

Governor's Commission to Reform Maryland's Pretrial System

Tuesday November 11, 2014

10:00 AM – 12:00 PM

**State House Building
100 State Circle
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

Mary Lou McDonough

Capt. Michael Merican

Hon. John Morrissey

Delegate Joseline Pena-Melnyk

Hon. Steven Platt

Jacqueline Robarge

Michael Schatzow

Angela Talley

Senator Christopher Shank

Scott Shellenberger

Rev. Dr. Sheridan Todd Yeary

Guests:

Mark Adams, Bail Bondsman

Joe Bryce, Manis Canning & Associates

Douglas Colbert, University of Maryland Law School

Phillip Cronin, Harris Jones & Malone

Ricardo Flores, Office of the Public Defender

Solomon Hamilton, Hamilton Bonding Service

Steve Lash, Daily Record

Kevin Loeb, Department of Public Safety and Correctional Services

Natasha Mehu, Maryland Association of Counties

Sara Morningstar, Montgomery County Office of Intergovernmental Relations

Kelley O'Connor, Maryland Judiciary

Shirleen Pilgrim, Department of Legislative Services

Claire Rossmark, Department of Legislative Services

David Soule, Maryland State Commission on Criminal Sentencing Policy

Drew Snyder, Maryland Judiciary

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

Carol Tuohey, Maryland State Bar Association

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 1:40 pm. The minutes for both the September 22nd and October 22nd Commission meetings were approved. Richard Karceski stated that the Commission voted on three recommendations at the previous meeting on October 22nd. All Commission members received an email of those final recommendations. Mr. Karceski also mentioned that the purpose of this meeting would be to vote on the additional recommendations that were approved by the subcommittees. These recommendations were grouped together into different categories. Mr. Karceski asked if there are any questions or if there is anything to add to the three recommendations that were voted on at the previous meeting. There was no additional discussion on those recommendations.

II. Discussion and Voting

A. Restructuring the System

Draft Recommendation 1:

Create a system so that only one entity in the pretrial process has to pull and summarize the arrestee's record in accordance with state and federal law.

Dorothy Lennig asked if this recommendation means that the Court Commissioners do not need to pull and summarize data that Pretrial Services would collect or are the Court Commissioners the entity that pulls and summarizes the records.

Judge Morrissey responded that he does not know if there is enough pretrial staff that has access to the same databases as the Court Commissioners as there are certain certifications needed to obtain access to these databases. He also mentioned that DPSCS runs the data for a different purpose than the Court Commissioners.

Capt. Merican responded that his officers in St. Mary's County have access to the same databases as the Court Commissioners, but they can't release the information to other entities. Mary Lou McDonough added that this information can only be disseminated if there is a log of release entered.

Tammy Brown responded that the group did not want to specify who the entity would be as there are operational issues depending on what branch of government the pretrial services agency would fall.

Dorothy Lennig recommended that we specify who the entity would be.

Judge Morrissey commented that the record check does not take as long as people think. He watched the process at 6 different hearings and it only took 5 minutes in many cases to run the data. Half of those 6 waived representation. At most, it took 20 minutes on these cases.

Tammy Brown mentioned rather than changing the language of the recommendation, that we could just flush out additional language in the body of the report explaining who the entity would be.

Judge Morrissey reiterated that the record check does not take the Court Commissioners a long time to run.

Delegate Pena-Melnyk asked if there was any room to compromise and have pretrial services be the agency that runs the data. Judge Morrissey responded yes if it abides by the federal law.

Tim Murray added that a pretrial services agency's purpose is to help improve decision making and they need to remain objective and neutral.

Judge Platt made a motion to change this recommendation to the following *“Create a system so that only one entity in the pretrial process has to pull and summarize the arrestee’s record, consistent with and in accordance with state and federal law and the independent needs of the system in order to operate efficiently.”*

This changed language was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>16</i>	<i>0</i>	<i>2</i>	<i>5</i>

Draft recommendations 2 and 3 were skipped until Reverend Yeary arrived.

Draft Recommendation 4:

Require the District Courts to equip each court and the designated facilities with audio/visual equipment to optimize court hearing efficiencies.

The Chair read the amended language that was agreed upon by the co-chairs of the three Subcommittees last week *“It is recommended that courts and designated facilities be outfitted with audio/visual equipment to optimize court hearing efficiencies.”*

Delegate Pena-Melnyk asked if this recommendation applies to all court cases. She also added that there are certain cases such as crimes against children, as well as sex offenses, where videoconferencing would not ensure the privacy of the victim or witnesses. She also asked what is meant by a “designated facility.”

Paul Kemp responded that this recommendation only applies to initial appearances before a Court Commissioner.

Scott Shellenberger asked Paul DeWolfe if there is a requirement that one of the two pretrial hearings (initial appearance or bail review hearing) has to be conducted in person to which Mr. DeWolfe responded that this is not a requirement.

Scott Shellenberger mentioned amending the language to include “optimizing court commissioner hearing efficiencies.”

Judge Platt felt that the recommendation does not need to be specific as to what kind of hearing while Delegate Pena-Melnyk disagreed and thought that the type of hearing needs to be clarified.

Judge Morrissey responded that the courts are moving in the direction to go electronic with their MDEC system to improve efficiencies, but there are some fiscal restraints to doing this. He mentioned that there is a two way communication with videoconferencing which requires cooperation of the facilities on the other side. The cooperation with these agencies has been successful thus far. The Judge thinks that videoconferencing makes everyone safer because it

does not require the transporting of prisoners. Judge Morrissey recommends that the legislature provide funding to the judiciary to equip this technology.

Paul Kemp asked Judge Morrissey how many counties don't have audio/visual capabilities. Judge Morrissey will follow up to get an answer. He knows that Cecil and Kent County just wired an upgrade and there is a planned rollout to have all counties equipped with this technology.

Capt. Merican added that the local detention Centers are working on an MOU to get access to this technology, but it is a time consuming process.

Richard made a motion to add "initial appearance" into the recommendation. Shank offered another suggestion that we add "public safety designated facilities" into the language as well as "pretrial hearing." He re-iterated the language was changed to "recommend" and not "require."

Tammy Brown read out the recommendation as follows: *"It is recommended that funding be provided for Court and public safety-designated facilities to be outfitted with audio/visual equipment to optimize court hearing efficiencies."*

This recommendation was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>17</i>	<i>0</i>	<i>2</i>	<i>4*</i>

* Jacqueline Robarge was not present for the first recommendation vote.

Draft Recommendation 5:

Maximize and expand the use of the criminal citation process by law enforcement.

Paul DeWolfe passed out some materials regarding citable offenses under current law as well as a recommendation for crimes where the issuance of citations could be expanded. This list of crimes was broken down into different categories. Mr. DeWolfe explained that expanding citations could reduce the pretrial detention and provide cost-savings to the system.

Tim Murray asked if there was any data currently available in Maryland on the use of criminal citations.

Jeffrey Zuback mentioned that the Maryland Statistical Analysis Center (MSAC) located at GOCCP is required to compile an annual report on all criminal citations issued by law enforcement. This first report was completed in September 2014. He offered to email this report to the Commission.

Scott Shellenberger suggested that the Commission not take the time to review all of the crimes on Paul DeWolfe's list at this meeting. Mr. Shellenberger also added that we should examine these offenses more in depth and also evaluate outcomes on people cited to see whether or not they show up to court or recidivate.

Jacqueline Robarge added that we need to take a hard look at FTAs because it may be more costly to detain someone on the backend of the system if they do not show up for court.

Delegate Pena-Melnyk commented that this recommendation would have the most impact and is the most likely to be passed by the General Assembly.

Tim Murray recommended that the state analyze the current use of citations including FTAs and re-arrest rates on citation offenses and report this to the legislature. The state should also examine the cost-savings associated with the issuance of criminal citations. Paul DeWolfe agreed with Mr. Murray.

Senator Shank added that there needs to be an evidence-based discussion regarding any new offenses that would be added to the criminal citations expansion. There has to be a rational basis for choosing each one. Delegate Pena-Melnyk also mentioned looking at what other jurisdictions are doing around the country.

Richard Karceski asked if there were any changes in the language to this recommendation. He also suggested that it is not a good idea to start listing specific crimes in this recommendation.

Judge Platt made a motion to change the recommendation to the following: *“study the utilization and experience of law enforcement in expanding the use of criminal citations under the recently revised stature with a view towards examining the effect of this expanded use on the criminal justice system.”*

Michael Schatzow is opposed to recommending a study as law enforcement are using their discretion to issue criminal citations and would not be doing it if they did not think it was working. Mr. Schatzow added that in the first year of the citations legislation, there has been a reduction in 20,000 initial appearances which should be evidence that the legislation accomplished what it intended to do.

Richard Karceski made a motion to vote on Judge Platt’s amended language *“study the utilization and experience of law enforcement in expanding the use of criminal citations under the recently revised stature with a view towards examining the effect of this expanded use on the criminal justice system.”*

This motion was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>7</i>	<i>9</i>	<i>3</i>	<i>4</i>

The recommendation was then voted on as is: *“Maximize and expand the use of the criminal citation process by law enforcement.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>18</i>	<i>0</i>	<i>2</i>	<i>3*</i>

* Reverend Yeary arrived and voted on this recommendation.

Mary Lou McDonough commented that Prince George’s County has data on arrests that were converted to criminal citations.

Jacqueline Robarge shared a story about a client who was originally cited for an open container violation but when she missed court she was issued a bench warrant for the FTA and arrested and detained on a low bond. Ms. Robarge indicated that when looking at citations we must keep in mind that someone who was originally issued a citation could potentially be arrested and detained if they FTA on that original charge. Because of the FTA, the person may also score differently on a risk assessment. She feels it is important that when looking at expanding citations, we also consider whether or not it makes sense for an FTA bench warrant to be issued on some low-level citable offenses and whether that should be prohibited for certain offenses.

Draft Recommendation 2:

The General Assembly should revisit SB973 from the 2014 legislative session, and present new legislation that seeks to advance the commit to restructure the pretrial system in Maryland.

Senator Shank read the amended language that was agreed upon by the co-chairs of the three Subcommittees last week: *“The Judiciary should evaluate the current pretrial system to determine whether it has the capacity to implement best practices in pretrial justice. This evaluation should consider the repurposing of District Court Commissioners from their current duties to conducting risk assessments on defendants and supervising defendants pretrial.”*

Senator Shank explained the reasoning for the language change. He said that he did not want to mention SB973 from the 2014 legislative session because it did not pass, and it would not go over well with the General Assembly again this year if it was included in a recommendation. Senator Shank also spoke to Judge Morrissey prior to this meeting about this particular recommendation. The recommendation is not intended to shake up the entire system, but rather provides an opportunity to look at enhancing the work of the Court Commissioners by using a risk assessment tool.

Reverend Yeary added that the previous recommendation was not implying that SB 973 was the answer, but rather a starting point to get the discussion moving forward.

Judge Morrissey responded that the Court Commissioners job does not include supervision and that you can't mix judicial functions with pretrial supervision. He also added that many jurisdictions already conduct pretrial supervision and this recommendation would require a significant shift in resources, not to mention a very large fiscal note.

Reverend Yeary clarified that this recommendation only empowers the judiciary to evaluate and consider whether they have the capacity to implement best practices.

Dorothy Lennig asked if the Court Commissioners would become pretrial service agents and conduct the risk assessment. Is this recommendation still requiring the Court Commissioners to conduct initial appearances?

Senator Shank mentioned that the Court Commissioners would conduct the risk assessment. He also added that this recommendation grew out of the failure to pass SB 973 last year which proposed the elimination of the initial appearance function of the Court Commissioners.

Paul Kemp reiterated that this recommendation is only asking the judiciary to examine their capacity to do this.

Senator Shank asked how the General Assembly is going to retain the Court Commissioners system as it currently is and continue Richmond. There needs to be a collapse in the system somewhere to address cost-savings.

Scott Shellenberger commented that this recommendation does not address the Richmond decision. Capt. Merican added that the only way to address Richmond would be to incorporate some type of administrative release component to release low-risk defendants without discretion. Scott replied back that we cannot take discretion away from the judiciary; this is a non-starter to any bill.

Judge Platt offered a change in the recommendation to read: *“the judiciary should evaluate the current pretrial system to determine whether the existing institutions and the role they play have the capacity to implement best practices in pretrial justice.”*

Paul DeWolfe said that this recommendation was similar to the last task force which discussed expanding pretrial and using a statewide validated pretrial risk assessment tool. Judge Morrissey commented that that recommendation is very similar to the first recommendation that was voted on at the last Commission meeting on 10/22.

Michael Schatzow replied that the main difference with this recommendation is collapsing the Court Commissioner system. He mentioned that we should consider a change in the system and possibly have the judges conduct the initial appearances.

Scott Shellenberger stated that if you re-visit collapsing the system, it will not pass without first coming up with a replacement for the Court Commissioners.

Tim Maloney commented that the state would never design the system the way it is now if it had started from scratch. We first should adopt a risk assessment and then study what the future role of the Court Commissioner should be.

Reverend Yeary repeated the recommendation says that the judiciary can consider repurposing the District Court Commissioners, but is not required to.

Senator Shank mentioned that the recommendation in its current form (not the amended language from Judge Platt) is the only way to address Richmond.

Judge Platt withdrew his motion to change the language.

Shank read the recommendation: *“The Judiciary should evaluate the current pretrial system to determine whether it has the capacity to implement best practices in pretrial justice. This evaluation should consider the repurposing of District Court Commissioners from their current duties to conducting risk assessments on defendants and supervising defendants pretrial.”*

This recommendation was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>13</i>	<i>5</i>	<i>2</i>	<i>3</i>

Draft Recommendation 3:

That the judiciary deploy judges in such a manner as to ensure that all defendants not released by the Pretrial Service Agency have benefit of an initial appearance/bail review before a judge within 24 hours of arrest. That whatever system the legislature passes, the critical principle of prompt presentment no later than 24 hours of arrest remain.

Richard Karceski started the conversation stating that there are no teeth in the existing rule that prevent a hearing from occurring after 24 hours.

Scott Shellenberger commented that there is some wiggle room in the law if defendants are arrested on the weekends.

Reverend Yeary replied that this recommendation does not allow for “wiggle room” but there is also no discussion of sanctions if a hearing were to exceed the 24 hour rule.

Judge Morrissey commented that the 24 hour rule is already occurring and that the Judiciary does not have any control on when a presentment is made. That is controlled by the Executive Branch who has to figure out the reasons for the time delay to get to the Commissioner. The Commission should recommend how to study the problem of presentment within 24 hours. The Judge agrees that as risk assessment would help provide uniformity but the current system is working and abides by the 24 hour rule.

Scott Shellenberger asked if this recommendation should be targeting judges.

Michael Schatzow clarified that this recommendation states that no matter what changes take place as a result of other recommendations or legislation, the 24 hour rule should remain in effect.

Tammy Brown added that the current rule is good, we just want to ensure that this rule be continued to ensure that defendants have a right to an initial appearance within 24 hours.

Judge Morrissey again asked why the Commission is recommending a rule that already exists.

Reverend Yeary replied that the 24 hour rule should remain in effect despite any potential hypothetical changes to the system that may occur.

Paul DeWolfe re-iterated that the 24 hour rule is sacrosanct.

Scott Shellenberger stated that he is not opposed to changing the rule to 48 hours.

Delegate Pena-Melnyk stated that this recommendation is important to include because the legislature discussed changing the rule to 48 hours last session.

The recommendation was voted on as follows: *“It is recommended that all defendants not released by the Pretrial Service Agency have benefit of an initial appearance/bail review before a judge within 24 hours of arrest.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>17</i>	<i>1</i>	<i>2</i>	<i>3</i>

B. Managing Risk

Draft Recommendation 1

That the Pretrial Service Agency release those persons for whom the validated risk assessment tool recommends release without conditions. Until such time as a validated risk assessment tool is developed for domestic violence offenses and sexual offenses, the Pretrial Service Agency may not be authorized to released persons charged with those offenses.

Judge Platt commented that Pretrial Services does not have the authority to release anyone without judicial discretion.

Michael Schatzow added that this recommendation assumes that Pretrial Services does have this authority.

This recommendation was voted on as is: *“That the Pretrial Service Agency release those persons for whom the validated risk assessment tool recommends release without conditions. Until such time as a validated risk assessment tool is developed for domestic violence offenses and sexual offenses, the Pretrial Service Agency may not be authorized to released persons charged with those offenses.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>7</i>	<i>10</i>	<i>3</i>	<i>3</i>

Draft Recommendation 2

Provide adequate funding and/or personnel to implement a validated risk assessment tool modeled after best practices to pilot in jurisdictions to be utilized by the Court Commissioners after the data has been analyzed.

Dorothy Lennig commented that this recommendation conflicts with recommendation 1 (voted on 10/22) which states that the statewide Pretrial Services Agency will administer the risk assessment.

Tim Murray added that this recommendation does not address how you mitigate risk (e.g. supervision) once risk is identified. Tammy Brown replied that recommendation 1 (voted on 10/22) does address supervision.

Scott Shellenberger stated that this recommendation is different because it mentions piloting a risk assessment before going statewide. Tim Murray added that piloting a risk assessment in smaller jurisdictions is a good stepping stone to going statewide.

Richard Karceski added that recommendation 1 does not address providing funding to implement a risk assessment tool.

The Commission voted on the italicized language as is: *“Provide adequate funding and/or personnel to implement a validated risk assessment tool modeled after best practices to pilot in jurisdictions to be utilized by the Court Commissioners after the data has been analyzed.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>16</i>	<i>2</i>	<i>2</i>	<i>3</i>

Dorothy Lennig mentioned that there is no risk assessment tool validated for Domestic Violence other than the ODARA tool. Senator Shank replied that the ODARA tool is a supplement to use with a risk assessment. Tammy Brown replied that we will include language about DV risk assessment in the language of the report.

Judge Morrissey asked what validation means. He questioned the study that GOCCP is working on that uses a validated risk assessment from Kentucky. He stated that just because it is validated in Kentucky does not mean that it has been validated in Maryland. The definitions of felonies and misdemeanors are different in Maryland and Kentucky.

Senator Shank responded that there is a peer review process and it has been validated in Science. He also added that using a tool in Maryland would require the definition of Maryland law. Jacqueline Robarge added that is a scientific process. Tim Murray stated that there is a definition of “validated” on the Pretrial Justice Institute website.

C. Monetary Bond

Draft Recommendation 1

Cash bail, and its associated impact, should be monitored to determine if changes need to be developed and implemented including a comparison between secured and unsecured bond.

Draft Recommendation 2

The use of secured, financial conditions of pretrial release (cash, property, or surety bond) that require a low-risk defendant to pay some amount of money in order to obtain release, while permitting high-risk defendants with the resources to pay their bonds to leave jail unsupervised, be completely eliminated.

Richard Karceski commented that if we recommend eliminating commercial bail completely, it will not go anywhere.

Michael Schatzow responded that bonds are applied so irrationally, where high risk people get let out and low risk people with no money are detained. People who are low risk for non appearance and low risk to the community should be released regardless of their ability to pay money for a bondsman.

Scott Shellenberger echoed Richard’s statement that the Commissioner’s recommendations will go nowhere if you threaten the bail bond industry.

Tim Murray reminded the Commission that New Jersey just passed radical bail reform. He also mentioned the importance of addressing how to mitigate risk once it is identified. Mr. Murray added that the national research shows when high money bails are sent to keep defendants detained; roughly half of those end up posting and getting released.

Paul DeWolfe added that if you have money you get out and if you don’t have money, you don’t get out. He also brought up systems such as Kentucky, DC, and New Jersey do not use cash bail

and they have produce successful pretrial outcomes. Paul Kemp also mentioned that the federal system is the same way.

Richard Karceski asked the group if there is an argument about why we should keep commercial bail.

Scott Shellenberger replied that if a family member is on the hook financially the defendant may be more likely to come to court.

Judge Morrissey stated that all judges are trained in unsecured bond and many use it, but how can you force them to use it.

Senator Shank recommended that the Commission go with a softer approach (recommendation 1). It is important to have the discussion with judges and allow them option to use or not use it. It is better than a much more radical recommendation.

Delegate Pena-Melnyk asked the question regarding recommendation 1 of who will monitor the cash bail. She recommends the Maryland Insurance Administration. Senator Shank agreed but also thought that the Judiciary should look at it as well.

Delegate Pena-Melnyk made a motion to change the language to add that the Maryland Insurance Administration would monitor the cash bail system. This motion was proved.

Recommendation #2 was voted on as is: *“The use of secured, financial conditions of pretrial release (cash, property, or surety bond) that require a low-risk defendant to pay some amount of money in order to obtain release, while permitting high-risk defendants with the resources to pay their bonds to leave jail unsupervised, be completely eliminated.”*

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

Recommendation #1 was voted on as follows: *“Cash bail, and its associated impact, should be monitored by the Maryland Insurance Administration to determine if changes need to be developed and implemented including a comparison between secured and unsecured bond.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>17</i>	<i>1</i>	<i>2</i>	<i>3</i>

D. Data and Further Research

Draft Recommendation 1

“The Commission should recommend as an outgrowth of this Commission a broader Commission to Study the Institutions and Operations of the Maryland Criminal Justice System.”

Judge Platt read the amended language that was agreed upon by the three Subcommittee co-chairs last week. *“A Commission to Study the Maryland Criminal Justice System shall be created. The purpose of the Commission shall be to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning with a focus on evidence-based decision making. The*

primary duty of the commission shall be to develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated and cost-effective state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation.”

This recommendation was voted on:

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>18</i>	<i>0</i>	<i>2</i>	<i>3</i>

Draft Recommendation 3 and 4 (combined)

Provide state funding to create a shared jail management system, possibly through the Department of Public Safety and Correctional Services’ Offender Case Management System (OCMS), to allow for data collection on the pretrial population statewide.

Judge Platt stated that he did not know what this recommendation means.

Capt. Merican responded that currently 24 jails are using 24 separate siloed data systems. Some smaller counties cannot afford to build these interfaces to connect to other databases. OCMS has a variety of jail data such as time of arrests, sentences, bond amounts, gang information, cases in other jurisdictions, and commitment information.

Tammy Brown added that we don’t know who is in jail today unless we survey all 24 counties separately. Scott Shellenberger also stated that none of these systems share information with one another. Judge Platt added that this is an example of different branches of government collecting data independent of one another.

Paul Kemp asked if computer sharing agreements with OCMS can be set up.

Tammy Brown responded that GOCCP is providing funding to some of the locals to obtain access to OCMS. She also mentioned that using this as a recommendation in the report could add extra value to getting everyone access to OCMS.

Richard Karceski asked the group if additional language needs to be added or if they can now vote on the language as is.

Tammy Brown stated that further language explaining what OCMS is can be included in the body of the report.

The Commission voted on the recommendation as follows: *“Provide state funding to create a shared jail management system, possibly through the Department of Public Safety and Correctional Services’ Offender Case Management System (OCMS), to allow for data collection on the pretrial population statewide.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>18</i>	<i>0</i>	<i>2</i>	<i>3</i>

Draft Recommendation 2

Data are needed in order to effectively determine impact of process and procedures on various demographics (race, gender, English as a Second Language, Socio-Economic Status, etc.). Additionally, timeliness factors such as rates of waiver to arrests, time between arrest and presentment, and jurisdictional differences, etc. should be measured.

Delegate Pena-Melnyk added that we are missing data on waivers, waiting time, and nothing on English as a second language (ESL).

Scott Shellenberger asked who is supposed to be collecting this data.

Tim Murray added that there is no racial disparity in the system unless this data is captured.

Judge Morrissey responded that DPSCS has some of this data. He added that the Judiciary is ethically not supposed to ask certain questions such as citizenship as there is a presupposed bias. Some of the data is not available to collect such as SES.

Delegate Pena-Melnyk recommended replacing “SES” with “indigence” and changing “ESL” to “non English speaker”.

Judge Morrissey stated that indigence is omitted if the defendant waives their right to an attorney.

Reverend Yeary asked why we want to take SES out. Dorothy Lennig recommended that we define indigence in the recommendation such as “defined as eligibility for representation by OPD or appointed attorney.”

Judge Morrissey asked what is meant by “jurisdiction differences”. Reverend Yeary responded that we want to measure differences across the state in different jurisdictions.

Jacqueline Robarge added that by collecting this data, we can try to measure racial and economic disparities in who was given bail.

Delegate Pena-Melnyk does not see a downside to including this as a recommendation because this data has been requested numerous times by different members of the Commission.

Tammy Brown said that we should change “jurisdictional differences” to “by jurisdiction”.

Dorothy Lennig asked which agency would be responsible for collecting this. Delegate Pena-Melnyk responded that this data involves many different agencies.

The Commission voted on the following recommendation: *“Data are needed in order to effectively determine impact of process and procedures on various demographics (race, gender, non-English speaking, and indigence defined as eligibility for representation by the Office of the Public Defender or appointed attorney. Additionally, timeliness factors such as rates of waiver to arrests and time between arrest and presentment, by jurisdiction, should be compared and measured.”*

<i>Yes</i>	<i>No</i>	<i>Abstained</i>	<i>Absent</i>
<i>18</i>	<i>0</i>	<i>2</i>	<i>3</i>

III. Additional Discussion

Judge Morrissey asked about the results of the study GOCCP is working on, which involves 6 counties compiling a risk assessment tool on all defendants for two weeks and seeing what pretrial outcomes they were given by the Court Commissioners and the District Court judges. He is also concerned that the Commission did not see the tool that was being used.

Tammy Brown responded that GOCCP received the data and hired an independent researcher to conduct the analysis, which is not yet complete.

Reverend Yearly asked why we are discussing this study when it was already voted on by the Commission to be conducted by GOCCP.

A question came up on whether the results of this study should be included in the Commission report. Senator Shank thought that it could go in the appendix.

Scott Shellenberger asked if the Commission will have an opportunity to read the results and express an opinion. Morrissey added that the release rates in Maryland may be different than Kentucky and can't be compared because Maryland does not have statewide pretrial supervision.

Delegate Pena-Melnyk asked if Judge Morrissey can talk with Dr. James Austin, who is the researcher that is conducting the analysis on this study.

Tammy Brown that she will set up a meeting with Judge Morrissey and Dr. Austin and other members of the Commission would be invited to attend.

The meeting adjourned at 4:35 pm.