



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** August 15, 2019

Staff Contact: Max Cortes and Jerome Tushbant

Agenda Title: For Possible Action: Discussion and possible action regarding a Memorandum of Understanding (MOU) between Carson City, the Carson City Sheriff's Office (CCSO) and the First Judicial District Court and the Carson City Justice and Municipal Courts (Courts) for the implementation of a Pretrial Risk Assessment Program. (Max Cortes, mcortes@carson.org and Jerome Tushbant, jtushbant@carson.org)

Staff Summary: On March 21, 2019, the Nevada Supreme Court issued an Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment (ADKT 0539). ADKT 0539 mandates that all judicial districts in the state utilize the Nevada Pretrial Risk Assessment tool in determining whether a defendant will be a risk to the community if released pending trial. ADKT 0539 requires all courts to implement the pretrial risk assessment program within 18 months. The MOU between the City, CCSO and the Courts satisfies the requirements of ADKT 0539.

Agenda Action: Formal Action / Motion **Time Requested:** 10 mins

Proposed Motion

I move to approve the MOU as presented.

Board's Strategic Goal

Safety

Previous Action

The Carson City Internal Finance Committee recommended approval of the proposed action on July 17, 2019.

Background/Issues & Analysis

In Nevada, pretrial release is available to any person charged with a bailable offense if it appears to the court that it can impose conditions on the person that will adequately protect the health, safety and welfare of the community and ensure that the person will appear at all times and places ordered by the court. Although NRS 178.4853 provides factors, the Nevada Supreme Court determined that there was little uniformity throughout the state in how pretrial release decisions were made and what information was available or used in these decisions. As a result, the Nevada Supreme Court adopted a pretrial risk assessment tool to aid all judges in making decisions regarding pretrial release. The risk assessment tool is Nevada specific and is designed to assess a defendant's risk of nonappearance or new criminal behavior. Following a pilot program that included courts in Washoe County, Reno, Sparks, Clark County, White Pine County, Douglas County, and Churchill County, the Nevada Supreme Court Ordered that the assessment be adopted statewide. The State Court Administrator advised that a MOU is an appropriate way for courts to implement the risk assessment program with other local agencies.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 178.4851 and 178.4853; Nevada Supreme Court Order ADKT 0539.

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: 1012014-500101 thru 1012014-500271 Salaries and Benefits

Is it currently budgeted? No

Explanation of Fiscal Impact: Training on the pretrial risk assessment tool will begin September, 2019; therefore, the Sheriff is requesting an additional Support Specialist to go through the training and get the program in place. Total Salaries and Benefits for the Sheriff Support Specialist A3 range is \$60,608 to \$84,903 annually. Due to training dates, the Sheriff will be looking to fill this position by September 1st, thereby making the effect on FY20 Salary and Benefits \$50,506 to \$70,753. When the program is fully functional the Sheriff will need two additional Sheriff Support Specialist positions to ensure proper staffing coverage; those requests will be brought before this Board during the preparation of the FY21 Budget.

Alternatives

Do not approve the MOU and provide alternative direction to staff.

Attachments:

[Draft MOU Pretrial Risk Assessments.doc](#)

[Exhibit A - ADKT 0539 Order Adopting Statewide Use of the Nevada Pretria....pdf](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the First Judicial District Court, and the Carson City Justice and Municipal Court (collectively the “Courts”) and Carson City, a consolidated municipality and political subdivision of the State of Nevada (“City”), on behalf of the Carson City Sheriff’s Office (“CCSO”).

RECITALS

WHEREAS, the Courts, City, and CCSO provide public services essential to the health, safety and welfare of the residents of Carson City; and

WHEREAS, it is the duty of the Courts to administer justice in a fair and impartial manner by following the Nevada Constitution, Nevada Revised Statutes, and the Carson City Municipal Code and it is the duty of the City to provide essential funding for public safety and it is the duty of CCSO to provide public safety services to the community; and

WHEREAS, the parties to this MOU recognize and agree that having CCSO perform the mandated services required by the Nevada Supreme Court’s Order Adopting Statewide Use of the Nevada Pretrial Risk Assessment, ADKT. 0539, attached herewith as Exhibit A and expressly incorporated herein by this reference (dated March 21, 2019, and any subsequent orders related thereto; hereafter referred to as “ADKT 0539”), is a cost saving measure to the City; and

WHEREAS, this MOU between the parties will help achieve the goal of protecting residents of Carson City by the City providing essential funding for public safety, the Courts administering justice in accordance with the law, and CCSO providing public safety services to the community; and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this MOU;

NOW, THEREFORE, in consideration of the mutual undertakings herein, and for other good and valuable consideration, it is agreed as follows:

1 1. TERM

2 This MOU shall be effective **August 15, 2019** and remain in effect until a party
3 hereto dissolves it by providing the other parties hereto with a 90-day written notice of
4 termination.

5 2. INDEPENDENT AGENCIES

6 The Courts and CCSO recognize the Sheriff is an elected position. The Courts
7 and CCSO further recognize that the employees working for CCSO are employees of
8 the Sheriff.

9 The parties acknowledge that as separate branches of government their
10 cooperation must be mindful of Constitutional limitations. The relationship of the CCSO
11 to the Courts shall be analogous to that of an independent contractor. The Courts, City,
12 and CCSO agree that the Sheriff, or his designee, will work with the Courts' designee to
13 achieve the mandated requirement to perform pretrial risk assessments pursuant to the
14 Nevada Supreme Court Order in ADKT 0539.

15 3. INDEMNIFICATION

16 To the fullest extent of limited liability allowed under law, each party shall
17 indemnify, hold harmless and defend, not excluding the other's right to participate, the
18 other party from and against all liability, claims, actions, damages, losses, and
19 expenses, including but not limited to reasonable attorneys' fees and costs, arising out
20 of any alleged negligent or willful acts or omissions performed by the party, its officers,
21 employees and agents in the course and scope of their work in administering the
22 Pretrial Risk Assessment Program.

23 4. PRETRIAL RISK ASSESSMENT PROGRAM

24 The Courts, City, and CCSO agree that the CCSO will implement the Pretrial
25 Risk Assessment Program with input and agreement from the Courts as follows:

- 26 a. The Courts, City and CCSO agree that the creation of new Sheriff Support
27 Specialist positions is necessary to begin implementation of the Pretrial Risk
28 Assessment Program in Carson City. The new positions will have a total starting

1 salary and benefits range of \$60,608 to \$84,903 for FY20 and will be created
2 through a separate action by the Board of Supervisors. The range for this
3 position will adjust annually by 1.75% or as agreed by the City and the Carson
4 City Employees Association.

5 b. The Courts and the CCSO agree to work together to determine the necessity for
6 the creation of additional positions within the CCSO to perform the duties
7 required by the Pretrial Risk Assessment Program. The Courts and the CCSO
8 will bring requests for any additional positions to the Internal Finance Committee
9 (“IFC”) and the Board of Supervisors for approval.

10 c. The City agrees to allocate the necessary budgetary funding to the CCSO to hire
11 the necessary number of employees to perform the duties required to comply
12 with ADKT 0539.

13 d. The City agrees to allocate the necessary budgetary funding to the CCSO for its
14 employees to attend pretrial risk assessment training on an annual or semi-
15 annual basis as required to properly administer the pretrial risk assessment tool
16 in accordance to ADKT. 0539.

17 e. CCSO agrees to assign the necessary number of trained employees required to
18 interview inmates at the CCSO Jail and process the pretrial risk assessments by
19 following the agreed upon procedures and protocols between the Courts and
20 CCSO for compliance with ADKT. 0539. The procedures and protocols will be
21 developed and reviewed and approved by both the Courts and the Sheriff or his
22 designee.

23 f. CCSO agrees that employees assigned to administer the pretrial risk
24 assessment tool will attend and complete any required training and any annual
25 or semi-annual related training by the Nevada Supreme Court or any other entity
26 providing training with respect to administering the Pretrial Risk Assessment
27 Program or administering the risk assessment tool. The training is required to
28

1 ensure that the employees are administering the risk assessment tool using the
2 most current training, information, and methodology.

3 g. CCSO agrees to supervise the employees administering the pretrial risk
4 assessment tool to ensure that procedures and protocol are followed.

5 h. CCSO agrees to oversee the Pretrial Risk Assessment Program and will
6 immediately advise the Courts of any problems or issues with complying with
7 ADKT. 0539.

8 5. NOTICE

9 All notices and other communications required or permitted to be provided under
10 this MOU shall be in writing and may be delivered by hand or by United States mail,
11 postage prepaid and return receipt requested, addressed to the respective parties as
12 follows:

13 To Courts:

14 Max Cortes
15 Court Administrator
16 First Judicial District Court
17 Carson City Justice/Municipal Courts
18 885 East Musser Street, Suite 2007
19 Carson City, NV 89701

17 To City:

18 Nancy Paulson
19 City Manager
20 201 North Carson Street #2
21 Carson City, NV 89701

20 To CCSO:

21 Kenny Furlong
22 Sheriff
23 911 E Musser Street
24 Carson City, NV 89701

23 6. SEVERABILITY

24 In the event any of the provisions of this MOU are held to be unenforceable or
25 invalid by any court of competent jurisdiction, the validity and enforceability of the
26 remaining provisions shall not be affected.

27 7. ENTIRE AGREEMENT AND MODIFICATION

28

1 This MOU and its integrated Exhibit A constitute the entire agreement of the
2 parties and as such are intended as a complete and exclusive statement of the
3 promises, representations, negotiations, discussions, and other agreements that may
4 have been made in connection with the subject matter hereof. Unless an integrated
5 attachment to this MOU specifically displays a mutual intent to amend a particular part
6 of this MOU, general conflicts in language between any such attachment and this MOU
7 shall be construed consistent with the terms of this MOU. Unless otherwise expressly
8 authorized by the terms of this MOU, no modification or amendment to this MOU shall
9 be binding upon the parties unless the same is in writing and signed by the parties.

10 8. ASSIGNMENT

11 No party shall assign, transfer or delegate any rights, obligations or duties under
12 this MOU without the prior written consent of all other parties.

13 IN WITNESS WHEREOF, the undersigned, as authorized representatives of the
14 Courts, City, and CCSO, do hereby approve and have caused this MOU to be signed
15 and intend to be legally bound thereby.

16 CITY OF CARSON CITY

FIRST JUDICIAL DISTRICT COURT

17
18 By: _____
19 Robert L. Crowell, Mayor

By: _____
Honorable James T. Russell

20 Date: _____

Date: _____

21 JUSTICE AND MUNICIPAL COURT

FIRST JUDICIAL DISTRICT COURT

22
23 By: _____
24 Honorable Thomas R. Armstrong

By: _____
Honorable James E. Wilson, Jr.

25 Date: _____

Date: _____

26 JUSTICE AND MUNICIPAL COURT

CARSON CITY SHERIFF'S OFFICE

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28 By: _____

By: _____

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Honorable Kristin N. Luis

Kenny Furlong, Sheriff

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

Jason Woodbury, District Attorney

By: _____

Date: _____

DRAFT

FILED

MAR 21 2019

ELIZABETH A. BROVIN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: THE COMMITTEE TO STUDY
EVIDENCE-BASED PRETRIAL
RELEASE.

No. ADKT 0539

*ORDER ADOPTING STATEWIDE USE OF THE NEVADA PRETRIAL
RISK ASSESSMENT*

WHEREAS, in June 2015, the Judicial Council established a Committee to Study Evidence-Based Pretrial Release, whose purpose was to examine the current pretrial release system in Nevada and to consider alternatives and improvements to the system through evidence-based practices and current risk assessment tools. The Committee was chaired by Justice James W. Hardesty and was comprised of rural and urban judges, public defenders, district attorneys, pretrial services representatives, county representatives, and other stakeholders; and

WHEREAS, the Committee held multiple meetings during which it received presentations from local and national experts on the subject of evidence-based pretrial risk assessment tools. These tools assess the likelihood that a defendant will appear for future court proceedings and the likelihood that a defendant will be a danger to the community if released. Nationwide, courts are moving towards the use of evidence-based risk assessment tools because they guarantee that a pretrial release decision is based on the individual's risk of failure to appear or threat to public safety rather than the individual's ability to pay bail, thus instilling greater fairness and consistency into the process. In Nevada, pretrial release is available for any person charged with a bailable offense "if it appears to the court that it can impose conditions on the person that will

adequately protect the health, safety and welfare of the community and ensure that the person will appear at all times and places ordered by the court.” NRS 178.4851(1). Though NRS 178.4853 sets forth factors for the court to consider in determining whether to release a person without bail, there is little uniformity throughout the state in how these pretrial release decisions are made and in what information is available or used in these decisions; and

WHEREAS, on September 1, 2016, the Committee launched a pilot site program using a Nevada-specific risk assessment tool, developed and validated by Dr. James Austin with the JFA Institute, designed to assess a defendant’s risk of nonappearance or new criminal behavior. Participating pilot sites included Washoe County District Court, Washoe County Justice Court, Reno Municipal Court, Sparks Municipal Court, Clark County District Court, Las Vegas Justice Court, Las Vegas Municipal Court, and White Pine Justice Court. In addition, courts in Douglas County and Churchill County voluntarily implemented and used the risk assessment tool; and

WHEREAS, on August 15, 2018, based on the results of the pilot program, the Committee unanimously voted to recommend that this court enter an order requiring the use of the validated pretrial release assessment tool statewide; and

WHEREAS, on December 28, 2018, the Committee chair, Justice James W. Hardesty, filed a petition to adopt a statewide requirement that all judges utilize a validated risk assessment tool in pretrial decision-making as recommended by the Committee; and

WHEREAS, this court solicited public comment on the petition, conducted a public hearing on this matter on February 5, 2019, and

considered the Committee's recommendation and the public comment. In particular, the court heard concerns by the Nevada Association of Counties that counties be allowed sufficient latitude in implementing the tool as well as sufficient time to obtain information on potential budgetary and staffing impacts so as to adequately prepare for the implementation of the tool. This court also considered concerns expressed by the American Civil Liberties Union about potential racial bias implicit in the risk assessment tool, and solicited a response from Dr. Austin affirming that there is no current evidence that the tool, which is based on non-racial factors, increases racial disparities in pretrial release decisions; and

WHEREAS, this court finds that the Nevada Pretrial Risk Assessment tool, in the form of both Exhibit A and Exhibit B to this order, has been validated by Dr. Austin of the JFA Institute, and is consistent with that used in other jurisdictions and supported by the Department of Justice; and

WHEREAS, this court has determined that statewide implementation of the Nevada Pretrial Risk Assessment tool is warranted, as it will assist judges in assessing whether a defendant is likely to show up for court and whether the defendant will be a danger to the community if released, it will promote uniformity in how pretrial release decisions are made across the state, and it will ensure that pretrial release decisions are based on the risk posed by the defendant and not by whether the defendant can afford to pay bail;

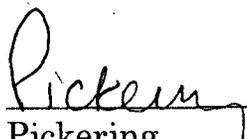
IT IS HEREBY ORDERED that the Nevada Pretrial Risk Assessment contained in Exhibit A and Exhibit B shall be adopted for use in all judicial districts in Nevada.

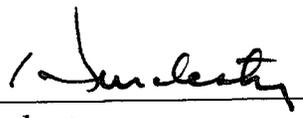
IT IS FURTHER ORDERED that the Administrative Office of Courts shall develop training materials for the implementation and use of the Nevada Pretrial Risk Assessment and make those training materials available on the Nevada Appellate Courts' website within 6 months of this order.

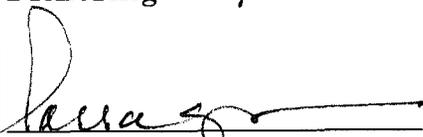
IT IS FURTHER ORDERED that the Administrative Office of Courts shall provide assistance to the judicial districts in educating judicial officers, court staff, and other interested individuals in the use and implementation of the Nevada Pretrial Risk Assessment, with training to be completed within 9 months of this order.

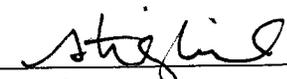
IT IS FURTHER ORDERED that the Nevada Pretrial Risk Assessment contained in Exhibit A and Exhibit B to this order shall be implemented within 18 months of this order, unless an extension of time is granted by the Administrative Office of Courts upon a showing of good cause.


_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Silver

cc: All District Court Judges
All Justices of the Peace
All Municipal Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Richard Pocker, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Administrative Office of the Courts

EXHIBIT A

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: ___/___/___ Assessor: _____ County: _____

Defendant's Name: _____ DOB: ___/___/___ Case/Booking #: _____

Address: _____ Contact Phone#: _____ # of Current Charges: _____

City State Zip

Most Serious Charge: _____ Initial Total Bail Set: \$ _____

Demographic Information (optional): Gender: Male _____ Female _____
 Race: Hispanic _____ White _____ Black _____ Asian _____ Nat. Amer. _____ Other/Unknown _____

SCORING ITEMS **SCORE**

1. Does the Defendant Have a Pending Pretrial Case at Booking?
 - a. Yes - 2 pts. If yes, list case # and jurisdiction: _____
 - b. No - 0 pts. _____
 2. Age at First Arrest (include juvenile arrests) First Arrest Date: ___/___/___
 - a. 20 yrs. and under - 2 pts. _____
 - b. 21-35 yrs. - 1 pt. _____
 - c. 36 yrs. and over - 0 pts. _____
 3. Prior Misdemeanor Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One to five - 1 pt. _____
 - c. Six or more - 2 pts. _____
 4. Prior Felony/Gross Misd. Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One or more - 1 pt. _____
 5. Prior Violent Crime Convictions (past 10 years)
 - a. None - 0 pts. _____
 - b. One - 1 pt. _____
 - c. Two or more - 2 pts. _____
 6. Prior FTAs (past 24 months)
 - a. None - 0 pts. _____
 - b. One FTA Warrant - 1 pt. _____
 - c. Two or more FTA Warrants - 2 pts. _____
 7. Employment Status at Arrest
 - a. Verifiable Full/Part-time Employment - 0 pts.
(e.g. Self-employed, Disabled and receiving benefits, Student, Retired, Military, Stay at Home Parent, etc.)
 - b. Unemployed - 1 pt. _____
 8. Residential Status Date of Residency: ___/___/___
 - a. Nevada Resident - living in current residence 6 months or longer - 0 pts.
 - b. Nevada Resident - not lived in same residence 6 months or longer - 1 pt. _____
 - c. Homeless or non-Nevada Resident - 2 pts. _____
 9. Substance Abuse (past 10 years)
 - a. Other - 0 pts. _____
 - b. Prior *multiple* arrests for drug use or possession/alcohol/drunkenness - 2 pts. _____
 10. Verified Cell and/or Landline Phone
 - a. Yes - 0 pts. If yes, list #: _____
 - b. No - 1 pt. _____
- TOTAL SCORE:** _____

Risk Level (Circle One): **LOW** (0-4 pts.) **MODERATE** (5-8 pts.) **HIGHER** (9+ pts.) **OVERRIDE?:** Yes ___ No ___

Override Reason(s): Mental Health _____ Disability _____ Gang Member _____ Flight Risk _____
 Prior Record More Severe than Scored _____ Prior Record Less Severe Than Scored _____
 Other, explain: _____

Final Recommended Risk Level: **LOW** _____ **MODERATE** _____ **HIGHER** _____

Supervisor/Designee Signature: _____ Date: ___/___/___

EXHIBIT B

NEVADA PRETRIAL RISK (NPR) ASSESSMENT

Assessment Date: ___/___/___ Assessor: _____ County: _____

Defendant's Name: _____ DOB: ___/___/___ Case/Booking #: _____

Address: _____ City _____ State _____ Zip _____ Contact Phone#: _____ # of Current Charges: _____

Most Serious Charge: _____ Initial Total Bail Set: \$ _____

Demographic Information (optional): Gender: Male _____ Female _____
 Race: Hispanic _____ White _____ Black _____ Asian _____ Nat. Amer. _____ Other/Unknown _____

SCORING ITEMS	SCORE
1. Does the Defendant Have a Pending Pretrial Case at Booking?	
a. Yes - 2 pts. If yes, list case # and jurisdiction: _____	
b. No - 0 pts.	_____
2. Age at First Arrest (include juvenile arrests)	
a. 20 yrs. and under - 2 pts.	
b. 21-35 yrs. - 1 pt.	
c. 36 yrs. and over - 0 pts.	_____
3. Prior Misdemeanor Convictions (past 10 years)	
a. None - 0 pts.	
b. One to five - 1 pt.	
c. Six or more - 2 pts.	_____
4. Prior Felony/Gross Misd. Convictions (past 10 years)	
a. None - 0 pts.	
b. One or more - 1 pt.	_____
5. Prior Violent Crime Convictions (past 10 years)	
a. None - 0 pts.	
b. One - 1 pt.	
c. Two or more - 2 pts.	_____
6. Prior FTAs (past 24 months)	
a. None - 0 pts.	
b. One FTA Warrant - 1 pt.	
c. Two or more FTA Warrants - 2 pts.	_____
7. Substance Abuse (past 10 years)	
a. Other - 0 pts.	
b. Prior <i>multiple</i> arrests for drug use or possession/alcohol/drunkenness - 2 pts.	_____
8. Mitigating Verified Stability Factors (limit of -2 pts. total deduction)	
a. Employed, Student or Retired (-1) pt.	
b. Nevada Resident - Living in current residence 6 mos. or longer (-1) pt.	
c. Verified Cell Phone/Landline (-1) pt.	_____
TOTAL SCORE:	_____

Risk Level (Circle One): **LOW** (0-3 pts.) **MODERATE** (4-8 pts.) **HIGHER** (9+ pts.) **OVERRIDE?:** Yes ___ No ___

Override Reason(s): Mental Health _____ Disability _____ Gang Member _____ Flight Risk _____
 Prior Record More Severe than Scored _____ Prior Record Less Severe Than Scored _____
 Other, explain: _____

Final Recommended Risk Level: **LOW** _____ **MODERATE** _____ **HIGHER** _____

Supervisor/Designee Signature: _____ Date: ___/___/___