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# Mayor's Panel Draft Report

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Mayor's Panel on  
Violent Crime and  
Bond Reform

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November 2013

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## **Introduction**

Much to the concern of the community at large the City of Columbia has experienced difficulties with persons on bail for major criminal offenses committing major criminal offenses. The crimes involved in these incidents have resulted in loss of life, serious injury and a general concern of citizens for their safety and well-being. Mayor Stephen K. Benjamin created a committee, the Mayor's Panel on Violent Crime and Bond Reform, to review bail process and procedure utilized by the Municipal Courts and examine the Early Legal Assistance (ELA) program utilized by the Columbia Police Department. The Panel was tasked with making recommendations regarding improving and strengthening the system in the city. Panel members were selected from a wide range of backgrounds and experience. They are as follows;

Chairman Robert M. Stewart | *Retired Chief, State Law Enforcement Division*

Robert Bolchoz, Esq. | *Attorney At Law*

Amy Cue, LMSW | *Community Member*

Rosalyn Woodson Frierson, Esq. | *Director of SC court Administration, SC Judicial Department*

Jonathan S. Gasser, Esq. | *Partner, Harris & Gasser, LLC*

Laura Hudson | *SC Crime Victims' Council*

Reverend Chris Leevy Johnson | *Campus Pastor, Brookland Baptist Church Northeast*

Leon Lott | *Sheriff of Richland County*

Neal M. Lourie, Esq. | *Lourie Law Firm, LLC*

Carl L. Solomon | *Municipal Judge, City of Columbia*

Kela E. Thomas | *Director of SC Department of Probation, Parole, and Pardon Services*

Gregory Torrales | *President of the SC Hispanic Leadership Council*

The Panel met on five occasions and received information from multiple sources including the South Carolina Sheriffs Association, the South Carolina Prosecution Coordination Commission, the Fifth Circuit Solicitors Office, the South Carolina Bail Agents Association, the South Carolina Department of Insurance and others. The Panel respectfully now offers the following observations and recommendations. An effort was made to keep the proposals concise and achievable. It is realized that further research must be performed and work completed by city agencies and others to determine the most appropriate manner in which to successfully implement the recommendations.

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## **Bail Process Issues**

Recent events have brought increased attention to the process of setting bail in criminal cases, especially involving incidents of persons already on bond being charged with committing subsequent offenses. Clearly when setting bail, it is a balancing act on the part of the judiciary to protect the Constitutional rights of defendants with safety concerns of the community. The courts must have sufficient information to determine the appropriate conditions of bond in an effort to protect victims, witnesses and the public in cases where safety may be an issue. Much work has been done nationally and in several states to improve laws and process thereby enhancing efforts to identify which defendants, and what circumstances, require the imposing of additional conditions. It is also important to select those for whom extra precautions are not needed. Of course judges can only act on the information presented to them at the initial bond hearing, and laws and programs should be in place to maximize the level of information furnished to the courts for use in setting adequate and appropriate bail. The Panel hopes and believes that the following information will be beneficial in an effort to create such a program for the City of Columbia.

The American Bar Association has developed Pretrial Release Standards, now in the Third Edition (2007), which state in part in Standard 10-1.10 that every jurisdiction should establish a pretrial service program to collect and present the necessary information and risk assessments for the courts to be used in the setting of bond. The Conference of State Court Administrators in a Policy Paper last year (2012) proposed the use of evidence based assessment of risk in setting pretrial release conditions with consideration for threat to public safety and victims of crime as well as defendants rights. This year (2013) the Conference of Chief Justices endorsed the State Court Administrators Policy Paper.

The International Association of Chiefs of Police with support from the United States Department of Justice conducted research resulting in a report entitled “Law Enforcement’s Leadership Role in the Pretrial Release and Detention Process” (2011). This document discusses pretrial programs which should consist in part of the screening of those arrested and charged with crimes; the use of research based risk assessment tools to guide appropriate release decisions that ensure public safety and the defendant’s return to court; and the need of

supervision and regular reporting of defendants in certain cases. The report also discusses cost savings associated with the use of these initiatives as well as providing better public safety.

A National Symposium of Pretrial Justice was conducted in 2011 by the Department of Justice at which the importance of fairness to defendants as well as safety to the public was discussed by federal, state and local officials including those from the judiciary and law enforcement. An extensive report of the proceedings is on the internet. According to the document, Washington, D.C. Chief of Police Cathy Lanier, remarked about how law enforcement must focus resources on the most violent, dangerous, repeat offenders when it comes to identifying whom to detain, those being the roughly 5-10 percent who are creating 80 percent of the problems. Chief Lanier said, “I really can’t say enough about a {risk based} system that allows us to strategically hold those who create the most problems in our community and who are the most dangerous”. By inference that would also say that the system, by risk assessment, identifies those who do not need to be incarcerated pretrial.

Several states have formal pretrial services systems as does the federal court system. The State of Virginia, after much research, has created a pretrial services program which is funded by state grants to local jurisdictions. While the Panel understands that there are most probably insufficient funds for such a system in South Carolina, there is much helpful information that can be gleaned from Virginia’s extensive efforts that may be of use in this state. The document “Pretrial Risk Assessment in Virginia” identifies common factors that predict danger to the community and failure to appear in court. They include current charges, pending charges at the time of arrest, criminal history, any active supervision such as parole or probation, history of failure to appear, history of violence, stability of residence and employment, community ties, and substance abuse. Based on these factors Virginia created and validated a risk assessment instrument that evaluates defendants and assists the courts in determining appropriate bonds and conditions. It also more clearly identifies those who are not considered to be a risk to the public.

The Panel recommends that the Columbia Police Department develop a system to perform a basic risk assessment, as described herein, to provide information to the courts to assist with the setting of proper and appropriate bail in all serious, most serious and violent crimes as defined in the South Carolina Code of Laws 17-25-45 and 16-1-60. It is understood

that several persons, sworn or non-sworn, would be required to perform the task, but the added value to the safety and security of the community would outweigh the cost. The use of retired officers or non-sworn personnel could lower the expense of providing this valuable asset. The Columbia Police Department should be present at all of the bond hearings for the crimes as classified above and request assistance at the proceedings as needed from the Fifth Circuit Solicitor's Office. It is also hoped that judges will insist upon adequate presentations of information on which they can make considered decisions regarding the amount of bail and setting of appropriate conditions. The preservation of persons' lives and well-being depend on law enforcement, prosecutors and the judiciary diligently and effectively working together in their respective roles.

Information to be considered in the creation of a pretrial risk assessment program includes a review of South Carolina Code of Laws Section 22-5-510 (C) concerning "Bail and Recognizance" states "Prior to or at the time of the bond hearing, the law enforcement officer, local detention facility officer, or local jail officer, as applicable, attending the bond hearing shall provide the court with the following information if available:

- (1) the person's criminal record;
- (2) any charges pending against the person;
- (3) all incident reports generated as a result of the offense charged; and
- (4) any other information that will assist the court in determining bail."

Another statute Section 17-15-30, entitled "Matters to be Considered in Determining Conditions of Release", states in addition to the above described information to be furnished to the court, that judges may consider if available the defendant's family ties, employment, financial resources, character and mental condition, length of residence in the community, record of flight to avoid prosecution or failure to appear at other court proceedings and pending charges. Both statutes state that law enforcement must inform the court if the listed information is not available and why; however, failure of the police to provide the material is not grounds for the postponement or delay of the bond hearing.

It has also been determined by the Panel that there are data bases available to law enforcement which can readily be accessed which should be utilized to provide information to the courts for setting bail. One, JODA (Juvenile On Demand Act) is at the Department of Juvenile Justice (DJJ) which police agencies can be approved to access in order to obtain records of crimes committed by those under 17 years of age. Another is through the South Carolina Information Exchange (SCIEEx) located at the South Carolina State Law Enforcement Division (SLED). SCIEEx contains millions of police incident reports from state and local agencies across the state. The reports can be queried by name for incidents involving a defendant that might be helpful information for the court. Additionally SLED maintains a Gang Database which also could hold beneficial data. These sources should be regularly used for the purpose of assisting the courts in setting bond and the Panel encourages that the police do so. There should be consideration given for the courts of this state to be allowed to access appropriate databases maintained by the State Law Enforcement Division for use in the setting of bail.

### **Legislative Issues**

There should be a statutory requirement that the circuit court conduct a hearing to determine the appropriate course of action regarding detention or bond when a defendant on bond commits another major crime. Therefore the Panel endorses the passage of Senate bill S19 which would require that in the case of a person on bond for a serious or most serious crime who is charged with committing another serious or most serious crime, a circuit court bond hearing must be conducted within 30 days to determine the appropriate course of action. This bill has passed the Senate and is currently being considered in the House of Representatives. While desiring that this bill be somewhat stronger, the Panel does not wish to impede the passage of S19 by suggesting amendments. Therefore any further recommendations for legislative change will be requested through separate bills.

There needs to be some penalty, either through a sentence enhancement or creation of a new crime, for those who commit another major offence while on bond. The Panel chooses to recommend that legislation be introduced to accomplish this goal, with certain safeguards as was done in California (Penal Code 12022.1). Under the Panel's view of this provision a defendant who commits a serious, most serious or violent crime while on bond for the same type offenses

would be subject to up to a five year enhancement or additional penalty. If the person has not yet been convicted of the original charge and is convicted of an offense arising from the second incident, then the enhancement or additional penalty would be stayed until the disposition of the first case for which the person was originally on bond. If the person is not convicted of the first charge the enhancement or additional penalty would not be applied. The additional penalty would be served consecutively. This hopefully would serve as a deterrent for those who commit violent crimes while on bond where now there seems to be none. It is interesting to note that federal law creates a crime for persons committing another offense while on bail. In that system if the secondary violation is a felony, a consecutive sentence of up to ten years, and in the case a misdemeanor up to one year, may be added to that imposed for the second offense.

In an effort to deter those on probation or parole from committing another crime, consideration could be given to a Florida initiative. Florida statute FL903.0351 prohibits pretrial release for persons on probation or parole until the holding of a probation or parole violation hearing. The Panel would suggest that legislation be adopted by the General Assembly providing that a person on parole or probation charged with a serious, most serious and/or violent crime as defined in the South Carolina Code of Laws 17-25-45 and/or 16-1-60, shall be held in custody pending a probation or parole violation hearing. Bond settings of all persons on probation or parole charged with serious, most serious and violent crimes should be held in the Circuit Court.

The proposed statute should also state that the Department of Probation Parole and Pardon shall be advised within 48 hours of the arrest that the person is being held pending a probation or parole violation hearing, and the PPP proceeding shall be conducted within the following 45 days. The determination of the PPP hearing shall be reported to the Circuit Court and a bond hearing shall be conducted within 60 days of the arrest. Failure of PPP to hold a probation or parole hearing within the prescribed time would not be grounds for the postponement or delay of the bond hearing beyond the 60 day limit.

The creation and growth of gangs and the increase in violence connected to them has become a major problem in the area. There are currently gang databases maintained at the state and some local agencies. There are standards that must be followed for entry of a person in a

police gang computer file. The panel recommends that Section 17-15-30(A) also be amended to add (8) “whether the accused is gang affiliated.” This could certainly be important information for the court to consider in setting bail.

Although currently available to law enforcement through the JODA system at DJJ, the legislature may wish to strengthen the effort to more fully inform the courts at bond hearings by amending Section 22-5-510(C)(1) by adding after “the person’s criminal record” the phrase “and the person’s juvenile record if the charge on which the bond hearing is being conducted is a serious, most serious or violent offense”. If this change is made it should also be reflected in Section 17-15-30(B)(1)

There also appears to be an inconsistency between these two statutes in that 17-15-30(C)(1) states that “the arresting law enforcement agency shall provide the court with the following information” however 22-5-510(C) requires “the law enforcement officer, local detention facility officer, or local jail officer, as applicable, attending the bond hearing shall provide the court with the following information.” Should the statutes be amended regarding this issue it should also be added that the court may require other law enforcement agencies to provide documents as needed.

### **Bail Bondsmen Issues**

The Panel received information confirmed by state officials and the professional bond industry that defendants are routinely released from jail on an installment plan after the defendant has posted a minimal "down payment" on the bond. As an example, such a practice may allow a defendant who is charged with a serious crime and given a \$100,000 bond by a judge, to pay as little as two or three percent of the bond with a promise of future payments to a bondsman and be freed from custody. This suggests that a person, whom the court felt the circumstances indicated a bond of \$100,000 was required, and normally would mean a defendant would be responsible for in some form whether it be cash, property or other, could be released for as little as between \$2,000 and \$3,000 and a promise to make further payments. Therefore a defendant with a substantial bail required by the court, possibly due to being charged with a major crime, may easily gain release from custody with little personal obligation or financial

responsibility on his bond. Further complicating this situation current law (38-53-50) states that a bail agent may return a defendant to a detention facility for violation of a specific term of the bond however the nonpayment of fees alone is not considered sufficient cause to warrant immediate incarceration. The Panel believes that this practice of minimal installment payments much too easily allows defendants, whom the court has determined to require a substantial bond due to the nature of the criminal charge, to be free to commit further offenses against the community.

Bail bondsmen are regulated by the South Carolina Department of Insurance. Chapter 53 of Title 38 of the South Carolina Code of Laws establishes the department's authority to regulate the bail bondsmen. Specifically, Section 38-53-170 establishes that a bail agent may only accept from a defendant a payment which “may not exceed fifteen percent of the face amount of the bond with a minimum fee of \$25.” Additional collateral security or other indemnity may be received but must be returned upon termination of liability on the bond. The bondsman must also identify who is the source of the funds and “shall represent that the collateral security or other indemnity has not been obtained from any person who has a greater interest in the defendant’s disappearance than appearance for trial.”

The Panel recommends that the Department of Insurance, through the promulgation of regulations, and by seeking legislation, revise the requirements regarding payments to bondsmen especially on serious, most serious and violent crimes. The minimum fee should be increased, a definite percentage of the face amount of the bond be set and whichever is greater should be the amount payable to bail agents. If installment payments are to be continued they should be for a specified length of time. It has been noted that in the federal courts the required amounts must be posted prior to release. It is also suggested that the courts make enquiry of bondsmen as to whether they determined that, as required by statute (38-53-170), the person paying the premium and or furnishing any collateral is not prohibited from doing so.

There should be consideration of a regulation that requires bondsmen to report to the appropriate authority any knowledge of the arrest of any defendant for whom they had posted bail. The bondsman’s report would be made to the law enforcement agency which made the arrest for the original charge. The police would then inform the prosecutor and/or the court.

Additionally, either by regulation or statute, bondsmen should be required to complete a signed and notarized form indicating that to the best of their knowledge the source of funds paid to the bail agent are not from someone prohibited by law to do so. This form should be submitted with the bond documents.

## **Victim Issues**

The Panel wishes to stress the importance of the criminal justice system making every effort to protect the victims of crime and witnesses through strict adherence to South Carolina Code of Laws 16-3-1525. This law covers notification, transportation and security of victims as well as the imposition of bond conditions sufficient to protect them from harassment or intimidation. To underscore the significance of the safety and protection of individual victims and witnesses the South Carolina Legislature should give consideration to amending Code of Laws 17-15-30(A) by adding to the current verbiage which mentions “danger to the community” the phrase “or any other person” as does federal law. It has been reported that there is on occasion confusion regarding a single victim or witness being considered “community.”

The statute requires that “A law enforcement agency must provide any measures necessary to protect the victim and witnesses, including transportation to and from court and physical protection in the courthouse.” It also states that judges “must impose bond conditions which are sufficient to protect a victim from harassment or intimidation by the defendant or persons acting on the defendant’s behalf.” Additionally, according to this law, there must be a reasonable attempt “to notify each victim of each case for which bond is being determined of his right to attend the bond hearing and make recommendations to the presiding judge.”

In fact, according to this statute, if a victim has not been given sufficient notification in advance to attend the bond hearing, the proceeding must be delayed by the court for a reasonable time to allow notice. However, if information needed for the court to make an appropriate bond, such as the defendant’s criminal history, charges pending, or other documents that would assist the court are not readily available for law enforcement to provide to the presiding judge, statutes 17-15-309(C)(2) and 22-5-510(D) specifically state that situation does not create grounds for “postponement or delay” of the bond hearing. The legislature should consider amending this

section of law to allow the court, in the case of serious, most serious or violent crimes, to delay or continue the bail proceeding for twenty four hours if the judge feels it in the best interest of public safety and there is a specific justifiable reason that the documents are not yet available.

### **Electronic Monitoring Issues**

The Panel discussed the use of electronic monitoring as a condition of bond. Global Positioning Systems (GPS) and other electronic monitoring systems are valuable tools utilized across the country in an effort to ensure compliance with conditions of bond. However in this state there have been serious issues involving quality control of the services provided in some areas.

It is recommended that the South Carolina Department of Probation, Parole and Pardon Services (PPP) statutorily approve equipment and companies that provide electronic monitoring services in the state as it does now with the ignition interlock program. PPP is thoroughly familiar with electronic monitoring as it operates GPS monitoring of convicted sex predators. The oversight process would be funded through fees remitted by the companies providing the service in this state.

Additionally, although electronic monitoring is now used in many areas of the state, to clarify that it may be a condition of bond when determined by the court to be appropriate, it is recommended that the Virginia language {Va. Code 19.2-123(A)(4)} be added to South Carolina Code of Laws 17-15-10(4). The South Carolina statute now reads “impose any other conditions deemed reasonably necessary to assure appearance as required, including a condition that the person return to custody after specified hours”. Added to that verbiage should be “or be placed on home electronic incarceration under the Home Detention Act (24-13-1510) or when the person is required to execute a bond be subject to monitoring by a Global Positioning System tracking device, or other similar device. The defendant may be ordered to pay the cost of the device.” It is understood that provision would have to be made for indigents.

The Panel also recommends passage of Senate bill S509 which prohibits a person from “knowingly and without authority” removing, destroying or circumventing the operation of an electronic device ordered to be used by a court or authorized agency. This bill creates a

misdemeanor offense with a penalty of not more than three years or a fine of up to three thousand dollars or both. The legislation has passed the Senate and is before the House of Representatives. Currently there is no specific crime for this activity or penalty other than that which might be imposed as violation of a condition of bond. This could serve as a deterrent to those ordered to wear a device but rather circumvent the court's imposed condition for monitoring as well as to those providing assistance to do so.

### **Early Legal Assistance Program**

The Early Legal Assistance (ELA) program began in approximately 1975 by then Solicitor Jim Anders as a quality control initiative and continues today. It is utilized during investigations of potential General Sessions Court cases (non-traffic). The ELA program is a tool for law enforcement officers and prosecutors to use in an effort to avoid legal complications that could jeopardize the successful outcome of a case and/or lead to possible lawsuits against police. It is also intended to better serve the public by improving the quality of prosecutions and providing an additional level of protection for all citizens. This is accomplished by prosecutors and police reviewing the evidence available at a given point in time, to determine the strength of the case and appropriate charges. An Assistant Solicitor is always on call to provide input. Upon receiving the opinion of the Solicitor's Office an investigator may disregard the advice and seek a warrant on a charge of their own choice, but that action should be taken with caution in that it could present complications. The ELA process is not ordinarily used where an officer intends to make an arrest without a warrant in an active situation unless he or she desires to obtain legal advice. A similar process is a generally accepted practice in many jurisdictions across the United States, and is utilized by United States Attorneys and federal investigative agencies. In South Carolina, SLED regularly reviews investigations with the appropriate state or federal prosecutor prior to obtaining a warrant.

The Panel recommends that the ELA program remain in effect. It is a valuable tool which seeks to promote high quality investigations, successful prosecutions, and protect citizens' rights. A formal ELA policy and/or procedure should be developed by the Columbia Police Department with approval of the Fifth Circuit Solicitor's Office. Included should be a process whereby if a disagreement arises as to the appropriate police action to be taken in a case,

supervisors are notified and if the situation is not immediately resolved, the issue would proceed through the corresponding chains of command in the Police Department and Solicitor's Office in an expeditious manner. However it is important to bear in mind that the final prosecutorial decision in any case belongs to the Solicitor. In addition, training regarding this program and its proper use should be provided to the police department.

## **Conclusion**

There has been wide interest across the state regarding many of the issues discussed in this report. The safety and security of citizens is the first duty and responsibility of every level of government. The appropriate setting of bail in major criminal cases is of the utmost importance in maintaining an environment in which community members may conduct their personal lives and business activities. The Panel hopes that the recommendations and considerations contained herein will contribute to improving the welfare of all citizens and be thoughtfully reviewed by decision makers. In that light it is recommended that the Mayor of Columbia seek the support of mayors and other municipal officials across the state and also organize a citizen support group locally in an effort to implement reforms and improvements in regard to the setting of bail in criminal cases.

The Panel respectfully submits this report to Mayor Stephen K. Benjamin on this \_\_\_ day of November, 2013.