

RECOMMENDATIONS TO THE PRETRIAL JUSTICE TASK FORCE

Cal Williams

At the September 11, 2019 presentations to the Task Force my time was cut short due to circumstances beyond my control. Judge Arnold-Burger asked me to submit a list of what I recommend to the Task Force and why I believe these recommendations are worth consideration.

Before we jettison over 225 years of experience with a system that has a proven record of adapting to change, there are some factors we should consider. Among the facts that have brought pretrial detention to the public's attention are that more people are arrested and detained today than ever before and it takes far longer for a case to come to trial than it did in the past. As I stated in my limited oral presentation, **prior to the early 1980's the number of those detained was 25% of what is today.** The obvious question is why have these numbers grown so much in just 40 years and can the trends be reversed without trashing the Criminal Justice System as we know it.

The Length of Pretrial Detention:

State Representative (and Bail Agent) Steven Owens told us that under current budget constraints **any solutions that require extensive state funding are unlikely to pass** whereas **solutions that are revenue neutral are viewed with favor.** This means that revenue neutral revisions of procedural statutes preventing delay in cases can and should be implemented.

This would apply to:

First appearances,
Preliminary hearings,
Arraignments,
and Speedy trial,

Application of these recommendations could cut month(s) off of the pretrial detention period the detained defendant faces and save money for the Sheriff's Departments housing these individuals. A full discussion of these statutes is found in my earlier submission to the Task Force.

The Excessive Number Of Defendants Detained

Also an issue is the number of citizens arrested and detained today as compared to that 1980's figure. **This has nothing to do with an increase in crime; it is all about the decision made in each individual case.** In what was possibly a Freudian slip, Sedgwick County Sheriff Easter admitted that as a young officer he thought everyone committing a crime should be arrested but he matured and realized his mistake in judgment. However across Kansas younger officers make most of the arrests and not all departments are as tuned in as Sheriff Easter.

I recommend a study be implemented as to which crimes should result in N.T.A.s or Book & Release, particularly misdemeanors. Any statutory changes required would also be revenue neutral.

First Appearance, Attorneys, and Bond

I recommend an attorney for the defendant be present for all first appearances as it is cost effective and helpful in reducing detention. Those states or jurisdictions that do so see a marked increase in bond reductions and/or recognizance bonds. This is the type of service that is appropriate for “contract attorney services”. So how is that paid for? If statutory changes suggested are made and pretrial detention periods are shortened by what could easily be 30 and possibly as much as 60 days or more, at an average detention cost of \$25.00-\$30.00 per day **the cost of contract attorney services at all first appearances could easily be paid** for with substantial savings left over for the Sheriff/Jail.

Pretrial Assessment

While I don't favor what I see as a flawed tool, if a way can be found to fund such a program state wide I understand it may be used as a tool by judges in setting bond, reducing bond, or releasing the defendant without bond. The numbers are coming in on pretrial assessment programs and many of them are found to have inherent bias not only in the programs as written by the white majority but also by the white majority of persons administering the assessment. This is not an indictment against those persons **it is simply a cultural bias that we as a nation are yet to overcome.**

Conclusion and Summary

The State of Kansas, through this Task Force of Judiciary and those attorneys who work in our Criminal Justice Courts have a clear opportunity to improve our Pretrial Justice System.

My recommendation is it should be a blended system of:

- persons not detained, due to the nature of their charge;**
- bonds set upon arrest for those who choose to bond out;**
- 1st appearance lawyer, for reduction, recognizance, assessment;**
- expedited procedures to guarantee a speedy trial.**

There are matters that will take time and funding to initiate but my recommendations are **revenue neutral steps that can be taken now** to reduce the numbers of defendants detained and the length of that detention. By taking clear steps toward reducing the number of defendants in pretrial detention, and reducing the length of pretrial detention if Kansas were to be sued for perceived bias the State can show positive action taken toward reducing unnecessary detention and improving its system of pretrial justice for all defendants.