

# PRETRIAL JUSTICE TASK FORCE

December 13-14, 2018

Judicial Center

Topeka, KS





# WELCOME

10:00 A.M.



# Professor Edward Latessa, Ph.D

DIRECTOR AND PROFESSOR OF THE SCHOOL OF CRIMINAL JUSTICE  
AT THE UNIVERSITY OF CINCINNATI

[latesej@ucmail.uc.edu](mailto:latesej@ucmail.uc.edu)

# PRETRIAL JUSTICE TASK FORCE

December 13, 2018

Judicial Center

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# INTRODUCTIONS

## WORKING LUNCH



**March 8, 2019**

**June 14, 2019**

**September 13, 2019**

**December 13, 2019**

**FUTURE ALL TASK FORCE MEETINGS**

# PURPOSE OF PRETRIAL BOND

- ▶ **Guarantee appearance in court**
- ▶ **Protect public or victim safety**

# Collateral Consequences of Pretrial Detention

- ▶ **Loss of job**
- ▶ **Loss of public assistance including housing and VA benefits**
- ▶ **Loss of schooling**
- ▶ **Loss of custody of children**
- ▶ **Health problems due to stress or lack of care**
- ▶ **More likely to plead guilty or be convicted**
- ▶ **More likely to get a longer jail sentence**
- ▶ **More difficult to consult with attorney and gather evidence and witnesses for defense.**





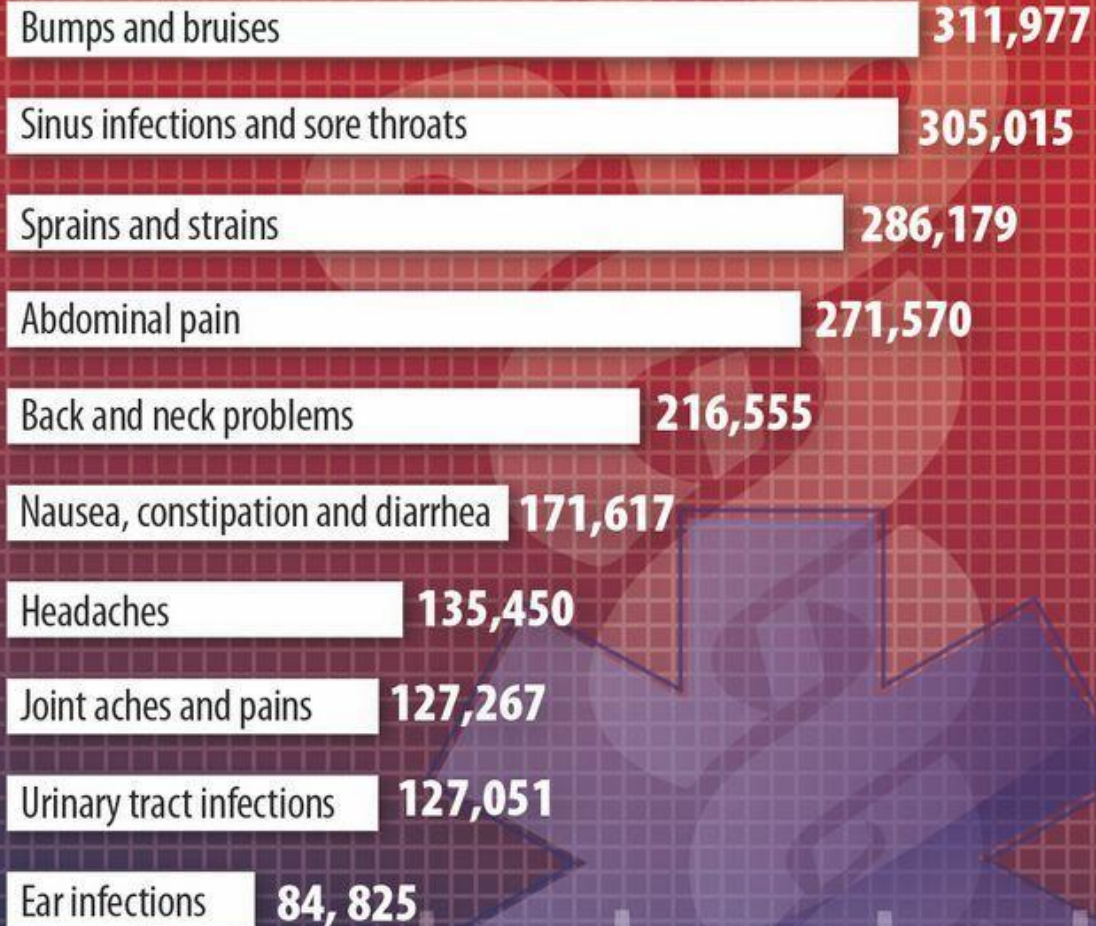
**Presumption of  
innocence and  
right to liberty**

**Administration of  
justice and public  
safety**

# The Emergency Room Model



# 10 common conditions responsible for emergency room visits



Source: Excellus BlueCross BlueShield

When you have healthcare needs, it is important to choose the right place at the right time. When you should go to the...



### Doctor's Office

*\*Best to schedule an appointment*

- Regular health screenings
- Check ups
- If something causes you concern
- Fever
- Cough or colds
- Unexplained weight changes
- Lingering pain



### Urgent Care Center

*\*Open 24 hours/7 days a week*

- Minor illness and injury
- Vomiting or diarrhea
- Flu or fever
- COPD
- Cystic fibrosis
- Sprains or strains
- Possible broken bones
- Sports injuries
- Eye infection
- Sore throats or ear aches
- Coughs or colds



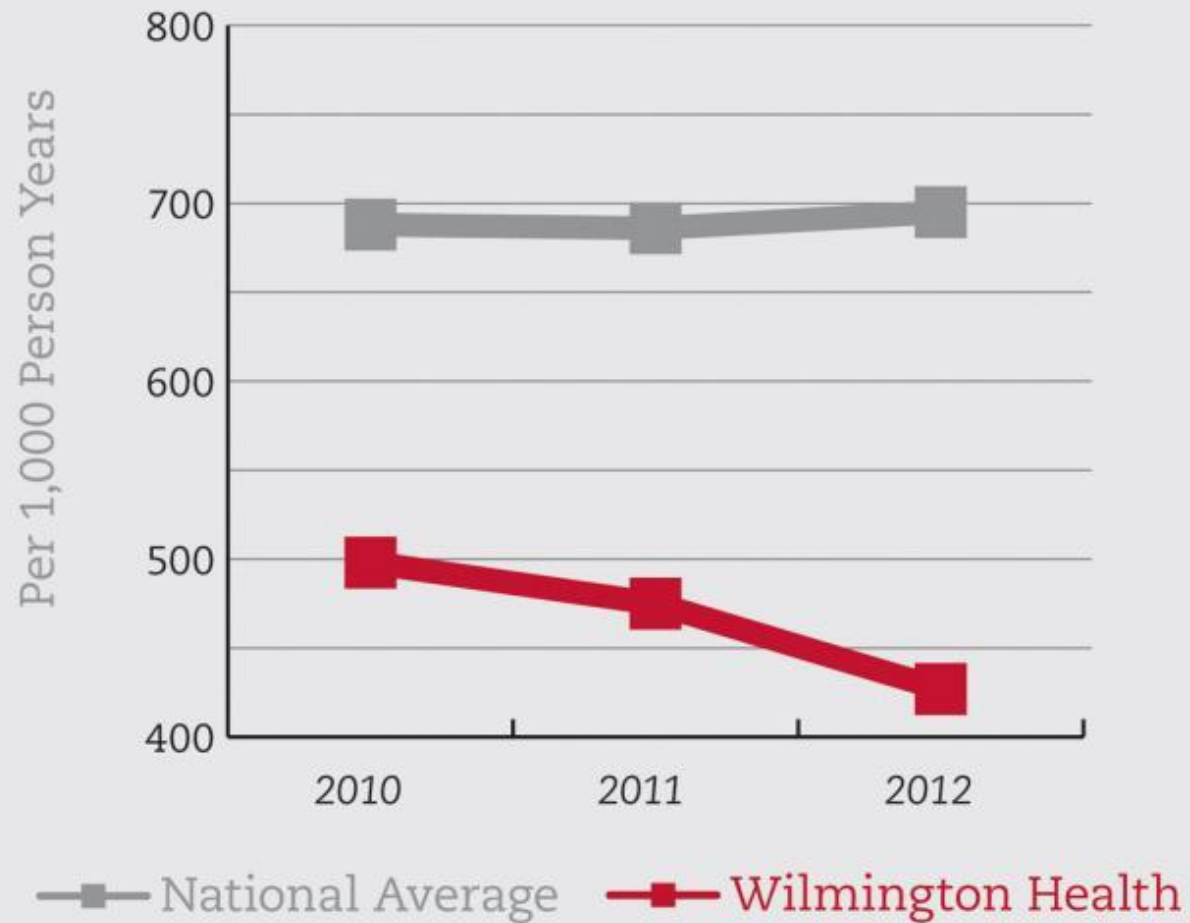
### Emergency Room

*\*Call 9-1-1 immediately*

For life-threatening

- Emergencies
- Difficulty breathing
- Serious head, neck or back injury
- Loss of limb
- A severely broken bone
- Chest pain or pressure
- Convulsions or seizures
- Unconsciousness
- Severe bleeding
- Poisoning
- Burns

# EMERGENCY ROOM VISITS



# Jail Bookings



# Pretrial Triage

Don't Treat



Diagnose and Release



Diagnose and Admit



**REDUCE UNNECESSARY DETENTION**

# Alternatives to Pretrial Detention

## Issue Citation

Released with issuance of a ticket with a notice to appear by officer on street

## Personal Recognizance

Allowed to sign out with a promise to pay or have sanctions if fail to appear. May have conditions imposed pretrial

## Cash or Surety Bond

Only if necessary to guarantee appearance and protect public or victim and then only when no less restrictive option is available and only in the smallest amount necessary to meet goals.

## No Bond

Proven to be extremely dangerous, violent offenders; Clear incarceration needed to protect public or victim and perhaps even statutorily required.



# TASK FORCE EXPECTATIONS

**Attend all meetings:  
No delegates**

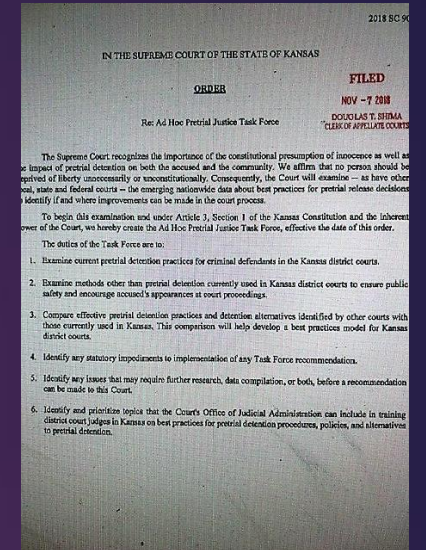
**Be willing to share your thoughts or concerns and think outside the box**

**Conduct independent research to be active contributor to Task Force**

**Share information received from interested parties with whole Task Force**

# Supreme Court Order

1. Examine current pretrial detention practices for criminal defendants in the Kansas district courts.
2. Examine methods other than pretrial detention currently used in Kansas district courts to ensure public safety and encourage accused's appearances at court proceedings
3. Compare effective pretrial detention practices and detention alternatives identified by other courts with those currently used in Kansas [to assist in the development of a best practices model].



# THREE SUBCOMMITTEES

- ▶ **Appearance**
- ▶ **Public Safety**
- ▶ **Alternatives**

# APPEARANCE

## Encouraging an accused's appearance in court

- ▶ **Examine factors that have been found to be directly related to likelihood to appear in court, including the literature regarding the relationship between bond amount and future appearance.**
- ▶ **Examine current practices in place in Kansas and around the country to encourage the appearance of an accused in court and the successfulness of such programs.**
- ▶ **Examine whether bond and bond amounts play an essential role in guaranteeing an accused's appearance.**
- ▶ **Identify best practices that merit further exploration for implementation in Kansas related to encouraging an accused to appear in court.**

# PUBLIC SAFETY

## Reasonable assurances that the public will be safe

- ▶ Examine factors that have been found to directly relate to the risk of victim or public safety while awaiting trial.
- ▶ Examine current practices in place in Kansas and around the country to address the safety of the public as it relates to persons awaiting trial.
- ▶ Examine whether requiring bonds and whether the amount of bond plays an essential role in guaranteeing the safety of the victim or the public.
- ▶ Identify best practices that merit further exploration for implementation in Kansas related to the risk to the victim or the public of release from custody pending trial.

# ALTERNATIVES

## Programs designed to avoid incarceration or limit it

- ▶ Examine alternatives to pretrial incarceration that are in use in Kansas and around the country. The committee will examine programs related to either keeping people out of jail in the beginning or limiting the amount of time they are in jail. A nonexclusive list for *possible* examination:
  - ▶ Arrest v. Citation decision: Examine law and practice in Kansas and around the country
  - ▶ Early triage of cases for diversion or plea agreement, including written policies and criteria by prosecutors
  - ▶ Programs that incorporate immediate mental health or drug abuse triage and placement in lieu of incarceration
  - ▶ Examine the adequacy of statutory speedy trial limits
- ▶ Examine resource needs for alternatives that have proven successful.
- ▶ Identify best practices that merit further exploration for implementation in Kansas.

# OVERARCHING CONCERN

- ▶ **Measurable problem**
- ▶ **Measurable success**

# Task force expectations

## Subcommittees

Meet at least  
twice  
between full  
Task Force  
Meetings

Send  
summary  
of  
meetings  
to Task  
Force Chair

Report on  
progress at  
each full  
Task Force  
meeting

Conduct  
independent  
research as  
necessary to  
be active  
contributor to  
subcommittee

**Seek out both sides of the issues examined and  
confront the issues with an open mind**



# INPUT ENCOURAGED FROM

- ▶ Peace Officers
- ▶ Sheriffs
- ▶ County and District Attorneys
- ▶ Association of Counties
- ▶ Criminal Defense Attorneys
- ▶ Court Services
- ▶ Community Corrections
- ▶ Bail Agents
- ▶ AG's Office
- ▶ ACLU
- ▶ NAACP
- ▶ LULAC
- ▶ Correctional Association

# WHAT WE WILL NOT BE ADDRESSING

- ▶ **Elimination of or continued viability of the commercial bond industry**
- ▶ **Ways to reduce jail costs**
- ▶ **Any post-trial incarceration**
- ▶ **Blame attributed to judges, prosecutors, defense attorneys, or legislators**

# WE WILL BE ADDRESSING

- ▶ **Balancing the presumption of innocence with the risk of flight and the risk to public safety in a way to avoid any unnecessary pretrial incarceration.**

# OVERARCHING CONCERN

- ▶ **Measurable problem**
- ▶ **Measurable success**



# SUBCOMMITTEE SIGN UPS



# Amber Widgery, JD

SENIOR POLICY SPECIALIST IN THE  
CRIMINAL JUSTICE PROGRAM AT  
THE NATIONAL CONFERENCE OF  
STATE LEGISLATURES

[amber.widgery@ncsl.org](mailto:amber.widgery@ncsl.org)



# Prof. Jeffrey Jackson, JD, LL.M

WASHBURN UNIVERSITY SCHOOL OF LAW  
[jeffrey.jackson@washburn.edu](mailto:jeffrey.jackson@washburn.edu)

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**March 8, 2019**

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**FUTURE ALL TASK FORCE MEETINGS**

# PRETRIAL JUSTICE TASK FORCE PANEL DISCUSSION

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# Hon. Jared Johnson

- ▶ Judge, 28<sup>th</sup> Judicial District
- ▶ Salina, KS



# Hon. Brenda Stoss

- ▶ Judge, Salina Municipal Court
- ▶ Chair, Ad Hoc Committee on Bonding Practices, Fines, and Fees in Municipal Courts





# Robert Sullivan

**DIRECTOR, JOHNSON COUNTY  
DEPARTMENT OF CORRECTIONS**

**OLATHE, KS**

# Tom Strubel

Sedgwick County Criminal  
Justice Alternatives Administrator  
Wichita, KS

[Tom.Struble@sedgwick.gov](mailto:Tom.Struble@sedgwick.gov)





**“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”**

***Coffin v. United States*, 156 U. S. 432, 453 (1895)**

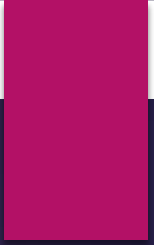
“ The only arguable substantive limitation of the Bail Clause is that the Government's proposed conditions of release or detention not be ‘excessive’ in light of the perceived evil. [When] the Government has admitted that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more. We believe that when Congress has mandated detention on the basis of a compelling interest **other than prevention of flight**, as it has here, the Eighth Amendment does not require release on bail.”

*United States v. Salerno*, 481 U.S. 739, 754–55 (1987)

**Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.**

EIGHTH AMENDMENT TO THE U.S. CONSTITUTION





“[T]he presumption of innocence, although not explicitly stated in the United States Constitution, is a basic component of our criminal justice system that is founded on the principle that a criminal accused is entitled to have his or her guilt or innocence determined solely on the basis of trial evidence and not upon “ ‘grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.’ ”

*State v. Miller*, 427 P.3d 907, 929 (2018)

“All persons shall be bailable by sufficient sureties except for capital offenses, where proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.”

KAN. CONST. BILL OF RIGHTS §9

“The bond fixed [\$250,000 for charge of 2<sup>nd</sup> degree murder] was indeed high, but the offense was most serious...In the case before us we cannot say that the court below abused its discretion at the time bail was fixed.”

*State v. Dunnan*, 223 Kan. 428, 430, 573 P.2d 1068, 1071 (1978)

**K.S.A. § 22-2801  
(ARTICLE 28 =  
CONDITIONS OF  
RELEASE)**

**“The purpose of this article is to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges or to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.”**



**K.S.A. § 22-2802**

**“Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. “**

**“The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.”**

**K.S.A. § 22-2802(3)**

**“In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.”**

**K.S.A. § 22-2802**



# Before We Break Into Subcommittees

NCSC National Council for State Courts

Who We Are | What We Do

HOME > FINANCIAL > FINES, FEES AND BAIL > FINES & FEES

ACCESS AND FAIRNESS

APPELLATE

CHILDREN, FAMILIES & ELDERLY

CIVIL

COURT COMMUNITY

COURT MANAGEMENT

COURTHOUSE FACILITIES

CRIMINAL

FEDERAL RELATIONS

FINANCIAL

- Budget Management
- Fines, Fees and Bail
- Foreclosures

HUMAN RESOURCES

INTERNATIONAL

JUDICIAL OFFICERS

JURY

LEGAL SERVICES

MEDIA

PROBLEM SOLVING COURTS

SPECIAL JURISDICTION

TECHNOLOGY

**National Task Force on Fines, Fees and Bail Practices Resource Center**



The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) formed a National Task Force on Fines, Fees and Bail Practices to address the ongoing impact that these legal financial obligations (LFOs) have on economically disadvantaged communities and to draft model statutes and court rules for setting, collecting, and waiving court-imposed payments.

**What's Included in the Resource Center?**

This Resource Center includes products created by the National Task Force and highlights other resources related to these issues. While the enforcement and collection of various court fines and costs is essential to the integrity of the courts in gaining compliance with court orders and ensuring that those orders are not violated, an increasing amount of attention is being focused on how fines, fees and bail practices disproportionately impact economically disadvantaged communities.

**Featured Resources**

The National Task Force is now pleased to offer its **"Principles on Fines, Fees and Bail Practices."** Developed


**Texas and Ability to Pay**



Category	Change
COMPLIANT DEBTORS	INCREASED 12%
WARRANTS DISCHARGED	DECREASED 7%
RECEIVED PAID	INCREASED 6.36%

A new bench card from the Texas Office of Court Administration helps judges follow the new guidelines about determining a person's ability to pay.

**State Fines, Fees and Bail Practices Interactive Map**



If you have information that can be added or updated please contact [dsmith@ncsc.org](mailto:dsmith@ncsc.org).

NCSC Resources  
CourTool Measure 7

# National Center for State Courts

National Task Force on Fines, Fees and Bail Practices Resource Center



### **Support for Pretrial Justice Reform: African-American Poll 2018**

New national poll results released today by PJI and the National Urban League show that 87% of African-American voters strongly favor reducing arrests for low-level nonviolent offenses.

**KEEP READING**

### **Texas Voters Ready for Pretrial Reform**

A new poll from PJI, Right on Crime and Texas Appleseed shows that 90 percent of registered Texas voters are dissatisfied with the criminal justice system overall and 55 percent want a complete overhaul or major change.

**READ MORE**

# Pretrial Justice Institute

<https://www.pretrial.org/>



## Initiatives

### Criminal Justice

LJAF's Criminal Justice Initiative aims to advance community safety and the values of equity, fairness, effectiveness, and racial justice. In the coming years, we will explore opportunities to accelerate progress in five key policy domains: Policing, Pretrial Justice, Community Supervision, Prisons, and Reintegration. We work with teams of experts from inside and outside the criminal justice field to conduct research, build evidence, create tools for practitioners, and partner with local jurisdictions to pilot and test new policies and practices.

MORE INFORMATION

# Laura and John Arnold Foundation

<http://www.arnoldfoundation.org/initiative/criminal-justice/pretrial-justice/>

# Meeting

**March 8, 2019**

**9:00 am -4:00 pm**

**FATZER COURTROOM**

**JUDICIAL CENTER, TOPEKA, KS**