

# THE SUPREME COURT *of* OHIO

## TASK FORCE TO EXAMINE THE OHIO BAIL SYSTEM

January 23, 2019  
Meeting Minutes

### Task Force Members in Attendance

**Hon. Mary Katherine Huffman (Chair)**  
Montgomery County Court of Common Pleas

**Sara Andrews**  
Director, Ohio Criminal Sentencing  
Commission

**Hon. Andrew Ballard**  
Lawrence County Court of Common Pleas

**Michael Barhorst**  
Sidney Mayor  
President, Ohio Municipal League

**Vallie Bowman-English, Esq.**  
Clerk of Court, Toledo Municipal Court

**Russell Brown, Esq.**  
Court Administrator  
Cleveland Municipal Court

**Gwen Callender, Esq.**  
Chief Legal Counsel  
Fraternal Order of Police of Ohio, Inc.

**Daniel Dew, Esq.**  
Legal Fellow, The Buckeye Institute

**Julie Ehemann**  
President, County Commissioners  
Association of Ohio  
Shelby County Commissioner

**Hon. Todd L. Grace**  
Athens County Municipal Court

**Meghan Guevara**  
Pretrial Justice Institute

**Hon. Brian F. Hagan**  
Rocky River Municipal Court

**Tim Horsley, Esq.**  
Cincinnati City Prosecutor

**Hon. Mark A. Hummer**  
Franklin County Municipal Court

**James Lawrence**  
President, Oriana House

**Matt Lutz**  
Muskingum County Sheriff's Office

**Charles Eddie Miller**  
President, Ohio Bail Agents Association

**Christopher Nicaastro**  
Chief of Criminal Justice Services  
Ohio Department of Mental Health and  
Addiction Services

**Jocelyn Rosnick**  
Assistant Policy Director, ACLU of Ohio

**Hon. John J. Russo**  
Cuyahoga County Court of Common Pleas

**Tom Sauer**  
President, Ohio Association of Pretrial  
Services Agencies  
Hamilton County Pretrial Services

**Michael Streng, Esq.**  
President, Ohio Association of Criminal Defense  
Lawyers  
Bridges, Jilisky, Streng, Weller & Gullifer,  
LLC

**Judy C. Wolford, Esq.**  
Pickaway County Prosecuting Attorney

**Timothy Young, Esq.**  
Office of the Ohio Public Defender

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### Opening Remarks

A brief presentation of the core principles for pretrial release and bail was made by Chief Justice Maureen O'Connor. The core principles are promulgated by the National Taskforce on Fines, Fees, and Bail Practice. These principles are designed to be a point of references for state and local court systems in the assessment of current court system structure and practices.<sup>1</sup>

In particular, Principles 5.1, 5.2, and 5.3 provide a structure within which the Task Force to Examine the Ohio Bail System (Task Force) should consider the Ohio bail system. It was requested by the Chief Justice that members of the Task Force use these guiding principles as they examine Ohio's bail system. These principles include:

**Principle 5.1. Pretrial Release.** Money-based pretrial detention practices should be replaced with those based on a presumption of pretrial release by the least restrictive means reasonably to assure appearance in court and promote public safety. States should adopt statutes, rules, and policies reflecting a presumption in favor of pretrial release based on personal recognizance. If risk assessment protocols are used, they should be validated and transparent and should not result in differential treatment by race, ethnicity, or gender. Such tools are not substitutes for individualized determinations of release conditions. Judges should not detain an individual based solely on an inability to make a monetary bail or satisfy any other Legal Financial Obligation. Judges should have authority to use, and should consider the use of, all available non-monetary pretrial release options. Judges may only use preventative detention if there is clear and convincing evidence that an individual poses a serious risk of danger to the community or flight. Preventative detention may only be ordered after a detention hearing that affords an individual all appropriate due process protections.

**Principle 5.2. Bail Schedules.** Fixed monetary bail schedules should be eliminated and their use prohibited.

**Principle 5.3. Pre-Payment or Non-Payment.** Courts should not impose monetary bail as prepayment of anticipated Legal Financial Obligations or as a method for collecting past-due Legal Financial Obligations.

### Purpose and Objectives of Task Force

The Task Force was created by the Chief Justice of the Supreme Court of Ohio to examine Ohio's bail system under Crim.R. 46 and to make recommendations that will ensure public safety and the accused's appearance at future court hearings, while protecting the presumption of innocence. The Task Force is charged with the study of bail and pretrial systems used in other states, and to review any federal or state

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<sup>1</sup> National Center for State Courts, National Task Force on Fines, Fees, and Bail Practices, *Principles on Fines, Fees, and Bail Practices*, 2 (December 2017).

<https://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx>

litigation pertaining to the use of bail or the elimination of money bail.<sup>2</sup> The recommendations to Crim.R. 46 should:

- a) Determine whether the rule should require courts to use a risk assessment tool and if so, whether that tool should be a validated tool;
- b) If it is determined that courts should be required to use a risk assessment tool, the Task Force should recommend any necessary amendments to the rule to mandate the use of such tool and the process for courts to select and adopt a tool;
- c) Review the use and utility of bond schedules;
- d) Recommend any necessary amendments to the rule pertaining to bond schedules.

The Task Force is further charged with a review Ohio's bond practices to determine the appropriate balance between recognizance bonds, pretrial monitoring, and cash or secured bonds and to address any other topics the task force deems necessary to examine Ohio's bail system.

### **Presentation from the Pretrial Justice Institute (PJI)**

Representatives from the Pretrial Justice Institute provided the Task Force with a snapshot of bail reform from a national perspective. The information presented included research regarding recidivism and failure to appear data for the pretrial population that is jailed compared with the same population released on non-money bonds. Collateral consequences, such as increased jail bed usage and the creation of racial and socioeconomic disparities was also detailed during the PJI presentation. Examples of pretrial reform pilot projects in other states were presented.

The PJI staff reviewed and compared two pretrial assessment tools: the Ohio Risk Assessment System – Pretrial Assessment Tool (ORAS-PAT) and the Virginia Pretrial Risk Assessment Instrument (VPRAI). The Arnold Foundation's Public Safety Assessment tool was also reviewed; the use of this tool is to classify a defendant's risk to commit new criminal activity and their failure to appear. PJI suggests an evaluation of a pretrial assessment tool should include: demographics, factors & definitions, transparency, statistical rigor, usefulness, interview, and the potential for perpetuating or exacerbating disparities. Context is required in developing an effective pretrial system; the assessment is one tool, but this tool is only as useful as the judge allows it to be, through their use of discretion and decision making.

### **Group Discussion, facilitated by Judge Mary Katherine Huffman, Chairperson**

Discussion by the Task Force included the following topics:

#### *Mandate and Cost of Implementation.*

- The consistent application of pretrial assessment tools across the state, particularly when the judge is the final decision maker, presents some complication for Ohio as a non-unified judicial system. It was suggested that a mandate from the Supreme Court of Ohio would be necessary to ensure that all local courts were using a validated pretrial assessment tool, if such tool was endorsed by this Task Force.
- An additional benefit of consistent application of pretrial tools across the state is the collection of data to measure success.

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<sup>2</sup> The Supreme Court of Ohio, *Operating Guidelines for the Task Force to Examine the Ohio Bail System*, Section 1.02 (A)(1) (2019). <https://www.supremecourt.ohio.gov/Boards/bailSys/guidelines.pdf>

- With a mandate, there comes an obligation to take action; this action is usually associated with a cost. For example, in the instance of a pretrial assessment tool, there must be a staff person trained to use the tool as well as staff time made available to implement the tool. It is important to consider the cost incurred by the agency tasked with the implementation of the tool (this includes the court staff but could also include probation staff, sheriff's office, jail personnel). Estimating the cost of using a pretrial assessment tool is important to local communities.
- It was suggested that a state-wide tool provides the opportunity for leveraging a better cost for obtaining and using a pretrial assessment tool, as opposed to each court negotiating its own rate to obtain the tool.

#### *Presumptions of Release and No-Money Bail*

- The Ad Hoc Committee included in its final report that “if a defendant is eligible for release under the Ohio Constitution, and the trial court determines that the defendant should be released pretrial, the trial court should first consider nonfinancial release.”<sup>3</sup> Discussion during the Task Force meeting indicated a favor toward this philosophy.
- It was discussed that the presumption of release, particularly when an individual is charged with a non-violent drug offense, may not adequately contemplate the harm to a community when those charged are immediately released. The impact of this philosophy is not just on the courthouse and jail, but it also reflects on local law enforcement and prosecutors. It was discussed that there is some need for input from the community on this issue.
- The Ad Hoc Committee recommended that bond schedules would be required to be reviewed yearly and that this requirement should be added to the Rules of Superintendence.<sup>4</sup>
  - The Task Force discussed this proposal and proffered the idea of the total elimination of a bond schedule.
  - The Task Force also discussed the impact of removing a bond schedule. It was suggested that the use of a standard bond schedule allows for consistency and predictability within the jurisdiction while removing a bond schedule will result in less cohesiveness across a county, rather than more.

#### *Data Collection.*

- The need for data collection was easily agreed upon by the Task Force. There is concern about the cost to local courts in collecting this information.
- There are a few sites across the state participating in a review of the data collection to identify gaps in data collection. This information will help to inform researchers of the effectiveness of pretrial assessment tool usage. This project runs until September 2019, after which the information collected will be analyzed.

#### *Technical Assistance*

- There was a discussion over the use of mentor courts to provide technical assistance to courts that have not previously used a validated risk assessment tool.
- In instances where a court may not have adequate resources to use a validated risk assessment tool, it was discussed whether this tool could be implemented by defense counsel and used by the court in its decision making.
- Further discussion on the cost of using validated assessment tools brought forth the idea that using technology to share resources, particularly in using web-based tools to conduct interviews, may be an alternative to the traditional implementation of pretrial assessment tools. An example

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<sup>3</sup> *Id.* at 11.

<sup>4</sup> *Id.* at 15.

was given where video conferencing between a jail and a courthouse is used to complete the interview portion of the assessment tool.

- When looking at using a tool to be used across the state, it is important to consider whether the interview portion of the assessment tool can be optional, with discretion of the local court.

The Task Force provided suggestions of organizations to be invited to provide viewpoints for consideration during the next Task Force meeting scheduled for February 27, 2019. The third and final meeting of this Task Force is scheduled for March 11, 2019.