

# final minutes

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## **Criminal Justice Policy Commission Meeting**

9:00 a.m. • Wednesday, June 7, 2017

Senate Appropriations Room • 3<sup>rd</sup> Floor State Capitol Building

100 N. Capitol Avenue • Lansing, MI

### **Members Present:**

Senator Bruce Caswell, Chair  
Senator Patrick Colbeck  
Representative Vanessa Guerra  
D. J. Hilson  
Kyle Kaminski  
Sheryl Kubiak  
Barbara Levine (teleconference)  
Sarah Lightner  
Laura Moody  
Sheriff Lawrence Stelma  
Jennifer Strange  
Andrew Verheek  
Judge Raymond Voet

### **Members Excused:**

Stacia Buchanan  
Senator Bert Johnson  
Representative Jim Runestad  
Judge Paul Stutesman

### **I. Call to Order and Roll Call**

The Chair called the meeting to order at 9:00 a.m. and asked the clerk to take the roll. A quorum was present, and absent members were excused.

### **II. Approval of May 3, 2017 Meeting Minutes**

The Chair asked members if there were any corrections to the proposed May 3, 2017 CJPC meeting minutes. There were none. **Commissioner Strange moved, supported by Commissioner Lightner, to approve the minutes of the May 3, 2017 meeting as proposed. There was no further discussion. The minutes were approved by unanimous consent.**

### **III. Progress Update from Hornby Zeller Associates, Inc. on Study of County Costs to Redirect 17-Year-Olds to Juvenile Justice System**

Karen Hallenbeck from Hornby Zeller Associates, Inc. provided a progress report on the efforts made over the last month in preparation of the online surveys that will be going out in the next few days. She asked for support from the Commission members in obtaining updated email addresses for the various organizations they represent and explained the process they will use in distributing the surveys. Commissioner Hilson and Judge Voet offered to send out the survey email through their listserv, and Sheriff Stelma indicated that he had sent the sheriff's email information to CJPC Data Administrator Grady Bridges. Mr. Bridges will share this information with Hornby Zeller Associates. Ms. Hallenbeck will contact Judge Stutesman for circuit court email addresses. Ms. Hallenbeck also reported on the progress made in accessing Judicial Data Warehouse (JDW), APPRISS, and OMNI data.

### **IV. Recommendation to the Legislature for Uniform Jail Management System**

CJPC Data Administrator Grady Bridges reported that he is waiting for a presentation from Sheriff Blaine Koops of the Sheriffs' Association before a recommendation is prepared. Sheriff Koops is tentatively scheduled to attend the July meeting.

### **V. Data Subcommittee Update**

Commissioner Kubiak reported that the subcommittee has been working on finding a consultant for the cost-benefit analysis for the study of 17-year-olds, and talking more about data integration and the acquisition of data from MDOC for the straddle cell study. Mr. Bridges added that the MDOC data is expected by Friday and provided information on the search for a consultant for the cost-benefit analysis. Mr. Bridges will get confirmation of the timeline for contracting with a consultant by the end of the week. In regards to the programming and mental health surveys, Mr. Bridges reported that these surveys will be rolled into the survey being sent out by Hornby Zeller.

**VI. Bail Bond Reform Subcommittee Update**

**a. Presentation from Jeffrey Clayton, Executive Director of the American Bail Coalition**

The Chair welcomed Mr. Jeffrey Clayton, Executive Director of the American Bail Coalition. Mr. Clayton proceeded with a presentation on bail bond reform and responded to questions from the Commissioners. For details on his presentation, please see the attached PowerPoint slides. The Chair inquired about the purpose of eliminating cash bail, asked how cash bail compared prior to reforms in the Kentucky data Mr. Clayton shared, and had questions about bail funds and fee increases in the New Jersey data presented. Commissioner Verheek inquired about the increase in repeat criminal offenses in the New Jersey data and the type of offenses being committed, and had questions about the data presented on false assumptions, what the costs would be for a mixed bail system, and what type of data the industry has access to. Commissioner Levine inquired about the not-eligible-for-bail data in the LA County jail study. The Chair asked Mr. Bridges to find out what the "no bail" designation means in that study and to let Commissioner Levine and the rest of the Commission know what he finds. Commissioner Hilson inquired about the suggestion that patrol officers make the discretionary call as to whether a person is arrested and what risk assessment tools are used by the industry. Commissioner Kubiak had a question about commercial bail and asked that it be on the record that she is uncomfortable with this presentation because of the manipulation of the data that Mr. Clayton presented. Commissioner Levine also asked what is included in the costs and savings to the system, and if the industry in Michigan has a financial report that is publicly available. Mr. Clayton will find out if there is a report or any data available and send the information to the Commission through Susan. Commissioner Strange inquired about what impact the move to a no-bail system has had on the industry in New Jersey.

**b. Recommendation Discussion**

Commissioner Hilson provided an overview of the discussion the subcommittee had at its last meeting that included information on the work Supreme Court Justice Bridget McCormack's workgroup is doing on the Arnold risk assessment tool and possible reform of court rules and the bail bond statute. A discussion of whether a recommendation should be made now due to the lack of data followed. Lori Shemka from Justice McCormick's office was present and provided comments on the status of the financial data available. Matt Maddock from the Michigan Professional Bail Agents Association was also present and noted that he is available to answer questions. The Chair suggested he contact Bail Reform Subcommittee Chair Hilson. Mr. Bridges then provided an overview of the statutes and court rules (see attached). The discussion of the issues that should be considered in preparing a potential recommendation continued. The subcommittee will draft a recommendation on the bail bond reform issue and send it to Susan so it can be distributed to all the members.

**VII. Mental Health Subcommittee Update**

Commissioner Strange reported that the subcommittee is proceeding with the release of their mental health survey. The subcommittee will formulate their next direction once the data are returned. The distribution will be coordinated with Hornby Zeller and is expected to go out within the next 10 business days. The Chair asked if Commissioner Strange had been contacted by anyone regarding the Michigan Mental Health and Justice Center Consortium Partnership request. She responded that she had not.

**VIII. Commissioner Comments**

The Chair asked if there were any comments from the Commissioners. Commissioner Kubiak apologized for her earlier comments made during the presentation by Mr. Clayton. The Chair noted that Sheriff Blaine Koops has been invited to the July meeting to share information regarding the collection of jail data. He also asked members to give some thought to the issue of data collection, to keep in mind the Headlee implications, and to consider who should have access to any data collected. He asked members to send their ideas to Susan before the next meeting.

**IX. Public Comments**

The Chair asked if there were any public comments. There were no public comments.

**X. Next CJPC Meeting Date**

The next CJPC meeting is scheduled for **Wednesday, July 5, 2017, at 9:00 a.m. in the Senate Appropriations Room, 3<sup>rd</sup> Floor of the State Capitol Building.**

**XI. Adjournment**

There was no further business. The Chair adjourned the meeting at 11:25 a.m.

*(Minutes approved at the July 5, 2017 CJPC meeting.)*



**Presentation to the Michigan Criminal Justice Policy Commission on Topics in Bail Reform**


June 7, 2017

**Jeff Clayton, M.S., J.D.**  
Executive Director  
American Bail Coalition



**Who Are We, What Do We Do?**

- American Bail Coalition, Surety Bail Insurance Companies
- Licensed Bail Agents in Michigan write surety bonds
- ABC works on bail and pretrial release issues in numerous jurisdictions throughout the country
- Advocate for best practices in bail setting and regulation of bail agents and insurance companies to protect the public
- Jeff Clayton—background





**Evidence-Based Practices and the “Scientific” Justice System**

A philosophy shift from punishment to rehabilitation



“Using stuff that works?”

Will never replace human judgment, will only complement and inform it





**Current National Picture**

- Various activist groups are advocating to eliminate all financial conditions of bail and replace it with a release/no-release system like the D.C. and federal systems
- This is a major decision-point
- These release/no-release policies were a major legislative topic of conversation the last couple of years
- Several states this year rejected major shifts in their bail systems to adopt the no money system: CT, NV, TX, CA
- New Jersey--first state to try to implement the no money system on January 1, 2017 after three years of preparations




**Current National Picture**

- Increased use of risk assessments, which if used properly, may assist judges in being better informed prior to making a decision on bail
- Most so-called reformed jurisdictions have not taken the step of eliminating financial conditions or surety bonds (MD, CO, KY)
- Kentucky still has financial bail—just no surety bonds—a majority of people who were released from jail posted cash up until a couple of years ago—now the number is **42% of all defendants released posted a financial cash only bond**



**Current National Picture**

- New Jersey has seen a rash of repeat criminal offenses
- Administrative Judge Glenn Grant has said the program will run out of money by the end of next year
- Three Bar Associations sued the Supreme Court over fee increases to support bail reform (materials)
- The Counties Association sued the State calling bail reform an unfunded mandate (materials)
- A series of calls from law enforcement saying it is not working (materials)



### False Assumptions in "Pretrial Justice"

- Monetary bail is unconstitutional—due process and equal protection challenges from *Clanton* to *Houston*, 5<sup>th</sup> and 11<sup>th</sup> Circuit Rulings (materials)
- Former U.S. Solicitor Paul D. Clement (materials):  
*"Bail is a liberty-promoting institution as old as the Republic."*  
*"Plaintiff would have this Court effectively abolish monetary bail on the theory that any defendant is entitled to immediate release based on an unverified assertion of indigency. Nothing in the Constitution supports that extreme position. Instead, the text and history of our founding charter conclusively confirm that monetary bail is constitutional."*



### False Assumptions in "Pretrial Justice"

- 70% of people in jail nationally are there "pretrial" and are "innocent," "have been convicted of no crime," and "cannot afford their bail"—Connecticut: 78% had three or more prior convictions, and 60% had 1 or more prior felony convictions
- How many are bailable? What about time-served?
- Michigan has tenth lowest percentage of persons "pretrial" as a percentage of the mix—41%. That is an irrelevant number because of sentencing policies also affect the mixes.
- Only a real localized jail study can discover the issues
- Presumption of innocence—measure is excessive bail



### False Assumptions in "Pretrial Justice"

- The concept that masses of people sit in jail for extended periods of time due to not being able to afford their financial bail is largely false (see materials, Los Angeles County study)



### False Assumptions in "Pretrial Justice"

The following is a snapshot of **10,545** pretrial inmates in the LA County Jail and who are eligible for bail:

- 3,501 already sentenced for another crime – **NO BAIL**
- 2,066 with outstanding warrants – **NO BAIL**
- 2,014 with "no bail" designations – **NO BAIL**
- 1,229 with assaultive crimes – **NO BAIL**
- 386 who are classified as high security – **NO BAIL**

**TOTAL ELIGIBLE FOR BAIL**  
**1,349**  
(or 12% ... NOT 70%)



### ABC Has Proposed Solutions

- The Kaleif Browder case renewed conversation but focused only on money and not other bail issues like his hold for a probation violation—look at other holds
- Set meaningful bail--\$1 bail? \$100 bail?
- Better review procedures to make sure review process from a bond schedule or initial setting is expedited—*City of Riverside*
- Public-private partnerships—state pay or state contracted surety bail as an insurance product—lift the indigent up, not drag everyone else down
- Do not arrest people unless danger to themselves if they are ultimately going to get a promise to appear
- Other state-specific reforms based on best practices



### Reject the No Money System

- It is easy to say we don't want a "wealth-based" bail system
- Ability to pay is one of a basket of factors and is a consideration as to whether bail is excessive
- The cost of bail is marginal compared to all of the other costs that offenders will be expected to pay
- Typically, third-parties are providing a surety (financial guarantee) to the Courts and the defendant at their own expense—you would be cutting off a private benefit provided to a defendant and the Courts
- Protects community's associational and familial rights



## Reject the No Money System

- Financial conditions should have a role in the system—this option should fit within the framework and not be excluded simply because the proponents of some risk instruments designed them to eliminate financial conditions
- Eliminating financial conditions means **preventative detention will be used**—clear and convincing evidence, court time, due process, heightened speedy trial requirements—New Jersey
- Preventative detention in the federal system keeps 64% of all defendants arrested detained with no bail (see materials)
- D.C. incarcerates 15-20% of all arrestees—what is Michigan's number? New York's is around 10%.



## Reject the No Money System

- Too costly to go to a system with *no* financial conditions
- D.C. \$65.2 million to handle pretrial services supervision and evaluation in a city population of 660,000 (materials)
- Michigan's population is 16 times larger—on per capita basis that is a \$1.04 billion price tag for Michigan—but MI specific cost estimates would need to be done
- New Jersey--\$62 million first year, total annual economic cost to the state of New Jersey of \$510 million (materials)
- California—Hundreds of Millions of Dollars in several categories—in excess of \$1 billion (materials)



## Least Restrictive Form of Release

- Constitutional standard in every state—for judges to decide. The dated ABA standard assumes that monetary conditions are always the most restrictive other than other conditions
- For most people who can post a bond or obtain a surety bond underwritten by a licensed insurer, **a secured bond is typically the least restrictive form of release**
- The dramatic expansion of GPS monitoring, blood monitoring, drug screening chemistry, SCRAM, etc. was not contemplated in the 1970s—the use of correctional technology has become extremely restrictive in terms of liberty, privacy, and financial cost



## Least Restrictive Form of Release

- The on-going cost of “non-financial” conditions should be considered
- Electronic monitoring companies are publicly-traded on Wall Street—they attempt, according to one article in the materials, to persuade public officials that defendants and convicted criminals will pay the charges (see materials)
- **All types of bond and conditions of release should be on a level-playing field for judges to impose when appropriate**



## Reject the Bail is Too High/Too Low Analysis

- Taking a percentage of cases and saying these people cannot “afford” their bail ignores the decisions of judges in setting the initial bail and reviewing that bail with a factor of financial resources as a consideration
- The only truly effective evidence-based system would be no bail at all—100% effective—not reasonable
- There are costs to the system of a failure to appear to the courts, victims, witnesses, police, prosecutor, defense attorney, etc. that should be included in the analysis—one study says \$1,775 for each FTA (materials)




## Risk Assessments – What They Do

- They tell us how likely someone is to “fail”
- Many don't tell us what the “failure” is—i.e., a risk score does not tell you which risk we are talking about, i.e., new crime and/or FTA
- The new Arnold tool attempts to predict new crimes and FTAs separately—new within last year
- They give judges another tool to assess risk
- They can inform bail decisions to a certain extent
- Arnold: **Risk Assessment + JUDICIAL DISCRETION**




### Risk Assessments – Limitations


- There is no “evidence-based” or scientifically validated way to set bail or conditions of release.
- Risk assessments only help identify who is risky, they do not help decide what conditions will obviate that risk
- The risk assessment does not help address criminogenic factors that lead to failure
- They have been criticized lately as not predictive—May, 2017, NJ Attorney General Porrino, New Jersey Law FOP (materials)
- Lack of accuracy of criminal conviction information—NJ, NV
- Questions about validity—DE, NV Governor’s Veto of AB 136




### Risk Assessments – Limitations



*“No conclusive evidence has been presented showing that the risk assessment methods proposed by AB136 are effective in determining when it may or may not be appropriate to release a criminal defendant without requiring bail.”*




Brian Sandoval  
Governor, Nevada




### Risk Assessments – Limitations

- Over-supervision is detrimental to low level offenders
- How does a financial condition mitigate risk?
- How does supervision mitigate risk?
- How does electronic monitoring or uranalysis mitigate risk?
- Seven issues with Risk Assessments from defense perspective (see NLADA report in materials)
- Validation issues are real—Delaware example (materials)
- Do they work—San Francisco Public Defender (materials)




### Risk Assessments – Judges Haven’t Been Blind

- Nearly all validated risk assessments are based on prior criminality and failures to appear—history repeats itself
- The risk assessments mechanically weight the factors today without further consideration—you score risk points for a prior felony, but often we do not ask what that felony was, what were the underlying facts of the case
- For example, Arnold Foundation categories—prior crimes, prior FTAs, violent crime or not, another pending case, whether previously served a jail or prison sentence. The only factor not a prior failure is age.




### Risk Assessments – Judges Haven’t Been Blind

- Risk assessments often **ignore statutory factors**. What happens when judges consider the factors?
- Does the risk assessment validity break down—unresolved issue at this time.
- Trust the tool or trust the information—the Nevada issue
- What if the risk assessment shows that too many people are getting out of jail—then what?
- Are we confident that risk assessments will stand up to scrutiny when used as a basis to preventatively detain?



### Risk Assessments – Demographic Factors

- The use of demographic factors for sentencing or setting of bail in the criminal justice system has been called into question by a prominent law professor (see materials).
- One recent study, “Machine Bias,” found that risk assessments discriminate based on race (see materials)
- Yale Law Journal Forum cited other issues—bills of attainder
- Many risk assessments use demographic or economic factors—e.g., age at first arrest, own or rent a home, income, etc.
- Eric Holder also questioned the use of these “tools” when he was Attorney General



## Risk Assessments – Resource Considerations

- Unless risk assessments are computerized, staff will have to be hired to assess people—Albuquerque—14 FTE
- Because we know risk assessments are intuitive, and we know which factors we need to focus on, we know what information we need to get so Judges have it
- It may be that creating new programs to do the assessments will stall out due to human resource issues—yet, making sure all of the underlying information we know matters is readily available to judges would go a long way
- Judges can weight the factors with better information



## Risk Assessments – Validation

- Not validated to set bail or recommend conditions
- Will never be validated to set bail, because it's a probability of failure based on certain factors but it doesn't validate the conditions that will obviate the risk
- Should it be treated differently than other scientific or expert testimony evidence?
- Should Courts the ones who approve an instrument?
- Due Process safeguards in place (materials—Wisconsin Supreme Court opinion)
- Algorithmic Transparency—proprietary contracts



## Evidenced Based Bail Setting – Advocacy Efforts

- We are advocating for research among national organizations to move forward to have a more evidence-based approach in terms of what conditions of release and type of bond will mitigate the risk presented
- This research has not been done—John Jay College symposium recently concluded there are 30+ areas of necessary research that has not been done (see materials)
- Anne Milgram: We were “stunned by the lack of information”
- We have also been advocating for system-wide benefit cost-analyses



## Effectiveness of Surety Bonds

- Peer-reviewed academic studies back the effectiveness of surety bonds as the most effective form of release:



## Effectiveness of Surety Bonds

*“Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time.”*

THE UNIVERSITY OF CHICAGO  
THE LAW SCHOOL

The Journal of  
LAW & ECONOMICS

Eric Helland, Claremont-McKenna College  
Alexander Tabarrok, George Mason University  
*The Fugitive: Evidence on Public Versus Private Law Enforcement on Bail Jumping, 2004*



## Effectiveness of Surety Bonds

*“This analysis suggested that net of other effects (e.g., criminal history, age, indigence, etc.—see technical appendix), defendants released via commercial bonds were least likely to fail to appear in court compared to any other specific mechanism. This finding was consistent when assessed for all charge categories combined and when the data were stratified by felony and misdemeanor offenses, respectively.”*




Robert G. Morris, Ph.D.,  
Associate Professor of Criminology, University of Texas at Dallas  
Director, Center for Crime and Justice Studies






### Effectiveness of Surety Bonds

*“Compared to release on recognizance, defendants on financial release were more likely to make all scheduled court appearances.”*



U.S. Department of Justice  
Bureau of Justice Statistics  
State Court Processing Statistics 1990-2004  
Release of Felony Defendants in State Courts


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### Bail Systems—Get Local

- Do not reform Michigan’s bail system based on national talking points or where Michigan fits in rankings
- Strive to find balance in the system
- Example—in a jail in California 30% of all defendants awaiting trial are facing homicide charges
- Costs at the local level must be considered—the D.C. system may be a fine system, but is it more “fair”?
- One Judge: “They have a lot of nice bells and whistles down there that would be nice to have, but which we cannot afford.”


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### Bond Schedules

- Litigation being pursued to suggest they are unconstitutional—*Clanton, Buffin, O’Donnell, Welchen, etc.*
- Novel equal protection theory—if someone can afford their bail, then unfair for poor person to wait at all
- It is settled law for a generation that using bond schedules is constitutional as an interim, temporary measure
- The key is timely and meaningful consider—Tuesday’s gone.
- Clanton settlement order still sets money bail in all cases at \$500 (materials)


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### Bond Schedules

- Best practices—setting bail in all cases 24 hours a day upon a full hearing with full representation. Not cheap or constitutionally required, so keeping schedules around is typically needed in most jurisdictions. Judges then smooth out the edges.
- Schedules were created to allow for releases when court is not in session.
- Only order not overturned of the recent cases stands for proposition that bail schedules do not violate the equal protection clause. (*Welchen v. Harris*, materials)
- Looking at the due process issues makes sense


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### What do the Reforms Tell Us

- **The cost of eliminating the use of monetary conditions of bail is borne directly by local governments, the judiciary, and defendants, and the savings will not offset costs**
- In New Jersey, the cost is going to be at least \$62 million annually in year one, total economic cost of \$510 million.
- Throwing out the entire system due to a new philosophy that monetary bail is blanket “unfair” is bad public policy—discovering the real issues and solving them with all partners at the table achieves accountability and progress


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### Jefferson County, CO – Where it all Began

- Eliminating the bail schedule, going to assessments and supervision, and reducing monetary bail combined, during a time when crime was falling to:
  - Increase the average daily pretrial population and increased the average pretrial length of stay by 29%
  - Increase the number of people staying in more than one day by 141%
  - Increase the number of outstanding warrants by 42% in felonies and 34% in misdemeanors
  - Increase the percent of the pretrial population in the jail from 35% to 42%
  - “Did not save budget dollars.” (see letter in materials)

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## Costs of Supervision and Monitoring

- It is not free—someone must pay
- Monthly tabs in many jurisdictions can be as high as \$500 (see IBT Article re: Antonio Green case)
- Even a \$100 a month tab will add up to \$1,000 over 10 months—that is a financial condition of bail, to be borne by a county government or a defendant
- Continuous payments can ensnare defendants—miss a payment, what happens? Re-arrest?
- Who will pay for the indigent? Someone must pay
- California—Criminal Uber



## Costs of Supervision and Monitoring

“You go to the National Association of Pretrial Services Conference, or the American Parole and Probation Association, and in the vendor room is all this technology for tracking,” says Cherise Burdeen. They portray it as a great technology, and they tell all these county folks, **“This doesn’t cost you anything; the defendant pays for it all!”**



## We Support Judicial Discretion

- Everyone loves judicial discretion...until they lose!
- We support judges making informed bail decisions—judges, not computers, should set bail
- We think surety bail should always be an option if it is the least-restrictive and the most appropriate form of release
- Surety bail will prove its worth in a local jurisdiction or not
- Eliminating all financial conditions has much bigger implications than eliminating surety bail agents
- “Bail as a last resort” could be potentially unconstitutional



**We are here to help**

Thank you for your time

## **- Determination of Bail – Brief Overview of Statutes and Court Rules**

### **MCL 765.6**

(1) Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

- (a) The seriousness of the offense charged.
- (b) The protection of the public.
- (c) The previous criminal record and the dangerousness of the person accused.
- (d) The probability or improbability of the person accused appearing at the trial of the cause.

### **MICHIGAN COURT RULE 6.106 - PRETRIAL RELEASE -**

(A) In General. At the defendant's arraignment on the complaint and/or warrant, unless an order in accordance with this rule was issued beforehand, the court must order that, pending trial, the defendant be

- (1) held in custody as provided in subrule (B);
- (2) released on personal recognizance or an unsecured appearance bond; or
- (3) released conditionally, with or without money bail (ten percent, cash or surety).

(B) Pretrial Release/Custody Order Under Const 1963, art 1, § 15.

- (1) The court may deny pretrial release to: *See full text of MCR 6.106*
- (2) A "violent felony" within the meaning of subrule (B)(1) is a felony, an element of which involves a violent act or threat of a violent act against any other person.
- (3) If the court determines as provided in subrule (B)(1) that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order, excluding delays attributable to the defense, within which trial must begin or the court must immediately schedule a hearing and set the amount of bail.
- (4) The court must state the reasons for an order of custody on the record and on a form approved by the State Court Administrator's Office entitled "Custody Order." The completed form must be placed in the court file.

(C) Release on Personal Recognizance. If the defendant is not ordered held in custody pursuant to subrule (B), the court must order the pretrial release of the defendant on personal recognizance, or on an unsecured appearance bond, subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, unless the court determines that such release will not reasonably ensure the appearance of the defendant as required, or that such release will present a danger to the public.

(D) Conditional Release. If the court determines that the release described in subrule (C) will not reasonably ensure the appearance of the defendant as required, or will not reasonably ensure the safety of the public, the court may order the pretrial release of the defendant on the condition or combination of conditions that the court determines are appropriate including: *See full text of MCR 6.106*

(E) Money Bail. If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in subrule (D), may be required.

(F) Decision; Statement of Reasons.

(1) In deciding which release to use and what terms and conditions to impose, the court is to consider relevant information, including

- (a) defendant's prior criminal record, including juvenile offenses;
- (b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution;
- (c) defendant's history of substance abuse or addiction;
- (d) defendant's mental condition, including character and reputation for dangerousness;
- (e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;
- (f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;
- (g) the availability of responsible members of the community who would vouch for or monitor the defendant;
- (h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and
- (i) any other facts bearing on the risk of nonappearance or danger to the public.

(2) If the court orders the defendant held in custody pursuant to subrule (B) or released on conditions in subrule (D) that include money bail, the court must state the reasons for its decision on the record. The court need not make a finding on each of the enumerated factors.

(3) Nothing in subrules (C) through (F) may be construed to sanction pretrial detention nor to sanction the determination of pretrial release on the basis of race, religion, gender, economic status, or other impermissible criteria.