

Approved Minutes

Michigan Joint Task Force on Jail and Pretrial Incarceration – Meeting #5
Tuesday, November 19, 2019, 10:30 a.m.– 4:00 p.m.
Boji Building, Lansing, MI

Members Present:

Lt. Gov. Garlin Gilchrist II, Michigan Lieutenant Governor, Co-chair
Hon. Bridget McCormack, Chief Justice, Michigan Supreme Court, 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. D.J. 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
Hon. Prentis Edwards, Jr., 3rd Circuit Court
Rep. Mike Mueller, 51st House District

Members Excused:

Ms. Dana Nessel, Michigan Attorney General; Ms. Christina Grossi attended as her proxy.
Rep. Tenisha Yancey, 1st House District; Mr. Brad Schmidt attended as her proxy.
Sen. Jim Runestad, 15th Senate District; Ms. Linda Hyaduck attended as his proxy.
Sheriff Jerry Clayton, Washtenaw County Sheriff's Department

I. Convening of Meeting

The co-chairs called the meeting to order at 10:35 a.m.

II. Roll Call

Co-chair Bridget McCormack took the roll. A quorum was present. Three members were represented by proxies for the day. Ms. Monica Jahner, Mr. Takura Nyamfukudza, Mr. Prentis Edwards, Jr. and Ms. Linda Hyaduck arrived shortly after 10:35 a.m.

III. Motion to Approve Minutes

Co-chair McCormack introduced the minutes from the fourth Task Force meeting on October 18, 2019. Mr. James Talen made a motion in favor of approving the minutes. Hon. Thomas Boyd seconded. Motion passed.

IV. Report from Dr. Amanda Alexander on Genesee County Jail Visit

Dr. Alexander reported on the Genesee County jail tour held on October 31, 2019. On the tour, Task Force members heard from jail staff about the challenges the jail was facing and met with a small group of people incarcerated in the jail. Issues raised included jail overcrowding, lengthy pretrial times, and challenges addressing substance use and mental health needs.

Approximately 95 percent of the jail population is being held pretrial, and the roundtable included two men who had been in jail pretrial for 3.5 and 4 years, respectively. Jail staff reported that at least 70 percent of the jail population struggle with drugs and alcohol, and around half have mental health needs. As a result, they discussed the need for more programming for mental health and addiction in jail, as well as more diversion options.

V. Report from Ms. Monica Jahner on the Genesee County Community Town Hall

Ms. Jahner reported on the community town hall held on October 31, 2019. The goal of the town hall was to give community members an opportunity to have their voices heard.

Participants expressed concerns on several topics. Community members noted that people held pretrial are being treated the same as people who are convicted. Ms. Jahner also highlighted frustrations related to expensive phone call charges and commissary prices. She noted that this places a tremendous burden on family members who help fund their loved ones in jail. She also expressed community members' frustrations with the abolishment of in-contact visits, as visitors cannot have face-to-face contact with their loved ones. Other concerns expressed included the medical treatment of people in jail, with some having difficulty receiving critical medication, as well as issues related to personal hygiene, especially for women. The community also spoke about the abuse of power and racial discrimination.

VI. Report from Mr. Craig DeRoche on Faith Leaders Meeting

Mr. DeRoche reported on a virtual meeting of faith leaders held on November 15, 2019. Mr. DeRoche reported that the meeting included pastors and advocates from urban, suburban, and rural counties across a variety of faiths. He summarized concerns raised related to participants' beliefs that their values are not being reflected in the criminal justice system. Too many people are in jails, and jails are being used as a tool to punish people as opposed to addressing their underlying issues. In addition, participants noted concern that punishments are not proportionate to the harm done. Ultimately, the system is not 'yielding fruit,' as recidivism remains high. The hope of faith leaders is for a system that values each human life.

VII. Report from Lt. Jim Miller, Chair, Subgroup A – Arrest and Arrest-Alternatives

Lt. Miller provided an overview of the progress Subgroup A has made to date. To begin, he provided a definition of deflection and diversion, emphasizing the importance in understanding the difference between these two terms. Both usually involve connecting the individual to services, like mental health or substance use treatment, but deflection occurs in lieu of arrest and diversion occurs after arrest. Lt. Miller noted the group wants the state to dedicate funding for both pre-arrest deflection and post-arrest diversion.

He noted that Subgroup A was focusing on the question of who should be arrested and when. For most misdemeanors, arrest should be the exception, not the rule. Some misdemeanors should be reclassified as civil infractions, which are not arrestable, and others should be addressed with criminal citations in lieu of arrest. If law enforcement officers are encouraged

and trained to issue civil and criminal citations, jail admissions would be diverted and local law enforcement costs preserved. Subgroup A also supports requiring mental health training for law enforcement and is looking at different training options.

Lt. Miller noted that Subgroup A is interested in something Subgroup C is also contemplating: driver's license suspensions. The subgroup is interested in alternatives to suspending someone's license for offenses unrelated to driving safety, such as nonpayment of parking tickets or child support. Lt. Miller shared that at its next meetings, the subgroup will discuss additional funding for victim services, summonses in lieu of warrants, and data sharing between law enforcement and community mental health.

Task Force members had the following questions and comments about Lt. Miller's remarks:

- Judge Boyd suggested limiting the radius of warrant pickups based on offenses.
- Dr. Alexander suggested looking into legalizing some offenses altogether. She noted making offenses civil infractions might not solve the problem entirely, since people can be brought into jail for unpaid citations. She also suggested that the subgroup consider other types of response teams than just law enforcement, such as dispatching mental health workers.
- Mr. Nyamfukudza noted that it's important to take into consideration that many diversion programs require the individual to provide payment. The subgroup should look at ability to pay.
- Mr. Hilson highlighted a diversion option in Muskegon. He also noted that prosecutors don't always have the statutory authority to do diversion. It would be nice to have a law that allows prosecutors to do this work.
- Judge Boyd commented that the district court judges are also interested in reclassifying lower level misdemeanors to civil infractions and have a list of what they would like to be considered.
- Rep. Mueller agrees with changing the warrant pickup radius for law enforcement and that we need mental health training for law enforcement. He added that law enforcement should be present in addition to mental health workers to ensure the scene is secure.
- Dr. Kubiak discussed training dispatch officers to identify mental health issues and then sending officers trained in mental health before dispatching other officers. This could help de-escalate the situation.
- Rep. Mueller stated that we should look at training for new officers in the academies, and then continue training in-house.

VIII. Report from Hon. Thomas Boyd, Chair, Subgroup B – Pretrial Release and Detention

Judge Boyd provided an overview of the progress Subgroup B has made to date. He noted they are looking at pretrial release and detention and started by defining the problem of how bail and bond is set and reviewed. He stated that the group believes too many people are being held on bail, and there are not enough alternatives. In addition, he noted the need for uniformity, rules and processes, in addition to treating people individually. Detained defendants can't be allowed to languish in a facility that isn't designed to keep individuals for long periods of time.

He noted that the group has come to some policy consensus to date. This includes:

- Automatic pre-arraignment release for low-level offenses. This would exclude domestic violence misdemeanors.
- Timing of release hearing. The current jurisprudence recommends 48 hours. We're discussing if 24 hours could be the goal.
- Presumption of release on personal recognizance. The court must order an unsecured appearance bond of PR, unless there is a significant risk of posing bodily injury to another person or themselves.

Future areas the group will be looking into:

- Response to pretrial failure to appear.
- Long-term court processes for those detained.
- How to address holds and those operating in other jurisdictions.

Task Force members had the following questions and comments about Judge Boyd's remarks:

- Rep. Mueller stated that individuals should still be incentivized with low-level amounts of money, even if they are released on a PR bond. In terms of the 24-hour time of release hearing, carve out domestic violence so that they can prepare for the return of that person and conduct safety planning.
- Mr. Nyamfukudza noted the importance of looking into what qualifies as a violent crime. For example, an unarmed robbery could really be retail fraud. There may not be physical contact at all.
- Dr. Kubiak noted that violent offenses are usually an exclusion for diversion programs and should definitely be looked at.
- Mr. Schmidt noted that SCAO keeps recommending the number of judges be reduced. Are we looking at clearer guidelines for how many judges are necessary?
- Mr. Gutzwiller believes the 24-hour period is not long enough for investigation.
 - Judge Boyd commented that the prosecutor could get the judge to extend this if necessary/appropriate.
- Dr. Kubiak noted that we should look at stalking and how domestic violence is being defined.

IX. Report from Sen. Sylvia Santana, Chair, Subgroup C – Sentencing, Probation, and Parole

Senator Santana provided an overview of the progress Subgroup C has made to date. The group is looking into driver's license suspension issues and the reclassification of some misdemeanors to civil infractions and some felonies to misdemeanors. The subgroup is also considering recommending presumptive non-jail sentences for many misdemeanors and presumptive probation for some felonies. The subgroup is also looking into probation and parole violations, including reducing unnecessary conditions and increasing support services for people on community supervision. Subgroup C is also looking into probation and parole term lengths, and whether people need to be on community supervision for these long periods of time, especially for individuals who are meeting expectations and those convicted of low-level offenses.

The group plans to delve deeper into several topics over the next months. These include:

- Appropriate conditions of probation and parole, including fines and costs;
- Restitution for victims;
- Mandatory minimums for jail sentences; and
- Alternative sentencing practices.

Task Force members had the following questions and comments about Sen. Santana’s remarks:

- Rep. Mueller commented that individuals who successfully complete their probation terms except for the payment of fines, costs, and restitution could have conditions reduced to allow for repayment without continued supervision.
- Mr. Nyamfukudza commented that conditions of probation should correlate with the offense.
- Judge Boyd commented that probation should be rehabilitative, and when done right, it is about behavioral modification. He urged caution when thinking about reducing probation term lengths too drastically, because short terms do not provide the necessary time for behavior change.
- Ms. Jahner noted that the group needs to take into consideration that individuals are getting the right programming.
- Mr. Hilson noted that specialty courts provide individualized treatment and programming and this model should be spread across the entire criminal justice system. He highlighted the EXIT program in Muskegon County, which includes training available for people leaving jail.
- Chief Justice McCormack noted that it may make sense to think of misdemeanor and felony probation differently.
- Dr. Kubiak commented that supervision costs should be considered in determining probation term lengths, and that research shows that higher levels of supervision increases recidivism rates for low-level offenses. She cautioned against a one-size-fits-all approach.

X. Report from Anne Seymour, National Crime Victim/Survivor Advocate, from Victim/Survivor/Advocate Roundtable

Ms. Seymour reported on the victim/survivor/advocate roundtables held on October 21, 2019 in Lansing and October 22, 2019 in Detroit. Ms. Seymour thanked the Task Force members who attended. She noted that the pretrial period is a very unsafe time for survivors, and access to resources during this time is very difficult. Ms. Seymour discussed concerns that the data evaluated remains overly broad and does not describe issues related to domestic violence or sexual assault, issues important to crime survivors. She stated that we need to provide 360-degree support for crime victims. Ms. Seymour also noted that federal funding for victim services is expected to be cut significantly, which could impact Michigan.

Ms. Seymour noted that roundtable participants heard from several survivors who said that jail custody gave them peace of mind. Of particular importance is that it can take victims longer to get a Personal Protection Order (PPO) than for a defendant to be arraigned and released. She noted that every PPO should be entered into the Law Enforcement Information Network (LEIN) so that law enforcement has consistent access to information. Ms. Seymour recommended that victims be able to share input at the bail hearing.

Task Force members had the following questions and comments about Ms. Seymour's remarks:

- Ms. Hyaduck asked if Ms. Seymour is suggesting that victims be notified of arraignment.
 - Ms. Seymour responded yes.
- Sen. Santana asked how long it takes PPOs to take effect.
 - Ms. Seymour said she had heard 72 hours.
- Mr. DeRoche asked what Ms. Seymour meant by having victims give input at the bail hearing.
 - Ms. Seymour answered that victims may have recommendations on some conditions of bail being set. It won't be the same for every victim.
- Mr. VerHeulen asked about the requirement to notify the defendant of arraignment. Do some states specify that victims must be notified?
 - Ms. Seymour stated that in some places they are notified, but victim advocates don't always have the capacity to contact the defendants.
- Rep. Mueller noted that in LEIN, law enforcement cannot access the conditions of the PPO, without which they are not able to easily enforce the PPO. He suggested that technology should allow for the inclusion of PPO conditions in LEIN. In addition, in MDOC probation officers are only checking twice a year for whether restitution is being paid. We need to involve victims at every stage of the process.
- Dr. Kubiak noted that victims of domestic violence, sexual assault, and other violence don't have the same coalition and support. Victim advocates are often overloaded. Victims without support can be left out in the cold when navigating the case.

XI. Lunch Break

Co-chair McCormack called for a one-hour lunch break.

Ms. Christina Grossi left during the lunch break.

XII. Additional report from Angie Povilaitis, MI Domestic & Sexual Violence Prevention & Treatment Board, from Victim/Survivor/Advocate Roundtable

Ms. Povilaitis thanked Task Force members for holding the two victim roundtables. She stated that there is no one-size-fits-all response to crime. After arraignment, release conditions are essential for homicide prevention of domestic violence victims. When making reform decisions, the Task Force should keep victims of violent and assaultive crimes in mind. Victims deserve to feel safe and have peace of mind. It can be devastating for victims when a perpetrator is released and they are not notified or acknowledged.

She noted that the data presented to the Task Force did not include Wayne County. In addition, it can be hard to quantify the experiences of victims. Ms. Povilaitis asked the Task Force to focus reform on serious crimes. Any reform must take into account victims. There should be coordination between civil PPOs and criminal release conditions. She supported expanding the definition of domestic violence, as had previously been mentioned in the Task Force meeting.

Task Force members had the following questions and comments about Ms. Povilaitis' remarks:

- Dr. Alexander stated that the system has failed victims. What are the most ambitious goals for victim services? Housing first? Restorative justice?
 - Ms. Povilaitis noted that she does not endorse restorative justice for domestic violence.
- Judge Edwards asked whether the Crime Victims Fund is effective.
 - Ms. Povilaitis responded that it currently funds crime victim advocates and can support communities and prosecutors. It also funds the Crime Victim Compensation Fund related to property damage.

XIII. Report from Jeffrey Clayton, American Bail Coalition, on Bail Agent Roundtable

Mr. Gutzwiller reported briefly on the bail agent roundtable held on October 30, 2019 in Lansing. He noted that five Task Force members attended, as well as agents from Macomb, Kent, and Wayne Counties, and two bail underwriters. Participants discussed the variation seen in practices across court rooms, as well as the lack of consistency in bond setting. They discussed how bail agents work and the speed of release after bond is posted.

Mr. Clayton discussed highlights from a written report that was presented to the Task Force. He echoed Mr. Gutzwiller’s comments pertaining to issues of consistency and uniformity in counties (e.g., bond for DWLS ranges widely). Some jurisdictions have on-call judges to make bail decisions, but some jurisdictions can take much longer to make decisions. Mr. Clayton noted that there are also differences in how often electronic monitoring is used. He commented that there is a need for standardization in the bond schedule, even for personal recognizance (PR) bonds.

Mr. Clayton discussed several barriers for people getting out of jail. Phone calls can be expensive. At times, bail agents don’t bail people out because their family doesn’t want them to get out of jail. Sometimes families will request bond revocations. Agents may also suggest people stay in jail to testify. Mr. Clayton commented that jails are poorly equipped to be detoxification facilities. He stated that a small sample of case data was gathered by bail agents, which can be found in the report.

XIV. Public Testimony

The following people provided public testimony to the Task Force:

Sheriff Robert Pickell, Office of Genesee County Sherriff
 Captain Jason Gould, Office of Genesee County Sherriff
 Reverend Nathan DeWard, Forgotten Man Ministries
 Paul Stankewitz, Michigan Catholic Conference
 Emily Fabry, Probation Officer, 55th District
 John Jays, JSG Monitoring
 Joe Haveman, Hope Network
 Heather Duhoski, Probation Officer
 Annie Patnaude, Americans for Prosperity
 Josh Hoe
 Chris Renna, State Planning Body/Berrien County Public Defender

James Sutton, Concerned Citizen
Kristen Burgess, MCFJ, ACLU Smart Justice
Barbara Niess-May, SafeHouse Center
Lois Pullano, Citizens for Prison Reform
Jean Bidwell, Victim
Derrell Slaughter, Ingham Board of Commissioners/ACLU of MI
Shawn Barrera-Leaf, ACLU Smart Justice/MI CFJ
Stephanie Marroki
Angela Amison
Diane Boose
Frank Bertram, MI-CEMI
Ashley Carter, Advancement Project
Mary F. Smith, Owner of Smith Bonds and Surety
Monica Briggins
Debby Harden
Kathy Hagenian, Executive Policy Director, Michigan Coalition to End Domestic Violence &
Sexual Violence (MCEDSV)
Greg K., Michigan Citizens for Justice
John Sargeant, Michigan Citizens for Justice
Allison Towe, Michigan Protection & Advocacy Services
Jeremiah Grant, Office of State Rep. Sherry Gay-Dagnogo
John W. Wagner, MCFJ
Darryl Woods, Youth Deterrent Program
Laura Yagi, Washtenaw County Public Defender's Office
Barbara L. Jones, Wayne State University – Center for Peace and Conflict Studies
Lacresha Hodrick

XV. Next Task Force Meeting Date

The next Michigan Joint Task Force on Jail and Pretrial Incarceration meeting is scheduled for Thursday, January 9, 2020, from 9:30 a.m. to 11:00 a.m. The meeting will be held at the Boji Tower, Michigan Senate Hearing Room – Ground Floor, at 124 W. Allegan St., Lansing, MI 48933.

XVI. Adjournment

The co-chairs adjourned the meeting at 4:00 p.m.