

**PRETRIAL JUSTICE TASK FORCE
STAKEHOLDER REPORT
MARCH 6, 2020**

The Pretrial Justice Task Force met from 9:00 a.m. – 4:00 p.m. We had several stakeholders attend our meeting for discussion including Shane Rolf, with the Kansas Bail Agents Association, Jessica Domme, Assistant Attorney General, Cal Williams, attorney, and bail agent, Ann Sagan, Federal Public Defender, Austin Spillar, ACLU, Rep. Stephen Owens, Jacob Gontesky, Assistant District Attorney-Johnson County, Ed Klumpp, Kansas Sheriffs Association, and Greg Smith, Johnson County Sheriff's Office. The discussion helped the Task Force Members understand the issues around the state and we also had an opportunity to ask questions and share some of our thoughts with the attendees. The discussion lasted from 9:00 am-12:15 pm.

Later, we reviewed the preliminary recommendations we have made to date and made some modifications to the language of a few, although we are certain the language will continue to be refined.

Based on stakeholder comments we have received, the Task Force decided the preliminary recommendations regarding a constitutional amendment and accompanying statute were premature and inadequate. We agreed to recommend further discussion among appropriate stakeholders, since this topic merited its own task force. We agreed to highlight the issue in the report but make no recommendation.

We also talked about pretrial detention of defendants awaiting admission to Larned for competency restoration and treatment pursuant to K.S.A. 22-3303 and agreed that we would make a recommendation regarding enough funding to lessen wait times. Some further research is needed, but anecdotally we were advised that pretrial detainees who are incompetent can wait up to a year in the county jail until Larned has the capacity to accept them simply for an evaluation of competency.

We expanded our discussion of appointment of counsel. This is one recommendation with which all stakeholders appear to agree. We wanted to make sure judges are reviewing information for appointment of counsel at the first appearance.

We agreed at this time that expanding the use of citations or notices to appear in lieu of arrest should remain discretionary with law enforcement but we want to encourage voluntary agreement on statewide standards so that people in Kansas will be treated the same regardless of what part of the state they are stopped in or what color their skin is.

We discussed the controversy over the use of algorithm-based pretrial risk assessment tools and decided to modify our recommendation regarding a pilot program to compare like sized jurisdictions that use an algorithm-based tool to those jurisdictions that review the same information, but not scored based on algorithms.

We also discussed the need to make pretrial supervision requirements free to the defendant. This was indirectly a recommendation that was suggested by the Kansas Bail Agents Association and the Kansas Association of Criminal Defense Lawyers. They both pointed out their concern with the growing number of these fees and the disproportionate impact they have on the indigent population. In some cases, defendants can't bond out due to money and they can't be released onto pretrial supervision because of money. In the 23rd, 17th and 15th judicial districts, Northwest Kansas Community Corrections (who does pretrial supervision and parole supervision in addition to Corrections supervision) they have been able to fund treatment, house arrest and other services through grant funding, so that these programs are at no cost to defendants who have not been convicted of anything and are entitled to the presumption of innocence. We agreed to further explore this recommendation.

Finally, the Chair was given authority to request that the Supreme Court grant an extension of our report deadline for a maximum of 90 days, although we hope to have it completed sooner. Our current due date is May 6, 2020. We need additional time to complete our recommendations and draft the report. We have scheduled April 2 to review half the recommendations and report and May 15 to review the other half. Final editing and publishing will follow.

What follows are the preliminary recommendations that the Task Force approved at the March 6 meeting. The Final Report will contain a detailed explanation of each, and the language will be refined. The portions highlighted in red are recommendations that are new from this meeting. **Until the Task Force approves a Final Report these preliminary recommendations are subject to modification or removal. Please feel free to email the Chair with any concerns. All emails are forwarded to the whole Task Force.** arnold-burgerk@kscourts.org

PRELIMINARY RECOMMENDATIONS APPROVED

Recommendation #1

- The Kansas Supreme Court should provide education to all district and municipal courts addressing pretrial release that: 1) emphasizes that liberty is the norm and detention is the exception; 2) judges should first consider non-monetary forms of release; and 3) release should be under the least restrictive conditions to assure defendant's appearance and the protection of the public. It should also encourage providers of continuing legal education to provide educational opportunities to attorneys related to pretrial release.

Recommendation #2

- The OJA should incorporate educational materials detailing the issues involved in pretrial release decisions in its public communications.

Recommendation #3

- The Office of Judicial Administration (OJA) should collect criminal case data contained within its legacy case management system (FullCourt) and its new case management system (Odyssey) related to types of pretrial release, change to and revocation of those types of release, and failure to appear. The OJA should design reports containing relevant data to aid in the understanding and communication of current state, future state, and the effect of changes made to the pretrial justice system affecting pretrial release.

The OJA should support the design of data collection, actual collection of the data, and reporting the data in a manner fostering an understanding of pretrial release through appropriate staffing within the OJA.

Recommendation #4

- Amend statutes to facilitate the use of a notice to appear rather than arrest for misdemeanor offenses and encourage law enforcement agencies to adopt uniform standards for the use of notices to appear and citations in lieu of arrest.

Recommendation #5:

- Law enforcement agencies should work with community mental health organizations, either live or virtually, for quick identification and referral of offenders with mental health and substance abuse issues to appropriate resources.

Recommendation #6:

- The Kansas Department for Aging and Disability Services (KDADS) should issue regulations under the Crisis Intervention Act, K.S.A. 59-29c01 *et seq.*, so that crisis intervention facilities can be licensed around the state. This will allow law enforcement the ability to immediately connect individuals to effective care, in lieu of incarceration, when appropriate.

Recommendation #7

The Legislature should provide adequate funding to the state hospital in Larned to allow timely admission of defendants for competency restoration and treatment pursuant to K.S.A. 22-3303. Existing waiting lists have resulted in housing mentally incompetent defendants in the county jail, pre-trial, for up to a year.

Recommendation #8

- State funds earmarked for drug treatment and evaluation should be available for use by persons in diversion programs for drug-related offenses.

Recommendation #9

- The Supreme Court should require each judicial district to adopt pretrial procedures that provide for: (a) a timely judicial determination of probable cause and conditions of release upon warrantless arrest; (b) the opportunity for timely judicial hearing for review of conditions of release; and (c) the release of arrestees when a complaint is not filed forthwith.

Recommendation #10

- Increase access to appointed defense counsel after arrest for timely review of release conditions.
 - Counsel should be appointed to qualifying defendants at first appearance.
 - Judges should require a financial affidavit to be filled out at the jail or in the courtroom before the first appearance. It should be presented to the judge for review, not only for appointment of counsel but for consideration of financial conditions associated with release.

Recommendation # 11

- The Supreme Court should initiate a pilot program of a representative cross-section of jurisdictions across the state **some utilizing a scored and validated pretrial risk assessment tool and some using a form with the same information, but no algorithm-based score.** The Task Force believes that the pilot program should include formation of a stakeholder’s group, training, and a designated coordinator. It should include a comparison of data from the jurisdictions that use the scored tool to like-sized jurisdictions that do not use a scored pretrial risk assessment tool. At the conclusion of the pilot program, the participants should be required to make recommendations to the Supreme Court regarding state-wide adoption of a uniform, pretrial risk assessment process.

Recommendation # 12

- Require adoption of post-charging procedures for timely judicial hearing for review of conditions of release.

Recommendation #13

- Courts are encouraged to provide an opportunity for offenders to voluntarily report after a missed court date and before service of a bench warrant to allow recall of and to avoid arrest on a failure to appear bench warrant.

Recommendation # 14

- The Supreme Court should determine appropriate processes to implement text message reminders.

Recommendation # 15

- Encourage local jurisdictions to examine whether a pretrial supervision program will reduce unnecessary pretrial detention.
 - For those that adopt a pretrial supervision program, leave it up to each jurisdiction to decide what agency is best suited to provide these services.
 - Pretrial supervision should be reserved for individuals who pose a flight and public safety risk.
 - Streamline case processing so individuals will not find themselves on pretrial supervision any longer than necessary. We recommend use of *The Pretrial Justice Planning Guide for Courts* for those courts that adopt a pretrial supervision program. It is designed specifically for judges and court managers interested in improving their jurisdiction’s pretrial practices. The worksheets are designed as

templates that can be modified to reflect the context in which each jurisdiction's pretrial system functions (e.g., court structure, legal authority, use of money bail, existence of pretrial services). It provides a step by step process that is aimed at a wide range of challenges and stakeholders engaged in reform efforts.

Recommendation # 16

- Amend K.S.A. 22-2802(1)(e) to allow for groups other than Court Services to supervise pretrial defendants and provide for a waiver of costs of supervision.

Recommendation # 17


- Amend K.S.A. 22-2816 to eliminate some restrictions on who may qualify for pretrial supervision and allow supervision by any pretrial supervision program designated by the judge.

Recommendation #18

- Adequate funding should be provided so that jurisdictions are not required to charge fees for conditional release, pretrial services, or pretrial monitoring.

Recommendation #19

- Encourage a discussion among appropriate stakeholders, regarding amendment of the Kansas Bill of Rights to allow a judge to preventatively detain a defendant, who --after a full due process hearing-- has been determined to be a danger to self or others or presents a serious risk of flight and no condition of release can adequately address the risks.



Our next meeting will be April 2, 2020 from 9:00 a.m. – 4:00 p.m. This will be a working meeting as we fine-tune the language of the recommendations and work on drafting the report. There will be no public comment period. But comments are accepted by email to arnold-burgerk@kscourts.org at any time.