

THE SUPREME COURT *of* OHIO

TASK FORCE TO EXAMINE THE OHIO BAIL SYSTEM

March 11, 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

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

Lisa Large
President, Ohio Association of Municipal & County
Court Clerks

James Lawrence
President, Oriana House

Branden Meyer
President, Ohio Clerk of Courts Association

Charles Eddie Miller
President, Ohio Bail Agents Association

Elizabeth Miller
Ohio Public Defender

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

Sheriff Larry Sims
President, Buckeye Sheriff's Association
Warren County Sheriff

Hon. Jarrod B. Skinner
Franklin County Municipal Court

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

Sen. Cecil Thomas
Ohio Senate District 9

Judy C. Wolford, Esq.
Pickaway County Prosecuting Attorney

Introductions & Approval of Minutes

Judge Mary Katherine Huffman, Task Force Chair, called for an introduction of Task Force Members present. These introductions were followed by the approval of February 27, 2019 meeting minutes. A motion was made to approve the minutes as written and this motion was approved by a verbal vote.

The specific duties of the Task Force were reviewed; it was agreed that the conversation of this Task Force meeting would stay within these duties. It was further agreed that the format of this meeting would follow the Ohio Criminal Sentencing Commission's Ad Hoc Committee on Bail and Pretrial Services 2017 Final Report and Recommendations (Report).¹ Each Task Force member was asked to speak only once per topic.

Discussion

The Report included “[r]ecommendations to reform and create a system of pretrial justice that maximizes appearance, release and appropriate placement, preserves public safety, protects the presumption of innocence, and achieves efficiencies and consistency in Ohio’s pretrial system while decreasing the reliance on monetary bail as the primary release mechanism...”² The Task Force reviewed each of the Report’s recommendations. The discussion summary is as follows:

Recommendation 1. Establish a risk-based pretrial system, using an empirically based assessment tool, with a presumption of nonfinancial release and statutory preventive detention.

- An empirically derived assessment tool that has been validated based on the population where it is being used, including validation for racial neutrality, is of significant importance. The cost of validation, and periodic re-validation, of the assessment tool should be considered and planned for if this recommendation is adopted.
- A definition of “validated” should be adopted and applied to any assessment tool that is used in the state. It was suggested that a criminogenic needs test be use as part of the assessment tool.
- The constitutional right against self-incrimination should be considered when adopting any pretrial tool for use in Ohio courts.

Recommendation 2. Implement a performance management (data collection) system to ensure a fair, effective and fiscally efficient process.

- A statewide data collection system should be created and funded to allow for equal access by all courts.
- The collection of data that can be used to assess the impact of pretrial tools will only be effective if *all* courts are reporting the same type of data, in the same way, to a centralized repository.
- Any conditional release costs may not be passed on to the defendant either during the pretrial period or after the conclusion of the hearing, regardless of the individual’s guilt or innocence.

Recommendation 3. Maximize release through alternatives to pretrial detention that ensure appearance at court hearings while enhancing public safety.

¹ Ohio Criminal Sentencing Commission’s Ad Hoc Committee on Bail and Pretrial Services Final Report and Recommendations (2017).

² Id, page 10.

- The use of electronic reminders, such as text messages or email notifications, was suggested as one tool to assist in ensuring appearance of defendants.
- The use of a state-wide bond schedule was considered. The default of such schedule should be a release on personal recognizance. Risk factors should be considered in using a bond schedule and limited in use.
- Defining “bail” as a means of release, not tied to money, is necessary for establishing a baseline for a statewide bond schedule.
- Judicial discretion should be permitted when deciding on pretrial alternatives.

Recommendation 4. Mandate the presence of counsel for the defendant at the initial appearance.

- The Task Force recognized the constitutional importance of this recommendation. It was also recognized that a significant financial obligation is attached to providing counsel to indigent defendants at this stage of court proceedings.

Recommendation 5. Require education and training of court personnel, including judges, clerks of court, prosecutors, defense counsel, and others with a vested interest in the pretrial process.

- It was generally agreed that these recommendations will require training of many different court and justice partner staff regarding the reason for change, how to implement these changes, and how to track data.
- The task of creating and providing trainings was suggested as twofold: at the state level and the local level.

Recommendation 6. Continued monitoring and reporting on pretrial services and bail in Ohio.

- This recommendation would need to be reviewed at length by a subcommittee, if these recommendations are adopted.

Next Steps

Draft of Task Force Recommendations. The draft of this Task Force’s recommendations will be written by Supreme Court of Ohio staff within two weeks of today’s meeting. This draft will be sent electronically for approval by the Task Force. A phone call may be scheduled if further conversation is required.

Implementation Timeline. The timeline for implementation of the Task Force’s recommendations is dependent upon the Supreme Court of Ohio’s process for sending law changes to the General Assembly as well as internal approval procedures for amendments the Rules of Superintendence. Further impacts on implementation timing include: obtaining funds, building, and training on the use of a statewide data repository. An appropriate timeline would be adopted after the approval of the recommendations.