

Michigan Judicial Institute Magistrate Specialty Seminar

July 30, 2020

Pretrial Update

Materials presented by:

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Gamby Speaker Bio

Ryan Gamby is a management analyst with the State Court Administrative Office (SCAO) and specializes in Michigan bail practices and pretrial risk assessments. Ryan began his career as a police cadet with the Holland Department of Public Safety and later worked as a probation officer with the 58th District Court in Grand Haven for seven years. In that capacity, Ryan had the opportunity to screen pretrial defendants using evidence based risk assessments; supervise pretrial defendants who were released pending trial; and pursue bond violations in both the district and circuit courts. He is currently helping Michigan courts pilot a new, pretrial risk assessment tool and is also working with community stakeholders to make legislative and policy changes that comport with legal and best practice standards. Ryan has Bachelor of Arts degrees in both Criminal Justice and Sociology from Grand Valley State University; a Master's Degree in Public Administration; and a Juris Doctor from Western Michigan University Thomas M. Cooley Law School. He is a member in good standing with the State Bar of Michigan.

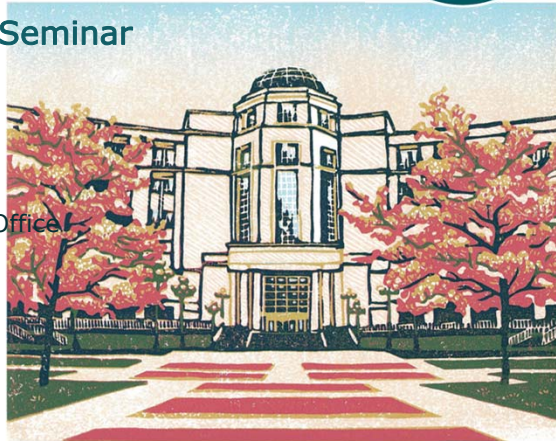
Pretrial Update



Magistrate Specialty Seminar

July 30, 2020

Ryan P. Gamby, J.D.
State Court Administrative Office



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COVID-19 & Jails

Transmission Concerns

- Live, work, and eat in congregated environments.
- High turnover rate.
 - 11 million admissions to county jails across the US.
 - In Michigan, 65% of all admissions stay less than 1 week in jail.
- Limited social distancing options.
- Numerous opportunities for transmission: staff movements, transfers, court appearances, medical visits, attorney meetings, new bookings, etc.
- Hesitance to report symptoms due to stigma or fear of isolation.

CDC Guidance

- Identify legally acceptable alternatives to in-person court appearances.
- Consider options to prevent overcrowding (e.g., diverting new intakes to other facilities and encouraging alternatives to incarceration).

<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>



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Legal Updates – COVID-19

Administrative Order 2020-01: “During the state of emergency, trial courts should be mindful that taking reasonable steps to protect the public is more important than strict adherence to normal operating procedures.”

- ***People v Chandler:*** “The trial court abused its discretion by failing to give adequate consideration...[to] public health factors arising out of the present public health emergency...The record does not support the trial court’s conclusory determination that the defendant is likely to fail to appear for future proceedings; nor does it establish that he poses a danger to the public if granted pretrial release.”

Administrative Order 2020-02: Designated issuing bail as an “essential function.”

- ***People v Moneasha Ferguson:*** “...considering the public health factors arising out of the present public health emergency, the circuit court should have granted defendant a personal bond.”



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Legal Updates – COVID-19

Executive Order 2020-146 (*expires 08/06/20*):
Eliminated strict compliance with the County Jail Overcrowding Act. Encourages early release for:

- People who are older, pregnant, medically frail, have chronic conditions, or are nearing their release date.
- Traffic violations.
- Failure to Appear or Failure to Pay.
- Anyone with behavioral health problems who can be diverted for treatment.



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Legal Updates – COVID-19

State Appellate Defender Office:
Created COVID-19 pleadings and resources page:

- Motion for Bail
- Motion to Challenge Continued Pre-Trial Confinement for At-Risk Clients
- Emergency Motion for Pretrial Release Due to Public Health and Safety Threat
- Motion to Waive Tether Fees
- Motion for Bail Reduction

The screenshot shows the SADO website with a navigation menu (Home, SADO/CDBC, MAACS, Project Reentry, Collections, Locators, Training) and a header for the Michigan State Appellate Defender Office and Criminal Defense Resource Center. The main content area is titled 'COVID-19 Pleadings and Resources for Attorneys and Advocates' and includes a paragraph explaining the importance of advocating for the release of incarcerated individuals during the pandemic. Below this, there is a section for 'Sample Trial Court Motions' with a list of links to various motions such as 'Motion for Bail', 'Motion to Challenge Continued Pre-Trial Confinement of at-risk Clients', and 'Emergency Motion for Pretrial Release due to Public Health and Safety Threat'.

Litigation

- *Cameron v Bouchard* (Oakland County Jail, 04/17/20)
- *Russell et al v Wayne County* (Wayne County Jail, 05/04/20)

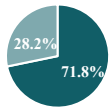


<http://sado.org/Articles/Article/759>

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Pretrial Data - Warrants

Statewide Percentage of Bench and Arrest Warrants

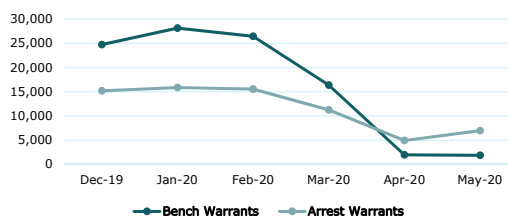


■ Bench Warrants ■ Arrest Warrants

Statewide Active Warrants

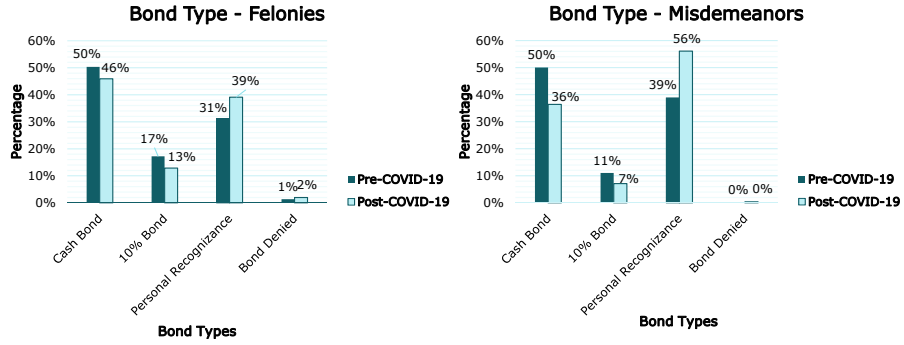
Date	Bench Warrants	Arrest Warrants	Total
03/01/20	765,905	301,425	1,067,330
06/01/20	745,759	296,203	1,041,962
Difference	-20,146	-5,222	-25,368
% Change	-2.63%	-1.73%	-2.38%

New Warrants Issued By Month



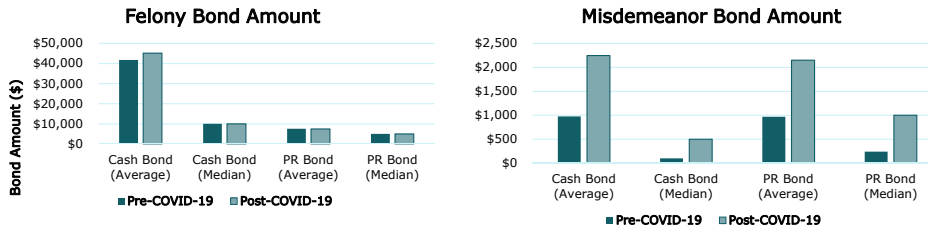
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Pretrial Data – Bond Type (Frequencies)



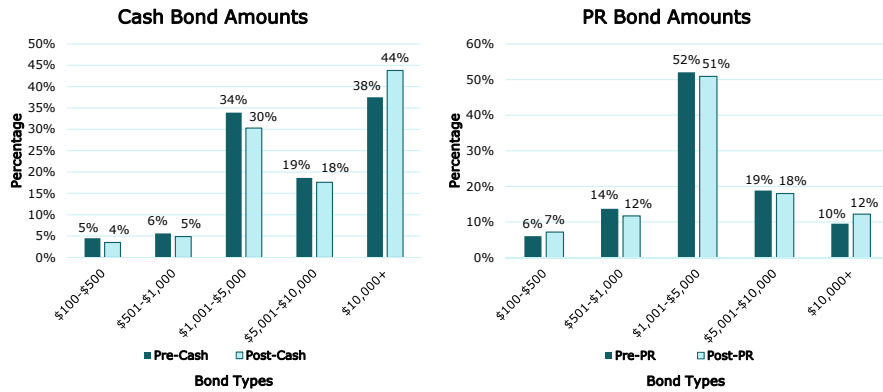
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Pretrial Data – Bond Amounts (Average & Median)



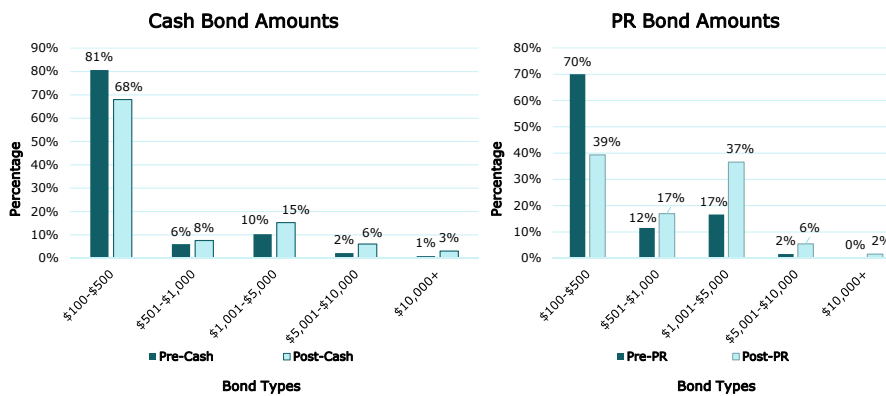
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Pretrial Data – Felony Bond Amounts (Range)



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Pretrial Data – Misdemeanor Bond Amounts (Range)



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Pretrial Grants

Coronavirus Emergency Supplemental Funding (CESF) Grant.

- \$4.5 million formula grant exclusively for Michigan trial courts.
- "Preventing, preparing for, and responding to COVID-19"
- "Pretrial and community supervision expenses, including: electronic monitoring, drug/alcohol testing, assessing pretrial risk and making recommendations, supportive services, and pretrial and probation staffing (OT only)."
- **Deadline: 12pm (noon) EST on August 14, 2020.**



https://www.michigan.gov/msp/0,4643,7-123-72297_34040_77095---,00.html

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Michigan Joint Task Force on Jail and Pretrial Incarceration



Gretchen Whitmer
Gretchen Whitmer
Governor, State of Michigan

Bridget McCormack
Bridget McCormack
Chief Justice, Michigan Supreme Court

Mike Shirkey
Mike Shirkey
Majority Leader, Michigan Senate

Lee Chatfield
Lee Chatfield
Speaker, Michigan House

Stephan Currie
Stephan Currie
Executive Director,
Michigan Association of Counties

Blaine Koops
Blaine Koops
Executive Director,
Michigan Sheriffs Association



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Task Force Findings

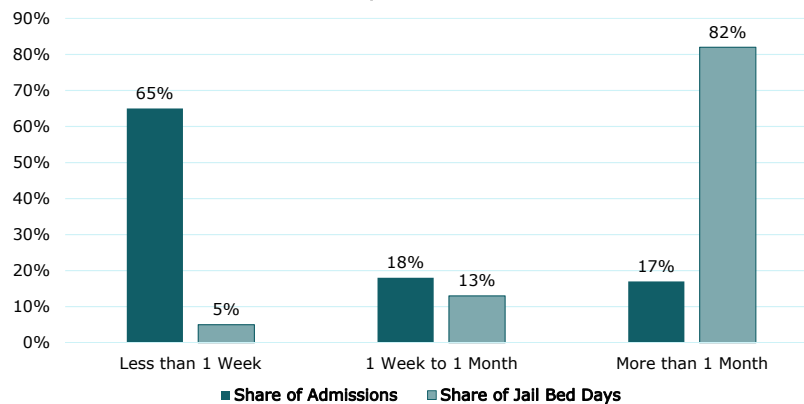
Category	Finding
Jail Population Growth	<ul style="list-style-type: none"> Increased from 5,700 in 1975 to 16,600 in 2016. Increase driven equally by pretrial and sentenced defendants.
Top Jail Admissions	<ul style="list-style-type: none"> (1) OWI, (2) Assault, (3) DWLS, (4) Theft, (5) Probation/Parole violations.
Racial Disparities	<ul style="list-style-type: none"> Black men comprise 6% of the resident population, yet 29% of all jail admissions.
Mental Health	<ul style="list-style-type: none"> 23% of jail admissions screen positive for a serious mental illness (SMI) compared to 4% of general population.
Court Filings	<ul style="list-style-type: none"> Traffic violations comprise ½ of all criminal court dockets.
Supervision	<ul style="list-style-type: none"> Michigan has 6th highest rate of people under community supervision in the nation.
Sentencing	<ul style="list-style-type: none"> Average misdemeanor jail sentence: 1 month (no probation) Average felony jail sentence: 6 months (no probation)
License Suspensions	<ul style="list-style-type: none"> In 2018, the SOS suspended nearly 358,000 driver's licenses for FTA in court or FTP F&C



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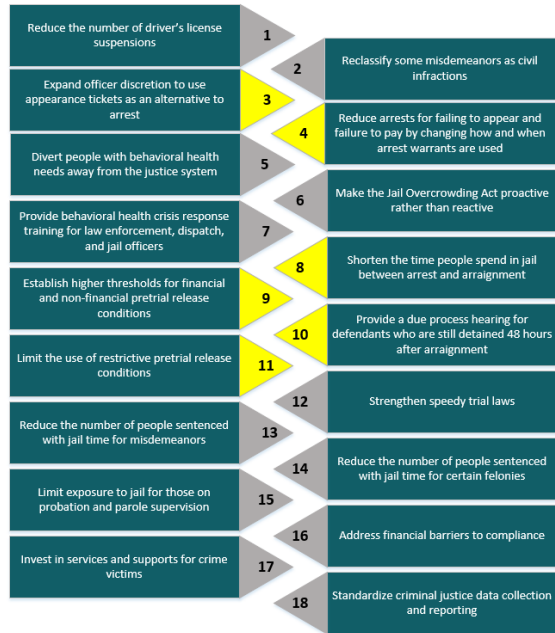
Task Force Findings

Jail Bed Use by Share of Admissions



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Jails Task Force Recommendations



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Relevant Bills

“Round 1” Bills: License suspensions, decriminalization, and mandatory minimums.

Eliminate License Suspensions

- **HB 5846 (Kahle):** Motor Vehicle Code, except those related to unsafe driving.
- **HB 5847 (Meerman):** Selling alcohol to minors and minors purchasing alcohol.
- **HB 5850 (Warren):** FTP child support and failure to comply with parenting time orders.
- **HB 5851 (Yancey):** Public Health Code for drug convictions (except those in which a motor vehicle was used during the offense).

Reclassification as Civil Infractions

- **HB 5853 (Kahle):** Reclassifies numerous traffic misdemeanors as civil infractions.
- **HB 5684-5699:** Reclassifies numerous traffic, hunting, recreational misdemeanors as civil infractions.



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Relevant Bills

Eliminate Mandatory Jail Minimums

- **HB 5854 (Sneller):** Motor Vehicle Code, including OWI and several other misdemeanors.
- **HB 5856 (Johnson):** Natural Resources and Environmental Protection Act.
- **HB 5844 (Bellino):** Public Health Code, unauthorized use of a professional occupational title.
- **HB 5855 (Brann):** Revised School Code, truancy and authorized used of a professional occupational title.
- **HB 5857 (O'Malley):** Railroad Code, throwing a projectile at a train.

"Round 2" Bills: Citations, warrants, sentencing, and probation/parole.

Citations

- **SB 1046 (Victory):** Expands appearance tickets from 93 days misdemeanors to all misdemeanors, except DV. Presumes citation in lieu of arrest for low-level misdemeanors.



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Relevant Bills

Warrants

- **SB 1047 (Irwin):** (1) summons over arrest warrants, (2) voluntarily appearance, (3) 48 hour grace period, and (4) procedures for out-of-county arrests.

Sentencing

- **SB 1048 (Santana):** Presumes non-jail, non-probation sentence for certain misdemeanors and "intermediate sanctions."

HYTA

- **SB 1049 (Chang):** Extends HYTA eligibility to age 25.

Probation/Parole

- **SB 1050 (MacDonald):**
 - Reduces maximum felony probation term from 5 years to 3 years, with possible 1 year extension;
 - Authorizes streamlined process for early discharge;
 - Requires conditions of probation be least restrictive and individually tailored;
 - Places jail caps for technical probation violations
- **SB 1051 (McBroom):**
 - Requires conditions of parole be least restrictive and individualized.



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Relevant Bills

"Round 3" Bills: Pretrial Reform

- **PR Bonds:** Required for all offenses unless the court makes an individualized determination that the person poses a significant, articulable risk of nonappearance or causing bodily harm to another reasonably identifiable person or themselves.
- **Conditional Release:** Impose the *least restrictive* conditions of release. Designate certain conditions as "significant restraints on liberty" that require review within 60 days. Require government to pay costs of conditions for indigent defendants.
- **Money Bail:** Articulable risk *and* charged with a (1) violent offense, (2) sex offense, or (3) another enumerated serious, nonviolent or non-sex offense identified by Legislature. Court must also find that nonmonetary conditions cannot reasonably address the risk.
- **Due Process Hearing:** Adversarial bail hearing within 48 hours if still detained.
- **Speedy Trial:** Require trial within 18 months of arrest, absent waiver, acquiescence, or agreement by the defendant.



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