MULTNOMAH COUNTY PRETRIAL SYSTEM ASSESSMENT

Multnomah County Policy Team
Justice System Partners

January 31, 2020

Agenda

- Brief legal look at pretrial bail reform
- Summary of Pretrial System Assessment Recommendations
  - Discussion and questions at each recommendation
- Outcome Analysis

Legal Issues in Pretrial Detention

Federal Constitutional Principles

- Fourth Amendment protection against unreasonable seizures guarantees that an arrestee receive a probable cause determination by a neutral magistrate within 48 hours

  City of Riverside v. McLaughlin, 500 U.S. 44 (1991)

  Gerstein v. Pugh, 420 U.S. 103 (1975)

Federal Constitutional Principles

- The Eighth Amendment prohibits the use of "excessive bail," but it does not define what excessive means

- *Stack v. Boyle* Supreme Court provided some guidance

  - bail "set at a figure higher than an amount reasonable calculated" to "assure the presence of the accused"

  - Purpose of bail is to help assure the presence of that defendant at subsequent proceedings

Federal Constitutional Principles

- "Money bail may serve only one legitimate role: to incentivize someone to return to court as required". Jones v. City of Clanton, 2:15-cv-34 (M.D. Ala. Feb. 13, 2015)

- To do that, it must be individualized to the defendant

- The use of security also implicates due process and equal protection principles

- The Supreme Court has repeatedly reaffirmed that "[t]here can be no equal justice where the trial a man gets depends on the amount of money he has."

American Bar Association Standards

- **Standard 10-1.4. Conditions of release**

- (b) When release on personal recognizance is not appropriate reasonably to ensure the defendant's appearance at court and to prevent the commission of criminal offenses that threaten the safety of the community or any person, constitutionally permissible non-financial conditions of release should be employed consistent with Standard 10-5.2.

- (c) Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post bond.

- (d) Financial conditions should not be employed to respond to concerns for public safety.

- (e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

Oregon Pretrial Law

- Oregon Constitution:
  - Section 14. Offenses except murder, and treason, shall be bailable by sufficient sureties
- ORS 135.240:
  - Except as provided in subsections (2), (4) and (5) of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290
  - Subsection (4) outlines preventive detention process
- ORS 135.245:
  - Except as provided in ORS 135.240, a person in custody has the right to immediate security release or to be taken before a magistrate without undue delay

Suggested Process

- Identify defendants that may not be released by delegated release authority according to statute

- Release others with non-monetary conditions

- Those not released or those deemed dangerous or violent, follow preventive detention process (ORS 135.240)

- Risk scores should be used to assist in setting release conditions once the decision to release is made

Summary of Recommendations

1. Revise Presiding Judge Order

- The PJO currently limits the pretrial defendants that can be released prior to first appearance

- A draft PJO was provided with options for setting security amounts and non-monetary release conditions

2. Revise PJO appointing release assistance officers

- The PJO currently addresses both authority to release and the charges for which release of defendants may not occur prior to arraignment.

- Revise the PJO to solely provide release authority to release assistance officers.

3. Eliminate Presiding Judge Order Adopting a Security Release Schedule

- For reasons stated previously, such a schedule has been found to be unconstitutional.

- The revised PJO would address the statutory charges that require a security amount set before release.

- This will be a basis for a class action lawsuit as seen in numerous other jurisdictions.

4. DCJ should revise policy and procedures

- Recog Unit:
    - Clarify staff's roles and impact of release decisions.
    - Define criteria for over-riding risk scores.
    - Define criminal history and FTA history that can be used to increase release conditions.
    - Eliminate subjective staff-based release decision.
    - Eliminate requirement that defendants must participate in interviews.
    - Develop policy to address defendants held on charges from other counties.

4. DCJ should revise policy and procedures manuals

- Pretrial Release Services:
    - Develop a policy and procedure manual that guides and controls staff in the operations of the PRS.
    - Review levels and contact standards considering the risk principle.
    - Address inconsistencies in directions to and reporting requirements of defendants as well as responses to noncompliant behavior.

5. Update & validate the MVPRAI or select a non-interview-based risk assessment instrument

- DCJ is using an outdated version of VPRAI risk instrument.

- The current tool has not been locally validated.

- Those refusing the interview are not assessed and therefore do not have a risk score.

- It is an opportune time to consider switching to non-interview-based tool.

6. Develop risk-informed decision criteria to assignment of cases to PSP and Close Street

- Currently assignment is based on charge, without regard to risk.

- Close Street is a resource rich, community-based supervision program that is highly regarded.

- 53% of Close Street cases are low risk and 11 % are high risk.

7. Revise Close Street policies & procedures to eliminate concerns of over-supervision

- Identify the target population to supervise, (should be high-risk defendants).

- Eliminate the ability to add conditions of release.

- Develop a non-compliance response policy.

- Separate HR policies from program policies.

8. Establish cross-system data workgroup

- The workgroup should span all criminal justice agencies.
- The workgroup should address:
  - the complexity of using separate data systems,
  - the lack of shared, unique, person identifiers,
  - the ability to merge and analyze data from multiple information systems, and
  - the need for system level versus individual agency analysis.

9. Areas to explore further

- Cases excluded from Recog Unit process (46%)
- Administrative holds
  - 19% of cases interviewed by Recog Unit are not released.
  - 2,056 released for "time served" or "court ordered release".
  - 37% of defendants not released due to PJO posted security amount and were released without supervision.