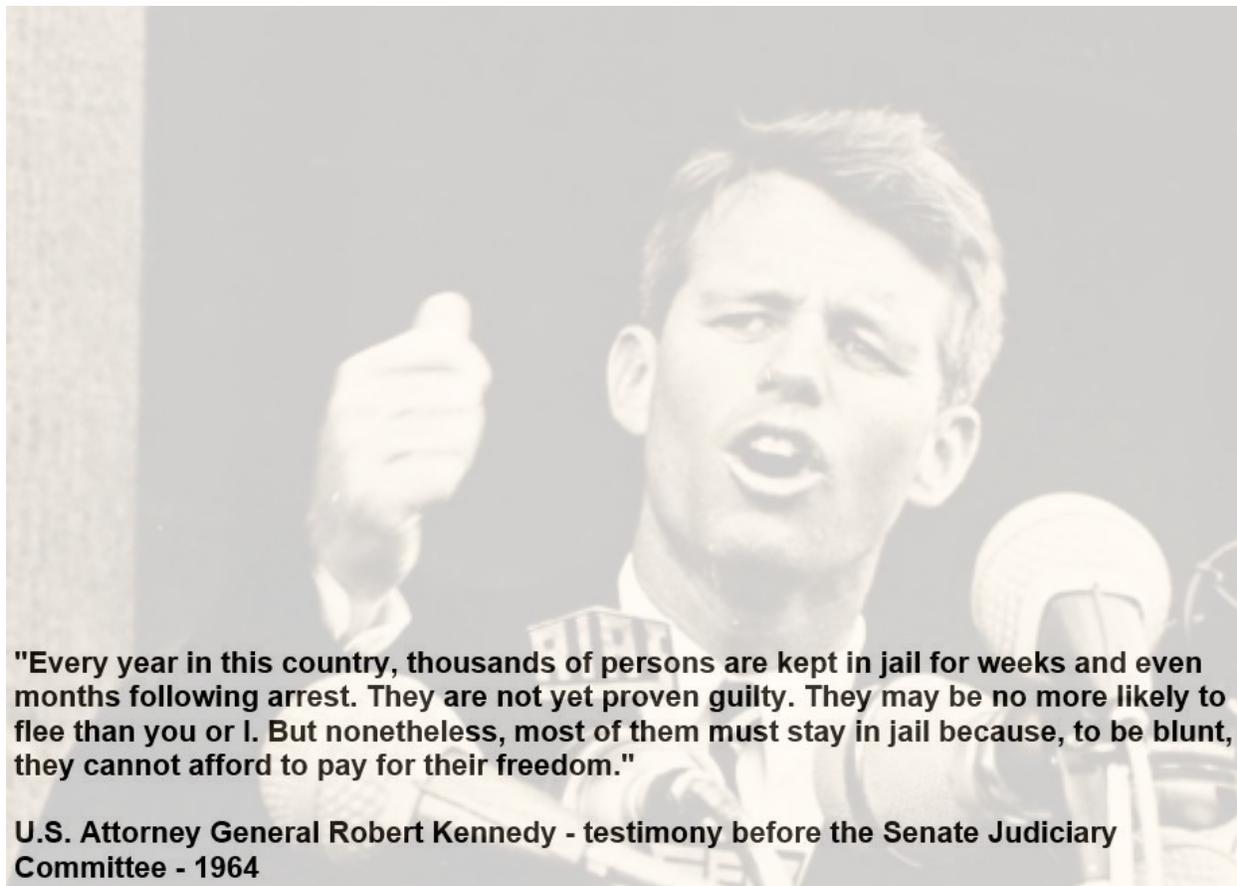


Montgomery County, OH

Bail Practices Review

Public Performance Partners, Inc. 1/11/2018





Executive Summary

Since well before Attorney General Kennedy opined on the topic, American judges have wrestled with the appropriate use of bail to achieve a balance between ensuring appearance, protecting the public safety, and protecting the liberties of the accused. The nation's pretrial justice renaissance reached Montgomery County in 1973, with the formation of the Pretrial Release Bureau.

Since that time, the county's pretrial services have provided bond recommendations and pretrial supervision to the county's common pleas and municipal courts. Based on our data analysis, and the assessment of other published reports, the county's pretrial program demonstrates the ability to improve pretrial outcomes, but is limited in its reach to only those charged with a felony or violent misdemeanor; leaving hundreds in jail awaiting appearance at any given time, while occupying law enforcement with elevated levels of recidivism and failure to appear.

Leading jurisdictions in Ohio and across the nation are blazing a new trail, using rigorously validated models to identify those at highest risk of negative pretrial outcomes, allowing them to reduce jail populations while improving appearance and recidivism. Montgomery County is well positioned to incorporate similar tools into the county's existing structures and systems in a way that will facilitate the expansion of bond recommendations across the entire misdemeanor population, and the reallocation of supervision resources to highest risk defendants.

Public Performance Partners (P3) agrees with earlier published reports that the county should consolidate pretrial operations under the operation currently housed in the common pleas court. In addition, we recommend the formation of a Council of Government (CoG) structure to efficiently incorporate all eight court systems across the county in the collaborative building of processes, adoption of risk assessment and other poignant tools, and regular review of data-driven pretrial policy on behalf of the county court system.

Montgomery County Court System

The Montgomery County Court System is comprised of a common pleas court, with eleven judges hearing felony level cases, and seven municipal courts, hearing misdemeanor and traffic cases in the following jurisdictions:

Municipal Court	Jurisdictions
Dayton Municipal Court	City of Dayton
Kettering Municipal Court	Cities of Kettering, Centerville, and Moraine as well as Washington Township
Vandalia Municipal Court	Cities of Vandalia, Englewood, Union, and Clayton, as well as Butler Township, and Harrison Township
Oakwood Municipal Court	City of Oakwood
Miamisburg Municipal Court	City of Miamisburg
Western Division County Municipal Court	City of Trotwood, City of Brookville, Village of New Lebanon, Village of Phillipsburg, Village of Farmersville, Village of Verona, Perry Township, Clay Township, Jackson Township, Jefferson Township
Eastern Division County Municipal Court	Cities of Huber Heights and Riverside

The county municipal courts were originally designed to serve various unincorporated areas of the county but as incorporated entities have been created, these courts have been utilized to serve these new cities rather than incurring the expense of creating new municipal courts.

There are three mayor's courts in Moraine, Phillipsburg, and West Carrollton, which hear cases involving violations of local ordinances and traffic violations occurring within the jurisdiction boundaries, and are not part of the bail reform discussion.

Pretrial Operations Background & Practices

In 1973, Montgomery County began operating a pretrial release agency with funding from the Federal Department of Justice. The program, known as the Pretrial Release Bureau, provided bond recommendations for judges to review prior to setting bond. The agency also operated a pretrial diversion program in collaboration with the Montgomery County Prosecutor's Office. The program included urinalysis testing on defendants while their case was pending.

In 1979, the federal funding for the operation of the Pretrial Release Bureau ended and Montgomery County undertook the funding and administration of the pretrial operation, including the drug testing function. The administration and staffing of the diversion component was transferred to the Montgomery County Prosecutor's Office.

For a period of time in the 1980s the Dayton Municipal Court operated a pretrial release program that served only that court. Specific information regarding that program is not available.

Today, the Montgomery County Court of Common Pleas operates a pretrial release program that includes EHDP (Electronic Home Detention) and urine testing as well as supervision based on a risk assessment of the defendant, using the ORAS-PT risk assessment tool; part of a family of tools¹ developed by the University of Cincinnati. Contemporarily known as "Pretrial Services", the department interviews all newly arrested felons as well as defendants charged with violent misdemeanor offenses, reaching less than 30% of the overall pretrial population in the county, according to a 2015 analysis of Pretrial Services operations. Outside of the assessment of violent misdemeanor defendants, the municipal courts do not utilize a validated risk assessment tool to assist in the determination of bond.

¹ <http://www.drc.ohio.gov/oras>

Many felon and violent misdemeanor defendants released on a bond are required to report to Pretrial Services and to follow a reporting and urinalysis schedule set by a case manager. These pretrial defendants typically have been released on an OR bond in many cases but also may be under a requirement for pretrial supervision due to the posting of a 10% bond or the full bond amount by the defendant or a bail bondsman. They may also be subject to Electronic Home Detention and be required to wear an electronic ankle unit that enables pretrial officials to track their whereabouts.

In 2017, the municipal court judges of Montgomery County agreed upon the adoption of a uniform bond schedule to be applied to all defendants appearing in a municipal court in the county. Bond schedules are applied when a defendant is first processed into the Montgomery County Jail. The more serious the alleged offense, the higher the monetary amount that must be posted on behalf of the suspect to obtain their release. Prior to this standardization of the bond schedule, defendants were detained on variable bond amounts depending on the bond schedule for each court. This resulted in a significant disparity where a defendant arrested and charged with a crime in one jurisdiction may have to post a higher bond amount than a defendant charged with the same crime in a different municipal court jurisdiction within the same county. The most recent bond schedule is included in the Appendix.

Past Evaluations of Montgomery County Pretrial Operations

In the Spring of 2015, Montgomery County retained two technical resources from the National Institute of Corrections to evaluate the effectiveness of the county's administrative practices, infrastructure, pretrial program, and jail population. The work was led by Don Trapp, Pretrial Supervision Program Manager for Multnomah County, OR, and Janice Radovick-Dean, Director of the Pretrial Services Dept., Fifth Judicial District, PA.

The resulting recommendations were laid out in their technical assistance report, "Pretrial System Analysis For Montgomery County, Ohio"². Based on a jail population analysis and practitioner/stakeholder interviews, the county's criminal justice system was encouraged to increase the use of supervision, while reducing the use of financial conditions for release;

² Radovick-Dean, Janice, Trapp, Don. "Pretrial System Analysis For Montgomery County, Ohio." (2015)

arguing that money bail schedules limit the use of judicial discretion and is inconsistent with the use of a risk assessment tool.

Most notably, the report recommended the consolidation of all pretrial functions into the county pretrial program and the expansion of pretrial bond recommendations beyond those charged with felonies or violent misdemeanors. At the time, only 27% of those arrested in the county were being interviewed by Pretrial Services staff.

The report also characterized the use of the ORAS-PT risk assessment tool as poorly understood by judicial stakeholders and lacking confidence from pretrial officers, with recommendations to train judges on the inputs and to create a recommendation matrix. While efforts have been made to more consistently incorporate the assessment tool into recommendations, county pretrial executives continue to lack complete confidence in the tool, citing the subjectivity - and resulting variance in outcome for the same defendant - and the lack of local data validation. There has been little progress to inform and train judges on the nature of the assessment, leaving judges to rely more on bond schedules, in addition to their discretion, when setting bail.

Finally, the report highlights a general lack of outcomes data and dashboards to guide a data-driven policy decision making culture across the Montgomery County criminal justice system. While there was limited analysis to understand the appearance rate (93%) related to defendants under the county's supervision, more holistic data to evaluate bail practices were not available at the time. P3 endeavored to pursue this more holistic analysis by gathering data to support the creation of a near county-wide failure to appear and bail recidivism rate as a means of establishing a benchmark to judge progress going forward.

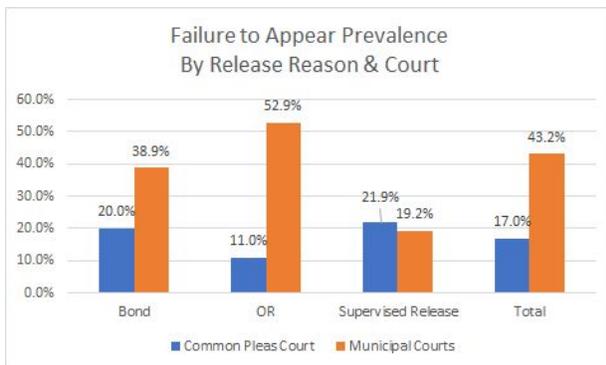
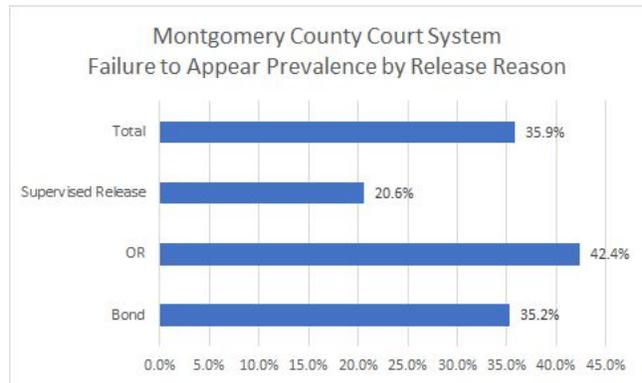
Current State of Failure to Appear & Bail Recidivism

According to the Ohio Criminal Sentencing Commission's recent report on Bail and Pretrial Services, "The system of bail was intended to ensure a defendant would appear in court and, eventually, ensure public safety by keeping those defendants who pose a substantial

risk of committing crimes while awaiting trial in jail.”³ While the judges and pretrial services staff of Montgomery County Common Pleas and Municipal Courts strive to ensure appearance and mitigate crime while awaiting trial, these outcomes cannot be managed if they are not first measured.

P3 analyzed data extracted from the county’s criminal justice information system, JusticeWeb, from Jan 1, 2014 through October 20, 2017 to create failure to appear and bail recidivism measures across the county court system. Due to the lack of comprehensive warrant data in the system, a failure to appear rate could be calculated only for Common Pleas, Dayton Municipal Court, and the county’s East & West Division Municipal Courts. Data procedures and measure definitions are included in the Appendix.

For the four courts with failure to appear warrant data in JusticeWeb, the Failure to Appear prevalence (FTA) is the percentage of cases with at least one failure to appear warrant issued prior to disposition of the last (most recent disposition) charge associated with a case, when the defendant was booked in the jail and released on bond, own recognizance, or supervision. According to the chart above, the four courts analyzed experienced a 35.9% FTA rate for the 3+ years of data considered.



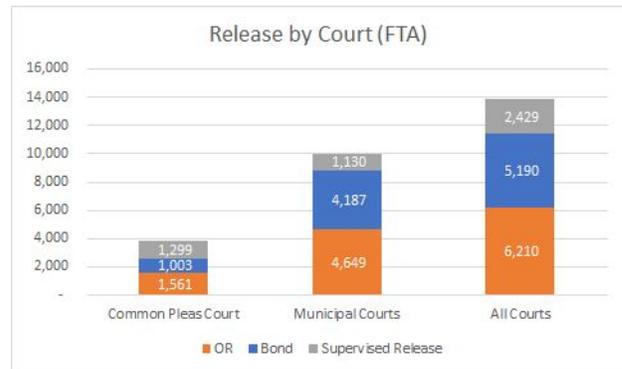
While the overall better performance of the supervised release population compared to OR and Bond is as expected, differences between the common pleas and municipal courts are more telling. According to the chart to the left, the municipal courts’ FTA runs significantly higher than the common pleas court, at 43.2% vs. 17%, driven

³ Ohio Criminal Sentencing Commission. “Ad Hoc Committee on Bail and Pretrial Services Report & Recommendations”. (March 2017)

primarily by the performance of the Bond and especially the OR release populations. It should be noted that P3 did not have a way to differentiate “failure to comply” from “failure to appear” capias warrants for the common pleas court, which could cause their FTA prevalence to be overstated to some degree.

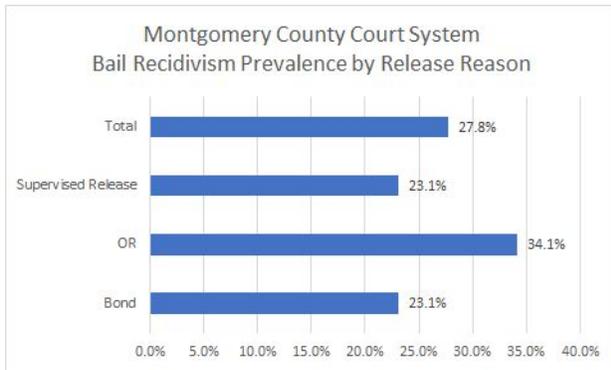
It does appear that pretrial recommendations provided to the common pleas judges, based on the ORAS-PT risk assessment tool, and in context of their discretion, are helping judges discern the risk of failure to appear to some degree. Based on the data, there is no doubt that municipal judges would benefit from the expanded use of a validated risk assessment tool to improve FTA.

The data might also suggest the expanded use of supervision to address the high FTA in the Bond and OR release populations, and in



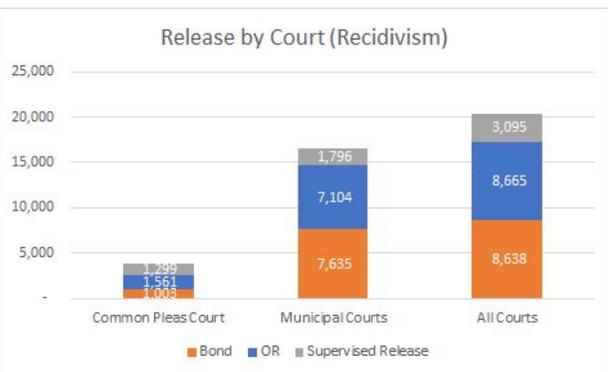
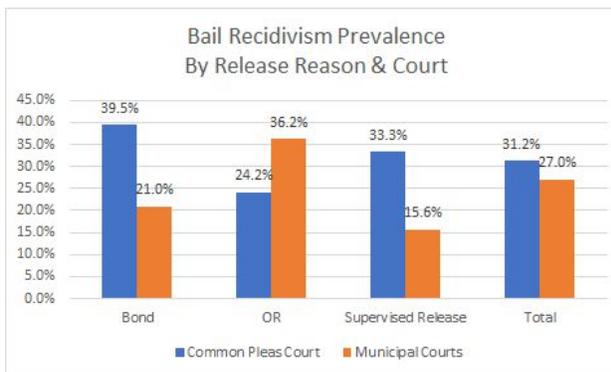
fact the supervised release FTA may even be overstated because JusticeWeb lacks data to determine if the warrant was issued during the period of supervision. However, pretrial supervision can be resource-intensive and may not comprehensively address the factors that drive FTA in the municipal court population, where the transient nature of housing and employment, combined with limited access to transportation, can often be an impediment to court appearance. Supervision tactics should be reserved for those at highest risk of negative pretrial outcomes, while additional programs and interventions are designed for the broader population, including contemporary outreach methods, along with flexible court scheduling options.

While failure to appear is clearly a significant challenge for the Montgomery County court system, recidivism while out on bail is rightfully more of a concern to the community. JusticeWeb contained all data necessary for P3 to create a Bail Recidivism (BR) prevalence calculation for common pleas and all municipal courts within the county. BR is the prevalence of cases that have a new case filed against the same defendant, prior to the disposition of the last charge associated with the original case, when the defendant was detained and released on Bond, OR, or supervised release relative to the original case.



The county's overall BR prevalence over the same time period used in the FTA calculation was 27.8%. In this case we see similar overall performance between the common pleas and municipal courts at 31.2% vs 27% respectively. While recidivism appears to be relatively elevated for the supervised common pleas population, it should again be noted that the data we

studied did not include start and end dates for supervision, and a check of randomly selected records revealed several instances where the recidivism or FTA event occurred outside of the dates of supervision, causing the Supervised Release BR and FTA to be relatively overstated to some degree. Moreover, differences across the populations that can drive risk are not controlled for in this analysis, which would preclude us from determinately judging the performance of specific tactics deployed for specific release types. The most important takeaway is that the system, as a whole, is not operating at optimal performance levels.



With that in mind, the overall high rate of recidivism could reflect the subjectiveness implicit in the ORAS-PT assessment tool, as well as the lack of local data validation. But it also could reflect the relative lack of non-jail detention facilities in the county. Many of the judges interviewed by P3, as well as jail leadership, lamented the need for detox and behavioral health facilities, among other interventions that better address the root cause of crime in Montgomery County.

A recent analysis of the county's jail population showed 220 low level felony and misdemeanor defendants awaiting trial, presumably due to their inability to post bond. While the jail is not currently exceeding its capacity, the return of convicted F5 offenders as part of the Targeted Community Alternatives to Prison (T-CAP) program will further strain the county's resources as judges balance the protection of liberty and presumption of innocence, with the practical concern for the health and safety of the defendant and the public at large.

T-CAP was initiated by the Ohio Department of Rehabilitation and Corrections (ODRC) to reduce the state prison population by having individuals convicted of non-violent, non-sexual felony 5 crimes remain in the county where they were sentenced and serve their sentence in the local county jail or other local custodial facility. Beginning on July 1, 2018, T-CAP participation will be mandatory for the following counties: Franklin, Cuyahoga, Hamilton, Summit, Montgomery, Lucas, Butler, Stark, Lorain, and Mahoning. T-CAP participation will be voluntary for the remaining 78 counties.

In Montgomery County, 261 defendants were sentenced to serve periods of incarceration ranging from six months to one year during 2016. The Montgomery County Jail has an inmate capacity of 900. Further analysis is needed to more precisely understand the full impact on the jail, but, the housing of T-CAP inmates could occupy upwards of 30% of the jail beds going forward.

The Constitutionality of Money Bail

An April 29th, 2017 article in the New York Times reported that a federal judge in Harris County, Texas - home to the fourth largest city in the US (Houston) - had ruled that the use of money bail to detain low level crime suspects was unconstitutional. The ruling resulted from a case involving a woman detained for driving without a valid license who was held in jail for two days on a \$2,500 bond. District Court Judge, Lee H. Rosenthal, wrote in the ruling, "Harris County's policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights against wealth-based discrimination and violating due process protections against pretrial detention." The judge cited statistics that showed 40% of those charged with low level crimes in Harris County were held in jail until final

disposition of their case⁴.

Judge Rosenthal's groundbreaking ruling included a requirement that all misdemeanor defendants who can't afford their initially-set bail bond amount must be released on a personal bond. The judge further ordered that indigent defendants be released within 24 hours of their arrest, even if a probable cause hearing had not been held.⁵ The Harris County Jail handles approximately 50,000 misdemeanor suspects annually. According to a study done by the the University of Pennsylvania Law School, 50% of those booked into the jail are detained prior to disposition of the case.

In June, 2017, Harris County asked a Federal Court of Appeals and the U.S. Supreme Court for an emergency order overturning the district court decision. Both courts refused the request. In October, 2017, Harris County filed a formal appeal of Judge Rosenthal's decision with the 5th District U.S. Court of Appeals in New Orleans, LA. Arguments have been heard by the Court of Appeals but to date that court has not issued a ruling in the case.⁶

Montgomery County Implications

Closer to home, pretrial detainment in Montgomery County has raised the interest of both the ACLU and some local judges.

"They sit in jail until their case is called. That's the inequity of the whole thing. Why are they sitting in jail? Because they're too poor. It's tied to their economic status and *you can't constitutionally allow that to happen.*" |

Ohio Supreme Court Chief Justice Maureen O'Connor (Dayton Daily News - 7/16/2017)

Recently, the Honorable Montgomery County Common Pleas Judge, Steven Dankof wrote to his colleagues (full letter in Appendix) in common pleas and municipal courts across the county, urging them to heed the winds of change by recognizing that charge-based pretrial detention practices are not only found to be unconstitutional, but ineffective in protecting the public, while implicitly limiting the discretion of the judge setting the bond according to a schedule.

To understand the prevailing opinion of the bench in Montgomery County, P3 Lead Criminal Justice Consultant, and former Montgomery County Prosecutor's Office and Clerk of Courts veteran, Jim Knight, interviewed 10 of the 13 municipal court judges across the

⁴ [U.S. District Court Bail Bond Decision April 2017](#)

⁵ [Texas Tribune report on Appeals Court hearing on Harris County bail bond case](#)

⁶ [Associated Press Harris County bail bond case](#)

county. Kettering Municipal Judge, and Montgomery County Bail Review Committee co-chair, Jim Long was able to speak with two of the remaining judges. Two common pleas court judges were also interviewed for their views on the use of money bail bonds.

Few of the judges expressed any significant concern about how money bail bonds are utilized in courts across Montgomery County. The judges feel that the use of money to secure a defendant's appearance at court hearings generally works well. All of the judges interviewed by P3 believe they do everything possible to identify low-risk defendants and to have those defendants released on an Own Recognizance (OR) bond. They believe that there are significant factors justifying a monetary bond in those cases where they do not grant an OR bond. One judge noted the opinion that bail bondsmen play an important role in ensuring the appearance of defendants for court proceedings.

The municipal court judges confirmed that in non-violent misdemeanor cases, they do not receive any type of report on the defendant's criminal and social background. Some use JusticeWeb to review the criminal history of the defendant and some indicated that they ask the defendants questions from the bench in an effort to assess issues that are relevant to setting bond.

Only one judge brought up a specific concern regarding the ability of poor defendants to post money to secure their release. When asked about the disparity in the current system, several judges acknowledged a concern but reiterated their belief that they are releasing those defendants that don't pose a risk to the community and are likely to appear for court hearings.

The responses of the judges to specific factors that go into setting a bond are shown below. All of the judges interviewed by P3 agreed that the following factors are significant and tend to drive their decision on what bond to set:

- Is the current charge a violent crime?
- Did the defendant have a pending charge at the time of arrest on the current charge?
- Has the defendant failed to appear for a scheduled court appearance in the past two years?
- Is the defendant employed?

The following factors were mentioned by a majority of the judges interviewed:

- How long has the defendant been employed?
- Does the defendant have a prior felony conviction?
- Was the prior felony conviction for a violent crime?
- Does the defendant have a stable residence?
- Does the defendant have a substance abuse problem?

Other factors identified by some of the Judges included:

- Is the defendant enrolled in school?
- Has the defendant failed to appear for a scheduled court appearance more than two years ago?
- Has the defendant ever been sentenced to a period of incarceration?
- Is the defendant currently in physical distress due to drug or alcohol withdrawal?
- Does the defendant have a safe place to live or go to upon release?
- Does the defendant have a supportive family?

Several judges noted that municipal courts see a number of domestic violence cases. They recognize that these cases are not always clear-cut but that they, as judges, must err on the side of caution, especially when there have been previous complaints of violence against the defendant.

A significant factor for at least one of the judges was keeping the docket up to date. This judge noted that they have a responsibility to move cases through the system and defendants that repeatedly fail to appear for scheduled court appearance clog the court docket and make the functioning of the court more difficult.

There was general agreement among municipal court judges that their decisions on bail bond would be enhanced if they were able to obtain more specific information about the defendants; their employment status, their home and family situation, their education, and their plans for their future. In lieu of a bond recommendation and social background report on defendants not charged with a felony or violent misdemeanor, some of the judges utilize the information available through the JusticeWeb database. Pulling data daily from courts and every half hour from county jails throughout southwest Ohio, JusticeWeb provides judges with a comprehensive view of a defendant's criminal history within a relatively large area of the state.

Most of the judges indicated a high level of concern regarding defendants that are addicted to opioids. This addiction is obvious in many cases, especially when the defendant is experiencing symptoms of opioid withdrawal while standing before the court. The general inclination among the judges was to keep these defendants in the county jail in order to keep them safe from further drug use until some type of treatment can be arranged. There was general agreement, however, that treatment is not easily arranged for these defendants and retaining them in the county jail does not mean that they will receive treatment; only that they will not be able to use drugs while incarcerated.

On balance, the judges see their bail bond practices to be well reasoned and effective. Several mentioned that the effort put forth to create a countywide bail bond schedule was a step in the right direction. The judges as a group did not express a significant concern about the practice of requiring defendants to post money with the court to secure their release if the judge feels the defendant poses some risk to commit further crimes or to fail to appear for court hearings.

In looking at the responses from municipal court judges it is apparent that they do not have consistent and relevant information upon which to assess the risk associated with the release of a defendant from custody while a non-violent misdemeanor case is pending. Neither the risk to re-offend while awaiting trial nor failure to appear for scheduled court appearances can be accurately determined since little if any relevant information is available to the judge when they make bail bond decisions. There is some consistency in which factors they consider when making a bond decision but these factors do not constitute a validated risk assessment. Without such a validated tool, the decisions are not consistent from one defendant to another or from court to court. For felony defendants and defendants charged with violent misdemeanor offenses, a risk assessment tool is used but this tool does not seem to drive bail bond decisions in Montgomery County.

Winds of Change

Recognizing the challenges to the constitutionality and general ineffectiveness of current bail practices, a growing list of jurisdictions are blazing a new trail for the deployment of evidence-based bail practices that work. In fact, there is a growing national consensus

around the belief that citizens are being detained before trial based on their ability to pay rather than an objective assessment of their risk to the community or likelihood to appear for their court date. A recent report by the Pretrial Justice Institute estimates that over 63% of the national daily jail population are awaiting trial and cost taxpayers \$38 million per day. Annualized, that is \$14 billion expended to detain citizens not yet convicted of a crime, some whose charges may be dropped, and, in most cases, pose very little risk to the community.⁷

Harder to quantify but more devastating are the the social and economic disruptions needless incarceration can create. Loss of a defendant's job, home, transportation and family functionality are just a few of the life-changing consequences of an unnecessary incarceration.

Thirty four (34) states, including Ohio, are on the move enacting bail reform legislation, statewide reviews, and rule amendments. Nationally, two U.S. Senators, Kamala Harris (D-California) and Rand Paul (R-Kentucky) have introduced The Pretrial Integrity and Safety Act of 2017 (S.B. 1593) to incentivise states to reform or replace money bail. This bill authorizes \$10 million in grant money to encourage risk-based decision making and \$5 million to establish a National Pretrial Reporting database.

Here in Ohio, H. B. 439⁸ was recently introduced, which - in most recent form - would compel courts to use the results of a validated risk assessment tool in bail determinations, allow non-monetary bail to be set, and require courts to collect certain data on bail, pretrial release, and sentencing.

Additionally, The Ohio Criminal Sentencing Commission would be charged with assembling a list of validated risk assessment tools and monitoring the policies and procedures of courts relative to the setting of bail and utilization of pretrial supervision services.

Ohio Chief Justice Maureen O'Connor is also raising the profile of pretrial reform. The Conference of Chief Justices and the Conference of State Court Administrators has formed

⁷ [The State of Pretrial Justice in America](#)

⁸ <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-439>

a National Task Force on Fines, Fees, and Bail Practices. Chief Justice O'Connor and State Court Administrator Laurie Dudgeon from Kentucky are co-chairs.

Trends toward Data-Driven Judicial Discretion

Utilizing data and predictive algorithms to expedite risk assessments are currently being employed across the country. The most prevalent tool was developed by the Arnold Foundation. The Public Safety Assessment (PSA), currently being piloted in two Ohio jurisdictions, was created using a database of over 1.5 million cases drawn from more than 300 US jurisdictions. The Arnold Foundation analyzed the data to identify the factors that best predict whether the defendant will commit a new crime, commit a new violent crime, or fail to return to court. These factors include:

- whether the current offense is violent;
- whether the person has a pending charge at the time of the current offense;
- whether the person has a prior misdemeanor conviction;
- whether the person has a prior felony conviction;
- whether the person has prior convictions for violent crimes;
- the person's age at the time of arrest;
- how many times the person failed to appear at a pretrial hearing in the last two years;
- whether the person has been previously sentenced to incarceration.

Factors such as race, gender, level of education, socioeconomic status and neighborhood, which are typically considered in making a bond recommendation, are not included in the PSA because they were not shown to be statistically relevant⁹.

Risk assessment tools, in general, weight relevant factors that are proven to contribute to pretrial failure. While these tools are designed to be race and gender neutral, any tool selected should be transparent about the aggregate data employed and the outcomes respective to these populations. Factors that weigh heavily in predictive formulas - such as prior convictions - can carry inherent biases, with the potential to negatively impact disadvantaged groups if not implemented appropriately and controlled on both an individual case by case, and aggregate monitoring basis. Rigorous, ongoing testing and publishing of outcomes (failure to appear, racial and gender impact, etc.) should be a

⁹ [Arnold Foundation PSA risk metrics](#)

condition of implementation.

Some jurisdictions in Ohio, like the Montgomery County Pretrial Services team, use the Ohio Risk Assessment System (ORAS) tool for assessing criminal suspects for release on bond. This collection of assessment models was developed at the University of Cincinnati at the request of the Ohio Department of Rehabilitation and Corrections. The goals of this approach were to 1) separate Ohio offenders into risk groups based on their likelihood to recidivate, 2) identify dynamic risk factors that can be used to prioritize programmatic needs, and 3) identify potential barriers to treatment¹⁰. There are 10 distinct assessment tools available through ORAS. One of these, the Pretrial Tool, is used to assess the risk associated with the release of a crime suspect pending trial. This is the assessment tool currently in use in Montgomery County. Only felony suspects and those accused of violent misdemeanor offenses are screened using the ORAS-PT tool.

There are other validated risk assessment tools in place across the country, including the Virginia Pretrial Risk Assessment Instrument (VPRAI), and some jurisdictions have decided to pursue tools modeled on their own local data, which comes with its own set of pros and cons.

Regardless the pros and cons of any given tool, all statistically validated risk assessment tools have the potential to improve judicial discretion. However, as Toledo Municipal Court Judge Timothy C Kuhlman points out in his “Lessons Learned” document, these tools are not intended to replace the discretion of a judge; nor prosecutor, police, or defense argument. It is more information for all parties to argue and set an appropriate bond. Judge Kuhlman also advises getting all criminal justice stakeholders involved in training up front, agreeing on tough cases (e.g.: Murder, Rape, Robbery, Escape) that will be handled outside of the tool’s recommendation, and a mechanism for judges to question the tool’s recommendation on individual cases, among other recommendations included in the Appendix.

¹⁰ [Ohio Risk Assessment System ODRC](#)

Ohio Leaders

Lucas County

In Lucas County, Toledo, Ohio, a number of factors have combined to lead the county to implement a risk-based assessment protocol for pretrial detainees. Lucas County faces the same problems that many communities face when trying to deal with the cost of pretrial detention of criminal suspects. The county jail is in need of significant repair and renovation and the county is under a decades-old federal court decree setting a limit on the number of inmates that can be housed in the jail facility. In 2014, a study was conducted that recommended the construction of a new county jail. The county has first turned to the adoption and implementation of the Arnold Foundation Public Safety Assessment (PSA) risk assessment tool to lower its jail population. The Arnold tool gives Lucas County judges useful data and statistically supported probabilities in making decisions to detain suspects or release them on OR bonds and/or supervision. Results from Lucas County after one year utilizing the Arnold Public Safety Assessment (PSA) tool and reorganizing their pretrial services organization have been dramatic.

- Total incarcerated population reduction: 18.2%
- Failure to appear reduction: 30%
- Pretrial recidivism reduction: 50%
- 4,158 bed days saved¹¹

In July of 2017, Lucas County announced that it will be one of six jurisdictions nationwide to receive technical assistance funding from the Justice Bureau of Justice Assistance and will use the funds to engage the Pretrial Justice Institute (PJI) in Maryland. PJI will help Lucas County pretrial officials reduce the number of pretrial violations that put people back in jail for failing to meet bond restrictions while their cases proceed through the system. The scope of assistance will be used for pretrial supervision of people under detention for felony charges in Lucas County Common Pleas Court, and the Toledo and Sylvania Municipal Courts, according to Michelle Butts, Common Pleas Court Deputy Director of

¹¹ Lucas County Regional Court Services

Regional Court Services.¹² The focus will be on helping those under pretrial supervision avoid violations of the terms and conditions of their release.

Cuyahoga County

The initial success experienced by Lucas County in reducing its pretrial jail population caught the attention of courts in Cuyahoga County, Cleveland, Ohio. With a significantly larger population and a more fragmented court system, Cuyahoga County is interested in determining if adoption of a risk assessment methodology combined with an increased and more effective pretrial supervision operation can result in a decrease in jail population as well as the reductions in failure to appear rates and new criminal activity seen in Lucas County. Cuyahoga County has formed a committee comprised of judges, criminal justice professionals and educators to look at the current bail bond system and determine if the approach taken by Lucas County will yield similar results.¹³

In 2017, the Cuyahoga Common Pleas Court and the ACLU asked the Pretrial Justice Institute to conduct an analysis of pretrial and jail operations in Cuyahoga County. The results were published in September of 2017. They showed that while reported property and violent crime statistics had declined significantly and the number of criminal cases filed in common pleas and municipal courts had declined, jail population remained high, exceeding the capacity of the county jail.¹⁴ 82% of county and municipal court judges felt there was value in examining the pretrial processes in the county. Of the judges interviewed, “79% felt it is important to provide judicial-specific education to understand possible ways to improve the bail system in the areas of actuarial risk assessment (87%) and research-informed risk management strategies (87%).”¹⁵

The Arnold Foundation PSA has been implemented in the Cleveland Municipal Court and is being used to provide judges with a statistically predictive assessment as to the risk of releasing a suspect on a low bond or no bond. Judges, prosecutors, and defense attorneys

¹² [Pretrial Justice Institute Grant](#)

¹³ [Cuyahoga County to Review Lucas Co Bail Bond Changes](#)

¹⁴ [PJI Cuyahoga County Jail Study 2017](#)

¹⁵ [PJI Cuyahoga County Jail Study 2017](#)

are withholding final judgement on the success of the Arnold Foundation approach but the reviews are generally positive. The focus going forward will be on how to track and interact with pretrial defendants to assist in their compliance with court dates and avoidance of crime.¹⁶

Summit County

County officials in Summit County, Akron Ohio, are faced with the same problems facing other counties in Ohio and around the country. The county jail population exceeds capacity and officials are looking for ways to reduce that population while protecting the community from dangerous criminals. In June of 2016, Akron and Summit County launched a pilot project by issuing summons to fourth and fifth degree felony suspects after a case by case review of the defendant and the accusations. Of the approximately 100 people given a summons, 86 percent showed up to court.¹⁷

In January of 2017, the John D. and Catherine T. MacArthur Foundation announced that 20 additional jurisdictions would join the Safety and Justice Challenge, a national \$100 million initiative seeking to reduce over-incarceration by changing how justice and law enforcement officials use jails. Summit County, Ohio is one of the jurisdictions selected. The funding will allow the county to design and test innovative local justice reforms to safely reduce jail usage as well as racial and ethnic disparities in their local justice systems.

As one of the MacArthur Foundation Innovation Fund recipients, Summit County will receive funding and expert technical assistance along with access to the resources, peer learning opportunities, and expertise of the network of jurisdictions participating in the challenge. The Urban Institute will provide technical assistance to the sites and will document and disseminate lessons learned from the Innovation Fund's work.¹⁸ Through the grant and initiatives such as issuing summons to low level felony suspects, the hope is

¹⁶ [Cleveland Municipal Court Implements Arnold PSA](#)

¹⁷ [Summit County issues summons to appear](#)

¹⁸ [MacArthur Foundation Summit County Grant](#)

that jurisdictions other than the City of Akron will be able to detain violent misdemeanor suspects in the county jail, something only Akron has done, due to a shortage of beds.¹⁹

National Trailblazers

New Jersey

Bail reform efforts in New Jersey have centered on the social justice argument of fairness to those incarcerated because they cannot afford bail.

"The existing bail system is not fair to poor defendants who, because they cannot post bail, are cut off from families, may lose their jobs, and may go without access to medication for a period of time. In terms of the charges against them, studies have shown that they face tougher plea offers and pressure to plead guilty because of the amount of time they have already spent in jail, and they receive longer sentences as compared to similarly situated defendants who were able to make bail."

- Chief Justice Stuart Rabner, New Jersey Supreme Court

In 2014, New Jersey voters approved changes to their constitution that nearly eliminate cash bail. This decision by the voters placed New Jersey at the forefront of a nationwide movement to reform a bail system that critics say discriminates against poor defendants, a disproportionate number of whom are blacks and Latinos. An article in the New York Times dated February 6, 2017, noted that fewer suspects were being incarcerated in New Jersey while awaiting trial or a plea. The article pointed out that of the 3,382 criminal cases processed statewide in the first four weeks of January 2017, judges set bail only three times. An additional 283 defendants were held without bail because they were accused of a serious crime or were a significant flight risk, or both. Chief Justice, Stuart Rabner pointed out that under the old law, one in eight inmates were being held because they couldn't post bail of up to \$2,500. Under the new law, judges in New Jersey still have the option of setting a money bond if they determine it is needed.²⁰

¹⁹ [Ohio.com Summit County Justice Reforms](#)

²⁰ [New Jersey Bail Bond reforms](#)

In a report published by the Pretrial Justice Institute in November, 2017²¹, a nationwide scorecard graded every state on its pretrial system for releasing and detaining suspects in criminal cases. In the report, every state received a letter grade on its pretrial detention rate, its use of pretrial risk assessment tools and its reliance on money payment as a condition for release before trial. Only the state of New Jersey earned an A due to their statewide implementation of a new bail bond system that is based on validated risk based assessment tools.

Under the new law in New Jersey, the justice system distinguishes between a complaint warrant and a complaint summons. People arrested on a summons for a low level non-violent crime are booked at a police station and issued charges. They are then released and given a date to appear in court. People arrested on a complaint warrant are taken to the county jail and held for as long as 48 hours. During that time, they undergo a risk analysis and prosecutors make a decision on whether the suspect will be held in jail longer or released.

The decision to keep a defendant in jail is based in part on a new statewide scanning system that brings up alleged offenders' criminal histories and helps determine whether they are a risk to the community or at risk for failing to appear for a court date. That information along with the current charge information is analyzed in the Public Safety Assessment (PSA) tool developed by the Laura and John Arnold foundation and in use throughout the state. New Jersey is first in the nation to roll out such system changes statewide.

Following some public criticisms of the new bail bond provisions that went into effect on January 1, 2017, State Attorney General Christopher Porrino announced changes to the application of the law on May 24, 2017. The changes are designed to allay public concerns regarding the potential release of dangerous offenders. The revised directive creates presumptions that prosecutors will seek an arrest warrant and/or pretrial detention for offenders charged with gun crimes, assaults on police, certain crimes involving sexual

²¹ [The State of Pretrial Justice in America](#)

exploitation of children, or any indictable offense committed while on release or under post-conviction supervision for another crime.²²

Kentucky Experience

In Kentucky, it has been illegal since 1976 to profit by posting bond for a detained criminal suspect. This law essentially eliminated the bail bond industry in the state. In its place, the state created the Pretrial Services Agency as a division of the state court system.

Pretrial services operates under the premise that defendants are presumed innocent until proven guilty, are entitled to reasonable bail and are entitled to the least restrictive release terms possible, depending on whether they are likely to appear in court and whether they present a risk to public safety.²³ Section 446.010 of the Kentucky Revised Statutes defines "pretrial risk assessment" as "an objective, research-based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication."²⁴

The Kentucky Pretrial Services Agency operates in all 120 Kentucky counties. Within 24 hours of arrest, a Pretrial officer interviews the defendant. The officer collects and verifies the defendant's information: name, address, length of residence, ties to the community, employment, education, and criminal history. The officer performs an extensive criminal background check on the defendant. The officer uses a pretrial risk assessment tool to predict the defendant's flight risk, anticipated criminal behavior and danger to the community. Pretrial Services then makes a recommendations to the court the defendant's eligibility for release. Pretrial Services staff supervise released defendants by monitoring any conditions placed on the defendant by the court.²⁵

²² [New Jersey AG announces changes to NJ Bail Bond reform law](#)

²³ [Kentucky Pretrial Services](#)

²⁴ [Avvo.com](#)

²⁵ [Kentucky Pretrial Services](#)

In Kentucky a defendant may be released under various conditions, including:

- Release on Recognizance (ROR or OR) — requires only the signature of the defendant, a promise to appear in court as scheduled and abide by any conditions that may be imposed by the court.
- Unsecured Release — requires that the defendant sign, promise to appear and abide by any conditions imposed by the court. There is an uncollected money amount attached to this type of release and a defendant's failure to appear in court, or a defendant's failure to abide by conditions imposed, could lead to a forfeiture that the defendant would be required to pay.
- Third-Party Surety Release — requires a third party to sign with the defendant. The party signing will usually be required to own property but a lien will not necessarily be placed upon the property. These types of bail releases are subject to approval on a local basis. If the defendant does not show up for court appearances or does not abide by conditions that may be imposed by the court, the third-party surety may be subject to forfeiture by the court. The amount of the forfeiture would be the amount set as bail.²⁶

Pretrial services operates in all 120 Kentucky counties and provides services seven days a week and 24 hours a day. Pretrial officers conduct interviews and investigations of all persons arrested on bailable offenses within 24 hours of the arrest. Many jurisdictions strive to provide their services within 12 hours of the defendant's initial incarceration.

Since 2013, the State of Kentucky has been using the Public Safety Assessment (PSA) tool developed by the Laura and John Arnold Foundation to determine which defendants can be released pending trial and which ones pose a significant risk to reoffend or fail to appear in Court. In July 2014, the Arnold Foundation issued a report on the first six months of the Kentucky Pretrial Release Program operation using the PSA. The data showed a drop in the commission of crimes of 15% among those on pretrial release. This decrease occurred while the number of defendants that were released increased. The Arnold Foundation concluded that, "the first six months of results indicate that the PSA Court is serving the state (of Kentucky) well. Most importantly, the results show that by using the risk assessment and applying their discretion, Kentucky judges have effectively made pretrial

²⁶ [Pretrial Services Kentucky Program](#)

decisions that have reduced crime, reduced jail populations, and led to a smarter and more effective use of criminal justice resources.²⁷

Washington D.C.

For more than two decades in Washington D.C., criminal suspects have been routinely released after arrest and given a date and time to appear in court. According to an article in the Washington Post, in 2015, 91% of those arrested were granted a release without having to post a money bond. No one was locked up because they could not raise money to post a bond. The Post article cited statistics that show that for every 100 suspects released, 11 will commit a new crime with awaiting trial and only two of those will commit a violent crime.²⁸

According to a report released in 2012 on the Washington D.C. pretrial release program, on average in the District of Columbia, 80% of persons arrested and charged with a crime are released to the community, either on personal recognizance or with supervised release conditions. Another 15% are preventively detained. Only 5% are released or held on financial bond. Of those preventively detained, more than half (57.2%) were due to defendants being charged with crimes that carry a maximum sentence of 10 years or more if convicted. More than 17% were due to defendants being charged with crimes of violence, and 11.9% were due to defendants being declared serious risks of flight.²⁹

The Pretrial Services Agency in Washington D.C. provides extensive services to those released pending trial to help ensure their compliance with the terms of their release and their appearance at scheduled court hearings. "Pretrial Services Agency supervises defendants released to the community through a variety of programs that include drug treatment, mental health services and referral to a range of social services.", according to their online profile.³⁰

²⁷ [Arnold Foundation 6 month report Kentucky results](#)

²⁸ [Pretrial Release in D.C - Washington Post](#)

²⁹ [Initial Detention and Subsequent Release in the District of Columbia 2012](#)

³⁰ [Pretrial Services Agency website](#)

San Francisco, CA

Since 1976, the San Francisco Pretrial Diversion Project (SFPDP) has operated several pretrial programs including a pretrial release program. SFPDP is a non-profit agency established through a partnership with the Municipal Court and the San Francisco Bar Association.

The SFPDP has begun using the Arnold Foundation Public Safety Assessment (PSA) tool to identify those criminal defendants that can be safely released pending disposition of their criminal case. SFPDP oversees three distinct levels of pretrial supervision: OR-No Active Supervision, OR-Minimum Supervision, and Assertive Case Management.³¹

State of New York

In New York, Governor Andrew Cuomo recently announced his bold plans for bail reform in his State of the State Agenda. As part of a 5-pronged platform intended to make New York the standard for fair and equitable pretrial practices, the proposed legislation will completely eliminate money bail for those charged with misdemeanors and non-violent felony crimes, and ban all asset seizures unless an arrest is made. The platform will also expand the discovery process, while reducing unnecessary delays in court proceedings.

According to Governor Cuomo, "For too long, our antiquated criminal justice system has created a two-tiered system where outcomes depend purely on economic status - undermining the bedrock principle that one is innocent until proven guilty. This sweeping overhaul will transform our criminal justice system by removing critical barriers, reaffirming our beliefs in fairness, opportunity and dignity, and continue our historic progress toward a more equal society for all."³²

Montgomery County Bail Review Committee

Recognizing the need for a full and transparent dialog of the criminal justice community centered around the implementation of best practices in the county, the Montgomery

³¹ [SFPDP Adopts Arnold Foundation PSA](#)

³² [Restoring Fairness in New York's Criminal Justice System](#)

County Commission assembled a bail review committee with diverse participation across the county court system. Committee members are listed below:

Co-chair, Judge Jim Long; Kettering Municipal Court
Co-chair, Judge Deirdre Logan; Dayton Municipal Court
Co-chair, Jim Dare; Common Pleas Court Administrator
Dan Foley; Montgomery County Commissioner
Chris Shaw; Dayton City Council Commissioner
Rudy Wehner; Montgomery County Chief Public Defender
Stephanie Cook; Dayton City Prosecutor
Joe Spitler; Director, Montgomery County Criminal Justice Council
Vanessa Carter; Common Pleas Deputy Court Administrator
Mary Kay Stirling; Common Pleas Pretrial Services Manager
Ann Murray; Dayton Municipal Court Administrator
Shawn Dunlavy; Montgomery County IT Manager
Tom Hagel; Professor, University of Dayton School of Law
Anthony Van Noy; Criminal Defense Attorney
Robert Gresham; Criminal Defense Attorney
Ellis Jacobs; Civil Rights Attorney
Kate Bowling; Criminal Defense Attorney

The committee met six times from October through December, 2017 to discuss the current state of bail and pretrial services in the county and the feasibility of implementing best practice solutions. Committee members began by drafting a mission statement to guide their work:

The mission of the Montgomery County Bail Review Committee is to determine whether the current pretrial release and/or monetary bond practices of the Municipal and Common Pleas Courts in Montgomery County can be improved to ensure that decisions are made based on individualized criteria; while guarding public safety and maximizing the return of the accused to court.

The Committee will utilize the information from JusticeWeb to compile data. The Committee will also examine information gathered from local courts and other community partners to formulate practices that will:

1. *Protect public safety and crime victims as measured by the*
 - *Appearance and/or Failure to Appear rate*
 - *Recidivism while the accused is out on bail*
2. *Maintain offender social/family stability near or greater than the point of arrest as measured by*
 - *Employment*
 - *Family disruption*
 - *Housing stability*
 - *Treatment options*
3. *Encourage shared services to ensure efficient and consistent pretrial processes throughout the county with 100% of arrests screened with a tool built to analyze the likelihood of the first two objectives.*

While weighing the judicial interview feedback and emerging best practices across the country and in Ohio - including a site visit in late December to Lucas County - the committee identified the following concerns with regard to bail reform in Montgomery County:

- The inability of the county pretrial services team to expand scope of service beyond charged felons and violent misdemeanants
- The effect of jail processes on the ability of the pretrial services team to provide timely recommendations to the bench
- The inability of best practice risk assessment tools to accurately and comprehensively assess risk in intimate partner circumstances
- Police culture of arrest/detain in circumstances where summons/citation would be more appropriate
- The county's common bond schedule assesses risk based on charge, without statistical validation, while inherently presuming guilt prior to trial
 - o The ACLU has been in contact with Chief Public Defender Rudy Wehner about a potential lawsuit

The committee agreed that the county's pretrial services team should be expanded to provide services to all municipal courts in the county for both felony and misdemeanor

defendants, using a best practice, statistically validated risk assessment tool, based on a review of available options to be determined.

A full account of agendas and meeting notes can be found in the Appendix.

Pretrial Recommendations

Having taken into account our research into evolving best practices, feedback from the bench, a thorough analysis of the data, a site visit to Lucas County, Ohio, and the dialog of the bail review committee; Public Performance Partners offers the following recommendations to the Montgomery County Commission in its efforts to define a better pretrial system for the community. How this proposal is implemented will depend not only on the availability of funding, but primarily the will of the Montgomery County judicial community to determine that change is necessary, and the best path to accomplish those changes. The proceeding recommendations offer a structure and the start of a road map to take the next step.

The Montgomery County Pretrial Services Program is staffed to assess roughly 7,000 cases per year which represents 27% of annual bookings across the five (5) municipal courts, two (2) county area courts and the Common Pleas Court. It utilizes the state prescribed ORAS PT risk assessment protocol that involves a personal interview with each defendant charged with a felony or violent misdemeanor. In order to ensure that due process and equal treatment under the law is afforded those accused of a crime but not tried or convicted, the local criminal justice system must first embrace the need to assess all defendants in custody, not just felonies and violent misdemeanors. Current staffing, systems and budgets are configured to assess the risk of less than one third (1/3) of the citizens in custody for an alleged crime.

As headlines have recently noted, the cost of jail related civil litigation has risen dramatically (\$1 million in 2017 settlements) and should provide further incentive to utilize technology, better data, and better aligned criminal justice systems to make sure that only defendants that need to be in jail are held in custody. And, quite clearly, becoming more data driven by utilizing a risk assessment tool that puts more information before the judiciary and allows for evaluation of every defendant greatly reduces the likelihood of

litigation seeking relief on constitutional grounds of equal protection.

Hard data from the two-year pilot in Lucas County, Ohio, measuring the results of a new evidence-based risk assessment tool and pretrial program indicates significant reductions in negative outcomes and local jail population when every pretrial detainee can be assessed in a timely manner. The key to timely consideration is to greatly reduce reliance on personal interviews, through employment of a validated, evidence-based risk assessment tool (preferably informed by local data), and building out a regional shared service organization to serve all of the courts in Montgomery County.

Expansion of the current pretrial services operation into all courts would provide a level of consistency that is currently lacking in the setting of bond on criminal defendants in Montgomery County. While individual judges would retain the final say on the bond, all judges would receive the same structured risk assessment on each defendant. This consistency would serve to reduce unintentional disparities in the level of bond set. It would also ensure that judges are looking at the same relevant factors in determining bond.

Extending pretrial services to all criminal defendants in Montgomery County will require the expenditure of additional resources. Additional staff will be necessary to provide services to the other 70+% of defendants not currently being reviewed and supervised. The basic structure of a pretrial release operation is already in place. The operational model has been in use in the common pleas court and by the seven municipal courts in violent misdemeanor crimes. A countywide pretrial services operation is within reach if local officials are willing to identify and commit the resources needed for such expansion.

Under almost any scenario going forward, Montgomery County is going to incur increased costs for its criminal justice operations. As the State of Ohio continues to reduce tax revenue formerly shared with local governments while increasing pressure on county jails to accommodate F 5 prisoners (T-CAP), political subdivisions face the daunting prospect of expanding pretrial assessments in a diminishing revenue environment.

Therefore, working collaboratively on a shared services solution is strongly recommended and should include a consensus governance structure, service level agreements with participating courts, comprehensive training, and structured review cycles of both process and outcomes. To accomplish this, P3 recommends formation of a Pretrial Services Council of Governments (PSCoG).

Members from jurisdictions that fund municipal and common pleas court operations in Montgomery County would serve to coordinate criminal justice system planning, communication, training, evaluation and data protocols. A CoG provides members a consensus-building governance mechanism and contracting authority. This shared service approach and governance structure can also facilitate the establishment of community standards around which charges (ie. murder, rape, robbery & escape) would require unique protocols. Montgomery County courts and political subdivisions may also choose to add categories or enhanced protocols for domestic violence cases and clinical addiction circumstances where dedicated treatment programs are unavailable. ***Clearly, in order for process change of this magnitude to be fully embraced, all CoG members (courts) will need to play a role in the formation of community standards, processes, and championing the changes required organizationally to fully partner in improving criminal justice outcomes.***

Broader criminal justice system issues such as standardization of booking procedures, unified probation protocols, court notifications (texting of defendants), and jail communication standards should also be in scope for evaluation by the CoG. Pretrial processes require a seamless interface with both the courts and the jail to operate in a timely, accurate manner. Best practice implementation of a validated risk assessment tool will require a high degree of automation, allowing pretrial services officials to focus on supervision rather than interviews, but also requiring a full review of business processes within the unit, and handoffs of information from the jail to the court and vice-versa. The CoG will be well-positioned to assess these processes, and the system requirements necessary to facilitate the timely and accurate flow of information. For this reason, we recommend the delay of any jail or court software until the CoG has convened and evaluated the system in an end to end fashion.

P3 also recommends Implementation of a fully-automated risk assessment tool that provides judges with data- driven predictors and further informs their discretion. This is a proven process improvement that enables all defendants to be assessed before booking into the county jail. Ensuring that only those defendants that need to be detained are detained is cost prohibitive if requiring an interview. An automated risk assessment tool, working in concert with a repurposed pretrial services organization, gives Montgomery County the best chance to better evaluate the risk factors of the 70% of the daily jail bookings that are currently not assessed. Ideally, integration of a risk assessment tool for front line law enforcement that are properly trained, poses the greatest opportunity to enhance public safety and efficiency, while facilitating community policing.

Such comprehensive system evaluation, change, and implementation would be impractical and cost prohibitive for individual courts. Therefore, a regional shared service governed by a Regional Council of Governments of local court jurisdictions, authorized by the Ohio Revised Code (ORC) 167.01 is recommended.

Appendix

Current Bond Schedule

**MONTGOMERY COUNTY
MUNICIPAL AND COUNTY COURTS' BOND SCHEDULE**
Adopted Pursuant to Ohio Crim. R. 46(G) - Effective August 1, 2017

UNIFORM BOND SCHEDULE

DEGREE OF OFFENSE	IN-STATE BOND	OUT-OF-STATE BOND
1st Degree Misdemeanor and M1 Traffic	\$2,500 Cash/Surety or 10%	\$5,000 Cash/Surety or 10%
2nd Degree Misdemeanor	\$2,000 Cash/Surety or 10%	\$4,000 Cash/Surety or 10%
3rd Degree Misdemeanor	\$ 750 Cash/Surety or 10%	\$1,500 Cash/Surety or 10%
4th Degree Misdemeanor	\$ 500 Cash/Surety or 10%	\$1,000 Cash/Surety or 10%
Minor Misdemeanors	\$ 100 Cash/Surety or 10%	\$ 200 Cash/Surety or 10%

EXCEPTIONS TO ABOVE BOND SCHEDULE

OFFENSE	IN-STATE BOND	OUT-OF-STATE BOND
Domestic Violence DOES meet criteria ORC §2919.251(A) "Amy's Law"	<ul style="list-style-type: none"> ➤ No bond IF Judge will see w/in 24 hours ➤ \$25,000 Cash/Surety or 10% + No contact with Victim if Judge will NOT see w/in 24 hours 	<ul style="list-style-type: none"> ➤ No bond IF Judge will see w/in 24 hours ➤ \$50,000 Cash/Surety or 10% + No contact with Victim if Judge will NOT see w/in 24 hours
Domestic Violence Does NOT meet criteria ORC §2919.251(A) "Amy's Law"	\$10,000 Cash/Surety or 10% + No contact with Victim	\$20,000 Cash/Surety or 10% + No contact with Victim
Menacing by Stalking	\$10,000 Cash/Surety or 10% + No contact with Victim	\$20,000 Cash/Surety or 10% + No contact with Victim
Violating Protection Order	\$10,000 Cash/Surety or 10% + No contact with Victim	\$20,000 Cash/Surety or 10% + No contact with Victim
Intimidation of Victim/Witness	\$10,000 Cash/Surety or 10% + No contact with Victim	\$20,000 Cash/Surety or 10% + No contact with Victim
Voyeurism (M1 - M3)	\$10,000 Cash/Surety or 10% + No contact with Victim	\$20,000 Cash/Surety or 10% + No contact with Victim
Child Enticement w/ sexual motive (M3)	\$10,000 Cash/Surety or 10% + No contact with Victim	\$20,000 Cash/Surety or 10% + No contact with Victim
Domestic Violence Threats (M4)	\$ 5,000 Cash/Surety or 10% + No contact with Victim	\$10,000 Cash/Surety or 10% + No contact with Victim
OVI – Third Offense (UM)	\$10,000 Cash/Surety or 10%	\$20,000 Cash/Surety or 10%
Driving under Suspension under O.R.C. §4510.11 (M1)	\$ 1,500 Cash/Surety or 10%	\$ 3,000 Cash/Surety or 10%

Data Procedures

Data Procedures for Failure to Appear and Bail Recidivism Measures

This document outlines the procedures used to produce a failure to appear and bail recidivism measure for the Montgomery County Bail Review Committee.

Data from following tables were extracted from the Montgomery County's CJIS system, with data pulled from January 1, 2014 through October 20, 2017:

- Jailcharges – a record of the charges brought by the arresting officer at the time of jail booking
- Warrants – a record of all warrants; specifically, failure to appear warrants for Dayton Municipal, and the county East/West district courts and Capias warrants issued by the Common Pleas Court. Warrant data for Miamisburg and Kettering Municipal Courts are pending.
- Cases – court cases filed
- Charges – charges filed by the prosecutor, which are associated with a case

Both measures are produced at the case level, when an associated jail charge record and charge record can be associated with the case. All other cases without an associated jail charge and charge record are excluded. The procedures for producing the measures are listed below.

Jailcharges:

- Filter jailcharge records to top charge record only, using TOP_PRIMARY_CHARGE field – “T”; discard other records.
- Roughly a third of the remaining records have no Case ID for association at the case level. For these records, an inferred Case ID is created by searching the case table for records with the same CJIS_OR_PARTY_ID when FILING_DATE (Cases table) is within four calendar days of BOOKING_DATE (Jailcharges table). About 5.5k records matched to an inferred Case ID using this logic. Discard all other Jailcharges records without a Case ID or inferred Case ID.
- Dedupe the remaining Jailcharges records to make CASE_ID field a unique identifier. Preserve records where BAIL_OUT = Y. When more than one record with the same Case ID contains BAIL_OUT = Y, preserve the record with the highest value in the BAIL_AMOUNT field. Otherwise, randomly preserve one record for each Case ID.

Charges:

Two procedures were applied to the Charges table; the first to identify cases with a top charge of initial degree higher than a minor misdemeanor. The second procedure was applied to find the case with the latest disposition to define the end date of the case, relative to FTA and recidivism calculations.

- Dedupe Charges records to make CASE ID field a unique identifier. Preserve records based on the highest degree in the INITIAL_DFGREF field, according to the rank order below. Where more than one record of the same charge degree exists with the same Case ID, preserve the record with the most recent value in the DISPOSITION_DATE field. Else, randomly preserve one record for each Case ID. Discard all other records.

- 1) Unclass
- 2) UF
- 3) AF2

- 4) AF3
- 5) F1
- 6) F2
- 7) F3
- 8) F4
- 9) F5
- 10) FE
- 11) M1
- 12) M2
- 13) M3
- 14) M4
- 15) UJ - only 30 records/mostly OVI charges
- 16) MM
- 17) UNCL-MM, UC, UM, UN - these are all codes used by different jurisdictions to describe what appears to be mostly DUS charges
- 18) U - 103 records/mostly handicapped parking violations

- Dedupe Charges records to make CASE_ID field a unique identifier. Remove any charges with INITIAL_DEGREE = 15-18, per the procedure above. Preserve records based on the charge with the latest date in DISPOSITION_DATE field. (Charges with a null value in the DISPOSITION_DATE field were populated with a date in the future to ensure pending charges were recognized as the latest date charge.)

Warrants:

- Filter records on WARRANT_TYPE field = BW FAILURE TO APPEAR, FTA, and CAPIAS. Discard all other records.
- Append Top Charge Disposition Date from Charges table for the charge with the latest disposition date.
- Append Case File Date from Cases table.
- Flag predisposition FTA warrants when Issue Date falls between Case File Date and Top Charge Disposition Date. Remove all other warrant records.

Cases:

- Append Initial Degree from Charges table deduped to preserve the top charge, with highest initial degree, on CASE_ID field.
- Append Disposition Date from Charges table, with latest Disposition Date, on CASE_ID field.
- Remove all cases where INITIAL_DEGREE = MM, UNCL-MM, UC, UM, UN, U, or where a related charge is not found.
- Append from Jailcharges table, on CASE_ID field:
 - BAIL_OUT
 - BAIL_TYPE
 - BAIL_AMOUNT
 - RELEASE_REASON
 - BOOKING_DATE

- Append from Warrants table, on CASE_ID field:
 - WARRANT_ID
 - CJIS_OR_PARTY_ID

Failure to Appear Calculation:

Measures the prevalence of cases with at least one associated pre-disposition failure to appear warrant, when the defendant was released on bond, OR, or supervised release.

- Filter Case records where RELEASE_REASON = BOND, CORE (OR), EHDP, RBPD (BOND), RCRT (OR), REOR (OR), RLOC (OR), RPRT (PRETRIAL SERVICES)
 - Minor misdemeanors have already been filtered out of the table (see “Cases” second bullet above)
 - Remove from analysis any records with Release Reason of CORE or RCRT, when jail Release Date is the same or greater than latest disposition charge disposition date.
- Count Case records where WARRANT_ID does not equal Null and CJIS_OR_PARTY_ID from the warrant record = CJIS_OR_PARTY_ID on the case record.
- Divide by total Case records, where RELEASE_REASON = BOND, CORE (OR), EHDP, RBPD (BOND), RCRT (OR), REOR (OR), RLOC (OR), RPRT (PRETRIAL SERVICES).

Bail Recidivism Calculation:

Measures the prevalence of cases with a new case filed after the case file date and prior to disposition of the top charge of the case; and when the booking date associated with the second case occurred after the original case’s filing date; and the defendant was released on bond, OR, or supervised release.

- Minor misdemeanors have already been filtered out of the table (see “Cases” second bullet above)
- Sort by CJIS_OR_PARTY_ID field, then by FILING_DATE field.
- Count Case records where RELEASE_REASON = BOND, CORE (OR), EHDP, RBPD (BOND), RCRT (OR), REOR (OR), RLOC (OR), RPRT (PRETRIAL SERVICES), and CJIS_OR_PRIMARY_ID equals next record’s CJIS_OR_PRIMARY_ID, and FILE_DATE of the next record is between FILE_DATE and DISPOSITION_DATE of the original Case record.
- Divide by total Case records where RELEASE_REASON = BOND, CORE (OR), EHDP, RBPD (BOND), RCRT (OR), REOR (OR), RLOC (OR), RPRT (PRETRIAL SERVICES).
 - Remove from analysis any records with Release Reason of CORE or RCRT, when jail Release Date is the same or greater than latest disposition charge disposition date.

Letter from Common Pleas Court Judge Steven Dankof



Judge Steven K. Dankof

Court of Common Pleas
GENERAL DIVISION
MONTGOMERY COUNTY

COURTS BUILDING
41 NORTH PERRY STREET
P.O. BOX 972
DAYTON, OH 45422-2150
937-225-4409
FAX 937-824-7992

November 13, 2017

SENT VIA EMAIL

Dear Colleagues:

On Thursday, November 2, 2017, I attended The Supreme Court's Judicial College presentation of "Pretrial Release in Ohio: Trends and Best Practices". Judge Logan also attended.

My takeaway from this excellent program? We in Montgomery County can get on board the Bail/Bond Reform train, or be run over by it. If we choose the former, we can collaborate and develop¹ a Bail/Bond program that is actually constitutional and of which we can be proud.

Colorado, Connecticut, Idaho, Illinois, Kentucky, Maryland, Oregon and Vermont have enacted bail reform. In 2016, voters in New Mexico adopted a constitutional amendment barring defendants being kept in jail "solely" because of financial inability to post bond. New Jersey has enacted similar provisions.

The basic premise of the Bail/Bond Reform movement is that current practices, stuck in the past, effect great and unnecessary suffering on disadvantaged communities, without any concomitant benefit to our larger citizenry much less the administration of justice. Constitutionally, bail should be a process of release, not confinement, if we are to discharge our constitutional obligations, because the only legitimate concerns of bail are to 1) ensure public safety and 2) protect against flight risk.²

Simply put, in paying actual homage to the constitutional principles³ of the presumption of innocence, the right to bail, 5th amendment due process, and 14th amendment equal protection, our courts must honestly embrace the simple reality that monetary bonds are arbitrary and rarely bear any relationship to the legitimate purposes of bail.

The clear message from the Supreme Court is that Ohio jurisdictions⁴ must develop pretrial procedures dedicated to 1) risk assessment of pretrial release; 2) risk management of those released; 3) integration of services so that substance abuse and mental health needs are adequately and constitutionally addressed at the outset of a defendant's journey through the criminal justice system and not just post-conviction; and 4) performance assessment utilizing metrics and outcomes to guide us as we move forward.

¹ In all likelihood with considerable grant monies and funding from the Supreme Court and elsewhere.

² I would argue the latter purpose must take a seat in the "way way back" compared to public safety, but that's just me.....

³ And speaking of the constitutions, an effective and fair pretrial release system is a constitutional requirement. Post-conviction supervision, while important, is not.

⁴ The Pretrial Justice Institute recently released its "The State of Pretrial Justice in America" report, giving Ohio an overall grade of "C". This just doesn't cut it.

Lucas County has embraced and spearheaded Ohio's Bail/Bond reform movement. Utilizing the Arnold Pretrial risk assessment tool and within one hour of a defendant being booked into jail, Lucas County's Pretrial Services Agency (staffed with 14 full time employees²) provides bail recommendations 24 hours a day, 7 days a week and 365 days a year. For 2015, Lucas County's Failures to Appear (FTA) have fallen 28.8%, and New Criminal Activity (NCA) and New Violent Criminal Activity (NVCA) among pretrial releases have fallen 50% and 44%, respectively. Importantly, these results were expected, based upon nationwide experience. Simply put, early screening results in more effective outcomes.

The biggest impediment to real change in Bail/Bond reform will be the same impediment always hanging around our collective necks like a millstone: "We've never done it that way!" Were this "argument" with merit, we could merrily return to the joyous days of the rack and trial by ordeal.....

So what's the only remaining impediment to boarding the train? Cost. Ah, but that's a red herring too because actual savings to Lucas County far outstrip the pretrial agency costs discussed earlier.

As we move forward with the earnest efforts of the recently formed Bail Reform Committee led by Dayton Municipal Administrative Judge Deidre Logan, Kettering Municipal Judge Jim Long and Montgomery County Courts Administrator Jim Dare, let us commit to getting this right by honoring our oath to uphold the Constitution. The clock is ticking. But no need to reinvent the wheel here. We have been invited to draw upon and benefit from the experience of Ms. Lori Eville, Correctional Program Specialist with the National Institute of Corrections (NIC) Community Services Division of the Justice Department, and Lucas County General Division Judge Gene Zmuda and his Unit Manager, Ms. Michelle Butts. We should accept their kind assurances of assistance in crafting a pretrial assessment protocol that is both constitutional and practical.

And against the advent that Montgomery County eschews the opportunity to get aboard the train of righteousness; well, we all know what will and should happen next, courtesy of the ACLU, and coming to a Federal Court near us all.....

STEVE DANKOFF
MONTGOMERY COUNTY COMMON PLEAS COURT GENERAL DIVISION

² Summit County employs 12 such people and has experienced similarly excellent results.

Toledo Municipal Judge Timothy C Kuhlman's Lessons Learned

PUBLIC SAFETY ASSESSMENT/ARNOLD FOUNDATION

Lessons Learned in the Toledo Municipal Court Jan. 2015 – Dec. 2017

Judge Timothy C. Kuhlman Tim.kuhlman@tmcourt.org

Get as many people as possible at the training with Dr. Marie VanNostrand, especially key players: (Judges, Chief Prosecutor, the prosecutor, police officers and public defenders in arraignment court, and representatives of the defense bar.) We did not get this part done initially, people trained themselves and we are still trying to train people correctly. We would have been more successful if we had buy-in, support and leadership from the prosecutor's office. Dr. VanNostrand is excellent at explaining the PSA Court and selling it. Her theory is good, and it is easy to understand and believe in when she trains.

Someone local has to sell and continue to sell the PSA Court after Dr. VanNostrand leaves. In Toledo it is Michelle Butts, who supervises the undertaking of the PSA Court and me. I aggressively set bonds following the tool. 7 Week Arraignment Court Rotation. Once every 7 weeks I put on a PSA Court training by clearly explaining why the PSA recommends the bond and then following it. This required me to really study, ask questions and spend a lot of time with Michelle Butts and other pretrial services personnel.

The argument is we have enough jail space for the bad guys and we don't want to let the bad guys out. The problem is there are lots of people in jail who are not public safety or flight risks and they are taking up the jail space we need for the bad guys. This tool helps us figure out who are the bad guys and who are not. BTY rape, robbery and murder are not even on the list to be evaluated by the PSA Court.

Tough Cases. Felony 3 weapon under disability (prior drug conviction or intoxication) or improperly handling a firearm will get a lot of recommendations for release that people will not like to follow. Also, Felony 1 and 2 drug charges. It may be easier to push people harder on the easier cases, then after they get used to the PSA Court, start pushing these harder cases as the next step.

Specific Push Back On Specific Cases. Everyone, especially people who oppose this change, will find specific cases that "don't feel right" to push back on. These are excellent teaching opportunities. Some Judges gave us stacks of these reports to prove the tool was "wrong." Do everything you can to address every one of those from the start. Establish a process to question the PSA Court on individual cases. (Our process goes through our Court Administrator who is well versed in the PSA Court and who has a close relationship with Pretrial Services.) The first thing is to verify that it is in fact accurate. If it is not, do something specific to avoid the mistake in the future and report that change. Otherwise, teach the complaining party how the tool works in that specific case and why the recommendation is good. Everybody has always set bonds anecdotally (by feeling) and people will anecdotally challenge the tool. It needs to be explained; the algorithm is a predictor based on a review of millions of cases and we in Lucas County have added one year of data to those millions of cases. Also, some of these cases should be in the 15% that are not followed.

If the prosecutor disagrees with the PSA Court recommendation, I ask that they articulate a reason I should not follow the tool and that articulation cannot be based on the charge. It cannot be "based on what the defendant did, you cannot let him out."

Determine who influences (i.e. really makes) the bond decisions and coddle that person. This change and the new bond attitude will be a lot easier if the people (prosecutor and police) initially evaluating and making or influencing the bond recommendation understand and buy into the PSA Court Tool.

Reminder that the tool is only expected to be followed 85% of the time. This tool does not interfere with Judge discretion or prosecutor, police or defense argument. It provides more information for all parties to argue and set bond.

Montgomery County Bail Review Committee Meeting Agendas & Notes

Montgomery County Bail Review Committee Kick-off Meeting

10/4/17

1:00 – 2:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Meeting called by: Co-Chair, Kettering Municipal Court Judge, James F Long; Co-Chair, Dayton Municipal Court Administrative Judge, Deirdre E Logan; Co-Chair, Common Pleas Court Administrator, Jim Dare

Attendees: Mat Heck, Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Ellis Jacobs, Bob Gresham, Joe Spitzer, Tom Hagel, Anthony Van Noy, Stephanie Cook, Shawn Dunlavy, Ann Bryant, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Please read: 2015 Montgomery County Pretrial System Analysis (attached); articles on the current state of bail reform initiatives in Ohio and across the country:

http://www.cleveland.com/metro/index.ssf/2017/02/ohio_sheriffs_county_commissio.html

<https://www.ohio.com/akron/editorial/how-bail-fills-our-county-jails>

Please bring: A one-minute introduction; Thoughts on mission statement/objectives for the committee

1:00

Introductions

Co-chair Kickoff

Judge Long

Committee Members Intro

All

1:30

Committee Objectives/Mission Statement

Open Discussion

Co-Chairs/All

Key Themes/Summary

Hugh Quill

2:20

Wrap up/Next Steps

Closing Thoughts

Judge Long

Take-aways/Next Steps

Hugh Quill

Next Meeting

Hugh Quill

Montgomery County Bail Review Committee Kick-off Meeting

10/4/17

1:00 – 2:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Attendees: Co-chair Jim Long, Co-chair Dee Logan, Co-chair Jim Dare, Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Bob Gresham, Joe Spitler, Tom Hagel, Anthony Van Noy, Stephanie Cook, Ann Bryant, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Notes:

Committee member Commissioner Dan Foley opened the meeting with the purpose for creating the committee, his thoughts on the committee's objectives, and his sincere thanks for everyone's time and attention to the subject, before turning the meeting over to co-chair Jim Long.

- Judge Long introduced himself and his personal interest in bail reform and encouraged the rest of the committee to do the same. The following themes emerged as important to the bail reform discussion in Montgomery County:
 - Safe community
 - Preserve liberty
 - Ensure appearance
 - Jail capacity (getting ahead of F5's to local)
 - Informed Judges with the right information
 - Consistent practices
 - Civil disenfranchisement
 - Workforce & Family stability
 - Fairness
- After introductions, the committee discussed the draft mission statement. Several questions and points were raised during the discussion:
 - Is it the committee's intent to extend pre-trial screening to 100% of felonies and misdemeanors?
 - Yes, it was implied that 100% of defendants would be in scope, excepting minor misdemeanors.
 - Questions and concerns were raised about the currently used ORAS-PT screening tool
 - There were questions about the link between grant funding and utilization of this tool. Further research will be done to better understand the amount of funding at risk and the potential options to mitigate.

- There were concerns about the resources it takes to administer the interview in a timely manner for the felony and M1/violent population.
- There were concerns about the ambiguity of the scoring method leading to inconsistencies in its application from court to court and interviewer to interviewer.
- There were questions and concerns raised over the Arnold Foundation's risk assessment tool. It was clarified that the tool assesses the probability of FTA and violent/non-violent recidivism without prescribing an intervention (bond amount, supervision, etc). The tool does not require an interview to be effective and could be automated with an integration to CJIS. More information about the tool will be shared for the committee's review.
- There was discussion and debate over the use of scientific statistical methods to predict pretrial outcomes vs. judicial discretion.
 - It was agreed that any tools the committee recommended for development would be positioned as an empirical aid for the judges to incorporate into their decision-making process, not a replacement of judicial discretion.
 - It was noted that the committee will incorporate input from all of Montgomery County's municipal and common pleas judges.
 - It was also noted that the committee should and will endeavor to pursue an objective data analysis of Montgomery County court records to determine the impact of pretrial and bond practices on the committee's desired outcomes.
- There was a suggestion that pretrial services team's mission statement and current state tools could be helpful as we craft ours. This will be sent out with the meeting notes.

Montgomery County Bail Review Committee Meeting 2

10/17/17

3:30 – 5:00

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Meeting called by: Co-Chair, Kettering Municipal Court Judge, James F Long; Co-Chair, Dayton Municipal Court Administrative Judge, Deirdre E Logan; Co-Chair, Common Pleas Court Administrator, Jim Dare

Attendees: Denise Martin-Cross, Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Ellis Jacobs, Bob Gresham, Joe Spitler, Tom Hagel, Anthony Van Noy, Stephanie Cook, Shawn Dunlavy, Ann Bryant, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Please read: Mission statement near-final draft & article:

<http://www.governing.com/topics/public-justice-safety/gov-bail-reform-texas-new-jersey.html>

Please bring: Concluding thoughts on mission statement

3:30	Mission Statement	
	Current language	Judge Logan
	Discussion/finalization	Committee
<hr/>		
3:45	P3 update	
	CJIS data update	Jeremy Smith
	Judicial feedback progress	Jim Knight
	ORAS/Funding update	Hugh Quill
<hr/>		
4:15	Wrap up/Next Steps	
	Next meeting w/Judge <u>Adrine</u>	Hugh Quill
	Closing thoughts	Committee Co-Chairs

Montgomery County Bail Review Committee Meeting 2

10/11/17

3:30 – 5:00

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Attendees: Co-chair Jim Long, Co-chair Dee Logan, Co-chair Jim Dare, Ann Murray, Ann Bryant, Ellis Jacobs, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Bob Gresham, Joe Spitler, Shawn Dunlavy, Stephanie Cook, Ann Bryant, Tina Huber, Hugh Quill, Jim Knight, Julie Helter, Jeremy Smith

Notes:

- The committee agreed on a final mission statement (see attached)
- There was a discussion about the scope and status of the data analysis to support the committee:
 - Shawn has provided data from CJIS going back to Jan 2014
 - Jeremy is working on developing Failure to Appear and Recidivism measures to support point 1 of the mission statement.
 - Failure to appear warrants are only tracked in CJIS for Common Pleas and Dayton Municipal Court. Shawn will attempt to capture separate data files from the county east/west courts and other municipal courts that use a different system to capture this.
 - It was pointed out that measures should be built on the jailcharges table (not the cases table) to ensure bail schedule release data are included.
 - Once the measures can be accurately produced, we will analyze by other factors to derive insights (e.g.: charge degree, bail amount, etc)
 - Measures related to point 2 of the committee's objectives will be more difficult to produce. Efforts will be made to procure individual-level JFS data that can be matched to an event in CJIS, but we do not expect to be able to procure this level of information. In lieu of that, we will explore and report macro-level data related to the county's unemployment, family disruption, and housing stability.
- Jim Knight has spoken with judges from Kettering and Miamisburg Municipal Courts. He is scheduling Dayton Municipal Court judges next week before meeting with the rest of the common pleas and municipal judges by early/mid-November, schedules permitting.
- Concerns over the use of the ORAS screening tool in conjunction with grant funding will be addressed later in the process, as we get closer to recommendations. Other jurisdictions in Ohio

have adopted non-ORAS validated screening tools, and these will be used as a precedent in determining our approach.

- Next meeting is scheduled for Friday, October 27, 8:30 – 10:00 at the Montgomery County Administrative & Environmental Learning Center at 2550 Sandridge Dr. See invitation from Ann Bryant earlier this week. We will have Judge Ronald Adrine from Cleveland Municipal Court, presenting their efforts to implement bail reform. Invitations have been sent to all Montgomery County Common Pleas and Municipal Judges, in addition to committee members.

Montgomery County Bail Review Committee Meeting 3

11/6/17

2:00 – 3:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Meeting called by: Co-Chair, Kettering Municipal Court Judge, James F Long; Co-Chair, Dayton Municipal Court Administrative Judge, Deirdre E Logan; Co-Chair, Common Pleas Court Administrator, Jim Dare

Attendees: Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Ellis Jacobs, Bob Gresham, Joe Spitler, Tom Hagel, Anthony Van Noy, Stephanie Cook, Shawn Dunlavy, Ann Bryant, Mat Hock, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Please read: Pretrial Justice Institute’s report on The State of Pretrial Justice in America (exec summary and report); articles on bail reform in the news.

Please bring: Thoughts on Judge Adrine’s presentation and takeaways for the committee

2:00	Judge <u>Adrine</u> Presentation Debrief Discussion	Committee
2:15	Judicial Feedback What we’re hearing from the judges Discussion	Jim Knight Committee
2:45	Data Update Preliminary measures Discuss data challenges/opportunities	Jeremy Smith Committee

Montgomery County Bail Review Committee Meeting 3

11/6/17

2:00 – 3:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Attendees: Co-chair Jim Long, Co-chair Jim Dare, Ann Murray, Ellis Jacobs, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Joe Spitler, Shawn Dunlavy, Stephanie Cook, Tina Huber, Hugh Quill, Jim Knight, Julie Helter, Jeremy Smith, Anthony Van Noy

Notes:

- The committee appreciated hearing from Judge Adrine on the use of the Arnold Foundation’s pretrial risk assessment tool
 - Judge Adrine pointed out the inherent hole in risk assessments when dealing with DV cases and cautioned that judicial discretion should never be compromised by the assessment tool, especially in these cases, which the committee affirmed.
 - There is lingering concern over the linkage of ORAS to grant money and the operationalization of another risk assessment tool with limited resources.
 - The committee would like to hear directly from Lucas County, Ohio on both of these concerns if possible.
 - There was also concern over implementing a risk assessment tool without full knowledge of the algorithm (back box) producing the score. We know Arnold Foundation has not publicly released the algorithm, but we’re not sure they wouldn’t release it to us if we entered into contract with them.
- Jim Knight presented an update on his conversations with judges so far (DMC, Kettering, Miamisburg):
 - By and large, the judges are open to the bail reform discussion, but don’t necessarily see it as a pressing problem.
 - The judges do generally appreciate the information provided by the pretrial services team, and would like to see more information in their justice web portal, along the lines of:
 - Residence stability
 - Employment
 - Charges pending
 - Substance abuse problems
 - Education
 - Mental illness

- Failure to appear in the past
 - The judges would also like to see jail alternatives, especially in drug abuse situations
 - Meetings are set for Moraine, East/West district, and common pleas
- Geremy presented preliminary Failure to Appear and Bail Recidivism measures to the committee.
 - Jailcharge records with missing case information and missing warrant information not being sent to CJIS from most municipal courts are obfuscating the actual prevalence of FTA across the county, however, work will continue to refine these numbers.
 - The committee expressed an interest in understanding the number of people in jail because they can't afford to bail out. Shawn Dunlavy will look into this.
- Next meeting is scheduled for Thursday, November 16, 10:00 – 11:30 in the usual location.

Montgomery County Bail Review Committee Meeting 4

11/16/17

10:00 – 11:30 AM

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Meeting called by: Co-Chair, Kettering Municipal Court Judge, James F Long; Co-Chair, Dayton Municipal Court Administrative Judge, Deirdre E Logan; Co-Chair, Common Pleas Court Administrator, Jim Dare

Attendees: Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Ellis Jacobs, Bob Gresham, Joe Spitler, Tom Hagel, Anthony Van Noy, Stephanie Cook, Chris Shaw, Shawn Dunlavy, Ann Bryant, Mat Heck, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Please read: ORAS Pretrial Assessment Tool (attached); Lucas County bail reform article:

<http://www.toledoblade.com/local/2017/05/23/Lucas-County-notes-progress-made-on-reform-goals.html>

Please bring:

10:00	Data Follow Up Role of data going forward	Hugh Quill
10:20	Solution Framework Shared Services discussion Lucas County Site Visit	Hugh Quill/Committee Hugh Quill
11:00	Risk Assessment Tools ORAS sufficiency vs Arnold Foundation	Hugh Quill/Committee
11:25	Close December meetings	Hugh Quill

Montgomery County Bail Review Committee Meeting 4

11/16/17

10:00-11:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Attendees: Co-chair Jim Dare, Co-chair Dee Logan, Ellis Jacobs, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Joe Spitler, Shawn Dunlavy, Stephanie Cook, Hugh Quill, Jim Knight, Geremy Smith, Anthony Van Noy, Bob Gresham, Chris Shaw, Ann Bryant

Notes:

- Dee provided a brief summary of the bail reform conference she attended with Judge Dankof (CPC) week before last.
 - She was encouraged that the committee was proceeding on pace with the statewide efforts and mentioned Summit and Lucas counties as standing out in Ohio.
 - Best practice seems to be providing a pretrial recommendation within an hour of arrest, but requires investment in a 24/7 pretrial services team.
- Hugh provided an update on the data:
 - We continue to wrestle with the Failure to Appear and Recidivism measures, but we want to keep the broader committee engaged at the policy/solutioning level while we solve the challenges with the data.
 - Therefore, we will engage a small data subcommittee of folks who can provide business context to the data and how/when it is input into CJIS. Ann Murray, Vanessa Carter, Mary Kay Stirling, Joe Spitler Rudy Wehner, Ellis Jacobs, and Jim Knight were called out as resources in this regard. These folks can expect offline communication from Geremy as we refine the analysis.
 - Final calculations will be shared with the broader committee
 - We are still missing FTA warrant data from all courts except Dayton Municipal and the East & West district courts.
 - Dan offered to reach out to the other courts to request the data on a one-off basis (outside of a direct feed to CJIS). Geremy will send Dan an email with specs.
 - The committee is still interested in quantifying and understanding the number of people in the jail because they can't afford to get out. Sean reported that he has built a dashboard with this info and that Joe is reviewing. He expects to be able to present the info in the next committee meeting.

- Hugh confirmed the committee's intention to reduce the use of cash bail to the minimum required to ensure appearance and protect the public safety.
 - Recognizing that currently, less than 30% of the jailed population receive an assessment, and the committee's desire to assess all non-minor misdemeanors in addition to felonies, the committee agreed that the only practical solution would be recommendation of a shared service model, housed in the county's pretrial services unit, with the intent to deliver pretrial assessments on all defendants to both common pleas and municipal courts within the county.
 - Concerns were expressed over the allocation of cost to fund such a solution, to which County Commissioner Foley and City Council Commissioner Shaw encouraged the committee to focus on defining the best practice model for the Montgomery County court system and then figure out how to fund it.
 - There was also a suggestion that one hour turnaround wouldn't necessarily require 24/7 staffing if an administrative tool, like the Arnold Foundation's, could be completely automated in Justice Web and/or streamlined enough for jail staff to produce the score for the judge's initial review.
 - It was suggested that jail procedures have a significant impact on the ability to turn around interviews in a timely manner and that we should include someone in our discussions. Hugh will reach out to the sheriff's office.
 - Joe Spitler mentioned that the police culture of using jail as the first option for every criminal offense needs to evolve to increase the use of summons under appropriate circumstances.
 - Hugh is arranging a site visit to Lucas County to learn first hand how they implemented their bail reform initiative. Commissioner Foley has agreed to arrange transportation for anyone from the committee who wishes to attend. *Please let Hugh know before Thanksgiving if you would like to attend.*
- A one pager was shared to encourage discussion on three potential risk assessment solutions; 1) extend the ORAS interview-based tool to the misdemeanor population, 2) Implement the Arnold Foundation's pretrial risk assessment (or another national validated assessment), or 3) develop a proprietary risk assessment tool based on the county's CJIS data.
 - Jeremy shared the result of a discussion with Chris Galli, Chief of the Bureau of Community Sanctions. Chris encouraged the committee to not let the issue of DRC grant funding get in the way of designing the best model, with the most appropriate

- validated risk assessment tool, to keep as many people awaiting trial as possible out of jail, as this is the spirit of the operating grant in the first place. Chris reported to Jim Dare that grant funding will not be revoked if the committee decides to use a different validated tool.
- Lucas county implemented the Arnold Foundation tool with the developer of that tool, third party analytics firm Luminosity. They will not share the “black box” algorithm that produces the score, but they are “working to make it more widely available.” It isn’t clear when the tool would be available for implementation in Montgomery County, but we understand there is a growing wait list.
 - Dee reported that Hamilton County is looking at implementing a revised version of the ORAS pretrial assessment tool.
 - There was a question about the feasibility of a proprietary Montgomery County pretrial risk assessment tool. It was explained that a Phd would be retained to develop the model, with Richard Stock (UD business professor) an early candidate for such work. Chris Shaw acknowledged that the Dayton City Council has been pleased with Richard’s work on their behalf.
 - A fourth scenario was suggested; using the current ORAS interview-based process for felonies and violent misdemeanors and implementing the AF tool for other misdemeanors.
 - Judge Logan was against using different methods to assess risk of FTA or recidivism based on charge degree. She prefers to look at the individual, not the charge.
 - Rudy mentioned that the ORAS assessment uses employment as a factor, which could be interpreted as discriminatory.
 - Bob suggested certain low-level charges don’t belong in jail if they haven’t been convicted of a previous crime, but others, including Stephanie, believe the risk of FTA (or recidivism) should be considered regardless.
 - Shawn suggested a proof of concept, whereby we would run a validated risk assessment tool parallel to the current ORAS process.
 - Future committee meetings were set for December 4 and December 18, 3:00-4:30 in the usual location.

Montgomery County Bail Review Committee Meeting 5

12/4/17

3:00 – 4:30 PM

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Meeting called by: Co-Chair, Kettering Municipal Court Judge, James F Long; Co-Chair, Dayton Municipal Court Administrative Judge, Deirdre E Logan; Co-Chair, Common Pleas Court Administrator, Jim Dare

Attendees: Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Ellis Jacobs, Bob Gresham, Joe Spittler, Tom Hagel, Anthony Van Noy, Stephanie Cook, Chris Shaw, Shawn Dunlavy, Ann Bryant, Mat Heck, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Please read: None

Please bring: None

3:00	General Updates	
	Recent judicial meetings/non-meetings	Jim Knight & Jim Long
	Criminal Justice Council feedback	Jim Dare
3:15	Data Update	
	Jail Population Analysis	Shawn Dunlavy
3:45	Report Architecture	
	Committee input on report outline	Hugh Quill/Committee
4:15	Close	
	Lucas County Site Visit	Hugh Quill

Montgomery County Bail Review Committee Meeting 5

12/4/17

3:00 – 4:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Attendees: Co-chair Jim Dare, Co-chair Dee Logan, Co-chair Jim Long, Ellis Jacobs, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Joe Spittler, Shawn Dunlavy, Stephanie Cook, Hugh Quill, Jim Knight, Jeremy Smith, Ann Bryant

Notes:

- Hugh shared that he briefed Jail Administrator, Major Matt Haines, on the committee's work. Similar to some of the judicial feedback we've received, Major Haines's primary concern was the lack of non-jail detainment alternatives for mental health and drug offenders.
- Jeremy reported he had made contact with jail staff to clarify that the jailcharge records with missing case id's were very likely the result of the prosecutor's office deciding not to move forward with charges and issuing a release order. We will proceed with the FTA and bail recidivism calculations with this understanding.
- Jim Knight reported feedback from recent judicial interviews, which was in line with earlier conversations. In sum, the majority of judges in the county think the system works fine, but are open to better, more timely data on more defendants.
 - Jim is compiling a list of four or five things most of the judges use to determine bail.
 - Jim Long confirmed similar feedback from the judges he has spoken with.
 - The committee has been unable to connect with Cindy Heck for comment on the current state of bail in Vandalia Municipal Court.
- Jim Dare reported that the 2015 Pretrial Analysis report was shared with the Montgomery County Criminal Justice Council since our last committee meeting. Jim reported that they had questions about where we were going with our work and there was some push back from a couple of people on the council due to the lack of data quantifying how big a problem this is.
- Jim Dare also shared that Ohio Supreme Court Chief Justice Maureen O'Connor is scheduled to be in the Dayton area January 18 for the opening of a new mental health court. Following the court opening, all judges in the county are invited to a luncheon at Sinclair CC to discuss bail reform with Justice O'Connor. Jim extended the invite to committee members as well.
- Shawn shared the bail dashboard he has been working on. The dashboard reports the number of people currently in jail on a bond, awaiting a court appearance, with filter criteria to better

understand the circumstances of their detainment and prior violent convictions or failure to appear. Shawn demoed the tool with several filters based on input from the committee:

- There were 88 charged with misdemeanors and another 137 charged with a low-level felony awaiting a court appearance in jail on a bond.
 - Filters were added to identify those with a prior violent conviction and a prior failure to appear, leaving 24 charged with misdemeanors awaiting a court appearance.
 - There were some concerns over the accuracy of the report; it appeared that the filter to remove individuals sentenced to a jail term was not 100% working, likely due to a lag in jail reporting caused by fax transmission of court orders. This was understood to be a relatively minor issue with the report, however.
- Hugh shared an outline of the report and encouraged feedback from the committee on any omissions or other areas of concern. Please share any feedback prior to the next committee meeting
 - Hugh confirmed the Lucas County site visit. A van will leave the Montgomery County Administration & Environmental Learning Center promptly at 8:00 AM, Friday, December 15 for meetings with Lucas County officials from 10:30 – 2:30.
 - Please confirm your attendance with Hugh if you haven't already.
 - Next committee meeting is set for December 18, 3:00-4:30 in the usual location.

Montgomery County Bail Review Committee Meeting 6

12/18/17

3:00 – 4:30 PM

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Meeting called by: Co-Chair, Kettering Municipal Court Judge, James F Long; Co-Chair, Dayton Municipal Court Administrative Judge, Deirdre E Logan; Co-Chair, Common Pleas Court Administrator, Jim Dare

Attendees: Ann Murray, Vanessa Carter, Dan Foley, Mary Kay Stirling, Rudy Wehner, Kate Bowling, Ellis Jacobs, Bob Gresham, Joe Spittler, Tom Hagel, Anthony Van Noy, Stephanie Cook, Chris Shaw, Shawn Dunlavy, Ann Bryant, Mat Heck, Tina Huber, Hugh Quill, Jim Knight, Jeremy Smith

Please read: FTA & Recidivism Analysis Overview; HB 439 draft; OCSC Ad Hoc Committee on Bail & Pretrial Services Report

Please bring: None

3:00	General Updates State Supreme Court Meeting Debrief Lucas County site visit	Hugh Quill Hugh Quill, Mary Kay Stirling, Dan Foley
3:15	Data Update FTA & Recidivism Analysis	Jeremy Smith
3:45	Legislative Update HB 439 & OCSC Report Discussion	Hugh Quill/Committee
4:25	Close Next steps for report & need for future meetings	Hugh Quill

Montgomery County Bail Review Committee Meeting 6

12/18/17

3:00 – 4:30

Montgomery County Courts Building, 41 N. Perry Street, Courts Conference Room, Lower Level

Attendees: Co-chair Jim Dare, Co-chair Dee Logan, Ellis Jacobs, Ann Murray, Dan Foley, Chris Shaw, Mary Kay Stirling, Rudy Wehner, Joe Spitler, Hugh Quill, Jim Knight, Geremy Smith, Ann Bryant, Steve Dankof

Notes:

- Jim Dare shared that Chief Justice Maureen O'Connor is confirmed for both the mental health court and judicial luncheon on Jan 18. Once he has a headcount from the judges who were invited, he'll know whether he can extend the invite to some or all of us on the committee.
- Hugh reported a positive meeting with Mike Buenger, Administrative Director for the Ohio Supreme Court, and his staff, who were pleased to hear of our efforts, and eager to help in any way they can.
- CPC Judge Dankof shared his thoughts on the Lucas County site visit. He was impressed how they were able to reduce failure to appear by 25% and recidivism by 50% by implementing system-wide reform, not just a risk assessment tool. He urged the committee to emphasize with judges who believe we're replacing their discretion with the risk assessment tool; that the tool further informs their discretion. In no way does it diminish judicial discretion. Toledo Municipal Judge Timothy Kuhlman shared that judicial discretion on its own is accurate 65% of the time, the risk assessment tool is accurate 70% on its own, and that together, discretion with input from the risk assessment is accurate about 85% of the time.
- Mary Kay shared that the pretrial services team were administering the risk assessment tool on behalf of all of the courts, and that they were adding information from a brief interview to felony cases. The Lucas Co pretrial services team reported that it took about 20-30 minutes per assessment, with little automation. They have a pretrial team in common pleas of 18 people providing the service to all courts across the county.
- Geremy updated the committee with the latest draft failure to appear and recidivism numbers. Feedback was to look at how cases bound over from municipal to common pleas were being handled in the data and to use more charts and graphs in the report.
- Draft House Bill 439 was discussed. It was pointed out that the requirements, as currently drafted, are quite onerous from both a pretrial operations and data reporting standpoint. The committee believes the legislation will become more reasonable as committee hearings take

place; the key takeaway is that it appears the best practices the committee is working on will eventually become a requirement from the legislature.

- Commissioner Foley made the point that the new jail system planned for this year should be integrated with court systems to ensure compliance.
- Hugh shared P3's plan to share a draft report for individuals on the committee to comment by around the first week of January. He plans to submit it to the commission mid-January.
- There are no additional committee meetings planned at this time.