

final minutes

Criminal Justice Policy Commission Meeting

9:00 a.m. • Wednesday, April 5, 2017

Senate Appropriations Room • 3rd Floor State Capitol Building

100 N. Capitol Avenue • Lansing, MI

Members Present:

Senator Bruce Caswell, Chair
Stacia Buchanan
Sarah Lightner
Representative Vanessa Guerra
D. J. Hilson
Sheryl Kubiak
Barbara Levine
Representative Jim Runestad (teleconference)
Sheriff Lawrence Stelma
Jennifer Strange (teleconference)
Judge Paul Stutesman
Andrew Verheek

Members Excused:

Senator Patrick Colbeck
Senator Bert Johnson
Kyle Kaminski
Laura Moody
Judge Raymond Voet

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. Reappointment/Expiration of Terms Update

The Chair directed the members' attention to an email that was sent on March 6, 2017 regarding information on CJPC reappointments and the March 27, 2017 letter from the Governor that reappoints Commissioners Hilson, Levine, Stelma and Verheek to the Commission for terms that expire on March 1, 2021 (see attachments for more details).

III. Approval of March 1, 2017 Meeting Minutes

The Chair asked members if there are any corrections or additions to the proposed March 1, 2017 CJPC meeting minutes. Commissioner Kubiak ask that the words "the Diversion Council that reported" be deleted in section VI after "from" and "who" be added after "Services" in in the third sentence. There was no objection to these changes. The Chair asked if there were any other corrections. There were none. **Commissioner Lightner moved, supported by Commissioner Hilson, to approve the minutes of the March 1, 2017 meeting as amended. There was no further discussion. The minutes were approved by unanimous consent.**

IV. Recommendations Approved by the Commission

The Chair noted that a list of all the recommendations approved by the Commission to date can be found in the meeting packet (see attachment).

V. Update on Study of County Costs to Redirect 17-Year-Olds to Juvenile Justice System

The Chair announced that Hornby Zeller Associates, Inc. has been selected to conduct the study of county costs to redirect 17-year-olds to the juvenile justice system. He called on the firm's representatives present at today's meeting to come forward and introduce themselves. Dr. Dennis Zeller introduced himself and provided background on the firm's previous work on similar juvenile justice projects. Karen Hallenbeck and Margo Hogeland from Hornby Zeller Associations, Inc. were also present and available to answer questions. Ms. Hallenbeck noted that she will be present at the CJPC monthly meetings and will share progress updates each month.

VI. Discussion of the Impact of Reducing or Eliminating the Use of Cash Bail

The Chair noted that information on the cash bail issue distributed since the last meeting was included in today's meeting packet (an article from The American Bail Coalition (see attachment) and the risk assessment tool used by Oakland that Barb Hankey sent in response to a request made at the last CJPC meeting). A general discussion of the issue followed. Commissioner Hilson commented that he appreciates the need for an assessment to be done prior to arraignment, however, he struggles with the idea of the complete elimination of the bail system. The Chair inquired about the constitutional questions surrounding the bail issue and wondered how often people are kept in jail because they cannot meet bail. He asked if this data is collected in the Judicial Data Warehouse (JDW). Based

on an email from Dawn Monk of SCAO, Judge Stutesman does not believe the JDW currently collects this information. The Chair then asked CJPC Data Administrator Grady Bridges to research whether data regarding the ability to meet bail is reported to Appriss. Sheriff Stelma suggested that maybe the question to look at should be whether the amount of bail set is reasonable to the crime. The creation of a subcommittee that could identify all the questions that need to be asked and determine what data should be collected was considered. After further discussion, the Chair created the Bail Bond Reform Subcommittee and appointed Commissioners Buchanan, Hilson, Verheek, and Voet as members. He directed the subcommittee to meet, select a chair, and prepare a recommendation for the Commission to consider that includes a list of the type of data that should be collected and tracked from the courts, how often an assessment tool is used prior to bond being set, and a review of other issues that involve judicial discretion and the presumption of release. To assist in the subcommittee's efforts, Commissioner Verheek will share the code book used and the data his pre-trial group has collected. Commissioner Hilson will obtain the email Judge Stutesman received from SCAO. Mr. Bridges noted that additional funding for SCAO has been requested to cover not only the collection of additional data, but to also hire two additional employees to assist in the development of the assessment tool to be used, training on the use of the assessment tool, and the handling and building of the data infrastructure. Commissioner Kubiak asked for clarification as to whether it is appropriate for the data subcommittee to work with a representative from SCAO that they have invited to be a non-voting member of the data subcommittee on Senator Colbeck's bill. The Chair responded that he is not comfortable with the Commission recommending a specific bill to the legislature, but the subcommittee can provide information and guidance to the legislature, if asked.

VII. Recommendation to the Legislature for Uniform Jail Management System

The Chair noted that no new information is available yet on this agenda item.

Discussion of a Data Analysis Expert

Commissioner Kubiak reported that, at the last Commission meeting, she had suggested a cost-benefit analysis expert be brought in to be a consultant to the Commission on the Study of County Costs to Redirect 17-Year-Olds to Juvenile Justice System. Mr. Bridges reported there should be sufficient funds available for the Commission to hire an expert to review the proposed methodology Hornby Zeller plans to use in the study and the draft report that is to be presented in November. Dr. Zeller commented that he has no problem with the Commission's efforts in this regard as he wants the report to be as credible as possible. **Commissioner Verheek moved, supported by Commissioner Lightner, that the Commission prepare a Request for Quote to hire a cost-benefit analysis expert to review the methodology and data used in the study. There was no further discussion. The motion was approved by unanimous consent.**

VIII. Request from Dr. Jennifer Johnson, Michigan State University, Michigan Mental Health and Justice Center Consortium Partner

The Chair directed members' attention to an invitation the Commission received from Dr. Jennifer Johnson to be a Consortium Partner for an application for a cross-disciplinary, academic-practice-community partnered P50 Center application to the National Institute of Mental Health (see attachment for more details). A discussion of whether the Commission should accept the invitation followed. **Commissioner Levine moved, supported by Commissioner Buchanan, to accept the invitation from Dr. Jennifer Johnson to be a Consortium Partner for the National Institute on Mental Health application and send a letter of support. There was no further discussion. The motion was approved by a majority of the members present and serving.**

Yeas—6: **Commissioner Buchanan**
 Representative Guerra
 Commissioner Hilson
 Commissioner Levine
 Commissioner Strange
 Commissioner Verheek

Nays—4: **Chair Caswell**
 Commissioner Lightner
 Commissioner Stelma
 Judge Stutesman

Commissioner Kubiak abstained from voting on the motion.

IX. Mental Health Subcommittee Update

The Chair called on Commissioner Strange for an update. She reported that the revised memorandum was sent to CJPC Data Administrator Grady Bridges. Mr. Bridges acknowledged receipt of the revised memorandum and noted that a draft of an online survey as well as a revised letter have been prepared. He will share this with the Mental Health Subcommittee after today's meeting.

X. Data Subcommittee Update

Commissioner Kubiak noted the subcommittee updates were already discussed, but inquired if Mr. Bridges can move forward on the straddle cell study now that the study of 17-year-olds is underway. Mr. Bridges offered that it would be appropriate for the data subcommittee and Chair Caswell to finalize that at the next subcommittee meeting. Commissioner Kubiak thought that the straddle cell study had already been put in the queue at a previous meeting which may have pre-dated Mr. Bridges arrival.

XI. Commissioner Comments

The Chair asked if there were any comments from the Commissioners. Commissioner Lightner inquired if the July 5 meeting can be moved to July 12. Commissioner Verheek would also preferred the meeting date be moved to July 12. The Chair polled other members and most are available on the July 5 meeting date. He noted the meeting date would remain July 5 and Commissioners Lightner and Verheek agreed to call into the July meeting.

XII. Public Comments

The Chair asked if there were any public comments. Mr. James Rayman was present and offered suggested changes to the criminal justice system. His written testimony is attached to these minutes. There were no other public comments.

XIII. Next CJPC Meeting Date

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

XIV. Adjournment

There was no further business. The Chair adjourned the meeting at 10:43 a.m.

(Minutes approved at the May 3, 2017 Criminal Justice Policy Commission meeting.)

Susan Cavanagh

From: Susan Cavanagh
Sent: Monday, March 06, 2017 12:41 PM
To: 'Allison Paris'; Andrew G. Verheek (andrew.verheek@kentcountymi.gov); Barbara Levine (blevine@capps-mi.org); Bruce Timmons; D.J. Hilson; Grady Bridges; Jennifer Strange; 'Jim Runestad'; 'Jim Runestad-Private'; Joanne DeHetre-Senator Colbeck Staff; Joy Brickerson - Senator Johnson Staff; Krista Jones - Rep Runestad Staff; Kyle D. Kaminski; Laura Moody; Lawrence A. Stelma; Nick Plescia; Penny Crider - Senator Colbeck Staff; Sarah Lightner; Senate Patrick Colbeck - Private; Senator Bert Johnson; Senator Bert Johnson - Private; Senator Bruce E. Caswell; Sheryl M. Pimlott-Kubiak; Stacia J. Buchanan; The Honorable Paul Stutesman; The Honorable Raymond Voet; 'Vanessa Guerra'; 'Vanessa Guerra-Private'
Subject: CJPC Reappointments

Senator Caswell has asked me to share the following information regarding CJPC reappointments:

The standing operating procedure for reappointments is to allow appointees to continue to serve in their usual capacity until a successor has been appointed unless specifically prohibited by statute. The Governor's office, having reviewed the statute, has interpreted it as allowing the commissioners to legally continue in their roles.

Thank you,

Susan Cavanagh

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STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

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2017 MAR 31 PM 3:56
ELECTIONS/GREAT SEAL

BRIAN CALLEY
LT. GOVERNOR

March 27, 2017

The Honorable Ruth Johnson
Secretary of State
Office of the Great Seal
Michigan Department of State
Lansing, Michigan 48909

Dear Secretary Johnson:

Please be advised of the following appointments to office:

Criminal Justice Policy Commission

Dale J. Hilson of 1068 Dykstra Court, Muskegon, Michigan 49445, county of Muskegon, representing prosecuting attorneys, succeeding himself, is reappointed for a term expiring March 1, 2021.

Barbara R. Levine of 9685 Looking Glass Brook Drive, Grand Ledge, Michigan 48837, county of Clinton, representing advocates of alternatives to incarceration, succeeding herself, is reappointed for a term expiring March 1, 2021.

Lawrence A. Stelma of 14601 Cedar Springs Avenue, Cedar Springs, Michigan 49319, county of Kent, representing county sheriffs, succeeding himself, is reappointed for a term expiring March 1, 2021.

Andrew Verheek of 901 Argo Avenue, SE, Grand Rapids, Michigan 49546, county of Kent, representing Michigan Association of Community Corrections, succeeding himself, is reappointed for a term expiring March 1, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Snyder".

Rick Snyder
Governor

Adopted CJPC Recommendations
as of 4/5/2017

Recommendation approved at the September 2, 2015 CJPC Meeting:

1. “In order to properly inform the recommendations of the Criminal Justice Policy Commission, it is necessary to have a robust centralized data collection system. The Commission believes that data must be collected from prisons, jails, probation departments, parole systems, community corrections, courts, juvenile justice, law enforcement arrest data, and specialty courts. The building of this system must meet the requirements of the Headlee amendment. Information in this system must be accessible by the Michigan Department of Corrections, the Supreme Court Administrators Office, and other pertinent entities. Based on this information, we respectfully encourage the legislature to review the data when formulating new criminal justice legislation.”

Recommendations approved at October 7, 2015 CJPC Meeting:

2. “It is the recommendation of the Commission that no immediate action be taken pursuant to the changes brought about by the Lockridge decision of the Michigan Supreme Court. It is the recommendation of the Commission that data on sentencing, community placement, and prison entries be tracked to determine changes that may be occurring because of this decision and to develop Commission recommendations as needed to modify the guidelines.”
3. “It is recommended by the Criminal Justice Policy Commission that sentencing guidelines be kept as the best method for reducing disparity, increasing sentence predictability, and promoting proportionality, while continuing to be transparent. The current guidelines have reduced sentence disparities and increased predictability across the state since their adoption. It is important that the Commission be retained so that continuing research on this issue may be enhanced and presented to the legislature for their discussion.”
4. “It is the recommendation of the Criminal Justice Policy Commission to establish a subcommittee to examine and analyze the data elements outlined in the governing statute. Data elements included in the statute include use of jails/prisons, sentencing patterns at the local level (including misdemeanors), effectiveness of sentencing guidelines, and recidivism (e.g. re-arrest, returns to prison). Once these elements have been examined, the subcommittee can expand its functions to include the analysis of other aspects of the criminal justice system (e.g. juvenile justice, specialty courts, prosecuting attorneys, criminal defense, mental health, and substance abuse). In the process of examination and analysis the subcommittee will identify any areas lacking information that would be needed by the Commission to recommend sound public policy options to the legislature and Governor.”

Recommendations Approved at January 6, 2016 CJPC Meeting

5. “In order to provide the legislature and Governor with an accurate evidence-based analysis of the criminal justice system in an on-going manner, the Criminal Justice Policy Commission makes the following recommendation: It is recommended that the legislature fund on-going research, data collection, and data system implementation activities in the amount of \$500,000 for the Criminal Justice Policy Commission. This will enable the Commission to provide the legislature and Governor with on-going research and analysis of all facets of the criminal justice system for their use in establishing legislation. It is further recommended that this funding be separate from the Michigan Department of Corrections budget.”
6. “It is the recommendation of the Criminal Justice Policy Commission that the Commission track and analyze data for three different measures of recidivism—re-arrest recidivism, re-conviction

recidivism, and re-incarceration recidivism in prison or jail of an individual within three (3) and five (5) years of their release from incarceration, or placement on probation, or conviction, whichever is later. All measures of recidivism are to include probation and parole violations as well as misdemeanors and felonies. It is further recommended that data on technical violators be collected separately from new crime violators. "

Recommendation Approved at the February 3, 2016 CJPC Meeting

7. "It is the recommendation of the Criminal Justice Policy Commission that monies should be more equitably distributed between evidence-based programs to serve the parole and probation populations. Evidence-based programs designed to help these populations are quite different in each programmatic area and need to be funded for success. Appropriately funded evidence-based programs that result in success for probationers have the potential to save the taxpayers significant money by avoiding the high cost of incarceration while effectively preventing crimes. Evidence-based programs must be evaluated utilizing an objective evaluation tool that measures both process and outcomes to determine effective programming that will result in reducing the number of those who recidivate."

Recommendation Approved at May 4, 2016 CJPC Meeting

8. "The Criminal Justice Policy Commission feels that each citizen bears personal responsibility for his/her actions. The citizens of this state have a right to impose punishment on those negative actions that impact the well-being of individuals and safety of our communities through the criminal justice system, with the goal being to prevent crime and hold individuals responsible for their actions. As a result, punishment (e.g. fines, diversion, supervision, confinement) is a component of the criminal justice system, but this punishment must be commensurate with the impact of the negative actions, and should be consistent for offenders committing similar crimes with similar criminal histories.

In addition, the Criminal Justice Policy Commission also recognizes that society in general will benefit if the perpetrators of crime can be rehabilitated, and, as a result, not return to a life of crime when released from probation, jail or prison. Evidence-based options and tools for rehabilitation should be available throughout the criminal justice continuum, from arrest through discharge from supervision."

Recommendation Approved at the August 3, 2016 CJPC Meeting

9. "Although an offender's criminal history is clearly related to his risk of recidivism, the risk predictive accuracy of each guidelines system's criminal history score and all score components should be validated using recidivism data. The risk-prediction value of each score component should also be measured against the added costs and other negative consequences of the sentence enhancements associated with that component."

Recommendation Approved at the December 7, 2016 CJPC Meeting

10. "The Commission recognizes that there is a significant amount of incarcerated persons with mental illness, who are at times routed to the criminal justice system due to a lack of immediate and accessible crisis intervention services. The Commission recommends that the creation of local or regional crisis centers and crisis intervention training for local law enforcement agencies be supported as a viable option for stabilization of mental health crises and that this venture is a partnership between local and state governments. Compassion for those people with mental health issues is of importance, but must also be balanced with the safety of the community and the sharing of financial burden by state and local governments for providing such services."

11. Information from Chair Caswell:



Bail Reform in 2017—Key Talking Points and Summary of Collected Research Regarding the Proposed Shift to the “No Money” System

Link to dropbox materials: <https://www.dropbox.com/sh/7tjqyokm3idm5x/AAA4X5eWtphj5BeJ8HWlqwPea?dl=0>

The “No-Money” Bail System is The Current Fad—States Cannot Afford It, and It May be Harmful to Defendants

--Eliminating all monetary bail means moving to the federal system or the Washington, D.C. system. Preventative detention serves as the only basis for detention. This is a key decision-point.

--Many of the reformed jurisdictions, like Kentucky, still widely use monetary conditions of bail—they simply do not have licensed commercial bail bonding agents in their state and require instead defendants to post cash.¹ The no-money bail movement would cause a dramatic shift in Kentucky’s system if it were to be implemented there.

--The no-monetary bail system involves two options: preventative detention (which serves as the only means to keep someone in the custody of the state) and release on recognizance with or without supervision by the state.² Preventative detention must cover all crimes where a person could be held in jail preventatively, which is a much larger list than the current homicide crimes and the two other specific exceptions.³ Thus,

¹ Kentucky has recently gone from a majority of defendants on a monetary bail condition to about 1/3 of all defendants being released on a monetary bail condition.

² See constitutional provisions from New Jersey [https://ballotpedia.org/New Jersey Pretrial Detention Amendment, Public Question No. 1 \(2014\)](https://ballotpedia.org/New_Jersey_Pretrial_Detention_Amendment_Public_Question_No._1_(2014)), New Mexico (proposed) [https://ballotpedia.org/New Mexico Changes in Regulations Governing Bail, Constitutional Amendment 1 \(2016\)](https://ballotpedia.org/New_Mexico_Changes_in_Regulations_Governing_Bail_Constitutional_Amendment_1_(2016)) and Report from Arizona Judicial Council re: proposed constitutional changes to implement the no-money bail system, recommendation #45 <http://www.azcourts.gov/LinkClick.aspx?fileticket=bmECOPU-FD8%3d&portalid=74>.

³ For example, Article I, Section 12 of the California Constitution:

“A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;
(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion”



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nearly all state constitutions would have to be changed to implement the no-money bail system.

--Criminal defense lawyers and the ACLU fought vigorously against the expansion of preventative detention leading up to the federal bail reform act of 1984 due to the potential increase in incarceration of defendants who would be detained with no bail.⁴ The no-money bail movement points to the federal system as a model which, at the time, the District of Columbia system was sold as a model for the entire federal system to adopt.

--In fact, in the federal system, 64% of all arrestees are preventatively detained.⁵ The Federal Bail Reform Act of 1984, which eliminated bail schedules and moved to a risk based system, increased pretrial detention by 267% between 1983 and 2010 measured by those who never get out of jail pending trial. The numbers also show the percentage of those who spend some time in jail has not changed, and that the population of those who were previously not jailed is the population that is being detained at increasing rates. In Washington, D.C. that number is only 15-20% detained the entire period between arrest and disposition; however, it is higher than other states including New York, which was only at 9.7%. Recent data from Connecticut indicated that only 7.46% of defendants were incarcerated the entire period. The move to this no-money, risk-based bail system may prove to increase incarceration.

--In addition, the Riverside Federal Public Defender recently questioned the consistency of the federal system, calling it the “do as I say, not as I do” Justice Department, criticizing the Department for trying to reform local bail systems while presiding over a broken federal bail system. This article notes that the Federal system is widely inconsistent in its use of preventative detention, indicating the extreme potential for abuses in that system.⁶

--Costs of this move are high—D.C. expects costs of \$61 million annually, and New Jersey is trying it, with expected net economic costs of \$500 at full implementation.⁷ The counties are continuing to call for delays due to lack of resources and New Jersey Governor Chris Christie has called on the Attorney General to do a new cost estimate.⁸

--The New Mexico Legislature rejected the bail/no-bail system and instead adopted a compromise that provided for expanded preventative detention and expedited bail review hearings on a 69-0 vote. The key is that the right to be free from being jailed “solely due

⁴ <https://library.cqpress.com/cqalmanac/document.php?id=cqal81-1173164>

⁵ See <https://www.bjs.gov/content/pub/pdf/pdmfdc9510.pdf>

⁶ See enclosed article.

⁷ See studies from Towson University in materials.

⁸ See enclosed economic impact studies and other collected materials on the costs of bail reform in New Jersey.



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to inability to pay” was limited in the sense that it was not self-executing, i.e., a motion must be filed and the defendant must show that he or she was being held solely due to inability to afford the bail and that he or she is not a danger to the community or a flight risk. This example represents sensible compromise on both ends of the spectrum that still preserves judicial discretion to set bail in all cases in the middle, and in particular where there are flight risks or risks to public safety that warrant high bail when the prosecutor either cannot or does not prove a case by clear and convincing evidence.

--Most defendants cannot afford the cost of supervision which, in many jurisdictions, is more than a significant bail bond. This sets them up to fail on supervision by expansive electronic monitoring.⁹

Monetary Bail Conditions are Constitutional Contrary Claims by Legal Activists Having Filed a Litany of Copy-Cat Lawsuits

--Despite the widespread allegations of the unconstitutionality of bail by trying to couch bail as a debtors’ prison issue, none of the alleged cases holding that someone who cannot “afford” bail has their right to equal protection violated have been decided by a U.S. Court of Appeals. One case, *Walker v. Calhoun*, has gained a dispositive, positive ruling by a U.S. District Judge, which is pending on appeal before the U.S. Court of Appeals for the 11th Circuit.

--In a brief filed by former U.S. Solicitor General Paul Clement, he makes it undoubtedly clear that monetary conditions of bail are constitutional.¹⁰ The brief also explores the constitutional boundaries of bail which may assist in policy-making and understanding in this area. Other briefs were filed in support of the constitutionality of bail from other *amici* including the Georgia Sheriffs Association, the International Municipal Lawyers Association, the Georgia Municipal Association, and the Alabama Municipal Association.

--On October 11, 2016 (order in materials), in the case *Welchen v. Kamala Harris.*, U.S. District Judge Troy Nunley dismissed the equal protection bail claim that underlies this entire movement.

--Chief Judge Craig DeArmond of Illinois issued a lengthy position paper against moving to the no-money bail system in September, 2016, which is included in the materials.

⁹ See the article, Chain Gang 2.0 article regarding Antonio Green. <http://www.ibtimes.com/chain-gang-20-if-you-cant-afford-gps-ankle-bracelet-you-get-thrown-jail-2065283> Also, note that there are lawsuits in several jurisdictions challenging the constitutionality of re-jailing people who cannot afford their pretrial supervision.

¹⁰ See attached *amicus* briefs filed in *Walker v. Calhoun Georgia*, as case pending in the U.S. Court of Appeals for the 11th Circuit. All of the briefs filed in the case are here: <https://www.dropbox.com/sh/z2ew0fa4u8mc4ck/AAB4ezJQqg8sZ6gz9TScQcbsa?dl=0>



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Bail Reform Becomes Clearer When We Reject the Bail-No-Bail Mentality and Focus on the Systemic Problems in a Particular Bail System at the State or Local Level

--The art of bail is sorting people into the right categories, which minimizes the risk of flight and risk to the community in light of community conditions and resources. Periodical adjustments are always necessary. No system is perfect.

--The appropriate use of monetary conditions of bail is evidence-based, and the effectiveness of it is supported by peer-reviewed academic research.¹¹ Yet, it is only one of the means of release, and should not be unnecessarily over-used.

--Non-monetary holds have a greater impact than an unposted security in keeping people in jail. In one study of the Los Angeles County Jail, 88% of defendants for whom a bail had been set in a case had some other administrative or legal hold that preventing them from bailing out of jail.¹² Do all of these holds make sense? Kaleif Browder, for example, was on a probation hold. Some analysis of these holds should be conducted—if a low-level probationer on a low-level new crime is held without bail, does that make sense? Should that person be bailable pending disposition of probation violation and new crime?

--Due process reforms may be preferred—are the procedures adequate under state and federal law so that defendants may properly and quickly assert their right to be free from excessive bail in front of a judge? Most due process issues have occurred at the local level. States must consider if the time for a bail review, while constitutional, is too long from a policy perspective. The trend is moving toward that of the Clanton, Alabama settlement (48 hour *de novo* review of bail set by a schedule.)

--Pre-arrest or pre-detention evaluation—avoid arresting people who will get a recognizance release.

--Administrative reforms—the time from arrest to bail out typically can be shortened.

--Fugitive Recovery issues—national survey highlights problems in state and local processes when dealing with the return of fugitives who have been located and apprehended in foreign jurisdictions.¹³

--Effectiveness of supervision and sorting appropriate persons to supervision.¹⁴

¹¹ See enclosed collected articles and report from Santa Clara County Board of Supervisors Working Group.

¹² See enclosed study of the Los Angeles County jail by the ACLU of Central California.

¹³ See enclosed survey.

¹⁴ In two touted programs, Washington, D.C. and Mesa County, Colorado, the new crime rates while on supervision were 29.7 and 20 percent respectively. See enclosed reports.



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--Benefit-cost analysis of the system in light of cost of failure to appear, impact on communities and victims, etc.¹⁵

--Making sure defendants have adequate counsel so that they can assert their Eighth Amendment rights to assert their right to be free from excessive bail.

--Speedy-trial reforms reduce pretrial incarceration for all categories of defendants, whether preventatively detained, held on a non-monetary hold, or held in lieu of posting a financial bail and allow victims and the community to get justice more quickly.

--Finding solutions through industry-partnerships to provide access to bail, which is the least restrictive form of release other than recognizance, when it can be provided to a defendant.¹⁶

Is the Move to Predictive Algorithms to Replace or Inform Judicial Decisions Appropriate?

--Recently predictive algorithms (risk assessments) are coming under increasing scrutiny as they are failing to be predictive and have had a negative impact on protected classes potentially running afoul with the federal constitution.¹⁷ Former Attorney General Eric Holder has also questioned the use of demographic factors in risk-based instruments.¹⁸

--San Francisco Public Defender Jeff Adachi recently criticized the Arnold Foundation PSA Risk Assessment tool, suggesting that it has negative racial implications and incarcerates more people.¹⁹

--Can the algorithms co-exist with consideration of constitutional factors, statutory factors and other information?

--If we move to a no-money bail system, will the algorithms combined with judicial discretion hurt protected classes more than if they had access to monetary bail as an alternative to preventative detention?

--Need for appropriate safeguards—the National Association of Legal Defenders issued a recent report detailing the significant issues with the use of risk assessments that require consideration and necessary safeguards.²⁰ Also, a recent Wisconsin Supreme Court

¹⁵ The Robert Morris study in the materials is one example of this.

¹⁶ The vast majority of defendants are provided a bail bond by a third-party. It may be that some portion of defendants could be release-able, and thus the least restrictive form of release would be to provide a person access to a commercial surety rather than force them into intrusive supervision by the state.

¹⁷ See collected articles enclosed. This study has been widely cited: <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> This link has a list of over a dozen academic articles discussing the use of big data in criminal justice and the potential problems: <https://epic.org/algorithmic-transparency/crim-justice/>

¹⁸ <http://time.com/3061893/holder-to-oppose-data-driven-sentencing/>

¹⁹ See article from Jeff Adachi in materials.

²⁰ See report in collected materials.



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decision, while in sentencing context, discusses the necessary legal safeguards surrounding the use of big-data predictive algorithms.²¹ These issues in the pretrial context have not been well-studied. For example, the Wisconsin Supreme Court indicated that the algorithms cannot make a recommendation as to custody, but that is widely the case in the pretrial context.

--Delaware's risk assessment was determined to be invalid.²²

We Are Here As Resource

--Thank you for your time—we are always happy to provide any further information or assist you as you think about bail and bail reform.

Contacts for Further Information

Jeffrey J. Clayton, Executive Director, American Bail Coalition, 303-885-5872,
jclayton@americanbail.org

²¹ <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=171690>

²² See report in materials.



Jennifer Johnson, Ph.D.

C. S. Mott Endowed Professor of Public Health
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March 28, 2017

Dear Chair Caswell and Criminal Justice Policy Commission Members:

We would like to invite you to be a Consortium Partner for an application for a cross-disciplinary, academic-practice-community partnered P50 Center application being submitted to the National Institute of Mental Health (NIMH) this May. The application's title will be: "Accelerating the reach and impact of mental health services for justice-involved individuals: The Michigan Mental Health and Justice Center." The goal of the Center is to bring together academic and community partners to accelerate the pace of cross-disciplinary research to solve systemic barriers to optimal mental healthcare and service linkage for justice-involved individuals with mental illness, especially those with serious mental illness and those at risk for suicide. We would love to have your organization as a Consortium Partner because of your practice and policy work and experience in this area.

As a Consortium Partner, we would ask you to:

- Have a member of your organization attend quarterly Consortium meetings by videoconference and/or telephone
- Provide input into and help shape Center direction and plans for evaluation and dissemination
- Bring practice and policy questions related to better mental healthcare and service linkage for justice-involved individuals to Center Investigators
- Provide feedback on the relevance, implications, and strategies for real-world roll-out of Center findings

We would also invite you to:

- If desired, participate in discussions with Center Investigators about how your practice and policy questions could best be answered
- If desired and appropriate, partner with Center Investigators in research answering your practice and policy questions

Potential benefits of Consortium Partnership include:

- Having regular conversations with a wide range of academic, justice agency, mental health agency, and community partners (including local, state, and national partners) about potential systems-level solutions to addressing mental illness among justice

involved individuals

- Synergies of ideas and approaches across systems
- Access to cutting-edge research and national experts
- Opportunities to get matched with researchers to get your questions answered either directly or through working together on projects of mutual interest to find out the answer
- Possible opportunities to get matched with students/trainees who can provide support on smaller evaluation projects
- Invitations for you and your staff to attend monthly lectures, trainings, and workshops either in person or by video conference, as well as regular notification of other relevant trainings and workshops held by our other Consortium Partners
- Having your events, trainings, and workshops listed on our Center website and email list
- Getting officially listed and recognized as a Consortium Partner on this NIMH-funded project
- The opportunity to help shape the direction of a nationally-recognized, systems-focused research effort
- In summary, networking and new partnership opportunities.

The application for the Center Grant will be submitted on May 17, 2017. It has about a 25% chance of getting funded. If funded, the project will likely start March 1, 2018. We should know more about whether or not it is getting funded in November of 2018.

If you are willing to be a Consortium Partner, please personalize/sign a letter of support (see draft on the next page) and send it to: Jennifer.Johnson@hc.msu.edu (address above) by May 1, 2017 (sooner if possible). Also, if you are willing to take a moment to fill out our initial survey, it would be much appreciated, though this is not required.

Thank you very much!



Jennifer E. Johnson, Ph.D.

(Sample 'Letter of Support' to be placed on letterhead)

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March 29, 2017

Dear Dr. Johnson:

On behalf of (organization), I am pleased to write this letter indicating our willingness to serve as a Consortium Partner for your proposed project, "Accelerating the reach and impact of mental health services for justice-involved individuals: The Michigan Mental Health and Justice Center" that will be submitted to the National Institute of Mental Health (NIMH). We welcome the Center's plans to bring academic, practice, policy, and community partners together to foster cross-disciplinary research addressing systemic barriers to optimal mental healthcare and service linkage for justice-involved individuals with mental illness, especially those with serious mental illness and those at risk for suicide.

We are thrilled that through this Center and collaboration, we will have the opportunity to have regular conversations with a wide range of academic, justice, mental health, and community partners about potential systems-level solutions to addressing mental health issues among justice-involved individuals. We look forward to the synergy of ideas and approaches to these problems that the Center will provide. We also look forward to providing input into Center directions and relevant research questions, and potentially to partnering with investigators and students to answer questions of interest to us. We appreciate the opportunity for our staff to be able to attend free workshops and trainings related to addressing mental health issues in the justice system. We will be happy to have a member of our organization attend quarterly Consortium meetings by videoconference. We understand that part of the role of the Consortium Partners is to provide input into plans for the Center direction and evaluation, to bring relevant practice and policy questions to Center Investigators, to partner with Investigators in answering those questions as desired, and to provide feedback on the relevance, implications, and dissemination of Center findings.

Include a paragraph about your organization and how it connects with mental health for justice-involved individuals. It's OK to brag here, if you want to. The paragraph can be short or long.

Finding new ways to optimize mental healthcare services and service linkage for justice-involved individuals is a significant and challenging task. Anything else about how this issue is important or timely. We look forward to working with you on this important project.

Sincerely,

Name
Contact Information

PROPOSAL FOR PARDON, RECORDS, & EDUCATION PROCEDURE (PREP)

First of all I feel many individuals who make a mistake in their lives can be truly forgiven and allowed to continue their normal lives with their families and pursue all opportunities as free men and women. Having read about the Pardons already given by Governor Snyder, I have wondered about what is the goal in our Justice System. Many of these pardons should have taken place many years ago. In retrospect, our justice system can be blind as to what our laws prescribe as punishment, i.e., time guidelines. Most assuredly though, our justice system should not be without compassion and must also have the forth sight as to the unnecessary cost incurred by our prison system.

As a further note, I realize that many individuals, who are rightfully convicted of a crime, need not to be living amongst the public. However, the treatment of prisoners at the **Charles E. Egeler Reception and Guidance Center (RGC) in Jackson, Michigan** is shameful. They are still human beings. In other words, this is not the medieval time where prisoners were locked up and not treated as human beings.

My main purpose today is the presentation of a program that could be of great benefit to the prison system of Michigan. I understand that the state already has a review board whose job is to review certain request for pardons and clemency. Again, though, after reading about the scope or effort given by this department, I sense the intentions or final goals of the prison system has been sadly overlooked and the benefits lost to society and the state.

The following is a list of criteria that would contribute to be an excellent foundation for this new program. Of course the list can be changed or expanded. The criteria would apply to each prisoner and assist in giving a grade or points to each. Those with the highest grade or points would have to highest probability of success upon release and become eligible for a pardon and a cleared record. Accordingly, many others could receive clemency and shorter incarceration time.

1. Violent in nature? Yes () No ()
2. First or second offence? First () Second ()
3. Age at the time of the offence () years
4. Was the jury verdict base on factual evidence? Yes () No ()
5. Education level of prisoner
None () High School ()
Some College () years
College Degree Yes () No ()
Enrolled in courses Yes () No ()
6. Had stable employment at time of conviction? Yes () No ()
7. Evaluation – Understanding and Emotionally stability
 - A. Exceedingly Stable - ready to resume normal life in the general public
 - B. Some anger or anxiety issues (Counselling needed)
 - C. Understands the seriousness of not returning to this court again.

Recommendation - A requirement (individual responsibility) of weekly counseling for a period of time after release would be beneficial to all prisoners.

It is assumed the state already has a database of the prisoner population. With some program modification it can immediately identify individuals who can qualify for the PREP program. Under the above criteria, the highest grade given to an inmate will culminate in being eligible and granted a pardon and a cleared record; *not years from now but as soon as possible*. Subsequently, the grades assigned would be used to determine the amount of time served and shorter sentences as suggested by Justice Richard Bernstein. The re-education that some inmates would require can also contribute to other grade levels for final release to general public life.

A note of interest; by utilizing existing staff there should not be a significant increase in cost to the state. Existing parole staff, who understand the benefits of the program and be willing to participate, could be transferred to the PREP Assessment Committee.

The following points list the significant reasons and benefits of the aforementioned PREP program.

- A. Helping an individual to return to a normal life is not only compassionate and honorable but would be most beneficial to his or her family.
- B. By acquiring and having steady employment they are contributing to the overall economy through spending and utilization of services.
- C. The benefit to the state is two-fold. First is lessening the cost of maintaining a prisoner. As a result, the reduction would be significant to the State budget. Second, an employed citizen also pays his or her share of the taxes; thereby increasing the revenues needed by the state.
- D. The success rate of this program should speak for itself. Thus, other states could incorporate this model program of Michigan and therefore realize the same benefits.

Please consider all the progress this program would bring to the State of Michigan. For that reason, I urge the Justice System and the MDOC to implement the program without delay. Let our state be the model for future generations to come.

Yours truly,

James Rayman
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