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POTENTIAL EFFICACY OF ENHANCING PRETRIAL SCREENING AND SUPERVISION IN THE 86TH DISTRICT COURT OF MICHIGAN (TRAVERSE COUNTY)

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CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT

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I. INTRODUCTION

Background

In May, 2008, the Pretrial Justice Institute (PJI) conducted a training session for the judges of the State of Michigan on pretrial release decision making. Judge Michael J. Haley of the 86th District Court of Michigan attended that session. Afterwards, Judge Haley submitted a request to the Bureau of Justice Assistance (BJA) Criminal Courts Technical Assistance Project (CCTAP) at American University for technical assistance on front-end decision making.

John Clark and Ken Rose of PJI were assigned to conduct this assessment. The two arrived on site on November 18, 2008, and met with system officials on November 19 and 20.¹ The first interview was conducted with Judge Haley, who summarized his request with two questions.

- What would be the efficacy of having someone at the jail whose job it would be to serve as a gatekeeper, screening defendants coming in to identify their risks and needs and refer them to an appropriate intervention – i.e., a diversion opportunity or pretrial release?
- What would be the efficacy of having someone supervise conditions of pretrial release and work with defendants to remain in compliance without every violation resulting in a court hearing?

Organization of Report

This report is organized into four sections. The first section looks at existing and planned diversion activities in the 86th Judicial District. The second focuses on the information and options that are available to the judicial officer at the initial bail-setting hearing, and the supervision of conditions set by the court. The third addresses the impact of diversion and information and options for bail-setting on the population of the Grand Traverse County Jail. The final section presents conclusions and recommendations.

II. DIVERSION OPPORTUNITIES IN THE 86TH DISTRICT COURT

As traditionally defined, a dispositional practice is considered pretrial diversion if it meets the following criteria:

- It offers persons charged with criminal offenses alternatives to traditional criminal justice proceedings
- It permits participation by the accused only on a voluntary basis
- The accused has access to an attorney prior to the decision to participate
- It occurs no sooner than the filing of formal charges and no later than a final adjudication of guilt, and

¹ A list of the persons interviewed appears in the appendix.

- It results in dismissal of charges, or its equivalent, if the divertee successfully completes the diversion process.²

The purpose of diversion is to allow individuals who have been arrested, and typically do not have lengthy criminal records, to participate in interventions that may help them address the issues that brought about the arrest. The goal is to reduce the likelihood that they will return to court on new charges.

Over the past 15 years, the concepts of pretrial diversion have shifted with the explosive growth of specialty courts. Based on a model developed for drug users in Miami, Florida in the late 1980s, these courts incorporate several of the criteria of traditional diversion. They do allow persons charged with a criminal offense to have a non-traditional proceeding. They are voluntary, and participants do have access to an attorney before making a decision about participation. Under some program models, participation does occur before a final adjudication of guilt, and results in the dismissal of charges upon successful completion. Under other models, the defendant must enter a guilty plea prior to participation, and successful completion results in a reduced sentence. There are currently two specialty courts in operation in the 86th District, and a third in planning stages.

The court established a Sobriety Court in 2001 with start up funding from the Bureau of Justice Assistance of the U.S. Department of Justice. The court is designed primarily for second or third time Driving While Intoxicated offenders. The court does accept some persons charged with drug offenses. Currently, there are approximately 110 participants in the Sobriety Court program. The program works in the following way.

Within one to two weeks of arrest, multiple drunk driving offenders will appear in District Court before Judge Michael Haley for arraignment, which is held on Wednesdays for drunk driving cases. By this point, most of these defendants are out on pretrial release or money bail. Before the arraignment, an assistant prosecutor will screen the cases for eligibility for participation in the program. Aside from being a multiple drunk driving offender, the defendant must also be a resident of one of the three counties in the District – Grand Traverse, Leelanau, or Antrim. In addition, the prosecutor will review the criminal record and generally find the defendant ineligible if there are prior convictions for violent offenses. A defense attorney is assigned to the court to answer any questions the defendant may have about participation. If the defendant agrees to participate, he or she must enter a guilty plea. Once admitted, the participant must complete three phases of treatment over a minimum two year period. There are regular status hearings in court before the Sobriety Court Team, comprised of Judge Haley, a prosecutor, defense counsel, probation officer, and treatment provider. Regular breath tests and urine screens are conducted during the participation period. Upon successful completion, the conviction remains on the record, but the participant avoids any jail sentence, which can be 30 days to one year in jail for a second conviction for drunk driving. In addition, participants with their third drunk driving conviction, a felony under Michigan law, will have their charges reduced to a

² National Association of Pretrial Services Agency, *Performance Standards and Goals for Pretrial Diversion*, 1995, p. 1.

misdemeanor. In the first six years of the operation of the Sobriety Court, 58 percent of participants successfully completed the program.

The Domestic Violence Court was established in 2003. This court is designed more to fast track domestic violence cases, but it does have elements of pretrial diversion. All defendants charged with domestic violence appear before District Court Judge Thomas Phillips for arraignment. Many are placed on the fast track, which seeks to bring the cases to adjudication more quickly. Defendants in this track, if convicted, are sentenced in the usual course. Some defendants, however, are offered the opportunity, when cleared by the assistant prosecutor, to participate in a 26-week Batterers Intervention Program. These defendants must first plead guilty, but the conviction is not entered. If they successfully complete the program the charge is dismissed. This alternative is available only to those with no previous domestic violence conviction, who then must be cleared by the prosecutor.

In February 2009, the court is scheduled to implement a Mental Health Court, with funding from a federal grant. It is expected that this program will serve up to 25 defendants during the first year, with Chief District Court Judge John D. Foresman presiding. As the program is envisioned, potential participants will be referred from a number of sources, including law enforcement, the jail, the court, the prosecutor, or the defense. Participation will be voluntary and will involve four phases over a 12-24 month period. Upon successful completion of the program, the charges will be dismissed.

III. PRETRIAL INVESTIGATIONS AND SUPERVISION IN THE 86TH DISTRICT COURT

Persons arrested in Grand Traverse County appear before a magistrate via video link between the jail and the courthouse within 24 hours of arrest. The magistrate has the file containing the defendant's criminal record before the hearing starts. The magistrate asks the defendant questions about age, address, employment, and marital status. The magistrate then makes a decision regarding bail. On weekends, probation officers appear in the jail and handle bail-setting responsibilities, going through the same process as the magistrate.

Standard conditions of pretrial release are that the defendant appear for all court hearings, not leave the state without permission of the court, and notify the court of any change of address. Defendants with drug or alcohol issues will typically be ordered to report on a regular basis for testing. Many defendants, particularly those charged with Driving While Intoxicated, are ordered to report twice daily to Traverse Area Support Services for Preliminary Breathalyzer Tests (PBT). Other conditions that are imposed include: not consume or possess alcohol or controlled substances; stay away from any place that serves alcohol; stay away from a particular person or location; not possess any weapon; and do not act in a threatening or violent way toward any person.

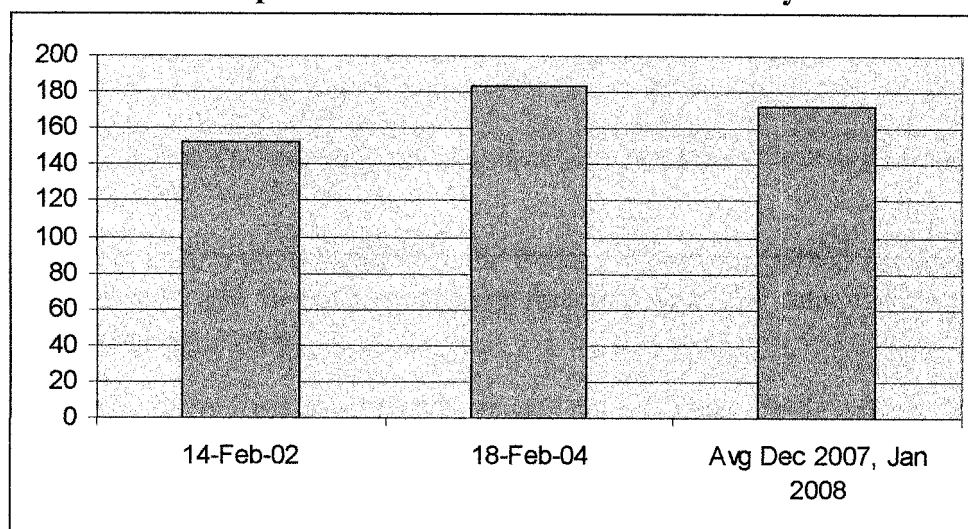
When defendants fail to report to Traverse Area Support Services for alcohol or drug testing, or test positive, the testing program sends a violation notice to the court, through the

Clerk's Office. That office then notifies the appropriate court of the violation and a violation hearing is scheduled. Other than this, there is no mechanism for actively supervising conditions of release.

IV. TRENDS IN THE JAIL POPULATION

Grand Traverse County has been working with consultant David Bennett for a number of years. Mr. Bennett has been reporting for the county data on the jail population at various intervals since 2002. Chart 1 shows the results of snapshots conducted on single dates in both 2002 and 2004, and the average daily population from snapshots conducted each day of December 2007 and January 2008. As the chart shows, the population fluctuated from about 150 to about 180.

Chart 1
Total Population of the Grand Traverse County Jail

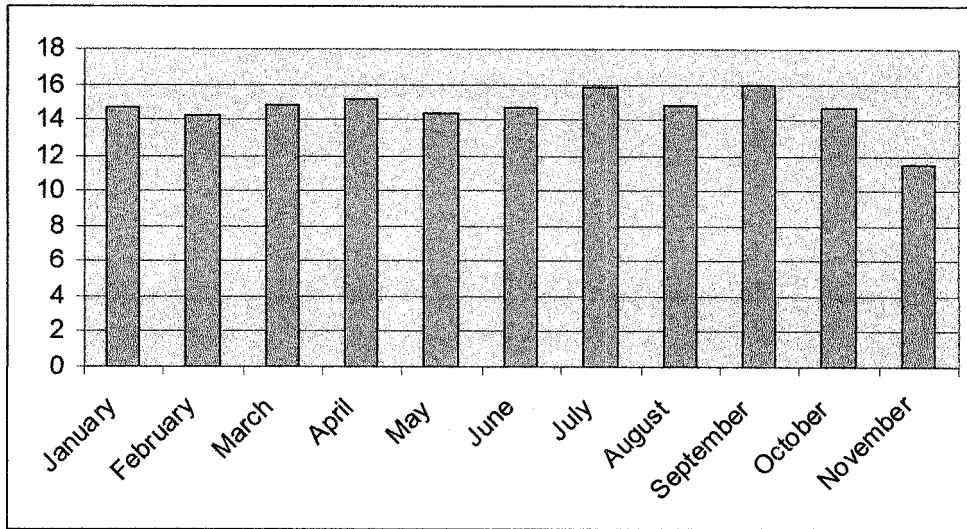


Source: David M. Bennett, *Grand Traverse County, Michigan Corrections Master Plan Update*, March 2008.

It should be noted that in late 2005 the jail added 40 dorm-style beds to the facility, bringing the total number of beds to 195. The population had exceeded 200 on several days during the summer of 2005.

Chart 2 shows the composition of the jail population over the same dates. The percentage of the population made up of sentenced inmates has come down slightly while the percentage of the population of those on holds has slightly risen. The percentage of the population comprised of pretrial defendants remained stable.

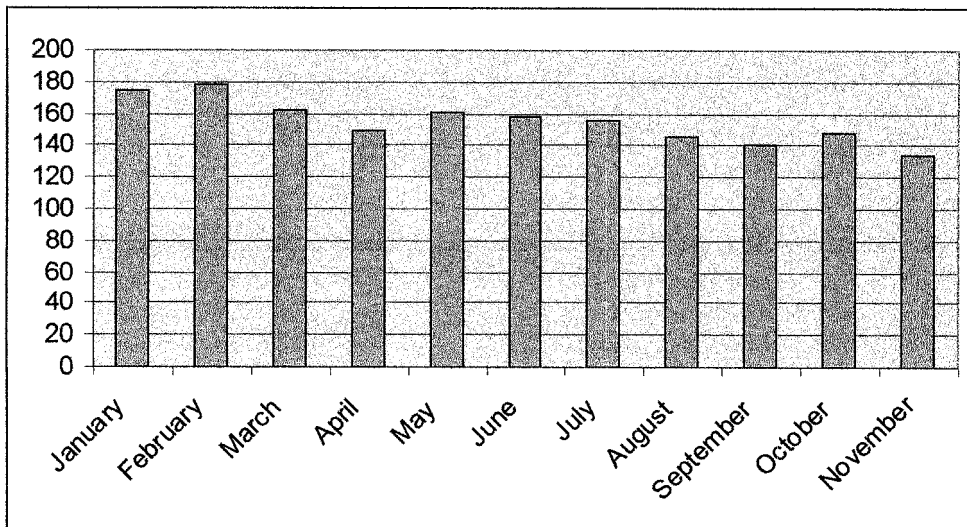
Chart 3
Average Daily Admissions to the Grand Traverse County Jail
January 2008 Through November 19, 2008



Source: Grand Traverse County Jail data.

Notwithstanding the steadiness in the number of admissions throughout most of the year, Chart 4 shows that the Average Daily Population (ADP) has been dropping. The ADP for 2008 has fallen from a high of about 180 in February to a low of about 135 in the first 19 days of November.

Chart 4
Average Daily Population of the Grand Traverse County Jail
January 2008 Through November 19, 2008



Source: Grand Traverse County Jail data.

A snapshot taken of the Grand Traverse County Jail on 11/20/08 found that out of the

total population of 134 inmates. Of these, 32, or 23.5 percent, were there for new charges only. Ten, or 7.5 percent of these, were charged with a misdemeanor. This included three individuals who had been booked the day before, and had not yet been to court to have bail set. A total of 22 of the inmates, or 16 percent, were being held on new felony charges, including three who had not been to court yet. The total pretrial population at the jail of 23.5 percent is about the same as reported in the Bennett report.

The snapshot method of looking at jail populations is useful in that it allows a point-in-time look at who is in the facility. A disadvantage of the snapshot, however, is that it makes it difficult to estimate length of stay for pretrial defendants. For example, in the snapshot done on 11/20/08, three of the ten pretrial inmates charged with misdemeanors and three of the 22 who were charged with felonies had not even been to court yet to have their bail set. If all six were released at or right after their initial appearances, the pretrial detention population would fall from 23.5 percent to 19 percent.

One other piece of data shows that the court has achieved a turnaround in a very important area. In 2002, the county was boarding out a daily average of 4.4 inmates to other facilities due to crowding. The figure was 16 inmates a day in 2003 and 36.7 in 2004. The county was spending hundreds of thousands of dollars a year to house inmates in other facilities. Through late November, the jail had boarded out no inmates for the year 2008.

Another data element that is important to examine to respond to the requests of the court is the pretrial release rate. The court was not able to provide this information, but valuable information can be discerned by looking at other data. Court data show that in the third quarter of 2008, there were 87 new felony cases, and 620 new misdemeanors, including 115 Driving While Intoxicated cases. From this, it is reasonable to assume that 29 new felony cases (87 divided by 3 months) and 206 new misdemeanor cases (620 divided by three months) came in during the month of October 2008.

The jail snapshot conducted on 11/20/08 showed that seven defendants were in jail charged with one or more felonies who were booked during October. Thus 22 out of 29 (or 76 percent) of those booked on felonies in October were out of jail – either through pretrial release or the disposition of the charges – by November 20. Below are the charges and bail statutes for the seven who remained in jail:

- Assault with Intent to do Great Bodily Harm - \$50,000 cash or surety
- Aggravated Assault - \$10,000, 10%
- Robbery – Business - \$500,000 cash or surety
- Controlled Substances Code Violation - \$250,000 cash or surety
- Entering Without Permission – No bond
- Obstruction - \$5,000, 10%
- Larceny - \$5,000, 10%.

Looking at misdemeanors, only three defendants were in jail charged with a misdemeanor who were booked during October, meaning that 203 out of 206 (98.5 percent) were out of jail by November 20. The three who remained in jail were charged with the following:

- Assault and Battery – Simple - \$5,000, 10%
- Larceny - \$2000, 10%
- Obstruction – No bond.

Similar results can be found when looking at pretrial defendants who were booked between November 1 and November 20. Eight defendants were in custody charged with new felonies on November 20 who were booked in November, including three who had not yet been to court for their bail hearings. Six defendants in custody were charged with new misdemeanors, including three who had not been to court yet.

These data suggest that the court is achieving high pretrial release rates, or swift adjudication of charges – or both – for both felonies and misdemeanors.

V. CONCLUSION AND RECOMMENDATIONS

Comparing the situation in Grand Traverse County from several years ago to the present shows the remarkable progress that has been made. Many persons arrested for drunk driving or domestic violence – both charges with very high volume and very high recidivism rates – who used to be prosecuted in the traditional manner, now have an opportunity to participate in intense programs designed to reduce their likelihood of recidivism. Persons with serious mental illnesses, also a group with high recidivism rates, will soon have the same opportunity. Several years ago, the county was paying other counties hundreds of thousands of dollars a year to house its overflow inmates, but today this expense is gone. The population at the jail, which exceeded 200 inmates as late as 2005 is currently averaging less than 140 – even though the jail’s capacity has been expanded. The jail is in much better position to track its population with a major enhancement to its information system. Finally, one other development not yet discussed is the fact that the average caseload for probation officers has fallen from 600 to 800 several years ago – a volume that makes meaningful supervision prohibitive – to less than 200 currently.

In his March 2008 Corrections Master Plan Update, David Bennett wrote that “Grand Traverse County operates one of the most efficient criminal justice systems in the country as it pertains to the processing of defendants through the system.” The data presented here confirm the efficiency of the processing of cases. The District Court is to be congratulated for opting not to rest on past accomplishments, but seek ways to improve the system further, as reflected in the request for this technical assistance.

Again, the request was summed up in two questions:

- What would be the efficacy of having a staff person in a gatekeeper role at the jail to direct defendants and cases to appropriate interventions?
- What would be the efficacy of having staff supervise conditions of pretrial release?

With this request, it was also made clear that the county is in no position to fund new initiatives in the court, and any recommendations, at least in the short term, would have to be implemented with existing resources. With that in mind, it is recommended that the court put

aside the question of the gatekeeper and focus on the second question. This is so for the simple reason that the court seems to be doing fine presently without one – the court has been very successful in moving detention cases along. In addition, there are only about a half dozen new cases coming into the system a day, making it difficult to justify the need to have a staff person play a gatekeeping role.

As noted, a very common condition of pretrial release has been to have defendants report to Traverse Area Support Services for drug or alcohol testing. Any time a defendant misses an appointment or tests positive, the testing program sends a notice to the Clerk's Office, which then schedules a violation hearing. The matter then ends up on a judge's calendar. There is no effort, short of the involvement of the judge, to determine whether the violation rises to the level that the court should be involved. And there is also no effort, short of involvement of the judge, to try to bring a defendant back into compliance. Clerical staff in the Clerk's Office do not take such actions, but probation officers do every day.

Probation officers would be able to review cases where violations are alleged, determine whether the violation was a rare or common occurrence, or whether there was a verifiable excuse for a missed appointment – then make a determination of whether to request a violation hearing before the court. Equally important, they could seek to bring non-compliant defendants back into compliance.

As noted, probation officers just recently had their caseloads reduced to more manageable levels. This was accomplished through changes in practices of sentencing offenders to probation, as well as the addition of resources. It would be a step back to reverse that advancement by again demanding more of probation officers than they can reasonably be expected to handle.

The court should meet with the probation department to determine the extent to which probation officers could add some defendants to their caseloads to pilot test the impact of actively supervising conditions of pretrial release. If, for example, each of the probation officers could add 10 defendants to their caseloads without seriously jeopardizing the supervision they provide to probationers over a period of, say, six months, this would give the court an idea of (1) whether the pilot effort was effective in keeping defendants in compliance and reducing unnecessary violation hearings, and (2) what resources would be required to provide meaningful supervision of all defendants who have conditions of pretrial release. If they could only add five defendants each to their caseloads, it would still be a useful exercise.

Throughout the pilot test, each probation officer should be asked to tally the results of their work. How many defendants overall were they able to supervise? Of these, how many made it through the supervision period without any violations? In how many cases did the officer need to intervene – by verifying the excuse for a missed appointment or by counseling the defendant to return to compliance? In how many cases did the officer refer a violation to the court for a hearing?

With the results of the pilot test in hand, the court should be in a much better position to

seek the resources that would be necessary to provide supervision of pretrial defendants who have conditions of release that need to be monitored. Even if additional funding from the county remains unlikely in the near future, with the results the court could seek grant funding -- from either state or federal sources.

One final thought: While the recent trend has been for the reduction of the jail population, experience shows that such trends can quickly reverse. With the information system now available to the jail, jail officials should compile and release, at least monthly, data on the jail population, breaking it down by felony versus misdemeanor and pretrial versus holds versus sentenced. The court, the jail, and other system officials should review the data and seek to identify and address instances where the jail population changes.

Appendix
List of Persons Interviewed

Undersheriff Nathan Alger, Sheriff's Office
Tom Bensley, Sheriff-Elect
Pam Blue, County Probation
Jenny Boyce, County Probation
Hon. John D. Foresman, Chief District Judge
Hon. Michael J. Haley, District Judge
Capt. Robert J. Hall, Sheriff's Office
Sgt. Christina Harrigan, Sheriff's Office
Hon. Thomas J. Phillips, District Judge
Tammi Rogers, District Court Magistrate
Carol Stocking, District Court Administrator
Al Schneider, Prosecuting Attorney
Ralph Schultz, Community Corrections
Paul Schultz, Lead Attorney, Grand Traverse Defense Council
Jennifer Tang-Anderson, Assistant Prosecuting Attorney
Tom Wilson, County Probation