

Governor's Commission to Reform Maryland's Pretrial System

Wednesday October 22, 2004

10:00 AM – 12:00 PM

House of Delegates Building

6 Bladen St.

Annapolis, Maryland 21401

Participating Members:

Richard Karceski (Chair)

Tammy Brown

Tim Murray Representing Cherise Burdeen

Delegate Luke Clippinger

Paul DeWolfe

Wendell France

Paul Kemp

Dorothy Lennig

Timothy Maloney

Capt. Michael Merican

Hon. John Morrissey

Delegate Joseline Pena-Melnyk

Hon. Steven Platt

Michael Schatzow

Angela Talley

Senator Christopher Shank

Scott Shellenberger

Rev. Dr. Sheridan Todd Yeary

Ryan Lhotsky Representing Sen. Robert Zirkin

Guests:

Mark Adams, Bail Bondsman

Vincent Andrews, University of Maryland Law School

Nicole Burnette, University of Maryland Law School

Christopher Burruezo, University of Maryland Law School

Mike Canning, Manis Canning & Associates

Guy Cherry, Department of Legislative Services

Phillip Cronin, Harris Jones & Malone

Ricardo Flores, Office of the Public Defender

Diana Griffin, University of Maryland Law School

Solomon Hamilton, Hamilton Bonding Service

Terry Kokolis, Anne Arundel County Department of Detention Facilities

Steve Lash, Daily Record

Kevin Loeb, Department of Public Safety and Correctional Services

Karen Marchiano, Governor's Office of Crime Control & Prevention

Natasha Mehu, Maryland Association of Counties

Jordan More, Maryland Department of Legislative Services

Richard Montgomery, Maryland State Bar Association

Sara Morningstar, Montgomery County Office of Intergovernmental Relations

Rachel Sessa, Department of Public Safety and Correctional Services

Kevin Stewart, Governor's Office of Crime Control & Prevention

Stephen Thomas, University of Maryland Law School

Kweku Toure, Private Attorney

Dave Weissert, Maryland Judiciary

Hon. Barbara Waxman, Maryland Judiciary

Hon. Alexandra Williams, Baltimore County District Court

Staff:

Lisa Smith, Governor’s Office of Crime Control & Prevention

Alexandra Staropoli, Governor’s Office of Crime Control & Prevention

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

I. Welcome

The meeting was called to order by the Chair at 10:00 am. Tammy Brown stated that the minutes from the 9/22 meeting need to be updated as more information regarding the discussion needs to be added. The minutes will be amended by GOCCP and sent out to the Commission members to approve. Richard Karceski stated that each Subcommittee prior to this meeting came up with a set of recommendations that were voted by the individual subcommittee members. Those recommendations that received a majority vote would be voted by the full Commission today. Each recommendation was placed into a particular topical area to generate meaningful discussion. Richard stated that any of the recommendations can be amended before they are voted on.

II. Discussion and Voting

Recommendation 1: Statewide Pretrial Services

“Create a uniform pretrial services process that will ensure continuity and consistency across all 24 jurisdictions. A Pretrial Agency should be state funded as a standalone agency within _____ branch. Pretrial will be responsible for gathering criminal records, administering a statewide risk assessment tool and other relevant information that will be beneficial in determining the initial appearance and to avoid the redundancy of various agencies pulling the same information. Pretrial will also be responsible for supervision of those released under pretrial supervision and provide referrals for treatment, counseling and other service, particularly for those individuals with limited means, to address the underlying needs that may have caused the criminal behavior.”

- 1. Establishment and funding of a Pretrial Services Agency in every jurisdiction in this state, which includes early access to treatment and counseling. (IMPROVEMENT SUBCOMMITTEE and RISK ASSESSMENT SUBCOMMITTEE)*
- 2. Create a fully funded uniform pretrial services process/agency that will insure continuity and consistency across all 24 jurisdictions. This includes questions of access within the pretrial services system for persons, regardless of race, gender, socio-economic status, jurisdiction of residence, or other factor of consideration. Whether the agency is situated in the Executive Branch or the Judicial Branch is considered a question of efficiency than preference. (INDIVIDUALS RIGHTS SUBCOMMITTEE)*

3. *The statewide system shall utilize risk-and-need-based supervision, referral, and treatment options in all Maryland counties. Connections with support services (drug treatment, counseling, follow-up, etc.) during the pretrial period should be identified and information made available to arrestees and/or included in pretrial instruction. There should be a particular emphasis on populations that are limited in their access to resources because of gender, SES, family background, or language barriers. (INDIVIDUAL RIGHTS SUBCOMMITTEE)*
4. *That a statewide pretrial services agency (“PSA”) be created, to be located within the executive branch. (INDIVIDUAL RIGHTS SUBCOMMITTEE)*

Richard Karceski asked the co-chairs of the Subcommittees for their justification on this recommendation. Judge Platt provided a handout with the justification for all recommendations made by the Pretrial System Improvement Subcommittee which concluded that the pretrial services agency should fall within the Executive Branch of government.

Senator Shank responded from his experience in visiting both Colorado and Kentucky that a statewide Pretrial Services Agency (PSA) works really well, but it does not have to be in the Executive Branch.

Paul DeWolfe commented that recommendations 2 and 4 are contradictory of one another. He also feels that for efficiency purposes, a statewide PSA should fall under the Executive Branch.

Scott Shellenberger offered a suggestion to create a recommendation that leaves the word “statewide” out. That way it would offer more flexibility to fund programs, especially those local agencies that have already established a pretrial agency.

Tim Maloney would like to see a unified PSA in the Executive Branch, which has better data systems than the Judicial Branch. He is not opposed to having it in the Judicial Branch however.

Judge Platt added that the generic proposal does not specify the branch of government or whether it should be statewide. He asked if the recommendation should be more specific or not.

Senator Shank responded that the Judicial Branch is the logical place to have a PSA where it could be run by the Court Commissioners who would provide information to the judges. Although not opposed to having the PSA operated by DPSCS, he stated that a PSA cannot be run like a probation agency. Since there are counties that already operate pretrial programs in Maryland, Senator Shank suggested incorporating a PSA that provides the least disruption to the local pretrial programs.

Tim Maloney commented that it is easier to fund programs in the Judicial Branch than the Executive Branch.

Delegate Pena-Melnyk suggested that a PSA needs to be implemented statewide so there is uniformity in the system and so that justice is blind. She also added that there needs to be a mandate for local agencies to adopt a pretrial system.

Michael Schatzow commented that we need to express a viewpoint of what we think needs to happen and not to what we think the legislature will do. He feels that there needs to be a statewide PSA for uniformity.

Judge Platt offered a motion to move forward with the introductory paragraph as a recommendation but delete out the following sentence “A Pretrial Agency should be state funded as a standalone agency within _____ branch.”

This motion was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>12</i>	<i>3</i>	<i>3</i>	<i>5</i>

Tammy Brown articulated that we should “create a uniform pretrial system that will mandate guidelines to ensure consistency and uniformity throughout the state.” Tim Murray suggested that we use “standards” rather than “guidelines.”

Richard Karceski made a motion to change the language to “Create a uniform pretrial services and standards which mandates a process that will ensure continuity and consistency across all 24 jurisdictions. Pretrial services will be responsible for gathering criminal records, administering a statewide risk assessment tool and other relevant information that will be beneficial in determining the initial appearance and to avoid the redundancy of various agencies pulling the same information. Pretrial services will also be responsible for supervision of those released under pretrial supervision and provide referrals for treatment, counseling and other service, particularly for those individuals with limited means, to address the underlying needs that may have caused the criminal behavior.”

This recommendation was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>15</i>	<i>0</i>	<i>3</i>	<i>5</i>

Recommendation 2: Prosecutorial Screening

The Commission should recommend earlier and enhanced prosecutorial screening particularly of citizens’ complaints. Prosecutors in Maryland have historically welcomed the authority to screen citizen applications, but resisted any attempt to mandate the procedure fearing that any such mandate would not be accompanied by the fiscal and human resources to implement it. This concern is totally understandable. However, with the additional cost of at least \$10 million now tacked on to the backend of the charging process, i.e. the initial appearance before a Commissioner, we believe the procedures should be reexamined based on a cost-benefit analysis as compared to the current system with its recently added cost in dollars and time based on current information. Domestic violence cases shall be excluded from these procedures and nothing in this recommendation shall interfere with the service of charges on defendants.

100% prosecutorial screening is not unheard of around the county and many jurisdictions have implemented it notwithstanding predictions of the practice being cost prohibitive. For starters, the District of Columbia does it. We are also aware of other jurisdictions that have implemented it including Maricopa County, Arizona whose prosecutors after hearing our system described

could not comprehend why we perpetuate it. The reasons for the adoption of this recommendation were again articulated by the witnesses from the District at our last full Commission Meeting. They were compelling. It is difficult to argue with success especially when government does something very well as is the case here.

We would be remiss if we did not note the ongoing highly effective programs in Baltimore County, Montgomery County, Calvert County and in Prince George's County. There may be others. They are as effective as they can be under the present statutes and rules. We should look into giving all of our prosecutors the resources needed to expand these programs and thereby cleanse the criminal justice system of unnecessary inefficiencies we can no longer afford. (IMPROVEMENT SUBCOMMITTEE)/

Judge Platt stated that the Process Improvement Subcommittee had a conference call yesterday, walked through this language, and had unanimous support on this recommendation as written. Dorothy Lennig added that “domestic violence crime” should be changed to “domestically related crime.”

Richard Karceski asked the following questions to consider for discussion:

- Should there be early and enhanced prosecutorial screening?
- If we have it, to what extent?
- What should it contain?
- Should they screen every case?

Scott Shellenberger provided an overview of the prosecutorial screening process for citizen complaints. A Screening Unit advances the decision making process of complaints that have not been investigated by law enforcement. His current model in Baltimore County was modeled after Montgomery County where the citizen is required to meet with a prosecutor within 3-5 days of issuing a complaint. This way, the State's Attorney's office can weed out certain cases that lack prosecutorial merit. He also stated that while it is ideal to screen all cases, it is very costly.

Delegate Pena-Melnyk added that early prosecutorial screening would produce cost savings in the system. She recommended starting the process in some jurisdictions to plant the seed.

Senator Shank asked Scott a couple questions including:

- How the process works in smaller jurisdictions?
- Why are we excluding domestically related crimes?
- What percentage of citizen complaints are domestically related?

Scott stated that this process works the same in the smaller jurisdictions; there is just less volume. It is not conducted 24/7 in any jurisdictions, rather State's Attorney's have a set schedule during the day to screen cases. Scott mentioned that DV cases are called out because of the heightened nature of these cases. You need to err on the side of the victim and the risk of harm is so large, that it is worth getting the case to court quicker. At this time, the victim also has the opportunity to get a protective order issued. Scott added that half of the homicides in

Baltimore County are DV related. In addition, Scott stated that the majority of citizen complaints are misdemeanors and not reviewed by police. Many times, court is not needed for these cases.

Paul Kemp added that early screening of DV cases may benefit the victim and DV should not be excluded from the early screening process. Dorothy Lennig replied that screening a case does not automatically result in a charge; there still needs to be probable cause.

Delegate Pena-Melnyk asked if the commission can take a vote on the recommendation.

Tim Murray asked Scott Shellenberger if there is a norm on how soon warrants are reviewed by a State's Attorney. Scott replied it occurs roughly 6 weeks before the trial date if it is a misdemeanor case and the defendant is not in jail. The warrant is reviewed in roughly 5 weeks if the defendant is in jail.

Paul DeWolfe mentioned that prosecutors screen all cases in DC and roughly 50-60% of cases are screened out because of this. He mentioned that the number of Nolle Prossed cases in Maryland produces costs on the entire criminal justice system. Tim Maloney added that DC does not have a citizen complaint process.

Michael Schatzow agrees with Paul Kemp that there should not be an exception for DV cases and that all cases should be screened by a prosecutor as soon as possible.

Dorothy Lennig responded that many times, law enforcement do not provide a report, so this process could be harmful to DV victims. Michael Schatzow stated that no citizen complaint should be made unless there is screening by law enforcement or a prosecutor. Dorothy replied back and asked why prosecutors are not doing this now. Mr. Schatzow responded back that it should be mandated as a policy.

Richard Karceski asked if there is a motion to change the language to remove the domestically related crime exception from the recommendations. The following sentence would be stripped from the recommendation: *Domestic violence cases shall be excluded from these procedures and nothing in this recommendation shall interfere with the service of charges on defendants.*

This motion was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
4	12	3	4

Tim Maloney asked if this recommendation would result in a rule change or a statutory change. Judge Platt added that we should include "rule change" language into the recommendation.

This amendment was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
15	2	2	4

It was suggested to change the language to "a summons or warrant shall not be served until screened by a prosecutor except for domestically related cases."

Dorothy Lennig asked if there should be a time mandate on the screening of a case. Scott Shellenberger recommended that we don't add a time frame because that could push a trial date further out. Judge Morrissey added that this recommendation is useless if the screening does not occur earlier in the process.

Richard Karceski read the final recommendation as follows: *“The Commission recommends earlier and enhanced prosecutorial screening, particularly of citizens’ complaints, by way of Maryland Rule, prior to the issuance of a summons or warrant, except for domestically related crimes.”*

This recommendation was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>16</i>	<i>1</i>	<i>2</i>	<i>4</i>

Recommendation 3: Attorneys at Initial Appearances

1. *Under no circumstances should we institutionalize the Judicial Branch of Government as the line manager of what amounts to the Lawyer-Referral Service Program for Attorneys to represent indigent criminally accused in their First Appearance before a Commissioner. Counties urge the State to fully fund Richmond compliance. The one-time \$10 million earmarked to provide court-mandated counsel through the appointed attorneys program offers only a temporary fix. Whether the appointed attorneys program remains in place or alternative means of providing attorneys for initial appearances is arranged, the state, not the counties, should be required to fully fund the program. (IMPROVEMENT SUBCOMMITTEE).*
2. *Timeliness of qualification for assistance of counsel, and access to counsel once a determination has been made continues to be a concern. Because the rules as currently written, require that the commissioner conducts the qualification for assistance, there is "significant" delay between time of arrest and the commissioner determination (varies by jurisdiction). Additionally, if the arrestee qualifies for counsel after waiting a significant amount of time before a determination is made, the additional wait time may have a coercive impact on the utilization of counsel. (INDIVIDUAL RIGHTS SUBCOMMITTEE).*
3. *There is a real concern on the part of members of the subcommittee concerning the high rate of waiver of right to counsel in some jurisdictions. The rules governing procedures on the administration of indigence determinations etc., may need to be revised to maximize efficiency. (INDIVIDUAL RIGHTS SUBCOMMITTEE).*
4. *The role of the Judiciary in administering the appointed attorneys program should be evaluated to determine whether there is a conflict of interest in the Judiciary’s involvement in this role, and to determine whether there is an entity better suited to*

administer the appointed attorney program or to represent defendants at initial appearances. There is also a concern about the continuity of counsel between the initial appearance stage and remaining parts of the process. One resolution is that the Public Defender be charged with representation at initial bail review and qualification for representation (means testing) so there is continuity of counsel between the initial appearance and remaining stages of the criminal process. (INDIVIDUAL RIGHTS SUBCOMMITTEE).

Richard Karceski opened up the following questions for discussion:

- Who should manage and be responsible for providing attorneys at the Initial Appearance?
- How to streamline the process without encouraging waivers?
- How to ensure continuity of counsel between the initial appearance stage and remaining parts of the process?

Reverend Yeary asked the Commission how we could turn the concerns regarding this issue into a recommendation that would have value in the final Commission report. He suggested that we gather data on the timeliness of determining indigence and that we need to streamline this process.

Judge Platt added that if the Public Defender's Office (OPD) took control of the attorney process, they could screen for indigence. He also commented that the Judiciary is not structured, budgeted, or staffed to do this process currently. Judge Platt recommended that the Commission approve recommendation #4.

Senator Shank added that the current system of providing attorneys at initial appearances is a colossal waste of resources and is not working. He seconded Judge Platt that this responsibility is better suited to be handled by OPD. He also suggested a way to incorporate a pretrial risk assessment into this component where low risk individuals would not need to be screened for indigence since they will most likely be ROR'ed anyway.

Angela Talley mentioned that as a result of the new attorney process under Richmond, the defendant waiting times have doubled in Montgomery County, which has also spent roughly \$1 million in overtime for correctional staff.

Paul DeWolfe stated that the screening of indigence should be determined prior to the defendant going before a Court Commissioner.

Judge Morrissey was not opposed to OPD running this program but stated that they are not available 24/7 like the court Commissioners are and there will not be enough attorneys available.

Paul DeWolfe added that all eligibility determination will be conducted pre-presentment if OPD takes ownership of this role.

Scott Shellenberger mentioned that there was strong opposition from the legislature last year to have this responsibility fall under OPD. Michael Schatzow added that the only way for this process to be constitutional is through OPD, so a rule change will be needed.

Pete France commented that the current system is killing the state financially as there are a lot of unseen staffing costs that have resulted from the Richmond Decision.

Both Tim Maloney and Michael Schatzow asked if there is data available to show the cost of the Richmond decision to date such as the number of waivers and the cost associated with the longer wait times. Judge Morrissey replied that it is impossible for the Judiciary to track that data but the ROR rate is up 6% since Richmond was implemented (48% to 54%).

Michael Schatzow also recommended comparing the average length of stay now to previous years. Tammy Brown replied that the Judiciary is collecting some data such as the number of waivers that can be included in the Commission report.

Tim Maloney also recommended conducting a complete report on the cost analysis of Richmond. This report could be completed sometime next year.

Richard Karceski made a motion to vote and Tammy Brown read the proposed recommendation aloud: *“The Office of the Public Defender should be responsible for determining eligibility for indigency and for providing representation at initial appearance.”*

This recommendation was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>15</i>	<i>2</i>	<i>2</i>	<i>4</i>

III. Next Meeting

The next Commission meeting will be held on November 11th at 1:30 pm at a location TBD. The purpose of that meeting will be to vote on the remaining recommendations that were not voted on at this meeting.