

**Governor's Commission to Reform Maryland's Pretrial System**

**Thursday June 26, 2014**

**1:00 – 3:00 PM**

**Maryland Judiciary Education and Conference Center**

**2011D Commerce Park Drive**

**Annapolis, Maryland 21401**

**Participating Members:**

Richard Karceski (Chair)

Sheriff Jesse Bane

Tammy Brown

Cherise Fanno Burdeen

Delegate Luke Clippinger

Paul DeWolfe

Wendell France

Brian Frank

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

Senator Robert Zirkin

**Guests:**

Mark Adams, Bail Bondsman

Spike Bradford, Pretrial Justice Institute

Amy Devadas, Maryland Department of  
Legislative Services

Delegate Kathleen Dumais

Pamela Harris, Maryland Judiciary

Kevin Loeb, Department of Public Safety and  
Correctional Services

Richard Montgomery, Maryland State Bar  
Association

Karen Morgan, Maryland Department of  
Legislative Services

Shirleen Pilgrim, Maryland Department of  
Legislative Services

Claire Rossmark, Maryland Department of  
Legislative Services

Janene Scelza, National Criminal Justice  
Association

Rachel Sessa, Department of Public Safety and  
Correctional Services

Drew Snyder, Maryland Judiciary

Dave Weissert, Maryland Judiciary

**Staff:**

Virginia Bersch, Governor's Office of Crime Control & Prevention

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

## **I. Welcome and Introductions**

The meeting was called to order by the Chair at 1:09 PM. Commission members briefly introduced themselves by name and agency/organizational affiliation. Tammy Brown thanked everyone for attending the meeting and reiterated the importance of pretrial system reform.

## **II. Why Is the Pretrial Decision So Critical?**

Video Presentation: *Pretrial Decisions Determine Mostly Everything* by Dr. Marie Van Nostrand from the Center for Evidence-Based Crime Policy

Link to Video: <https://www.youtube.com/watch?v=llqFx7GE-HU>

The video provided statistics on the harm of detaining low risk defendants pretrial. Low risk defendants detained pretrial are more likely to receive a jail or prison sentence, and are also more likely to receive a longer sentence than those released. The longer an individual is detained pretrial, the more likely he or she will recidivate. According to the video, only 10% of jurisdictions nationwide use some type of risk assessment instrument when making pretrial decisions.

## **III. Maryland's Current Pretrial Process**

Presentation: Dave Weissert, Coordinator for District Court Commissioner Activity, Maryland Judiciary

Mr. Weissert provided an overview of the District Court Commissioner System in Maryland. He provided a history of the system origins as well as the system that we have today. District Court Commissioners have provided their current functions since 1971. There are 279 Court Commissioners in 41 locations throughout Maryland. Court Commissioners serve 24 hours a day 365 days a year. All but 7 Court Commissioners have a Bachelor's Degree or higher: 18 Court Commissioners have a Master's degree, 18 Court Commissioners have a Juris Doctorate, and 1 Court Commissioner has a Ph.D. Sheriff Bane asked what the salaries are for Court Commissioners. Mr. Weissert responded that the starting salary is \$44,500 and a maximum of \$60,000.

Mr. Weissert's presentation also described the training requirements for Court Commissioners, who are required to complete 10 hours of training at the District Court headquarters and 40 hours of localized training, which varies by District. Court Commissioners also receive 40 hours of subject-specific training on probable cause, pretrial release, civil orders, and bonds, to name a few. Court Commissioner's also receive 20 hours of computer-related training on various databases and software. Before they work independently, Court Commissioners must complete 160 hours of on-the-job training under the mentorship of a seasoned Court Commissioner. Court Commissioners are also required to complete 32 hours of continuing education each year. Scott Shellenberger asked Mr. Weissert to elaborate on the content of the 32-hour training. Mr. Weissert responded that the training could be on a wide range of topics.

Mr. Weissert's presentation also included an overview of the initial appearance process. During an initial appearance, a Court Commissioner advises the defendant of his/her rights and his/her charges. If a warrantless arrest was made, the Court Commissioner must determine whether or

not there was probable cause to arrest. After probable cause is established, the Court Commissioner must decide whether to release the defendant on his/her own recognizance or set a bail amount (with or without collateral). It is at this time that the Court Commissioner may also set other conditions to ensure that the defendant will show up for court and not pose a danger to himself or the general public. After an initial appearance is conducted, all information is put into a paper-based case file. Initial appearances are not recorded. Tammy Brown asked what information goes into the paper-based case file. Mr. Weissert stated that the paper-based case file includes the statement of charges, all supporting documents for the docket, and the initial appearance report.

Maryland statute prohibits Court Commissioners from setting bond and/or releasing defendants charged with certain violent offenses. Maryland statute also places restrictions on releasing certain individuals on their own recognizance, although bail conditions in these cases may be allowed.

Mr. Weissert provided the following statistics on Commissioner Activities from 2013:

- Initial Appearances Conducted: 153,305
- Warrants: 68,790 vs. On-View Arrests: 84,515
- Peace Order Violations: 183
- Protective Order Violations: 8,754
- Pretrial Release Determinations:
  - o No Probable Cause: 3,528
  - o ROR: 65,663
  - o Held without Bond: 6,960
  - o Held Default on Bond: 77,154 total including--
    - Cash: 2,323
    - Corp: 40,512
    - Property: 4,510
    - Percentage: 6,959
    - Unsecured: 2,462

Scott Shellenberger asked if County Commissioners can change the bail amount set by a judge on bench warrants. Mr. Weissert said that they can do this under most circumstances. However, Court Commissioners do not have any discretion on the bond amounts set by judges on District Court and Circuit Court Violation of Probation warrants.

Court Commissioner Data on Statement of Charges:

- Applications Issued: 66,581
  - o Police: 38,140

- Citizen: 28,441
- Denied: 2,505
- Arrest Warrants: 31,074
- Criminal Summons: 42,032
  - Re-issues: 2,130
    - Summons: 742
    - Warrant: 1,388

Court Commissioner Data on Interim Civil Orders:

- Petitions Filed: 21,381
  - Protective: 12,807
  - Peace: 8,574
- Orders Issued: 19,465
  - Protective: 11,656
  - Peace: 7,809

Tammy Brown asked how citizen applications are referred by law enforcement. Mr. Weissert responded that this process varies by jurisdiction. Some jurisdictions have a “business card” with a complaint written on it that the citizen gives to the Commissioner. In other jurisdictions, the citizen appears before the Court Commissioner and states that a law enforcement agency told them to appear to request an arrest.

Judge Platt asked Mr. Weissert what percentage of police and citizen applications are screened by a State’s Attorney. Mr. Weissert responded that he did not have these numbers; he suspects that there are very few. Judge Platt also asked Mr. Weissert what percentage of arrest applications are denied, resulting in the issuance of a summons. Mr. Weissert does not have data to answer this question. In addition, Judge Platt asked if there are separate policies or trainings, or a difference in treatment, regarding the issuance of citizen and police applications. Mr. Weissert said that there is no separate training, but that police applications generally have more complete information than citizen applications and result in fewer denials. He does not have data on what percent of each type of application results in denial.

Tammy Brown asked whether there is any data on Commissioner decisions for police v. citizen applications for arrests. Mr. Weissert responded that they do not collect that data.

Scott Shellenberger asked Mr. Weissert what criteria Court Commissioners use to decide whether to issue an arrest warrant or a summons for citizen applications referred by law enforcement. Mr. Weissert stated that the same criteria are used: a person’s likelihood of appearing in court and whether the person poses a danger to himself or the public.

Delegate Pena-Melnik asked Mr. Weissert how cases are handled if the defendant cannot speak English. Mr. Weissert responded that \$12,000 a month is budgeted for interpreter services for defendants. The most common language is Spanish, followed by Russian and French.

Richard Karceski asked if the timeliness of the application for charges, in relation to the date the incident occurred, affects the Commissioner's decision to accept the application. Mr. Weissert stated that as long as there is probable cause to issue the warrant, the Commissioners will accept the application.

Richard Karceski asked Mr. Weissert how much training Court Commissioners are given on determining probable cause. Mr. Weissert replied that a large percentage of their subject-specific training is in regards to making probable cause determinations. As part of this training, a Maryland Court of Appeals judge gives a yearly presentation to Court Commissioners on probable cause.

Judge Morrissey pointed out that the Chief Court Commissioner at each district can notify the Chief Judge if a particular Court Commissioner is not setting appropriate bond amounts.

Paul Kemp asked if there was any data on the types of bonds posted by jurisdictions. Mr. Weissert said that these data are available by district.

Delegate Pena-Melnik asked if Mr. Weissert tracks disparities in decision-making by Court Commissioners. Mr. Weissert responded that data are not tracked in this manner.

Michael Schatzow asked if Commissioners are trained on the consequences of improper pretrial decision-making. Mr. Weissert stated that Court Commissioners assess the risk of every defendant they see, but they do not track the outcomes after the hearing has occurred.

Paul DeWolfe asked if any other states have a dual hearing process and have District Court Commissioners. Mr. Weissert responded that he did not know.

Senator Shank asked what type of training Commissioners receive on determining the risk level of a particular defendant. Mr. Weissert responded that no particular training model is available, but they do use mock scenarios. Judge Morrissey added that Commissioners look at eight factors to assess risk, including any pending charges, FTA history, etc.

Scott Shellenberger stated that a major problem with the pretrial system in Maryland is that there is a data gap in relation to our pretrial population. There is no system in place to track the outcomes of Court Commissioner release decisions. For example, no data are available to determine whether or not someone who was ROR'ed by a Commissioner commits a new offense pretrial.

Jacqueline Robarge asked if data on Court Commissioner cases are broken down by the specific charge. Mr. Weissert said that these data are not available.

Dorothy Lennig stated that it is important to capture failure data (FTAs and new criminal offenses) separately.

There is no pretrial unit in Maryland today that does any work on defendants before they go before a Court Commissioner. This process was in place in Baltimore City but ended about 15 years ago. Tammy Brown asked if historical data was available to see if the recommended outcomes by Baltimore City pretrial compared to the actual pretrial decisions made by the Court Commissioners. Mr. Weissert said that these data were never tracked.

Richard Karceski thanked Mr. Weissert for his presentation and for answering all of the questions asked.

#### **IV. Executive Order And Commission Objectives**

Richard Karceski took a few moments to go over the Executive Order that created the Commission. Mr. Karceski explained the need for a fair pretrial system, in which low risk defendants are released with no conditions. Mr. Karceski mentioned that the pretrial system will change on July 1<sup>st</sup> due to the Richmond decision and that these changes will remain unless other opportunities for pretrial system reform are proposed. Mr. Karceski briefly discussed the prior analysis of the pretrial system, including the Indigent Defense Task Force. Mr. Karceski stated that one of the main purposes of the Commission is to work towards researching and adopting a risk assessment tool that will not only be a benefit to public safety, but will also provide cost savings to the pretrial system. Mr. Karceski mentioned Kentucky as an example of a state that has implemented a statewide pretrial risk assessment tool. Lastly, Mr. Karceski stated that in addition to looking at a risk assessment tool, the Commission should also explore other methods to improve the pretrial system in Maryland.

#### **V. Discussion Question For Commission Members**

Richard Karceski generated an open discussion with the following questions: ***What is the one thing you would change about Maryland's pretrial system that would generate the most benefit to the Criminal Justice System?***

Paul Dewolfe opened up the discussion. Mr. DeWolfe stated that there are plenty of low risk people in jail that should not be there. There is cost savings associated with letting these individuals out of jail. He further went on to say that evidence-based practices need to be implemented in Maryland's pretrial system. Maryland's two-tiered system is unique and very cumbersome. He supports the concept of administrative release where low risk offenders are expeditiously released through a validated risk assessment tool, but that an override can be provided on the tool for certain defendants characterized as low-risk who should not be released due to other circumstances that the tool cannot capture.

Brian Frank followed and stated that the current pretrial system is not flawed. He explained that Commissioners and judges make good decisions and the reason why some offenders are "languishing" in jail is because the Commissioners or judges made the decision to put them there. Mr. Frank stated that there are a few cases that fall through the cracks, but most of the release decisions made by Commissioners and judges are the correct ones. He explained that the current pretrial system in Baltimore needs to be fixed because of the long wait time (up to 23 hours) for a defendant before he/she goes before a Court Commissioner for an initial appearance.

Dorothy Lennig responded that more consistent and more objective outcomes need to be made so that similarly situated people in different jurisdictions have similar pretrial outcomes.

Delegate Pena-Melnyk stated that while implementing a pretrial risk assessment tool is a good idea, other methods should be pursued as well as using best practices research.

Sheriff Bane stated that there is a bias in the system, whether it is intentional or unintentional, and that an objective pretrial risk assessment tool is needed.

Capt. Merican responded that inconsistencies in the system are a huge problem. He has data to show that the length of time people are sitting in jail pretrial is inconsistent across the state.

Mr. France has data to show that there are many people in Baltimore City who are in jail awaiting trial for 18 months to two years with a bond under \$1,000. He agrees with Brian Frank that the wait time to go before a Court Commissioner needs to be significantly reduced in Baltimore City.

Capt. Merican stated that we need to better focus data collection efforts on when defendants are sitting in jail and when they are getting out.

Steve Platt said that in many jurisdictions, 60-70% of charges are nolle prossed; so even if we could take out half of those cases, there would be significant cost savings on the system. He suggested that more screening could be done by the State's Attorney's Office on cases before they go to the Commissioner.

Scott Shellenberger added that it would be much more than \$30 million a year to have a State's Attorney at every single initial appearance to review the statement of charges. He also stated that an ideal pretrial system is one in which low risk defendants are released quickly while also protecting the general public and the victim(s).

Paul Kemp mentioned two pretrial system models that are working well: Montgomery County and the Federal System, although the latter has a much higher detention rate. Any data should be focused on the savings of those not incarcerated.

Cherise Fanno Burdeen mentioned that she has assisted with pretrial reform in other states and in order to begin the process, there first has to be a consensus-based vision of the pretrial system and what the outcomes need to be.

Jacqueline Robarge added that any pretrial risk assessment tool should separate FTA risk and new offense risk of an arrestee. She also mentioned that more health and community services need to be available to ensure that defendants will appear in court.

Senator Zirkin asked the Commission to also examine the outcomes of the Richmond Decision to see if having public defender representation at initial appearances is assisting the defendants.

Dr. Sheridan Todd Yeary added that implementing a pretrial risk assessment tool is a good first step, but you need to protect the fairness of the system. Any pretrial strategy of reform should also protect the foundation of the presumption of innocence.

Senator Shank stated that we are hamstrung by Richmond so there is certainly a need for fundamental holistic reform. There also needs to be an improved treatment aspect of pretrial including addiction screening. Without addressing drug addiction, these offenders will wind up back in the system.

## **VI. Closing Remarks**

Angela Talley offered to host the next Commission meeting in Montgomery County where the Commission could do a site visit of the Pretrial Services program there. Since Montgomery County implemented a pretrial risk assessment tool, there has been a 35% increase in those recommended for release.

Judge Morrissey added that it is important to note whenever any amount of discretion is involved; it triggers the right to counsel.

Mary Lou McDonough thought that it would not be a good idea to visit Montgomery County because their pretrial services do not take place until after the Court Commissioner level. Only individuals who are committed go before pretrial, so this site visit may only confuse the Commission.

Richard Karceski mentioned that the discussion of the next meeting should be focused around how to release low risk offenders quickly while protecting public safety.

Jacqueline Robarge discussed that there needs to be a shared data request from the Commission as we work to adopt a pretrial risk assessment tool.

Tammy Brown briefly mentioned that GOCCP is working on a study that will take a random sample of cases and include a manual case by case analysis on pretrial outcomes and criminal history information of each offender.

The meeting adjourned at 3:10 pm.

## **VII. Next Meeting**

The next Task Force meeting will be held July 15<sup>th</sup> at 2pm in Annapolis (House Office Building).