



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

www.courts.ca.gov/forum.htm
forum@jud.ca.gov

TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

December 13, 2018
12:15-1:15 p.m.

Advisory Body Members Present: *Hon. Abby Abinanti, Co-chair*, Hon. Erin Alexander, Hon. April Attebury, Hon. Hilary A. Chittick, Hon. Leonard Edwards(Ret.), Ms. Heather Hostler, Hon. Mark Juhas, Hon. Lawrence C. King, Hon. Patricia Lenzi, Hon. Devon Lomayesva, Hon. Lester Marston, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Christine Williams, and Hon. Joseph Wiseman

Advisory Body Members Absent: *Hon. Suzanne Kingsbury, Co-chair*, Hon. Richard Blake, Hon. Gail Dekreon, Hon. Patricia Guerrero, Hon. Kristina Kalka, Hon. William Kockenmeister, Hon. Gilbert Ochoa, Hon. Mark Radoff, Hon. David Riemenschneider, Hon. Michael Sachs, Hon. Cindy Smith, Ms. Christina Snider, Hon. Robert Trentacosta, Hon. Juan Ulloa, and Hon. Claudette White

Others Present: Ms.Carolynn Bernabe, Ms. Vida Castaneda, Hon. Edward J. Davila, Ms. Ann Gilmour, Ms. Eve Hershcopf, Ms. Annita Lucchesi, and Ms. Joy Ricardo

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 12:18 p.m.

Approval of Minutes

The Forum approved the October 11, 2018 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-5)

Info 1

CoChairs Report

February 28, 2019 In Person Meeting

The in-person Forum meeting will be held on February 28, 2019. Judicial Council staff will email travel information to all members.

Info 2

Federal Court – Power Act Collaboration

Hon. Edward J. Davila, United States District Judge, Northern District of California

A presentation from United States District Judge Edward J. Davila of Northern District of California on possible collaboration regarding the requirements of the federal [Powers Act](#) which mandates that federal courts annually hold events that partner with domestic violence support organizations and tribes. Staff to report back with formal recommendations. Members to contact Ann Gilmour if willing to be in the planning group and continue discussion with Judges Davila and Lenzi.

Info 3

Missing and Murdered Indigenous Women & Girls – Report from the Urban Indian Health Institute

*Ms. Annita Lucchesi (Southern Cheyenne), Ph.D.- Candidate & Program Researcher,
Urban Indian Health Institute*

A presentation from Ms. Annita Lucchesi of the Urban Indian Health Institute on her work on the data gathering and information about the [Missing and Murdered Indigenous Women & Girls](#) report. Ms. Lucchesi highlighted trafficking/missing persons issues within urban areas, process in gathering data missing from law enforcement data records, and the group proposed collaborative solutions to highlighted issues.

Info 4

Bail Reform and Development of Risk Assessment Tools

Eve Hershcopf, Attorney, Judicial Council Criminal Justice Services

Hon. Hilary A. Chittick, Judge, Superior Court of California, County of Fresno

Judge Hilary Chittick gave an update on developments in California's bail reform and discussed how these ongoing developments might be of interest to the work of the Forum and tribal communities in general.

She explained that every jurisdiction has some form of pretrial release. Some jurisdictions use exclusively bail either commercial bail or posting a fixed amount with the court. Some jurisdictions based on a pretrial risk assessment involving a combination of assessment and interview. An example is the Federal system. Some jurisdictions use pretrial release using a range of options, including electric monitoring and property bonds. Examples include Washington DC, Kentucky and recently New Jersey. Some jurisdictions use a combination of both.

In some jurisdictions pretrial release decisions are discretionary with law enforcement. For example, California has a misdemeanor field citation system. Nineteen California counties are subject to Federal overcrowding consent decrees which result in basically no pretrial detentions because of the overcrowding issue. California currently has a bail-based system with commercial bondsmen. The advantage is that it is quick, and if you are wealthy you can always get out. Also, according to bondsmen, more likely to return because family friends have put up the money. The disadvantages of the system are that if you are poor, it is harder to get out. Money (10%) is paid to purchase the bail bond and will not be returned even if you do everything correctly, return for every court date, and are eventually found innocent. Family and friends are on the hook for the money, sometimes for years if paid in installments, even if you show up to everything. Often you must put up collateral for the remaining 90%. Research also shows that gang members will post bond for other gang members and DV victims sometimes post bond for those who have victimized them.

The challenge is to create a system that treats everyone fairly, rich or poor, while correctly assessing risks, and the ability to mitigate them. The main risks to be considered are:

1. Risk of nonappearance pending trial
2. Risk of commission of a new offense while pending trial
3. Risk of commission of a violent offense while pending trial
4. Risk of loss of job, family and social connections while detained. (Risk of losing pro-social connections and habits and gaining criminogenic ones while detained, especially for low and medium risk people who are detained with high risk defendants.)

As an alternative to a money bail-based system is to create a system based on a correct assessment of these four risks. The higher the risk of 1-3, the less likelihood of release. The higher the risk of 4, the greater the likelihood of release. Balance these risks to determine release.

To achieve the improvements we are seeking, it is critical that this assessment be done fairly, without any implicit bias. A variety of risk assessment tools have been developed using either points or an algorithm to assess risk. It is important to assess whether they are fair. Do they either overstate or understate risks for certain ethnic or other minority groups? The advantage of tools is that, if designed correctly, they provide a baseline of information for the court in making its decision about pretrial release. Important to distinguish sentencing algorithms from shorter term pretrial risk assessment tools.

It is important that those tools be used in conjunction with other information and judicial discretion in making decisions about pretrial release. In California there is no county I think or no proposal to have these tools or algorithms alone decide about release decisions. They are just tools to be used in conjunction with other information about the individual and their circumstances. But judicial discretion depends on the information that is provided, so if I don't know that an individual is a member of a tribe and that the tribe may be able to offer services or pre-trial supervision I won't be able to take that into consideration.

A challenge in trying to mitigate risk 4, is that these determinations about whether to release an individual must be made quickly. The evidence shows that even one or two days of detention can have an impact on a person's job, housing, and family. However, to properly assess risks 1-3, it must be thorough and takes time.

Proper design of the system involves not just the assessment of risk, but the ability to mitigate those risks. It is critical for local communities and populations such as tribes, that may be impacted by the system to have input on system design. Right now, in California even if SB 10 is moot, counties are designing systems. It is important to inquire what is going on in your county, and to have input early in the system design. My pie theory – a small deviation at the center of the pie results in a much larger piece by the time you get to the edge.

SB 10 provides for input on the tools to start with, as well as a continual evaluation of their efficacy and fairness. The Judicial Council is to study and authorize the use of risk assessment tools, but local jurisdictions pick which of those tools they will use. Then there will be an ongoing assessment of the tools, but we can only assess and examine the information that we are looking for, so if we want to know whether these tools are disparately impacting Native Americans we will have to be asking about people's Native American status.

Local determination on additional exclusions for pre-arraignment release of medium risk individuals, and the creation of alternative ways to mitigate risk. Availability of tribal services, programs and pre-trial supervision would be important in determining ways to mitigate risk for tribal members.

Info 5

Recent and Upcoming Conferences

Vida Castaneda, Senior Analyst, Judicial Council Center for Families, Children & the Courts

- The *16th National Indian Nations Conference* was held last week in Coachella Valley, California on the reservation of the Agua Caliente Band of Cahuilla Indians. Many Forum members were in attendance and presented in workshops.
- The *California Partnership to End Domestic Violence* is hosting their annual conference on March 11-12, 2019 in Los Angeles at the Sheraton Gateway Hotel. There will be a tribal track at this conference and workshops will be focused on domestic violence issues. For more information about this conference please email: conference@cpedv.org
- The *Bay Area ICWA Symposium* will be held in November 2019 and the *Beyond the Bench Conference* will be held in December 2019. If you have speakers in mind, topic areas or workshops you are interested in having at these events, please let Vida Castaneda know.
- *Forum E-update Newsletter* for more information on upcoming webinars or out of state conferences.
- *Tribal Justice Project* of UC Davis, hosted by the San Manuel tribe, will be held January 31-February 2, 2019 for court personnel and tribal judges.
- *Tribal Court Advocacy Program* will hold a 3-day training for tribal courts in March 2019 at the Tule River. The Yurok Tribe will be hosting in May 2019.

Next Forum call is April 11, 2019.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:13 p.m.

Approved by the advisory body on February 28, 2019.