

Approved Minutes

Michigan Joint Task Force on Jail and Pretrial Incarceration – Meeting #4

Friday, October 18, 2019, 9:30 a.m.– 4:00 p.m.

Wayne State University Law Auditorium, Detroit, MI

Members Present:

Lt. Gov. Garlin Gilchrist II, Michigan Lieutenant Governor, Co-chair
Hon. Bridget McCormack, Michigan Supreme Court Chief Justice, Co-chair
Dr. Amanda Alexander, Detroit Justice Center
Hon. Thomas Boyd, 55th District Court
Mr. Craig DeRoche, Prison Fellowship
Mr. William Gutzwiller, Sr., Michigan Association of Chiefs of Police
Mr. DJ Hilson, Muskegon County Prosecutor's Office
Ms. Monica Jahner, Northwest Initiative
Dr. Sheryl Kubiak, Wayne State University Department of Social Work
Lt. Jim Miller, Allegan County Sheriff's Department
Mr. Takura Nyamfukudza, Chartier & Nyamfukudza, P.L.C.
Mr. Bill Peterson, Alpena County Board of Commissioners
Sen. Sylvia Santana, 3rd Senate District
Mr. James Talen, Kent County Board of Commissioners
Mr. Robert VerHeulen, Kent County Road Commissioner
Rep. Tenisha Yancey, 1st House District
Sheriff Jerry Clayton, Washtenaw County Sheriff's Department
Hon. Prentis Edwards, Jr., 3rd Circuit Court
Ms. Dana Nessel, Michigan Attorney General
Sen. Jim Runestad, 15th Senate District

Members Excused:

Rep. Mike Mueller, 51st House District; Mr. Scott Kempa attended as his proxy.

I. Convening of Meeting

The co-chairs called the meeting to order at 9:36 a.m.

II. Welcome and Introductions

Co-chair Bridget McCormack introduced Sen. Sylvia Santana to give introductory remarks. Sen. Santana welcomed everyone to Wayne County and expressed interest in bridging a gap in Lansing with her legislative colleagues to prioritize the findings of the Task Force. Sen. Santana recalled data on the large number of people in jail for nonviolent offenses and the disproportionate number of African American people involved in the justice system. She believes that the interest from members of all political stripes reaffirms the bipartisan potential for increasing justice and equality in the justice system.

III. Roll Call

Co-chair Garlin Gilchrist took the roll. A quorum was present. One member was represented by a proxy for the day. Ms. Dana Nessel, Michigan Attorney General, arrived at 9:59 a.m. Mr. John Pallas arrived as Ms. Nessel's proxy at 1:30 p.m.

Mr. Craig DeRoche was absent from 11:30 a.m. – 12 p.m.

IV. Motion to Approve Minutes

Co-chair Gilchrist introduced the minutes from the third Task Force meeting on September 20, 2019. Hon. Thomas Boyd made a motion in favor of approving the minutes. Mr. Robert VerHeulen seconded. Motion passed.

V. Report from Lt. Jim Miller on Law Enforcement Roundtables

Lt. Miller reported on roundtables with patrol officers and corrections officers held on October 3, 2019, to discuss issues related to the work of the Task Force. Patrol officers discussed their interest in expanding the ability to cite and release rather than arrest for some offenses because it allows police to better protect the community and serve them more efficiently. Corrections professionals and jail staff discussed inefficiency in the booking system and innovations in some jurisdictions that have helped speed up the process. Mental health is of serious concern among sheriffs and jail staff. There was wide consensus that most people with mental illness should not land in jail, but often do because there is no other place to take them. Lt. Miller confirmed that the needs and desires of law enforcement in Michigan align with the goals of this Task Force.

VI. Report from Mr. Takura Nyamfukudza on Defense Attorney Roundtable

Mr. Nyamfukudza reported on the roundtable with defense attorneys held on September 25, 2019, to discuss issues related to the work of the Task Force. Defense attorneys discussed many problems that exist in the justice system and the ambitious and innovative solutions that might be implemented across Michigan. Among other changes, defense attorneys would like to see better pretrial services, drug testing minimized for only those who need it, less jail for low-level offenses, holding child support payments during the duration of incarceration, and consistency in rules placed on individual from the court room to the jail cell.

VII. Report from Ms. Barb Hankey on Pretrial Training

Ms. Hankey, Oakland County Community Corrections Manager, reported on the pretrial training event hosted in Lansing on September 24-25, 2019. Over 200 stakeholders attended the pretrial training event where participants explored pretrial litigation across the country and their outcomes, as well as best practices in operating a pretrial department. The Michigan Pretrial Services Work Group recommended policies that include a presumption of innocence; restrictions on the use of financial bail; creation of an honest authority for preventative detention; and the use of the least restrictive pretrial conditions. Ms. Hankey thanked Lt. Governor Gilchrist for attending the event and underscored the important work of Task Force.

VIII. Presentation #1: Ms. Michelle Russell, The Pew Charitable Trusts

Ms. Russell presented additional data from Pew's analysis of statewide arrest data, statewide court data, and a sample of jail data. Ms. Russell reviewed key data takeaways from the last

data presentation and presented new data on arrests versus criminal filings and length of stay trends. The presentation can be found [here](#).

Task Force members had the following questions and comments regarding the data:

- Dr. Sheryl Kubiak noted that the Wayne County jail booking data shows that most admissions are for traffic violations and asked how the arrest data relates to jail beds. Ms. Russell confirmed that the jail data includes those incarcerated for traffic offenses.
- Judge Boyd asked how many people, in the sentenced served pie chart, were released to prison. Ms. Russell explained that individuals released to another agency, such as state prison, were not included in the sentenced served analysis.
- Rep. Tenisha Yancey asked if those who stayed in jail more than one month for the use of controlled substance had any prior convictions for the same offense. Ms. Russell explained the data set includes everyone, including those with prior offenses.
- Dr. Kubiak asked whether the assault category included domestic violence offenses. Ms. Russell confirmed that it does not.
- Mr. DeRoche asked if the offenses listed on the slide were the most serious offense for which people were sentenced and Ms. Russell confirmed that is correct.
- Judge Boyd speculated that “Driving Without Valid License” could mean an individual was arrested on a warrant unrelated to the driver’s license charge and possibly more serious. Ms. Russell explained that jails should record the most serious offense at arrest and Lt. Miller confirmed that if someone was arrested for driving without a valid license but also had a felony warrant, the felony would be the most serious charge recorded at booking.

IX. Presentation #2: Ms. Gracie Burger, Crime and Justice Institute

Ms. Burger presented an evaluation of Michigan policies regarding arrest discretion, practices, and alternatives to incarceration. The presentation can be found [here](#).

Task Force members had the following questions and comments regarding Ms. Burger’s presentation:

- Rep. Yancey asked if the Task Force members could get a detailed list of the locations and names of all stakeholder roundtables and listening sessions around the state and Ms. Burger told her that those details will be included in the final report.
- Lt. Gov. Gilchrist asked that all Task Force members be invited to all of the roundtable discussions and listening sessions and to ask the members who else to include in those meetings. Ms. Burger agreed.
- Mr. DeRoche remarked that there are sometimes perverse incentives to place fines and fees on individuals because courts rely on that for revenue and inquired whether there will be data on fines and fees revenue in the state since that will impact budgets. Ms. Burger said that Pew can look into it and explained that there are different ways to fund alternatives to jail.
- Sen. Runestad remarked that “moral hazard” is a reason to arrest rather than cite because of concerns about people committing repeated offenses, but that if driving

without a valid license is the only conviction on a person's record, they should not be arrested.

- Mr. VerHeulen asked whether there is law enforcement or prosecutorial follow-up after deflection with the LEAD program. For example, if someone does not show up for the program, will they be arrested? Ms. Burger explained that there are many models of police-initiated deflection, some of which involve law enforcement follow up. Because LEAD is a harm-reduction model, it generally does not. Sheriff Jerry Clayton added that in Washtenaw County, the prosecutor receives immediate notice of an officer's decision to deflect. If the person diverted does not make contact with a case worker within 30 days, the prosecutor may initiate prosecution, but because LEAD is a harm-reduction model, there is no requirement for successful engagement with treatment.
- Mr. DeRoche asked what the difference is between deflection and diversion. Ms. Burger explained that for our purposes, deflection generally refers to pre-arrest diversion and diversion refers to post-arrest diversion.
- Dr. Kubiak asked how often appearance citations result in failures to appear in court and additional charges. Ms. Burger said there are some studies on this and that she can provide more information in subgroups. Ms. Burger reminded the Task Force that failure to appear was the number one arrest event in 2018.
- Rep. Yancey asked about an individual's ability to pay for a citation and what the state can do to address the inability to pay. Ms. Burger noted that though there are often fines and court fees associated with conviction, the citation itself does not carry an additional fee.
 - Judge Boyd said judges determine ability to pay; however, there is a dual motive to collect costs for court operations.
 - Sheriff Clayton said he agrees, and he noted that court fees are baked into budgets and explained courts have to collect a certain amount for county budgets. Sheriff Clayton said there is a "push and pull" at the county level regarding maintaining a budget and lowering jail utilization. He said real cost savings may only occur when the jail population is low enough to reduce the number of employees or close a section of the jail.
- Rep. Yancey asked whether Hope Not Handcuffs helps substance misuse beyond opioids. Ms. Burger noted that the program can be customized for the needs of individual departments and they set their own eligibility requirements.
- Sen. Runestad remarked that rural jails have high populations of people with mental health needs due to a lack of resources in the community. Ms. Burger agreed that the technical assistance staff heard that in interviews with stakeholders around the state.
- Dr. Alexander asked what other deflection strategies exist in other states. Ms. Burger shared an example of a deflection statute in Illinois and said she can provide more state examples in subgroups.
- Mr. VerHeulen asked whether Network 180 gets its funding out of its own resources. Ms. Burger said some of Kent County's Community Mental Health (CMH) funding comes from the state.

X. Break

Co-chair McCormack adjusted the agenda to include a 10-minute break before the third presentation.

XI. Presentation #3: Mr. Quentin Weld, Crime and Justice Institute

Mr. Weld presented an evaluation of Michigan state laws and practices that impact pretrial release and detention options. The presentation can be found [here](#).

Task Force members had the following questions and comments regarding Mr. Weld's presentation:

- Rep. Yancey asked a clarifying question about whether prosecutors should attend arraignments, as well as defense attorneys. Mr. Weld said that is a pretrial best practice. Judge Boyd estimated that 13 percent of his cases were resolved without an arraignment when defense attorneys and prosecutors come together early in the case for discussions.
- Sen. Runestad asked about how length of stay data compared among offenses – in particular, the differences between child support charges and other offenses. Mr. Weld reminded the Task Force that offense data only reflects the most serious charge. Ms. Russell added that “friend of the court” charges are the 12th or 13th most common offense at jail admission. She can provide length of stay data for other offenses in the full report.
- Dr. Kubiak asked about the specifics of drug testing conditions of release. Mr. DeRoche said that as someone who had to do it for 228 days straight, it usually includes drugs and alcohol.
- Judge Boyd noted the JIS case management system generates postcard reminders for court appearances, but only for misdemeanors.
- Sen. Runestad asked a clarifying question about the range of interim bail amounts due. He asked if someone has to pay up to 10 percent of \$10,000 that day. Mr. Weld confirmed that is correct.
- Mr. Talen asked whether there are best practices for increasing the likelihood of appearance. Mr. Weld explained that court reminders, e-mails, texts, and calls have yielded excellent results. He also noted that in Michigan some jurisdictions have started implementing court reminders and have seen a significant increase in court appearance rates.
- Sen. Runestad noted that the rural county commissioners discussed best practices in a recent roundtable. He heard they have significant issues with mental health populations and often have no choice but to put people with mental health challenges in jail because there is nowhere else to take them.

XII. Lunch Break

Co-chair McCormack called for a 15-minute break before a working lunch during the fourth presentation.

XIII. Presentation #4: Ms. Erika Parks, Pew Charitable Trusts

Ms. Parks presented an overview of Michigan statutes and policies as they pertain to sentencing, probation, and parole. The presentation can be found [here](#).

Task Force members had the following questions and comments regarding Ms. Parks's presentation:

- Sen. Runestad requested a breakdown of misdemeanors and felony sentence types by urban and rural areas. Ms. Russell will provide that in a follow-up document. agreed.
- Dr. Kubiak described a recent report from the now sunset Criminal Justice Policy Commission on straddle cells. Ms. Parks agreed and recommended it to the Task Force. Judge Boyd noted that the state's current budget debates affect straddle cell recommendations as well. County jails are asking their courts to send people in straddle cells to prison because they aren't receiving money from the state to supervise and support those people in jail.
- Sheriff Clayton asked whether there is data about the number of technical violations someone receives before being sent to jail. Ms. Parks remarked that we don't have that data, but we know it varies a lot by jurisdiction. She noted that some judges send people to jail on a first violation and some give repeated chances. Sheriff Clayton said Washtenaw County tries to address behavior resulting from serious mental illness on the front end of supervision because they believe it leads to fewer probation violations. He said the state should ask whether the mission of probation should be to detect every violation or to support the success of people on probation. Judge Boyd noted the mission of probation is generally the mission of the chief judge, so the question needs to be about the mission of judges. Rep. Yancey added that the mission of probation officers may be different than probation leadership, and Ms. Parks agreed based on her conversations with probation staff at different levels.
- Mr. Nyamfukudza asked whether there is data on how much "dead time" people on parole are serving in jail, referring to the law that does not allow people on parole to receive jail credit when they are arrested on a new criminal offense. Ms. Parks said she does not have this data but can research the issue.
- Mr. Hilson asked if Pew will provide the script of their presentations. Ms. Parks said she is unsure if the scripts will be published, but all of the information will be available in subgroup meetings.

XIV. Remarks from State Appellate Defender Office

Mr. Jonathon Sacks and Ms. Jessica Zimbelman of the Michigan State Appellate Defender Office (SADO) provided a brief overview of their organization and outlined several policies they would like included in the Task Force's recommendations and case studies that underpin the implications policy change would have on individuals in the system. Task Force members had the following questions and comments about Mr. Sacks's remarks:

- Sen. Santana said she is interested in incorporating SADO's recommendations into her subgroup's discussions.

- Mr. Pallas asked whether judges are still applying sentencing guidelines as though they are mandatory. Mr. Sacks said that, for the most part, the sentencing guidelines are followed even though they are now advisory.
- Mr. DeRoche wanted to clarify the language used in Michigan versus other states regarding sheriff's good time and quarter reductions. He asked if sheriff's good time was Michigan's name for general "good time," meaning time off a sentence for behaving at a baseline level of expectation, while quarter reductions are similar to "earned time," meaning time earned off of a sentence for going above and beyond. Mr. Sacks said that was correct.

XV. Public Testimony

Ms. Linda Hyaduck replaced Sen. Runestad as his proxy for public testimony. The following people provided public testimony to the Task Force:

Brad Ray, Ph.D., Center for Behavioral Health and Justice
 Joanne Sheldon, TBD Solutions
 Jayesh Patel, Street Democracy
 Percy Johnson, UAW
 Eileen Hayes, Michigan Faith in Action
 Kimberly Yann, VIP Mentoring
 Kim Michon, Neighborhood Detroit Services
 Phil Mayor, ACLU of Michigan
 Angela Amison
 Sean Murphy
 Michelle Lyons, Michigan Liberation
 Kamal Lukata Anderson
 Richard Speck, ACLU
 Joseph Donofrio, LARA
 Kevin Harris, Nation Outside
 Lashanda Kelley
 Fred Saffold
 Bernard Gill
 Sherelle Hogan, Pure Heart Foundation
 Kimberly Buddin, ACLU
 Jessica Best, Nation Outside
 Alicia Jones, SCLC Detroit
 Thomas Lewis, ACLU
 Alyssa Gunderson, Social Worker
 Barb Hankey, Oakland County Community Corrections
 Lt. Steve Schneider, Oakland County Sheriff's Office
 Darryl Woods, NAACP
 Tamekia Young, Appellate Defender Office
 Tawana Williams, JLM
 Danielle Cadoret, Attorney
 Kathy Murphy, Attorney
 Erin Keith, Detroit Justice Center
 Mabelle Pearson, Michigan Liberation
 Earl Burton, Michigan Liberation

Nicholas Buckingham, Michigan Liberation
Maureen Connolly and Latrice Ward, Ruth Ellis Center
Jeyne Poindexter, Equality Michigan
Stuart Baum, WSU Student Senate

XVI. Next Task Force Meeting Date

The next Michigan Joint Task Force on Jail and Pretrial Incarceration meeting is scheduled for Tuesday, November 19, 2019, from 10:30 a.m. to 12:30 p.m., with public testimony to be heard from 1:30 p.m. to 4:00 p.m. The meeting will be held at the Boji Tower, Michigan Senate Hearing Room - Ground Floor, at 124 W. Allegan St., Lansing, MI 48933.

XVII. Adjournment

The co-chairs adjourned the meeting at 4:45 p.m.