

EBDM Pretrial Workgroup Meeting Record

June 10, 2019 9:30-11:30am

I. Welcome and Introductions – Judge Mark Spitzer (Chair)

Attendees: Mary Kay Hudson; Representative Jerry Torr; Devon McDonald; Christine Kerl; Bernice Corley; Bill Carmichael; Lisa Thompson; Troy Hatfield; Becca Streit; Stephanie Ruggles; Cindy McCoy; Marianne Halbert; Michelle Goodman; Jenny Bauer; Diane Mains; Vicki Davis; Dan Miller; Jamie Bergacs

Phone: Kim Maus; Madonna Wagoner; Susan Bentley

II. Updates and Reports

a. House Enrolled Act 1065

One section of this recently passed legislation establishes a Jail Overcrowding Task Force, chaired by the Chief Justice with various appointments from the legislative and executive branches and other state agencies. The task force's charge includes holding up to five regional meetings across the state to identify the reasons for and possible local and regional solutions to jail overcrowding, including opportunities to reduce recidivism by addressing mental health and substance use needs, educational opportunities, and use of other evidence-based practices. The task force is to complete and submit a report to the Chief Justice, Governor, and others by December 1, 2019. Additionally, this legislation directs the Justice Reinvestment Advisory Council (JRAC) to conduct a statewide review of bail and pretrial issues. Again, the group will need to complete a report outlining its findings and recommendations by December 1, 2019.

At this time it is not clear what involvement the Pretrial Workgroup may have, however it is likely that this group will be impacted and potentially involved in these activities in some way. Mary Kay will provide updates and additional information as available.

b. New Pretrial Counties

A new handout on pretrial practices in Indiana includes an updated map of county activities. Sam and Mary Kay continue to work with Vigo and Madison Counties. Additionally, mapping has begun with Whitley County and initial meetings have been held in Howard, Owen, and DeKalb Counties.

c. Research Project Request

Mary Kay has received a request from researchers at Princeton and Harvard who are working to conduct a study examining racial disparities in pretrial release rates. The proposed research design may make it difficult for any Indiana counties to participate – for example, the researchers are looking to study the practices of judges, rather than counties, and would like to be able to study at least ten judges who, ideally, are operating within the same jurisdiction. Additionally, in talking about some of the data requirements, it may be difficult for Indiana jurisdictions to provide comprehensive data sets in the manner in which the researchers would like. However, the researchers did express to Mary Kay that they would work with any interested sites to tailor the research to their practices and needs, and Mary Kay reported that if any counties are interested in participating the Indiana Office of Court Services would assist in communicating with the researchers to ensure they understand the local and state environments and to facilitate the contract.

If any sites are interested in learning more they can contact Mary Kay, who will work to set up a conference call with the researchers to get more information.

d. EBDM Sustainability and Expansion Plan

Pursuant to Indiana’s current technical assistance award from the National Institute of Corrections, members of the EBDM State Team as well as some additional county representatives have worked with Mimi Carter through the first half of this year to develop a proposed Sustainability and Expansion plan for Indiana’s EBDM initiative. The initial draft was submitted to Lori Eville at NIC on May 31, 2019, per the deadline, and has been circulated to the State Team, which still needs to review and approve the plan. The State Team will review the preliminary plan at the June 17 meeting and, following that, workgroups will review the plan to identify the relevant action items.

III. Pretrial Summit Planning

The Indiana Office of Court Services, with the assistance of the Pretrial Workgroup, has been asked to develop and host a Pretrial Summit. The event will be modeled after the Opioid Summit that took place in 2017. The Pretrial Summit is scheduled for Friday October 4 and all counties will be invited to send a team of stakeholders, to be nominated beginning in the next two weeks. State level partners are also welcome to attend. The event will work to meet the needs of counties with varying levels of awareness and activity in pretrial services, from those who are just beginning to explore it all the way to those who have been operational for a year or more.

The proposed structure for the summit includes an opening plenary, a series of concurrent breakout sessions in the morning, lunch, a second set of concurrent breakout sessions, and a closing plenary. This structure would take the full program from about 9am-4:15pm.

The Office of Court Services would like to form a planning committee with members of the pretrial workgroup to identify topics and faculty for the summit. As part of this, the Public Defenders Council and Prosecuting Attorneys Council agreed to plan sessions, and Mary Kay will be speaking with the Sheriff's Association about developing a session, as well. The goal of the event is to engage local stakeholders from various parts of the criminal justice system and we would like these various perspectives to be represented in the development of sessions and content.

Contact Mary Kay to participate in the planning committee.

IV. Discussion: Pretrial Certification Draft Rules

Throughout the first half of this year, a subcommittee of this workgroup has been meeting to develop the first draft of the pretrial certification rules discussed at the December 2018 workgroup meeting. The initial draft has been completed and was sent via email to workgroup members on May 23, 2019, with a request for feedback and proposed revisions no later than June 7. The group reviewed the feedback and proposed changes to the draft rules.

The next step in the certification development process is to pilot the rules and assess the feasibility of certification and the applicability of the rules to actual pretrial sites. These pilot visits will take place beginning in June or early July and will finish by August. Following these visits, any necessary revisions or modifications to the rules will be made and a public comment period will take place in the fall before ultimately presenting the final draft to the Judicial Board of Directors for approval in December.

The workgroup will reconvene following the certification pilot and discuss any proposed modifications to the rules.

V. Adjourn

EBDM Pretrial Workgroup Meeting Record

July 29, 2019 9:30-11:30am

I. Welcome and Introductions – Judge Mark Spitzer (Chair)

Attendees: Mary Kay Hudson; Larry Landis; Lisa Thompson; Mike Pate; Becca Streit; Bernice Corley; Dan Miller; Troy Hatfield; Christine Kerl; Representative Jerry Torr; Bill Carmichael; Shelby Bear; Madonna Wagoner; Stephanie Ruggles; Cindy McCoy; Angie Hensley; Marianne Halbert; Sam Goodson; Michelle Goodman; Jamie Bergacs; Jenny Bauer; Vicki Davis

Phone: Susan Bentley; Kim Maus; Derrick Mason; Justice Steven David

II. Updates

a. House Enrolled Act 1065

All members have been appointed to the Jail Overcrowding Task Force and the group will hold an organizational meeting this week to allow members to get acquainted, review the directives, and gather ideas about the meeting agendas. The task force is to hold up to five regional meetings, these meetings have not yet been scheduled. The task force's report is due by December 1, 2019.

The Justice Reinvestment Advisory Council (JRAC) met in June to discuss conducting the statewide review of bail and pretrial issues as outlined in the legislation and identify members to participate. The first meeting for that group is likely to be held in August, with a report also due on December 1, 2019. It is expected that the Pretrial Workgroup and the EBDM State Team will be involved in that group's work, however specifics have yet to be defined.

b. Pretrial Summit Planning

The current draft agenda was provided to the workgroup, faculty for the proposed sessions has been discussed but not yet finalized. The planning committee has met by phone twice, with another call scheduled for this week. At this time, the general structure for the summit is to start by discussing Criminal Rule 26, pretrial risk assessment research and applications, and pretrial best practices as outlined in the Essential Elements document from NIC. This will be followed by a series of breakout sessions, and the afternoon will include remarks that outline next steps, available resources, and opportunities for further training and support.

At this time 76 counties have nominated teams. The Indiana Office of Court Services will continue working to engage all 92 counties in the summit and formal registration will begin in early August.

III. Discussion: Pretrial Certification Site Visits

At this time three of five planned visits have been completed. The process has involved reviewing sites' existing policies, procedures, and other documents; meeting with various stakeholders while on site (attempts are made to meet with the judges, elected prosecutor, chief public defender, sheriff and/or jail commander, pretrial coordinator, and pretrial staff); observing initial hearings; observing IRAS-PAT interviews; and reviewing a small selection of pretrial defendant files. The primary objective of these visits is to assess the applicability of the current draft rules to pretrial sites and, overall, Sam and Jamie report that there are no significant changes to be made to the rules. The primary area for consideration is how to determine the threshold for certification – sites are engaged in varying practices, which is to be expected, but it will require some thoughtful conversation regarding how to apply certification expectations.

The remaining two mock certification visits will take place in early August. Following this, the subcommittee drafting the rules will reconvene to discuss any necessary revisions before initial presentation to the Judicial Board of Directors and the public comment period.

IV. Pretrial Risk Assessment

The workgroup reviewed a recently-published open letter, signed by researchers from various institutions including MIT, Harvard, NYU, Princeton, Columbia, and others, expressing concerns about the “use of actuarial risk assessments as a means of lowering pretrial jail populations.” The two primary areas of concern outlined in the letter are the challenges related to reliably predicting risk of violence and the potential for racial bias in actuarial risk assessment tools.

The workgroup discussed these concerns as they relate to the IRAS-PAT and pretrial risk assessment in Indiana. The concerns outlined by the authors have been frequent topics of conversation within the workgroup and surrounding the development and implementation of the IRAS-PAT. Additionally, a recently-funded study being conducted by Dr. Evan Lowder will specifically examine issues of potential racial bias in the risk assessment tool.

The workgroup agrees that these concerns are important to remain aware of and that continued evaluation of the use of pretrial risk assessment in Indiana must occur. Additionally, transparency with regard to the risk assessment tool and the research and validation that supports its use will be critical to respond to these types of concerns moving forward.

V. Other

Lisa Thompson reported that she was approached by a county requesting to add email addresses to the text court reminder system. Currently, these courtesy court reminders are sent via text message through Odyssey when a cell phone number is provided. The request is to add defendant's email addresses to Odyssey so that reminders will go to the individual's cell phone via text and the email address, if both are provided. While not all defendants may have an email address to provide, those who do may have an email address that is more consistent and reliable over time, whereas phone numbers may change frequently.

The group approved adding email addresses to the court notification system.

VI. Adjourn

EBDM Pretrial Workgroup Agenda
September 23, 2019, 9:30-11:30am

I. Welcome and Introductions

II. Updates

a. Jail Overcrowding Task Force and Statewide Review of Bail and Pretrial Issues

The first meeting of the Jail Overcrowding Task Force will take place on September 30 in French Lick. Jail data will be discussed. Additional meetings will take place on October 30 and November 6, with locations for each to be determined. All meetings are open to the public and will be webcast on the JOTF website. Once the report is finalized it will also be available on the website.

The Justice Reinvestment Advisory Council (JRAC) review of bail and pretrial issues will be completed by December 1, 2019 and the report will be available on the JRAC website.

b. Pretrial Summit Planning

The Pretrial Summit will be held at the Indiana Convention Center in Indianapolis on Friday October 4. At this time all 92 counties have submitted nominations, registration is still underway. Media will likely be provided an opportunity to be present in the morning and at the plenary sessions, but not the breakout sessions. The current draft agenda will be shared with the workgroup.

c. Pretrial Draft Rules: Judicial Board of Directors Presentation

The workgroup reviewed the current draft of the pretrial services rules. The draft does not yet include all revisions from the workgroup's last meeting. A preamble will be added and some additional language will be revised based on the most recent feedback. Judge Mark Spitzer presented the draft rules to the Board of Directors at their September meeting and they approved posting the rules for public comment. Once that comment period has ended, on or about November 1, the comments will be reviewed and final revisions will be made as appropriate before presenting the final version to the Board for approval and adoption in December.

III. Discussion: Failure to Appear Definitions – IRAS-PAT vs. Data Collection

Pretrial site coordinators have raised questions regarding differing definitions of failure to appear (FTA) for IRAS-PAT scoring and for data collection purposes. For the IRAS-PAT

scoring, recalled warrants are not counted; for pretrial data collection purposes, recalled warrants are included.

For IRAS-PAT scoring purposes, items are scored purposefully based on research-informed risk information, and while site coordinators report that this is clearly communicated in training the manual for the IRAS does not explicitly include this piece of information. University of Cincinnati is the owner of the manual and the only entity able to make changes to that.

For pretrial data collection purposes, when outlining these expectations the workgroup determined that it was of interest to collect information on all warrants, including those that are recalled. There remain varying perspectives on whether recalled warrants should be included and why or why not.

At this time no changes will be made to either aspect of this, however the topic will be revisited in the future.

IV. Expectations for Recording Pretrial Violations

A second issue raised by pretrial coordinators is regarding recording violations that do not result in termination. For example, an individual on pretrial supervision may get rearrested but not be terminated from pretrial supervision. The same individual may then have a failure to appear and be terminated from pretrial supervision. Site coordinators believe it is worthwhile to record all violations, however only one reason can be chosen for the termination. There is a desire to know whether there is a hierarchy of violations that determines what is recorded and when or, if not, what direction the workgroup would give coordinators regarding this issue.

The workgroup discussed various options and what the potential burden may be on counties for different approaches. The workgroup will continue to look into this issue and consider the best guidance for counties moving forward.

V. Other

VI. Adjourn

EBDM Pretrial Workgroup

Meeting Record

November 4, 2019, 9:30-11:30am

I. Welcome and Introductions – Judge Mark Spitzer (Chair)

Attendees: Mary Kay Hudson; Angie Hensley-Langrel; Marianne Halbert; Madonna Wagoner; Stephanie Ruggles; Troy Hatfield; Representative Jerry Torr; Christine Kerl; Shelby Bear; Cindy McCoy; Chris Cunningham; Jamie Bergacs; Diane Mains; Bernice Corley

Phone: Lisa Thompson; Kim Maus

II. Updates

a. Jail Overcrowding Task Force

The Jail Overcrowding Task Force (JOTF) has met twice – on September 30 and October 30 – and agendas and webcasts for both meetings are available online. The next and final public meeting will be held this Wednesday, November 6, in Anderson, IN. Presentations from the Division of Mental Health and Addiction, the Indiana Public Defenders Council, the Indiana Prosecuting Attorneys Council, and others are planned. Following the meeting the task force will meet to formulate and vote on items to include in the final report, the group will coordinate with the Justice Reinvestment Advisory Council (JRAC), as that group is working on a separate report regarding bail and pretrial issues that may include some of the same issues or themes.

Overall, attendance at the public meetings so far as been good and the presentations and discussions illustrate how complicated the issues is and the various factors at play. There will likely be a variety of recommendations from the task force in legislative, funding, training and technical assistance, and other areas. Additionally, some issues may require further study. It is clear from the public meetings and information gathered so far that the make-up of jail populations are unique to each locality and local practices influence the jail population. While there are themes, ultimately every county is different and it will be important to provide infrastructure that will support local evaluation and action.

The task force's report is due December 1 and will be published online once it is available.

b. Pretrial Summit

The Indiana Pretrial Summit was held October 4 at the Indiana Convention Center. A total of 721 attendees from 91 counties were present at the event. Participant evaluations indicate that many attendees felt the summit provided good and useful information; some attendees indicated that they wanted or expected more. Many pilot counties report they have received calls since the summit from counties looking for information and guidance on pretrial implementation. Concerns regarding defense counsel at initial hearings and concerns about potential conflicts of interest or ethical violations continue to come up from counties, particularly in smaller counties. There are ongoing discussions at the state level regarding these concerns.

Lisa Thompson reported that, following her session on data at the summit, she has a list of counties that have requested more information or asked to have access to the pretrial component on SRS. Lisa can share this list with the group.

Overall, feedback from the summit has been positive and will help to guide future training sessions and education opportunities focused on pretrial.

III. Discussion: Pretrial Certification Rules – Public Comments

The draft pretrial certification rules were posted online for public comment from September 30 to November 1, 2019. A total of five (5) comments were received. The workgroup reviewed each comment and considered whether revisions to the rules were warranted based on this feedback. The group went through the draft rules during the meeting to make proposed changes, which IOCS staff will finalize before the rules go back to the Board of Directors of the Judicial Conference of Indiana for a vote on December 12, 2019.

IV. JRAC Statewide Review of Bail and Pretrial Issues Report

Mary Kay Hudson discussed the proposed outline for the Justice Reinvestment Advisory Council's (JRAC) Statewide Review of Bail and Pretrial Issues report and asked for feedback from the workgroup regarding the components. The intention of the report is to make recommendations regarding issues for further examination, rather than specific actions to be taken.

The workgroup discussed whether to include a national perspective, as well as Indiana-specific information, in the legal foundations section, as well as a discussion in the report regarding preventive detention, including a historical perspective on the issue and state that have recently made changes to allow preventive detention. Additionally, the group discussed possibly completing a survey of counties in Indiana to gather information on current pretrial practices, including whether they have a policy team, policies and procedures, and current practices.

It was recommended to include the development of the pretrial certification process as a current effort of IOCS and the pretrial workgroup.

The group approved the current proposed format. Mary Kay reported that the outline will be presented to JRAC for review and approval and that group will then begin drafting the report, which is due on December 1. The full JRAC committee will have to vote to approve the report prior to its submission. Mary Kay reported they anticipate scheduling the vote for around November 25.

V. Other

The workgroup reviewed a draft of the Hamilton County IRAS-PAT validation report. The language in the report is very technical, but lead researcher Dr. Evan Marie Lowder stated that overall the report is very favorable. The workgroup hopes to have Dr. Lowder walk them through the report at a future date. At this time the report is still in draft format and not for further distribution. Once the draft is finalized the workgroup will approve it as a final product.

VI. Adjourn

EBDM Pretrial Workgroup Agenda

December 18, 2019, 9:30-11:30am

I. Welcome and Introductions

Attendees: Judge Mark Spitzer, Angie Hensley-Langrel, Devon McDonald, Troy Hatfield, Lisa Thompson, Jamie Bergacs, Michelle Goodman, Dan Miller

Phone: Chris Cunningham, Melanie Golumbeck, Marianne Halbert, Shelby Bear, Kim Maus, Catherine Haines

II. Updates

a. Jail Overcrowding Task Force and JRAC Statewide Review of Bail and Pretrial Issues Reports

Both the Jail Overcrowding Task Force and JRAC's Statewide Review of Bail and Pretrial Issues reports have been completed and submitted as outlined in HEA 1065 and the reports are available online at the respective websites (included below). A brief overview of each report was provided to the workgroup, both include EBDM and the pretrial workgroup's efforts within their analysis and recommendations. It is expected there will be ongoing involvement from the Pretrial Workgroup and the EBDM State Team, though the details of that involvement are not yet clear.

- i. Jail Overcrowding Task Force: <https://www.in.gov/judiciary/iocs/files/jail-overcrowding-report.pdf>
- ii. JRAC Statewide Review of Bail and Pretrial Issues: <https://www.in.gov/justice/files/jrac-2019-bail-pretrial-report.pdf>

III. Pretrial Certification

The final draft of the pretrial services rules was presented to the Board of Directors of the Judicial Conference of Indiana on December 12, 2019 and were approved, the rules are effective January 1, 2020 and are now posted on the pretrial website. A sample letter of intent has been sent to the pretrial pilot sites and the non-pilot sites receiving funding. The workgroup reviewed the draft sample documents developed by IOCS staff that will be finalized and provided to counties pursuing certification as needed. The IOCS Justice Services Division and certification team are still developing internal processes for responding to requests for certification and will provide updates to the workgroup as they are available.

IV. Justice Services Conference Pretrial Track

The annual Justice Services Conference will take place April 27-29, 2020, in Indianapolis. The conference will be open to pretrial policy teams and staff members whose pretrial agency is certified or pursuing certification beginning this year. IOCS is working to develop a pretrial track for the conference, which will be a series of five pretrial-specific sessions. At this time potential sessions include an initial hearing session (this will be a replication of a mock initial hearing done at a Judicial Conference in the past), a session covering certification and other related material, and pretrial release conditions and supervision. Two additional sessions are needed to complete the track. It was suggested that perhaps pulling in some of the information or presentations from the Jail Overcrowding Task Force would be a good way to weave things together, Porter County's team did a presentation to the JOTF on their pretrial practices and other initiatives implemented that are impacting their local jail capacity, this may be worth replicating at the Justice Services Conference. The Pretrial Site Coordinators group will be meeting soon and will also provide input on potential sessions.

V. Discussion: Role of the Pretrial Workgroup Moving Forward

Now that the pretrial services rules have been approved, the Pretrial Workgroup's role will likely begin to shift. There are a number of short-term and longer-term activities the group will likely continue to be responsible for, the group discussed a few of these.

a. Pretrial Staff Orientation Development

The pretrial services rules indicate that pretrial coordinators and staff will be required to attend a staff orientation, and this orientation has yet to be developed. A group of pretrial site coordinators have volunteered to participate in developing this orientation and identifying the content. The Pretrial Workgroup agreed that the site coordinators will act as a subgroup to develop the orientation and the Workgroup will have final approval.

b. Advisory Role for Pretrial Practices

As certification of pretrial services across the state is implemented, new issues and questions will continue to arise. One ongoing role for this workgroup is likely to be an advisory role to help address things that come up and provide ongoing guidance. One issue that has come up already is that of pretrial services agencies supervising individuals on whom charges have not been filed. The workgroup discussed this issue and it requires further consideration before specific feedback may be provided. The workgroup also discussed updating the pretrial practices manual and potentially using that document as a place to further outline best practice guidelines for pretrial services.

c. Validation and Evaluation Reports

IRAS-PAT validation work is still underway in pilot counties, at this time two of the eleven counties' studies have been completed. There are additional evaluations underway or planned related to pretrial services, as well. This group will continue to serve as the body that initially reviews these reports.

VI. Next Steps

a. Workgroup membership

With the completion of the pretrial services rules and the workgroup moving into its next phase, membership may need to be revisited. This will be an ongoing conversation.

b. Meeting frequency

The group discussed meeting schedule moving forward and determined the group will meet every other month, with the next meeting taking place on February 10, 2020. Judge Spitzer and IOCS staff will work to identify dates through the remainder of 2020 and will send those out to the group shortly after the new year.

VII. Other

VIII. Adjourn