

ALEXANDRIA HUMAN RIGHTS COMMISSION
MINUTES OF THE MEETING OF TUESDAY, MARCH 15, 2022
7:00 p.m.
VIRTUAL (Zoom)

Members Present

Danielle Beach
Lisl Brunner, Vice Chair
Michelle Cho
Kevin Edwards, Vice Chair
Lynette Foster
Chris Harris
Matt Harris, Chair
Susan Kellom
Katherine O'Connell
David Rigsby
Elizabeth "PJ" Palmer Johnson
Scott Schwartz

Staff Present

Jean Kelleher, Director
Miladis Martinez Gutierrez, Adm. Support

Members Not Excused

Janeka Cogdell

Guests

Ken Rose of the VA Dept of Criminal Justice Services
Tom Fitzpatrick, Director for Programs and Services at the
Virginia Dept. of Criminal Justice Services
Desha Hall-Winstead, Director of Pretrial Services in
Alexandria

1. Call to Order/Introductions by Chair Harris

Chair Harris called the meeting to order at 7:07 p.m. Introductions were made. Chair Harris welcomed new Commissioner Katherine O'Connell, liaison from the Landlord Tenant Relations Board. Commissioner O'Connell stated that she has lived in Alexandria for about seven years but has a lot of roots in Alexandria and is excited to be part of this Commission.

2. Approval of February Minutes

Upon a motion by Commissioner Rigsby, seconded by Vice Chair Brunner the Commission approved the minutes of the February meeting. All Commissioners present voted aye with one abstention.

**3. Guest: Ken Rose & Tom Fitzpatrick of the VA Dept of Criminal Justice Services
Desha Hall-Winstead, Director of Pretrial Services in Alexandria**

Vice Chair Brunner welcomed and introduced Ken Rose, and Tom Fitzpatrick from the Virginia Department of Criminal Justice Services, and Desha Hall-Winstead, Director of Pretrial Services in Alexandria. Vice Chair Brunner stated that they will be speaking about the Pre-trial Risk Assessment instrument tool, which is use in Virginia at the pre-trial stage to determine who is eligible for parole.

Vice Chair Brunner stated that the Human Rights Commission has been trying to educate themselves for the past two years about the ways in which technology is used that may have an impact on people's rights, which has the potential for a discriminatory impact in particular; they look at things like facial recognition technology. She said that in one of the reports that they looked at on those topics, the Pre-trial Risk Assessment instrument came up as a way in which technology can be used in ways that can have a biased outcome.

Tom Fitzpatrick started the presentation by giving an overview of what the pre-trial justice looks like in Virginia and why they use a risk assessment instrument and how it is used. He also stated that this is his

last week at DCJS and he is off to join a Human Rights Organization working on Housing and Fair Housing issues.

Mr. Fitzpatrick stated that the pre-trial risk assessment instrument is used not for parole, but it is used for the determination of pre-trial release. He stated that what they are looking at with the Pre-trial Risk Assessment instrument is how the decision is made for an individual; after they get picked up by law enforcement, they are now sitting at jail and the Judge has to decide whether that individual stays in jail or whether the individual will be released pending trial.

He talked about the notions in the legal principals, which are: presumption of innocence, right to release/presumption of release (release must be the norm; only two constitutionally valid purposes exist for limiting pretrial freedom: Court appearance and public safety), non-excessive bail (least restrictive condition), due process, equal protection, and individualized bail settings.

Mr. Fitzpatrick explained that what the pretrial risk assessment instruments help with is thinking about maximizing the releases, maximizing court appearances, and maximizing public safety. He added that one of the things that they are proud of in Virginia is that they have a very transparent risk assessment instrument. Also, that they publicized and trained all practitioners on the Defense Bar, Prosecutors and Judges, so that they know the factors that are being considered.

Mr. Fitzpatrick stated that it is their goal at DCJS, as the administrator of the Pretrial Services Act, is to provide standards to support local programs, provide the grants to the local programs, provide training, and to provide the risk assessment instrument. He stated that the local programs run the local offices with grant funding with DCJS and local funds, they then are the ones that go out and use the instrument. They will conduct interviews with defendants who are sitting in jail, put those factors into the risk assessment instrument and then provide that information to the Judges. The Judges then take this score that is provided in the pre-trial risk assessment instrument and use that as one of the factors in the determination for whether to release the individual and what conditions are placed on that individual, if they are releasing them.

Mr. Fitzpatrick explained that the way the pre-trial risk assessment tool is used in Virginia is that it is a tool that will assess risk and it is provided to the Court and then the Court uses that as one of the factors that they use to make a release determination. Additionally, what helps form the decisions are the presentation by the Commonwealth's Attorney on what the risk factors for the individual, the circumstances of the case and the recommendations from the Commonwealth Attorney to hold the individual or mitigating factors that are provided by the defense bar.

Mr. Fitzpatrick stated that across the states pre-trial risk assessment tool is used at different levels and some of this is based on how they conduct interviews, how many folks actually have the instrument provided for them, and how the Judges and what the comfort level is in using them. He also shared his experience when he was with the City of Richmond where they had an overcrowding problem at the Richmond City Jail, and they were working on how to release many individuals as safe as possible. He stated that they use the pre-trial risk assessment instrument and educated the judges on what this instrument was and said that this is a valuable tool they found in making their determinations and they actually saw a reduction of those being held in jail as the usage of the pre-trial risk assessment instrument increased.

He stated that this is important because without this instrument what is happening is just judges guesses, and so what this instrument allows is for another little bit of information for the judges to make their determination. He added that their goal is to maximize release, maximize Court appearances and maximize public safety, the PRAI (pretrial risk assessment instrument) provide any risk score to determine whether that individual might commit another crime if they are released.

Ken Rose explained that one of the concepts that they have developed as a field to guide them as the law intersects with research is a term that they use, which is Legal and Evidence-Based Pretrial Practices. He stated that the legal based practices give them the framework and the boundaries for how they conduct their research and develop their practices and policies. The evidence-based practices part is where they develop the research to tell them how they should be more effective in achieving their pretrial justice goals. Mr. Rose gave a little background of the pretrial risk assessment instrument and said that in 1995 with the enactment of the pretrial services act the Department of Criminal Justice Services was mandated to develop a pretrial risk assessment to use by the pretrial officers to assist judicial officer in making their bail determinations. As the result of this legislative mandate, they develop the first research based pretrial risk assessment that was validated among different community types. He added that Virginia was the first to develop such an instrument and it has been used in local agencies across the States since 2005. He added that they have been cognizant of the potential impact in race and gender bias with the instrument throughout the research and development of process and they continuously have that at the forefront of ensuring that whatever instrument is developed it will not be released unless it did meet certain research record to test race and gender neutrality.

Mr. Fitzpatrick stated that it is important to always validate risk instruments and they have always done it to ensure race and gender neutrality in the application of the instruments. Chair Harris asked if juveniles are held to the same standards. Mr. Fitzpatrick stated that this is a risk assessment in the adult criminal justice system and said that the Juvenile Justice System has different risk instruments that they use. The process is different, and their presumptions are very different, but the Department of Juvenile Justice for the state also has risk assessment instruments that they use as well.

Commissioner Schwartz asked if their data is compiled statewide or do, they look at the data county by county and also based on individual charges. Mr. Fitzpatrick stated that when the pretrial risk assessment instrument was created originally, they look at many different factors that were able to be captured during the pretrial process and then used sampling of urban rural areas in different parts of the state to figure out which factor were more predictive and that is how they came up with initial set of factors and how to weight them and it has been re-done several times.

Commissioner O'Connell stated that when looking at the risk factors such as employment and drug abuse, it feels like some of those would disproportionately impact historically oppressed community, like people of color, and was wondering how the instrument race mutual works when weighing risk factors like that, when it might impact some communities more than others. Mr. Fitzpatrick stated that those risk factors are taken into consideration of what was a predictive of pretrial failure. He said that all those factors are thought to be with an eye towards whether that individual will commit another crime if released or whether that individual will show up to court if released.

Vice Chair Brunner asked if the person who is being assessed for their pretrial risk grade or their attorney are informed that this instrument is being used and its court has been assigned, do they have a chance to

challenge that if they disagree with it. Mr. Fitzpatrick stated that they do not only have the chance to challenge it, but it is a factor that is used by the Courts, and that is the reason why they have a bond hearing. The purpose of the hearing is to hear the individual facts and circumstances of the individual for the Judge to determine whether to release an individual or not. Mr. Fitzpatrick stated that the individual is interviewed when they are being held in jail by a pretrial services officer/investigator and they are told why the pretrial risk assessment is being used; they are not represented by an attorney at that point, because it is done within the first 24 hours. In some jurisdictions it is in use immediately, like in Fairfax County. He added that there are individuals that refuse to answer the questions and they do not have pretrial risk assessment provided to them.

Mr. Fitzpatrick stated that having talked to defense attorneys, there are some that say that initially had concern about the usage of the pretrial risk assessment tool, but then notice that when the defendant was actually interviewed and the pretrial risk assessment tool was provided to them, they had more likelihood to be released from jail. He added that without the usage of this instrument what you have is state's attorney and defense attorney making the argument to the Judge and Judge having to use a gut instinct to release or not to release the individual. He also explained the research and stated that report validates the instrument that is used, the report looks at the factors and the report looks at does it have a disproportionate impact when it comes to race and gender.

Director Kelleher asked if they have seen abuses where there are states that have used instruments that have not succeeded as Virginia's has in reducing incarcerations. Ken Rose stated that one thing that they are learning as they go down this journey is how they use research to form decision and said that implementation of this tool is critical. He talked about New Jersey and said that they went to visit New Jersey and said that New Jersey went through a legislative reform and in that process their Administrative Office of the Courts lead the practical operational side of that, so in that process it included the implementation of pretrial services and pretrial risk assessment. Judge Grant was the Administrative Office of the Courts and in his leadership was very instrumental in ensuring that the tool was implemented as intended. He added that prior to the implementation of the tools they had high pretrial detention rates; post implementation those pretrial detention rates dropped significantly.

He added that other implementation efforts that are going on are really embracing some of the concepts of implementation science if you will; how do they maximize collaboration at the local justice level; how do they make sure folks understand how the pretrial justice system is constructed; how it actually operates; what opportunities for change are possible, for example, the risk assessment is just one of many pieces; what happens before that instrument is considered to be used; what other opportunities at the law enforcement stage; the decision whether to arrest or release on summons or citation; what is the role of the prosecutor maybe filtering out cases that may have enough evidence to prosecute, but could benefit greatly from diverting; how do they maximize the opportunity to release people without over conditioning. He stated that there are other states that are starting to implement pretrial risk assessment.

Desha Hall-Winstead stated that Alexandria is obviously using the pretrial risk assessment tool as DCJS provides them the standard mandates and guidelines. She added that they are in 24-hour operations in Alexandria, they have the pretrial folks at 3:00am and 4:00 a.m., because they have arraignments at 9:00 am., so the reports have to be ready by 8:30 am. She added that they have public defenders for the first appearance to represent those who do not have private counsel. She said that as pretrial forms have made its way to Alexandria; the tool highly used by all three Courts; all three Judges and people are

being release on bonds with conditions and they are bearing quite well in Alexandria, so the tool has been very good for Alexandria and allow Alexandria to come a long way in staring away from secure bonds.

Vice Chair Brunner thanked Desha Hall-Winstead, Tom Fitzpatrick and Ken Rose their presentation.

4. Executive Committee /Upcoming Meetings

Chair Harris stated that the Executive Committee met last week and said that he had two updates, one is that at the next month's meeting they anticipate getting an update from the Health Department; specifically, how it dealt with the Covid-19 crisis in the city and whether services were equitable distributed throughout the community and what lessons they may have learned.

Chair Harris stated that currently there is vacancy on the Commission and said that a liaison from Alexandria Commission on Persons with Disabilities is needed. He also stated that the Human Rights Commission liaison to the HIV/AIDS Commission is needed.

Chair Harris announced that tonight's is Vice Chair Edwards last meeting because he is moving to Charlotte, North Carolina.

Vice Chair Edwards thanked the Commission and said that it has been a pleasure serving on the Commission.

Chair Harris announced that the NAACP is going to have a joint meeting with the Human Rights Commission on March 24, at 7:00 p.m. virtually. Commissioner Harris will get the link and forward it to the Commission.

6. Old and New Business

Rainbow Crosswalk letter

Commissioners discussed the rainbow crosswalk proposal that was sent to City Council in early 2021, expressing concern that it had fallen through the cracks. Chair Harris and Commissioner Schwartz reported that they met with Director Kelleher two weeks ago, and she plans to follow up with Deputy City Manager Emily Baker to make sure the new City Manager, Jim Parajon, has all of the pertinent information, starting with the Commission's proposal and an internal memo from T&ES.

Commissioner Kellom talked about the Allyship program that is going to start in the City; ACT Alexandria Social and Racial Equity Program of At Home in Alexandria is participating in the program by having a discussion of the book "African Americans in Alexandria, Virginia, Beacons of Light in the Twentieth Century" on March 24 from 10 to 11:30 AM by Zoom.

7. Liaison Report

Commissioner O'Connell report that what Landlord and Tenant Relations Board discussed at their last meeting is that they are going to have the Friends of Mental Health do a mental health first aid training for landlords, so that landlords better know how to interact with people who might be having a mental crisis at a time. She stated that this training will take place in September.

Commissioner Palmer Johnson reported that the Commission for Women met on March 8th, and in honor of Women History Month, they received a proclamation from City Council, which was done

virtually. She also mentioned that their two subcommittees met, which are the affordable housing committee and the domestic violence and sexual assault; she added that they are going to be meeting with City Council to present their findings.

Director Kelleher reported that last evening there was a Boards and Commission Chair's quarterly meeting with Kate Garvey, the Director of the Department of Community and Human Services; and said that the Garvey focus on a number of things such as the budget schedule to the new building where they are going to be moving into at the Mark Center and the ARPA project that they have; one of which has to do with the guarantee income that the Commission was interested in, so she suggested inviting the person who is heading that up. She added that the ARPA money is intended to serve 170 individual for 24 months. She also suggested taking advantage of their new building on the west end to have regular outreach, conduct intakes, and do trainings.

She also reported that Virginia Association for Human Rights is going to have a quarterly meeting on March 28, 2022.

Director Kelleher announced the retirement luncheon for Patricia Ruble to be held on Thursday, March 31, 2022, at 12:30 p.m.

8. Announcements /Adjournment

MOTION: adjourn the meeting.

Palmer Edward/Foster **PASSED** unanimously.

The meeting adjourned at 8:35 p.m.