety of issues, including

Kalief Browder); Sporadic bail reform in California due to numerous county efforts; Arizona Fair Justice Task Force, due primarily to DOJ “dear colleague” letter and statement of interest in Varden case; Connecticut, due to several factors; Nevada, due to several factors; Utah, due to several factors; Alaska, due to several factors, Ohio, Delaware, Maryland, Utah, Alaska – this is a long list.

**Other initiatives due to organizations simply getting involved:**

NCSC/CCJ/COSCA efforts; NCJA holding various conferences around the U.S.; All organizations listed on PJI “partners” slide (ex: IACP); Crime and Justice Institute doing pretrial TA; Counsel of State Governments doing TA; White House and DOJ; Amin. Office U.S. Courts (training); Pew Charitable Trust, see full list of people from the Pretrial Justice Working Group.

**Some groups focusing on writing papers, reports:** Human Rights Watch, Justice Policy Institute; CLEBP (Tim Schnacke); JFA Institute; JMI (Barry Mahoney).

**Colleges, Universities and Law Schools:** ex: Harvard, Maryland Law School, John Jay College (research agenda), Quinnipiac in CT, various other schools from ABA initiative.

Help from **foundations** like Public Welfare Foundation, Arnold Foundation, MacArthur Foundation, other foundations giving money.

Also, **many states that are already pretty decent** are continuing to improve, like Kentucky, Wisconsin, Maine, and others.

And, the same groups who were **here from early on:** NIC, PJI, NAPSA, Luminosity (Marie VanNostrand), DC Pretrial and system folks, Vera Institute, NYU School of Law, ABA (albeit with a new committee),

Also **State Legislatures**, with help from the NCSL, demonstrating a shift from pro-commercial bail bills to pro-evidence-based-practices bills. Ex: Alaska, Massachusetts, Utah. **Governors**, like Chris Christie, Dannel Malloy; **Supreme Court Justices**, like Scott Bales, Charles Daniels, Robert Torres.

And finally, **news media** is catching on, and our mantra has been that bail reform is the “low hanging fruit” of criminal justice reform.

Of course, all of this has caused the **bail industry** to fight back.



**OHIO**

CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

**Ad Hoc Committee on Bail and Pretrial Release**

<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
<b>Evaluation and comparison of statutes, Constitution, court rules &amp; ABA standards</b>	Telephone Conference held 9/6/16  Provide comparison of Ohio statutes, rules and ABA standards and examples of other state Constitutional provisions on bail and bail reforms in those states to full Committee	Judge Beth Root* Susan Sweeney Diana Feitl Sara Andrews Marta Mudri Tim Schnake Jo Ellen Cline	
<b>Development of definition of bail and related terms and purpose of bail</b>	Telephone Conference held 9/6/16  PJI glossary of terms adopted by work group	Jo Ellen Cline* Sara Andrews Tim Schnacke Lori Eville Judge Nick Selvaggio	

\* Denotes work group lead contact



# OHIO

## CRIMINAL SENTENCING COMMISSION

Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
<b>DATA Collection</b>  <b>1. Utilization of pretrial services &amp; screening tools</b>	Telephone Conference scheduled for 9/9/16 (noon)	Dan Peterca*      Lori Eville Brenda Willis      Tim Schnacke Jim Lawrence      Diana Feitl Mike Kochera      Judge Ron Adrine	
<b>2. Prosecutorial diversion availability, use</b>	Telephone Conference scheduled for 9/12/16 (4 p.m.)	Lara Baker-Morrish* Dave Phillips Judge Ken Spanagel Anne Gatti	
<b>3. Responses to release violations &amp; identification of alternative release options</b>	Other states/jurisdictions examples emailed to group on 7/6/16	Josh Williams*      Julie Doepke Judge Cynthia Rice      Dan Peterca Lori Eville      Paul Dobson Judge Beth Root	



# OHIO

## CRIMINAL SENTENCING COMMISSION

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<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
<b>DATA Collection</b>  <b>4. jail data and money map</b>	Telephone Conference scheduled for 9/12/16 (noon)	John Leutz*  Sheriff Michael Heldman  Ryan Kidwell  Kari Bloom  Sara Andrews	
<b>Identification &amp; evaluation of the Clerk of Court processes &amp; process of release</b>	Telephone Conference held 9/6/16	Penny Underwood*  Marta Mudri  John Leutz  Judge Fritz Hany  Branden Meyer  Michele Mumford  Stephanie Hardman	<ul style="list-style-type: none"> <li>Flow chart on the processes in Clerks' offices regarding bail (Hardman, Mumford)</li> </ul>



**CRIMINAL SENTENCING COMMISSION**

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<u>Issue</u>	<u>Last Action</u>	<u>Subcommittee</u>	<u>Next Action, Person Responsible and Date Due</u>
<b>Representation for the defendant and funding for the public defender</b>	One survey question result provided via email to group 9/7/16	Kari Bloom* John Leutz Paul Dobson Chrystal Alexander Judge Selvaggio	<ul style="list-style-type: none"> <li>Gathering information on funding (Kari)</li> </ul>
<b>Identification of Bondsmen processes, concerns and opportunities for collaboration</b>	Telephone conference held 6/17/16	Judge Allen      Diana Feitl Tom Sauer        Jim Lawrence Mike Kochera     Eddie Miller Dan Peterca Michelle Mumford	<ul style="list-style-type: none"> <li>Determination of current practices (All)</li> <li>Other states' experiences with bondsmen</li> </ul>
<b>Education/Training &amp; Implementation Science</b>		Sara Andrews*  All	