Judges and Staff – A Team That Builds Confidence in Nevada’s Justice Initiatives

JUSTICE JAMES W. HARDESTY
JULY 23, 2019
Success Made Possible Through Communication, Coordination and Collaboration

- Leadership and involvement from the Judiciary
- Groundwork and execution by staff
- Communication and cooperation with relevant communities and stakeholders
FIVE EXAMPLES IN NEVADA

1. AMEND NEVADA’S CONSTITUTION TO ESTABLISH A COURT OF APPEALS

2. NEGOTIATION, DESIGN, CONSTRUCTION AND OCCUPANCE OF A NEW COURTHOUSE FOR THE SUPREME COURT AND COURT OF APPEALS IN LAS VEGAS

3. STUDY AND IMPLEMENT EVIDENCED BASED PRE-TRIAL RELEASE

4. STUDY AND REFORM GUARDIANSHIP

5. REFORM INTEREST ON LAWYER TRUST ACCOUNT PROGRAM TO IMPROVE ACCESS TO JUSTICE FOR THOSE WITH CIVIL LEGAL NEEDS
AMENDING NEVADA’S CONSTITUTION TO CREATE A COURT OF APPEALS

- Nevada was one of 9 states that did not have an intermediate court of appeals.
- 4 previous attempts to secure voter approval had failed including elections held in 2010.
- With staff’s assistance, the court rewrote the amendment which passed the legislature in 2011 and 2013.
- Case load and fiscal statistics were prepared for informational presentations made throughout the state.
- On the fifth try, the amendment passed on November 4, 2014, on a vote of 54% to 46%.
IMPLEMENTING A NEW COURT OF APPEALS

- The Supreme Court and staff now had less than 60 days to stand up a new Court of Appeals including:
  - The selection of three Court of Appeals judges
  - Securing the budget
  - Transferring certain central staff attorneys to support the Court of Appeals
  - Install a completely separate IT and case management system
DRAFTING AND ADOPTING RULES OF APPELLATE PROCEDURE FOR CASE PROCESSING

ORGANIZE AND CONDUCT INVESTITURE PROCEEDINGS

ASSIGN NEW CASES TO THE COURT

APPOINT A CHIEF JUDGE AND TRAIN THE NEW JUDGES AND STAFF ON ALL APPELLATE SYSTEMS
**THE RESULTS SO FAR**

Nevada Court of Appeals Filings and Dispositions 2015 – 2019 (6/30/19)

<table>
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<tbody>
<tr>
<td>Filings</td>
<td>816</td>
<td>745</td>
<td>1,205</td>
<td>1,313</td>
<td>438</td>
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<tr>
<td>Dispositions</td>
<td>710</td>
<td>706</td>
<td>1,039</td>
<td>1,170</td>
<td>646</td>
</tr>
</tbody>
</table>
IN DECEMBER 2014, THE SUPREME COURT OCCUPIED A 10,860 SQUARE FOOT SPACE ON THE TOP FLOOR OF THE REGIONAL JUSTICE CENTER IN LAS VEGAS.

PART OF THIS SPACE WOULD HOUSE THE NEW COURT OF APPEALS.

A LAS VEGAS DEVELOPER PROPOSED A PUBLIC PRIVATE PARTNERSHIP FOR A LEASE PURCHASE OF A NEW COURTHOUSE IN LAS VEGAS.

THE SUPREME COURT AND STAFF ENTERED INTO NEGOTIATIONS FOR A NEW LEASE THAT INCLUDED THE DESIGN AND COSTING FOR A NEW BUILDING.

CONSTRUCTION BEGAN ON OCTOBER 26, 2015, FOR A 26,132 SQUARE FOOT BUILDING SAVING THE COURT AND STATE $500,000 IN RENT OVER A 10 YEAR PERIOD.

THE SUPREME COURT OCCUPIED THE NEW COURTHOUSE ON MARCH 27, 2017
Resources

- All documents and materials for the initiatives discussed on the next two topics can be accessed at:

  - Committee to Study Evidence-Based Pretrial Release
  - Guardianship Commission
The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”

Committee to Study Evidence-Based Pretrial Release
Committee’s Creation

- The Conference of Chief Justices, Resolution 3 “Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release”
- In June 2015, in response to the COSCA Policy Paper, and the CCJ Resolution, the Judicial Council of the State of Nevada unanimously approved a resolution creating a Committee to Study Evidence-Based Pretrial Release in Nevada.
Objectives

- The purposes of the Committee are to study the current pretrial release system and to examine alternatives and improvements to that system through evidence-based practices and current risk assessment tools. The Committee will ultimately make recommendations to the Judicial Council of the State of Nevada and the Nevada Supreme Court regarding possible strategies for reforming and improving Nevada’s pretrial release system.
Defendants who are held in pretrial detention have less favorable outcomes than those who are not detained —regardless of charge or criminal history. In these studies, the less favorable outcomes include a greater tendency to plead guilty to secure release (a significant issue in misdemeanor cases), a greater likelihood of conviction, a greater likelihood of being sentenced to terms of incarceration, and a greater likelihood of receiving longer prison terms.”

Data support the common sense proposition that pretrial detention has a coercive impact on a defendant’s amenability to a plea bargain offer and inhibits a defendant’s ability to participate in preparation for a defense.
Membership

Committee membership consists of members of the Nevada judiciary, lawyers practicing criminal law in Nevada, court services officers and management staff from counties throughout Nevada.

- 23 judges
- Clark County Public Defender
- Clark County District Attorney
- Washoe County Public Defender
- Washoe County District Attorney
- NACO Representatives
- Leadership from Pretrial Services Departments in both Washoe and Clark Counties
- County Managers
Efforts/Important Dates

➢ September 30, 2015 – September 1, 2016 The Committee heard presentations from Mr. Tim Murray, Pretrial Justice Institute, Ms. Laurie Dudgeon, Kentucky Administrative Office of the Courts, Ms. Tara Boh Blair, Kentucky Dept. of Pretrial Services, Ms. Kathy Waters, Director of Adult Services, Arizona Supreme Court.

➢ Committee members received presentations from Magistrate Judge Peggy Leen and Ms. Sheila Atkins, U.S. District Court, District of Nevada regarding the federal pretrial system. Additionally, representatives from the Nevada bail industry presented.

➢ Ms. Lori Eville and Mr. Spurgeon “Kenny” Kennedy, from the National Institute of Corrections provided key presentations on “Building a Pretrial Justice System: Elements of Effective Pretrial Programming” and “Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field.” The Committee unanimously adopts the performance and outcome measures as presented in “Measuring What Matters…”
Outcome Measures and Definitions

- **Appearance Rate**: The percentage of supervised defendants who make all scheduled court appearances.

- **Safety Rate**: The percentage of supervised defendants who are not charged with a new offense during the pretrial stage.

- **Concurrence Rate**: The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct.

- **Success Rate**: The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision.

- **Pretrial Detainee Length of Stay**: The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release.
Performance Measures and Definitions

- **Universal Screening**: The percentage of defendants eligible for release by statute or local court rule that the program assesses for release eligibility.

- **Recommendation Rate**: The percentage of time the program follows its risk assessment criteria when recommending release or detention.

- **Response to Defendant Conduct**: The frequency of policy-approved responses to compliance and noncompliance with court-ordered release conditions.

- **Pretrial Intervention Rate**: The pretrial agency’s effectiveness at resolving outstanding bench warrants, arrest warrants, and capiases.
February 12, 2016 – The Committee hears presentations by Dr. James Austin, JFA Institute and Ms. Angela Jackson-Castain, Department of Justice, OJP Diagnostic Center. Based on these presentations, the Committee votes to move forward with the process to validate the Nevada-specific risk assessment tool (NPRA) created by Dr. Austin.

May 23, 2016 – The Committee is presented with the results of the NPRA validation study and unanimously votes to implement the tool in a pilot site program.

September 1, 2016 – The Committee approves the results of the pilot program.

Following public hearings the Supreme Court enters an order March 21, 2019, adopting the statewide use of the Nevada Pretrial Risk Assessment tool.
<table>
<thead>
<tr>
<th>Pretrial Risk Category</th>
<th>Less Serious Misdemeanor</th>
<th>More Serious Misdemeanor</th>
<th>Other Felony</th>
<th>Driving Under the Influence</th>
<th>Domestic Violence</th>
<th>Statutory Serious or Violent Felony</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (lower)</td>
<td>Release on Recognizance with Court Reminder</td>
<td>Release on Recognizance with Court Reminder</td>
<td>Release on Recognizance with Court Reminder</td>
<td>Release on Recognizance with Basic Supervision</td>
<td>Release on Recognizance with Basic Supervision</td>
<td>Detain, or Release on Recognizance with Enhanced Supervision</td>
</tr>
<tr>
<td>2</td>
<td>Release on Recognizance with Court Reminder</td>
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<td>3</td>
<td>Release on Recognizance with Basic Supervision</td>
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<td>Release on Recognizance with Court Reminder</td>
<td>Release on Recognizance with Basic Supervision</td>
<td>Release on Recognizance with Basic Supervision</td>
<td>Detain, or Release on Recognizance with Enhanced Supervision</td>
</tr>
<tr>
<td>4 (higher)</td>
<td>Release on Recognizance with Moderate Supervision</td>
<td>Release on Recognizance with Enhanced Supervision</td>
<td>Release on Recognizance with Moderate Supervision</td>
<td>Detain, or Release on Recognizance with Enhanced Supervision</td>
<td>Detain, or Release on Recognizance with Enhanced Supervision</td>
<td>Detain, or Release on Recognizance with Enhanced Supervision</td>
</tr>
</tbody>
</table>

The defendant’s SPRAT risk category determines which row of the table applies to the defendant, and the defendant’s most serious booking charge determines which column of the table applies.
<table>
<thead>
<tr>
<th>NPRAT Score</th>
<th>Less Serious Misdemeanor</th>
<th>Serious Misdemeanor</th>
<th>Most Serious Misdemeanor</th>
<th>Other Felony</th>
<th>Serious Felony</th>
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<tbody>
<tr>
<td>LOW 0-4</td>
<td>O/R REMINDER ONLY</td>
<td>O/R REMINDER ONLY</td>
<td>RELEASE WITH SUPERVISION</td>
<td>RELEASE WITH SUPERVISION</td>
<td>REQUIRES JUDICIAL REVIEW</td>
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<tr>
<td>MED 5-8</td>
<td>O/R REMINDER ONLY</td>
<td>RELEASE WITH SUPERVISION</td>
<td>REQUIRES JUDICIAL REVIEW</td>
<td>RELEASE WITH SUPERVISION</td>
<td>REQUIRES JUDICIAL REVIEW</td>
</tr>
<tr>
<td>HIGHER 9+</td>
<td>O/R REMINDER ONLY</td>
<td>REQUIRES JUDICIAL REVIEW</td>
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• Less Serious Misdemeanor – all not included in Serious or Most Serious.
• Serious Misdemeanor – violence (assault, battery), destruction of property (graffiti), DUI 1st.
• Most Serious Misdemeanor – domestic violence, child related, TPO, Stalking, Harassment, DUI 2nd.
• Other Felony/Gross – all not included in serious felony list.
• Serious Felony – See serious felony list.
Ongoing Efforts

- Continuous review of data and efforts being made in the pilot sites
- NPRA Tool – updates, modifications, and appropriate training on such
- Bail Schedule Subcommittee
- Next full-Committee meeting: August 2019
NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: __/__/______ Assessor: _____________________________ County: ___________

Defendant’s Name: _______________________ DOB: __/__/______ Case/Booking #: ___________

Address: ___________________ City: __________ State: __________ Zip: ________ # of Current Charges: ________

Most Serious Charge: ___________________ Initial Total Bail Set: $ ___________

Demographic Information (optional): Gender: Male __ Female __
Race: Hispanic __ White __ Black __ Asian __ Nat. Amer. __ Other/Unknown ___________

**SCORING ITEMS**

1. Does the Defendant Have a Pending Pretrial Case at Booking?
   a. Yes - 2 pts. If yes, list case # and jurisdiction: __________________________
   b. No - 0 pts.

2. Age at First Arrest (include juvenile arrests)
   a. 25 yrs. and under - 2 pts.
   b. 26-35 yrs. - 1 pt.
   c. 36 yrs. and over - 0 pts.

3. Prior Misdemeanor Convictions (past 10 years)
   a. None - 0 pts.
   b. One to five - 1 pt.
   c. Six or more - 2 pts.

4. Prior Felony/Gross Mind. Convictions (past 10 years)
   a. None - 0 pts.
   b. One or more - 1 pt.

5. Prior Violent Crime Convictions (past 10 years)
   a. None - 0 pts.
   b. One - 1 pt.
   c. Two or more - 2 pts.

6. Prior FTAs (past 24 months)
   a. None - 0 pts.
   b. One FTA Warrant - 1 pt.
   c. Two or more FTA Warrants - 2 pts.

7. Employment Status at Arrest
   a. Verifiable Full/Part-time Employment - 0 pts.
   b. Unemployed - 1 pt.

8. Residential Status
   a. Nevada Resident - living in current residence 6 months or longer - 0 pts.
   b. Nevada Resident - not lived in same residence 6 months or longer - 1 pt.
   c. Homeless or non-Nevada Resident - 2 pts.

9. Substance Abuse
   a. Other - 0 pts.
   b. Prior multiple arrests for drug use or possession/alcohol/drunkenness - 2 pts.

10. Verified Cell and/or Landline Phone
    a. Yes - 0 pts. If yes, list #: __________________________
    b. No - 1 pt.

**TOTAL SCORE:** __________________________

Risk Level (Circle One): LOW (0-4 pts.) MODERATE (5-8 pts.) HIGHER (9+ pts.) OVERRIDE? Yes ___ No ___

Override Reason(s): Mental Health ______ Disability ______ Gang Member ______ Flight Risk ______
Prior Record More Severe Than Scored ______ Prior Record Less Severe Than Scored ______
In past five years. Prior Successful Pretrial Supervision ______ Other: __________________________

Final Recommended Risk Level: LOW ______ MODERATE ______ HIGHER ______
Supervisor/Designee Signature: __________________________ Date: __/__/______
Tips & Tricks for Managing Guardianship Cases

ROBIN SWEET, STATE COURT ADMINISTRATOR
& KATE MCCLOSKEY, GUARDIANSHIP COMPLIANCE OFFICER MANAGER
Reform Efforts in Nevada

- Challenges & Supreme Court response
- Legislative (Statutory) Changes
- Established Appointment of Legal Counsel for all Protected Persons
- Guardianship Compliance Office
LACK OF CASE MANAGEMENT

- Guardianship cases were handled by a court master and supervised by the presiding judge, raising concerns regarding the system’s ability to properly manage the docket.
- More than 5,000 cases languished in the files of District Courts wherein the protected persons had passed away, moved away, or otherwise no longer needed guardianship.
- Guardianship cases were not monitored through regular status reviews. Guardianship case files lacked basic guardianship paperwork, such as petitions, accountings, guardian reports, etc.
Commission to Study the Creation and Administration of Guardianships

- 9 hours of public testimony.
- Presentations made by both local and national experts.
- Contemplated 30 policy questions.
- Recommended 14 new Supreme Court rules related to guardianship.
- Recommended the creation of a permanent guardianship commission and appointment of legal counsel for all protected persons.
Permanent Guardianship Commission

- Established in 2017
- Commissioners include judges, attorneys, advocates, and other stakeholders.

- Court Rules
- Uniform Statewide Forms
- Adult Guardianship Mediation
- Legislative Recommendations
- Performance Measures
STATE GUARDIANSHIP COMPLIANCE OFFICE

- Created during the 79th Legislative Session (2017) to provide district courts additional resources in the administration of guardianship.
  - Investigations
  - Audits
- Initially staff in January 2018
  - 1 program manager
  - 1 investigator
  - 1 financial forensic specialist
- Expanded Office to Las Vegas in July 2018
  - 1 Investigator
  - 1 financial forensic specialist
Contact information

Robin Sweet
rsweet@nvcourts.nv.gov

Kate McCloskey
kmccloskey@nvcourts.nv.gov

Guardianship Compliance Office Website
http://Nvcourts.gov/AOC/GCO
INTEREST ON LAWYER TRUST ACCOUNTS

- Nevada’s Access to Justice Commission initiated a study and reform of the State Bar IOLTA program in 2009 discovering that Nevada, like a number of states, received very low interest rates on IOLTA accounts when compared to rates paid in other states by national banks and financial institutions.

- Existing management lacked adequate accounting functions to track lawyer trust accounts and interest income.

- Numerous meetings were conducted with Nevada financial institutions to share information about legal aid organizations and the civil legal needs of Nevadans in poverty.

- The Supreme Court changed the rules governing lawyer IOLTA accounts requiring they be held with recognized financial institutions paying an approved fixed rate of interest.
The Access to Justice Commission changed the accounting system that enabled the Bar Foundation to know the precise number of trust accounts in the state, the average daily balance for each and the amount of interest paid.

More recently, the Commission created a subcommittee to update IOLTA rules, study other states’ practices and confer with Nevada financial institutions to evaluate the impact of interest rate increases by the Federal Reserve over the past two years.

With financial institution input and participation, the Supreme Court developed a tiered approach setting higher interest rates on IOLTA accounts with balances in excess of $150,000.

The results - $3.4 million in IOLTA revenue received in 2018 is projected to be $5 million in 2020.