



**Supreme Court Commission on
Pretrial Practices
Preliminary Report
December 2018**

Commission Members (during 2018)

Honorable Anne M. Burke, Supreme Court Justice
Honorable P. Scott Neville, Supreme Court Justice
Honorable Robbin Stuckert, Presiding Judge 23rd Judicial Circuit (**Chair**)
Representative Carol Ammons
Senator Scott Bennett
Honorable Liam Brennan
Honorable Sandi Cianci, Illinois Association of Court Clerks
Patrick Covington, Alumni Association
Honorable Thomas Dart, Cook County Sheriff
Honorable Patrick Delfino, Illinois States Attorney Appellate Prosecutor
Honorable Thomas Donnelly, Cook County, Chair, Illinois Judicial College Board of Trustees
Honorable Timothy Evans, Chief Judge, Circuit Court of Cook County
Honorable James P. Flannery Jr., Cook County, Chair, Supreme Court Legislative Committee
Keith Grant, Illinois Public Defender Association
Rodger Heaton, Chief of Staff (former), Office of the Governor
Cynthia Hora, Office of the Illinois Attorney General, Chief of Crime Victim Services Division
Honorable Donald Hudson, Second District Appellate Judge
Dan Hunt, Illinois Probation and Court Services Association
Honorable David A. Hylla, Chair, Conference of Chief Circuit Judges
Honorable Ronald Jacobson (Retired), Former Chair of IJC Criminal Justice Committee
John Maki, Former Executive Director-Illinois Criminal Justice Information Authority
Senator Elgie Sims
Honorable David Snyders, Illinois Sheriffs' Association
Steven Stelter, Illinois Association Chiefs of Police
Honorable Thomas Tedeschi, 2nd Circuit, Chief Judge

Administrative of the Illinois Courts

Marcia M. Meis, Director
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The Commission thanks Lori Eville, consultant with the National Institute of Corrections, for providing technical assistance to the membership and direction on best practices to fulfill the charge of the Illinois Supreme Court.

Last, the Commission thanks the following former members for their contributions on this effort: Representative Peter Breen, Senator Michael Connelly, Honorable Kahalah Clay, Honorable Russell Hartigan (Retired), Honorable James Kruger Jr., Honorable Kathy Keefe, and Tina Varney.

Background

Illinois has a long history of pretrial reform efforts and was one of the first states to abolish bail bondsmen in 1963. The Pretrial Services Act in 1987 (725 ILCS 185.1 *et seq*) provides the legal framework for the pretrial process. Under the Act, pretrial services are intended to provide a pivotal function in collecting and verifying information to be used by the judge to determine bond and release conditions, as well as provide post-release supervision as a means to respond to non-compliance with court conditions while awaiting trial. However, in practice throughout much of the state, it has become largely aspirational rather than a model for everyday procedure.

In April 2017, the Illinois Supreme Court issued the attached policy statement on pretrial practices seeking to ensure a "*fair, efficient, transparent, accountable and adequately-resourced system of pretrial services in each of Illinois' 24 judicial circuits.*" While the Pretrial Services Act, as reemphasized by the Court's policy statement, clearly anchors the foundation in the establishment of pretrial services and brought about positive change, Illinois has not yet enacted comprehensive, statewide pretrial reform. The need to implement a high functioning and sustainable system of pretrial throughout Illinois provided the impetus for the Court's creation of the Supreme Court Commission on Pretrial Practices.

On December 21, 2017, the Supreme Court entered the attached order creating the Illinois Supreme Court Commission on Pretrial Practices. The Commission is charged with conducting a comprehensive review of the State's pretrial detention system and making recommendations for amendments to state laws, Supreme Court Rules, or Supreme Court policies, as necessary, to ensure pretrial practices in all jurisdictions in Illinois are consistent, in form and substance, with the Supreme Court's Policy Statement on Pretrial Services.

Membership on the commission is comprised of all three branches of government including various justice stakeholders and organizations throughout the state. The entities that comprise the commission are:

- Illinois Judicial College Board of Trustee
- Supreme Court Legislative Committee
- Illinois Appellate Court
- Office of the Governor
- Conference of Chief Circuit Judges
- Illinois Criminal Justice Information Authority
- IJC Committee on Criminal Justice (now sunset)
- Appointed member by the Speaker of the House of Representatives
- Appointed member by the Minority Leader of the House of Representatives
- Appointed member by the Senate President
- Appointed member by the Senate Minority Leader
- Illinois State Bar Association
- Illinois Probation and Court Services Association
- Illinois State's Attorneys Appellate Prosecutor
- Illinois Association of Court Clerks
- Illinois Public Defender Association
- Illinois Association of Chiefs of Police
- Illinois Sheriffs' Association

The goal of this multi-cameral approach was to ensure all counties in the state were represented and able to weigh in on the varying levels of available resources and system operations.

The Order provides that “the Commission shall seek to ensure a fair, efficient, transparent, accountable and adequately-resourced system of pretrial services, which includes the use of evidence-based practices, and shall develop an operational structure that is guided by the National Institute of Corrections (NIC) *Essential Elements of a High Functioning Pretrial System and Agency*.”

To aid in this mission, the Administrative Office of the Illinois Courts (AOIC), secured technical assistance from the NIC to support the Commission’s study and recommendations for a bail system that is consistent with evidence-based pretrial practices. Based on what Illinois justice partners have learned from the NIC publication on the Essential Elements of a High Functioning System and Agency, as well as Illinois criminal justice leaders’ observations of the Wisconsin Criminal Justice Study Commission, the NIC was the clear choice to guide and support the Commission's efforts with the evaluation, analysis and recommendations for improving Illinois bail practices.

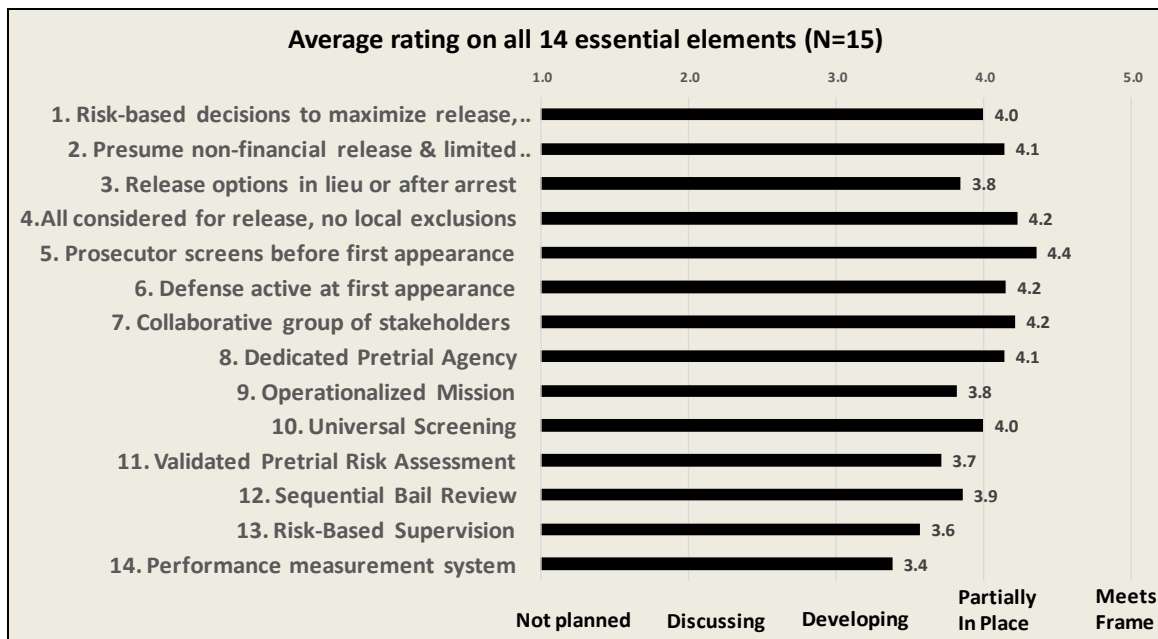
Lori Eville from the NIC has attended Commission meetings and provided critical support and training. Ms. Eville has more than 20 years of public service experience in criminal justice systems at the federal, state and county Levels. She also manages the Pretrial Portfolio for NIC and has trained 500 Pretrial Executives through its Orientation for New Pretrial Executives.

As the Commission was put into place and preparing for its first meeting, Illinois passed new legislation on pretrial reform, specifically, the Bail Reform Act of 2017 (effective January 1, 2018). The Act supports the use of least restrictive conditions based on an individual’s risk rather than financial ability to secure release from custody. The Commission, spearheaded by the guidance of NIC consultant Lori Eville, studied the new Bail Reform Act and incorporated it into the Commission’s pretrial training on the *Essential Elements of a High Functioning Pretrial System and Agency*. The Commission will further study and incorporate the Act’s requirements into recommendations on policy and practice development and other measures for enhancing the administration of pretrial justice in Illinois.

With this structure in place, the Commission began with its first meeting, February 16, 2018, at the Michael A. Bilandic Building in Chicago, thereby meeting the Order’s requirement that the Commission hold its first meeting within 60 days of the order being filed. Not surprisingly, Commission discussion focused on the Illinois Bail Reform Act, which had just become effective on January 1, 2018.

The members noted that among the Act’s provisions that bring challenges to statewide compliance in Illinois are the amendment to the Code of Criminal Procedure to include the right to counsel in bail hearings. The Commission's first task was to complete a survey to gauge the membership’s knowledge and perceptions on the administration of pretrial justice in the state or in their respective jurisdictions, depending on the duties of their positions. The Commission utilized an NIC Essential Elements survey in this regard.

At the March 16, 2018, the Commission reviewed the survey responses which, overall, indicated belief that our current practices were largely in compliance with NIC's *Essential Elements of an Effective Pretrial Justice System and Agency*. Survey results are below:



However, the Commission then critically reviewed each agency and system element and compared them to an AOIC inventory of current practices in all 102 counties that was completed in 2017. It became clear that the member's perceptions were anecdotal and not the true picture of pretrial in Illinois.

Who might be present for a typical pretrial bond hearing?*

Judge	98%
States Attorney	96%
Defense Counsel	49%
Court Reporter	59%
Circuit Court Clerk	81%
Probation/Pretrial Officer (e.g., Sheriff, Police, Bailiff)	29%
Defendant	50%
Defendant Family/Friends	82%
Other (e.g., Public, Translator, Victim Advocate)	43%
Unknown	7%
	1%

*This includes by video.

These survey results, notably the presence of defense counsel and defendant, substantiate the crucial need for statewide pretrial reform.

At the April 2018 Commission meeting, AOIC staff presented data on current pretrial funding, number of pretrial positions, and the number of pretrial programs statewide and the differences in operations. As the commission quickly discovered, a framework for evidence-based pretrial justice must begin with education on legal foundations of pretrial decision making, history of bail, and

Illinois statutes as they correlate to these topical discussions. Among other things, the frequent interchange and misuse of the word "bail" and "bond" necessitated discussion on defining pretrial terminology to ensure a cohesive platform of communication among Commission members.

In June 2018, Commission members traveled to the AOIC Springfield office to receive training on the NIC *Essential Elements of a High Functioning Pretrial Justice System and Agency*. The Essential Elements of an Effective Pretrial System include:

1. Pretrial release and detention decisions based on risk and designed to maximize release, court appearance, and public safety
2. Legal framework that includes: presumption of least restrictive nonfinancial release; restrictions or prohibition on the use of secured financial conditions of release; and detention for a limited and clearly defined type of defendant
3. Release options following or in lieu of arrest
4. Defendants eligible by statute for pretrial release are considered for release, with no locally-imposed exclusions not permitted by statute
5. Experienced prosecutors screen criminal cases before first appearance
6. Defense counsel active at first appearance
7. Collaborative group of stakeholders that employs evidence-based decision-making to ensure a high functioning system
8. Dedicated pretrial services agency

The Essential Elements of a High functioning Pretrial Services Agency include:

1. Operationalized mission
2. Universal screening
3. Validated pretrial risk assessments
4. Sequential bail review
5. Risk-based supervision
6. Performance measurement and feedback

The facilitators for this training included Timothy Schnacke, a nationally renowned criminal justice system analyst with 30 years of legal experience. Mr. Schnacke is also the author of two published papers that have been used by many jurisdictions nationwide for pretrial reform (*Fundamentals of Bail: A resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform and Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*). Training was also provided by Spurgeon Kennedy, Vice-President of the

National Association of Pretrial Services Agency and co-author of NIC's Essential Elements document. NIC Consultant Lori Eville also facilitated and guided the all-day training.

Commission members were educated on the three "generations" of bail in addition to the *Essential Elements of a High Functioning Pretrial Justice System and Agency*. The first generation (1920's to 1960's) focused on release. The second generation (1960's to 1980's) emphasized public safety as a consideration when making release decisions. Finally, the third generation, our current era, is trying to figure out how to balance appropriate release and public safety. As the Commission continues its research and effort to fulfill its charge, they must focus on answering three foundational questions:

1. Who do we release?
2. Who do we detain?
3. How do we do it?

The training noted that Illinois bail statutes and practices are driven by a resource-based system of justice. While Illinois was one of the first states to abolish bail bondsmen, those practices were replaced by allowing counties to retain 10% of the monetary conditions of release imposed on a defendant. See statute below:

(725 ILCS 5/110-7(f))

"When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused or to the defendant's designee by an assignment executed at the time the bail amount is deposited, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited."

As noted during training discussion, if Illinois continues to move from a resource-based system of justice to a risk-based system, there will be less reliance on monetary conditions of release. Because counties have sustained system operations on this 10% funding, stakeholder acceptance of pretrial reform will continue to be a challenge in many areas.

The training also educated on the conditions of release at bond call as contained in the Illinois bail statute (725 ILCS5/110), which outlines 37 factors that the judiciary shall consider when making liberty decisions. The Commission learned that many of the factors outlined in the statute (listed below) are not evidence-based or aligned with what we now know about measuring the risk of pretrial failure:

1. The nature and circumstances of the offense charged,
2. Whether the evidence shows that as part of the offense there was a use of violence or threatened use of violence,
3. Whether the offense involved corruption of public officials or employees,
4. Whether there was physical harm or threats of physical harm to any public official, public employee, judge, prosecutor, juror or witness, senior citizen, child, or person with a disability,
5. Whether evidence shows that during the offense or during the arrest the defendant possessed or used a firearm, machine gun, explosive or metal piercing ammunition or explosive bomb device or any military or paramilitary armament,
6. Whether the evidence shows that the offense committed was related to or in furtherance of the criminal activities of an organized gang or was motivated by the defendant's membership in or allegiance to an organized gang,
7. The condition of the victim,
8. Any written statement submitted by the victim or proffer or representation by the State regarding the impact which the alleged criminal conduct has had on the victim and the victim's concern, if any, with further contact with the defendant if released on bail,

9. Whether the offense was based on racial, religious, sexual orientation or ethnic hatred,
10. The likelihood of the filing of a greater charge,
11. The likelihood of conviction,
12. The sentence applicable upon conviction,
13. The weight of the evidence against such defendant,
14. Whether there exists motivation or ability to flee,
15. Whether there is any verification as to prior residence, education, or family ties in the local jurisdiction, in another county, state or foreign country,
16. The defendant's employment, financial resources, character and mental condition, past conduct, prior use of alias names or dates of birth, and length of residence in the community,
17. The consent of the defendant to periodic drug testing in accordance with Section 110-6.5,
18. Whether a foreign national defendant is lawfully admitted in the United States of America,
19. Whether the government of the foreign national maintains an extradition treaty with the United States by which the foreign government will extradite to the United States its national for a trial for a crime allegedly committed in the United States,
20. Whether the defendant is currently subject to deportation or exclusion under the immigration laws of the United States,
21. Whether the defendant, although a United States citizen, is considered under the law of any foreign state a national of that state for the purposes of extradition or non-extradition to the United States,
22. The amount of unrecovered proceeds lost as a result of the alleged offense,
23. The source of bail funds tendered or sought to be tendered for bail,
24. Whether from the totality of the court's consideration, the loss of funds posted or sought to be posted for bail will not deter the defendant from flight,
25. Whether the evidence shows that the defendant is engaged in significant possession, manufacture, or delivery of a controlled substance or cannabis, either individually or in consort with others,
26. Whether at the time of the offense charged he or she was on bond or pre-trial release pending trial, probation, periodic imprisonment or conditional discharge pursuant to this Code or the comparable Code of any other state or federal jurisdiction,
27. Whether the defendant is on bond or pre-trial release pending the imposition or execution of sentence or appeal of sentence for any offense under the laws of Illinois or any other state or federal jurisdiction,
28. Whether the defendant is under parole, aftercare release, mandatory supervised release, or work release from the Illinois Department of Corrections or Illinois Department of Juvenile Justice or any penal institution or corrections department of any state or federal jurisdiction,
29. The defendant's record of convictions,
30. Whether the defendant has been convicted of a misdemeanor or ordinance offense in Illinois or similar offense in other state or federal jurisdiction within the 10 years preceding the current charge or convicted of a felony in Illinois,
31. Whether the defendant was convicted of an offense in another state or federal jurisdiction that would be a felony if committed in Illinois within the 20 years preceding the current charge or has been convicted of such felony and released from the penitentiary within 20 years preceding the current charge if a penitentiary sentence was imposed in Illinois or other state or federal jurisdiction,
32. The defendant's records of juvenile adjudication of delinquency in any jurisdiction,
33. Any record of appearance or failure to appear by the defendant at court proceedings,
34. Whether there was flight to avoid arrest or prosecution,
35. Whether the defendant escaped or attempted to escape to avoid arrest,
36. Whether the defendant refused to identify himself or herself, or
37. Whether there was a refusal by the defendant to be fingerprinted as required by law

The increased number ofailable defendants in jail normally leads to bail reform. However, bail reform involves not only a system change but a cultural change - a challenging process that will undoubtedly continue beyond the tenure of this Commission.

In monthly meetings after the June 2018 training, the Commission discussed and refined its anticipated process for developing the statewide recommendations regarding pretrial practices that will be included in its final December 2019 report to the Supreme Court.

Drafting recommendations for statewide changes involves many different issues, stakeholders, and research. In addition to the obvious liberty interests at issue, it also involves consideration of the constitutional rights of victims of violent crimes guaranteed by Article I, Section 8.1(a) of the Illinois Constitution, including “the right to be reasonably protected from the accused throughout the criminal justice process” and “the right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant and setting conditions of release after arrest and conviction.” The Commission identified 10 subcommittees that will be tasked with identifying statewide issues for a specific area of discipline and, based on their research, provide recommendations to the full Commission. Membership of the subcommittees is comprised of Commission members, justice stakeholders across the state, and other community partners.

Each recommendation must be linked to appropriate factors in the NIC's *Essential Elements of a Pretrial Justice System and Agency* detailed earlier in this report. Subcommittees will address victims’ rights, as appropriate, when developing their recommendations. Below is a list of the subcommittees and their areas of focus:

Subcommittee	Primary Focus
Arrest Decision/Pre-Arraignment	NIC System Element #3
Communication/Training	All System and Agency Elements
First Appearance/Preventive Detention	NIC System Element #5 and #6
Funding/Resources for Implementation	NIC System Element #8 and Agency Element #1 to #6
Legislative	NIC System Element #2
Performance Measurement	NIC Agency Element #6
Risk Assessment	NIC Agency Element #3
Supervision/Conditions	NIC Agency Element #5
Recommendation Report Writing	Integrate Recommendation with NIC System and Agency Elements
Operational Policy and Procedures	NIC System Element #7

The Commission took great care in populating these subcommittees, and this structure will allow members to address issues of common concern, barriers to implementation, and strategies for reform. Subcommittee members were selected only upon formal invitation from the Commission Chair. Commission members were designated as Chair of the subcommittees and a tool kit was drafted as a resource to assist in managing the subcommittee content and process.

While the full Commission typically meets monthly in person, the various subcommittees meet via teleconference, as needed, and are scheduled on a rotating basis to “report out” to the full Commission on their progress. The expectation is that each subcommittee will complete its final report with recommendations no later than October 2019. The Commission will incorporate the subcommittee findings into its final report to the Supreme Court in December 2019.

In creating the Commission and its subcommittees, extensive vetting occurred to ensure all stakeholders had a voice. However, several membership terms were shortened by the 2018 election which resulted in the loss of four members. In other instances, internal organization elections/annual rotations resulted in the replacement of members.

While this has presented challenges to new members that assume a role on the Commission, it will be critical for new members to receive the extensive training and “catch up” with the knowledge that the Commission gained during 2018. Pretrial practices reform impacts every criminal justice system and stakeholder, and it is crucial that everyone's voice be heard. The issues are complex and sustained efforts are necessary to fulfill the charge given to the Commission by the Supreme Court.

Next Steps

As Illinois moves from a resource-based system of justice to one that is risk-based, the Commission's goal is to minimize the effects of monetary conditions of release in the criminal justice system while maximizing appropriate release, assuring court appearance, and fostering public safety. The Commission appreciates the opportunity afforded by the Illinois Supreme Court to review pretrial practices in the State of Illinois and make recommendations that ensure defendants are not denied liberty solely due to their inability to financially secure their release from custody.

The Commission will endeavor to make recommendations that ensure that pretrial justice in our state is fair and evidence-based but serves to protect against the risk that an individual will fail to appear in court or pose a threat to the safety of the community.