Final Report of the Special Commission to Evaluate Policies and Procedures Related to the Current Bail System

December 31, 2019

Commission Membership

- Representative Claire Cronin, ***Co-Chair***
- Senator Cindy Friedman, ***Co-Chair***
- Representative William Driscoll, 7th Norfolk District
- Senator William Brownsberger, Senate President Pro Tempore
- Representative Sheila Harrington, 1st Middlesex District
- Senator Bruce Tarr, Senate Minority Leader
- Chip Phinney, Deputy Legal Counsel, Massachusetts Supreme Judicial Court
- Chief Justice Judith Fabricant, Massachusetts Superior Court
- Chief Justice Paul Dawley, Massachusetts District Court
- Commissioner Ed Dolan, Commissioner of Probation
- Attorney Kristen Muniz, Committee for Public Counsel Services
- Attorney Atara Rich-Shea, Massachusetts Bail Fund, on behalf of the American Civil Liberties Union- Massachusetts
- Attorney Shira Diner, Todd & Weld LLP, on behalf of the Massachusetts Association of Criminal Defense Attorneys
- Attorney Dean Mazzone, Office of the Attorney General
- District Attorney Thomas Quinn, Bristol County
- First Assistant District Attorney Richard Savignano, Plymouth County
- Attorney Spencer Lord, Executive Office of Public Safety and Security

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I. Charge of the Special Commission

SECTION 220 OF CHAPTER 69 OF THE ACTS OF 2018

(a) There shall be a bail reform special commission established pursuant to section 2A of chapter 4 of the General Laws, referred to in this section as the commission. The commission shall evaluate policies and procedures related to the current bail system and recommend improvements or changes.

(b) The commission shall consist of 19 members: 2 of whom shall be members of the house of representatives appointed by the speaker of the house of representatives; 1 of whom shall be a member of the house of representatives appointed by the minority leader of the house of representatives; 2 of whom shall be members of the senate appointed by the president of the senate; 1 of whom shall be a member of the senate appointed by the minority leader of the senate; 1 of whom shall be the chief justice of the supreme judicial court or the chief justice's designee; 1 of whom shall be the chief justice of the superior court or the chief justice's designee; 1 of whom shall be the chief administrative justice of the district court or the chief administrative justice's designee; 1 of whom shall be the commissioner of probation or the commissioner's designee; 1 of whom shall be the chief counsel of the committee for public counsel services or the chief counsel's designee; 1 of whom shall be appointed by the American Civil Liberties Union of Massachusetts, Inc.; 1 of whom shall be appointed by Massachusetts Association of Criminal Defense Lawyers, Inc.; 1 of whom shall be the attorney general, or the attorney general's designee; 2 of whom shall be members of the Massachusetts District Attorneys Association, including 1 of whom shall be the president, or their designees, and; 1 of whom shall be the governor, or the governor's designee. The speaker of the house of representatives and the president of the senate shall each appoint 1 co-chair of the commission from among its members. Members of the commission shall serve without compensation.

(c) The commission shall submit its final report to the governor, the house and senate chairs of the joint committee on the judiciary, the house and senate chairs of the joint committee on public safety and homeland security and the chief justice of the trial court not later than June 30, 2019 which shall include: (i) an evaluation of the potential to use risk assessment factors as part of the pretrial system regarding bail decisions, including the potential to use risk assessment factors to

determine when defendants should be released, with or without conditions, without bail and when bail should be set; (ii) an evaluation of the impact of eliminating cash bail and recommendations, if any, for doing so; (iii) an evaluation of the setting of conditions on defendants when they are released with or without bail and if changes should be made to the setting of conditions; (iv) an evaluation of any disparate impact on defendants because of gender, race, gender identity or other protected class status in the pretrial system and recommend any changes that may minimize any such impact that is found; and (v) proposed statutory changes concerning the pretrial system.

SECTION 23 OF CHAPTER 34 OF THE ACTS OF 2019

Subsection (c) of section 220 of chapter 69 of the acts of 2018 is hereby amended by striking out the words “June 30, 2019” and inserting in place thereof the following words:- December 31, 2019.

II. Introduction

The use of bail to ensure a defendant's appearance at trial is rooted in the English Common Law and remains a mainstay of American criminal jurisprudence. The practice of requiring a defendant to post monetary bail as a condition of release allows the defendant to remain at liberty, in accord with the presumption of innocence, while giving the court some assurance that the defendant will answer the charges against him or her. However, bail proceedings must balance the orderly conduct of a criminal justice system with the rights of the accused. As such, several states are reevaluating the use of bail and the possibility of holding defendants in pretrial custody because they are unable to afford the amount set.

The concept of bail in Massachusetts has received increasing scrutiny as part of a broader discussion on criminal justice reform. Advocacy groups, practitioners, members of law enforcement, and all three branches of government have shown a desire and willingness to assess the fundamental purpose of bail and its potential negative effects on the accused.

The Massachusetts Supreme Judicial Court (SJC) addressed the purpose of bail, particularly in cases involving an indigent defendant, in Brangan v. Commonwealth, 477 Mass. 691 (2017). On the heels of Brangan, the Massachusetts General Court also addressed the imposition of affordable bail during its debate and passage of An Act Relative to Criminal Justice Reform, Ch. 69, Acts of 2018 ("CJRA"). CJRA largely codified the Brangan decision, thereby ensuring that bail shall be set no higher than what would reasonably assure the appearance of the defendant for trial after accounting for his or her financial resources. CJRA also added an additional factor that the judge must explain why the Commonwealth's interest in bail or a financial obligation outweighs the potential adverse impact on the person, their immediate family or dependents resulting from pretrial detention.

It is important to note that a perceived threat to the community posed by releasing the defendant prior to trial is not part of the bail determination in Massachusetts.[1] Indeed, an examination into the potential danger posed to the community by releasing the defendant prior to

[1] "[A] judge may not consider a defendant's alleged dangerousness in setting the amount of bail, although a defendant's dangerousness may be considered as a factor in setting other conditions of release." Brangan, 477 Mass. at 705-706. The defendant's likelihood of conviction and potential sentence may also be considered as factors in determining the defendant's risk of flight. See Vasquez v. Commonwealth, 481 Mass. 747, 755-756 (2019).

trial is conducted pursuant to G.L. c. 276, §58A, not G.L. c. 276, §§57 and 58. The Commonwealth must request a separate evidentiary hearing, which is limited to cases where certain serious charges are pending.[2] This Commission did not address these G.L. c. 276, §58A "dangerousness" hearings since they are governed by a separate statute outside the scope of the Commission's charge.

The Special Commission on Bail Reform ("Commission") convened for six official meetings between January and December of 2019 to hear presentations from Commission members and other experts in the field of bail and pretrial release. The presentations and their supporting research elicited engaging discussions on each of the topics within the Commission's scope as the members sought more information to evaluate the pretrial process in Massachusetts. The original deadline of June 30, 2019 was extended to December 31, 2019 through Section 34 of Chapter 34 of the Acts of 2019 to accommodate those discussions. This report is a distillation of those discussions, presentations, supporting materials, and other data.

[2] See Aime v. Commonwealth, 414 Mass. 667 (1993), and Mendonza v. Commonwealth, 423 Mass. 771 (1996).

III. Risk Assessment Factors

The Commission addressed the potential use of risk assessment factors as part of the pretrial system including the potential to use these factors to determine if a judge should hold or release a defendant with financial or other conditions to ensure his or her appearance at trial. Presentations by Attorney Colin Doyle[3] and Dr. Gina Vincent, Ph.D.[4] assisted the members in evaluating how risk assessment factors and tools might help a judge in making a bail determination.

Common risk assessment tools seek to predict three categories of future events to assist a judge in imposing cash bail or other nonfinancial conditions on a defendant prior to trial. The tools can generate a likelihood of missing a court date, being arrested for a crime, or being arrested for a violent crime while out awaiting trial. Massachusetts has a separate statute governing the assessment of potential threats to the community in G.L. c. 276, §58A, so any risk tools that predict future criminal activity in a bail determination under G.L. c. 276, §§ 57 or 58 could not be used. A tool used only to predict a likelihood of a missed court date would be appropriate in Massachusetts since ensuring the appearance of the defendant at trial is the purpose of bail.[5]

Jurisdictions across the United States have developed and implemented pretrial risk assessment tools to address the problem of inconsistent bail determinations and a growing pretrial population. Individual, subjective decisions made on a case-by-case basis resulted in a wide array of bail determinations and an erratic application of justice that undermined confidence in the judiciary. However well intentioned, risk assessment tools may have their own limitations due to their reliance on data of questionable correlation to predictability and the rigidity of application that restricts a judge's discretion.

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[3] Attorney Colin Doyle is a staff attorney at Harvard Law School's Criminal Justice Police Program, where he works on bail and pretrial reform across the country at the local and state levels.

[4] Gina Vincent, Ph.D. is an Associate Professor, Co-Director of the Law & Psychiatry Program, and Director of Translational Law and Psychiatry Research in the Department of Psychiatry at the University of Massachusetts Medical School.

[5] See Brangan, 477 Mass. at 699, quoting Stack v. Boyle, 342 U.S. 1, 5 (1951) ("bail is 'excessive' when it is 'set at a figure higher than an amount reasonably calculated to fulfill' the purpose of assuring the presence of the accused at future proceedings"); Id. at 706 ("Using unattainable bail to detain a defendant because he is dangerous is improper").

The use of pretrial risk assessment tools tends to arise in jurisdictions experiencing inconsistent bail determinations and high pretrial detention numbers as judges apply varying criteria to decide if, and under what circumstances, they should release a defendant to await trial. Implementing a tool to remove human decision-making is an attractive alternative to jurisdictions with high incarceration rates and uneven application of the law. Massachusetts, however, is not such a jurisdiction. Data presented by the Trial Court indicate that Massachusetts has a low failure to appear rate. The failure to appear rate in FY2018 was 12.6% for all individuals; 12.3% for individuals not held or released and 14.3% for individuals released on bail.[6] Data from 2016 indicate that District Court and Boston Municipal Court judges' decisions resulted in incarceration of about 9% of defendants before trial. Furthermore, 86% of those released made all of their court dates.[7] Such high appearance rates do not indicate that a risk assessment tool is necessary at this time, especially with the potentially negative effects that currently available tools could cause.

Risk assessment tools depend on historical data to process and determine a likely outcome when applied to an individual defendant. The quality of the prediction largely depends on the quality of the data put into the tool. A significant flaw in many risk assessment tools is that the algorithm relies on arrest data as the starting point of analysis to predict a future event, and this data may incorporate implicit bias. Specific risk assessment tools have come under scrutiny for artificially inflating the risk of black defendants while decreasing the risk posed by white defendants in the analysis of the tool itself. For example, a study of one pretrial risk assessment tool concluded that it overestimated recidivism risks of black defendants and underestimated recidivism risks of white defendants.[8] Furthermore, many commercially available risk assessment tools do not reveal their algorithms or methodologies, which fosters mistrust in the system, makes it difficult for defense counsel to challenge their results, and inhibits the ability of a jurisdiction to address inconsistent results quickly and accurately. The reliance on arrest data as a predictive factor has led to biased results counterproductive to the purpose of using a tool in the first place.

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[6] FY2018 Disposed Cases Post-Arraignment Defaults- "Failure to Appear," May 2019 (***Exhibit A)***
[7] Pretrial Risk Assessment Tools presentation by Colin Doyle (***Exhibit B)***
[8] See https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

A systemic implementation of a risk assessment tool in Massachusetts is not likely to lead to a drastic improvement in bail decisions at this time. Judges appear to be making good determinations based on comparatively high appearance and low pretrial detention rates. The SJC and the Legislature have recently undertaken an incremental approach to improving the system of bail and pretrial release in Massachusetts without the drastic step of implementing a risk assessment tool across the Trial Court. The drawbacks of implementing a currently available risk assessment tool would likely outweigh any incremental improvement in bail decisions. The Commission does not recommend the use of risk assessment tools at this time.

IV. Cash Bail and Conditions of Release

The SJC addressed the purpose of bail, particularly in cases involving an indigent defendant, in Brangan v. Commonwealth, 477 Mass. 691 (2017). The court analyzed G.L. c. 276, §§ 57, 58 and the nearly four centuries of jurisprudence relating to bail in Massachusetts to provide clarification for those setting bail. The SJC explained that a judicial officer must consider a defendant's financial resources when setting bail. However, bail does not need to be set in an amount the defendant can afford if other relevant factors outweigh the defendant's ability to provide the necessary security to ensure appearance at the proceedings. In cases where neither nonfinancial conditions nor an affordable bail will adequately ensure the appearance of the defendant, the judicial officer may set bail in an amount the defendant cannot afford, but the amount may not be any higher than necessary to ensure his or her appearance. The judicial officer must then provide written or orally recorded findings of fact that he or she considered the defendant's financial resources, and provide an explanation for how the bail amount was calculated. The judicial officer must also provide a statement of reasons for setting the bail amount, rather than alternative or non-financial conditions, where it appears the bail decision will result in the defendant's long-term pretrial detention.

Following Brangan, the Massachusetts General Court also addressed the imposition of affordable bail during its debate and passage of CJRA in April of 2018. CJRA codified that bail shall be set no higher than what would reasonably assure the appearance of the defendant for trial after accounting for his or her financial resources. However, higher than affordable bail may be set if neither alternative nonfinancial conditions nor a bail amount which the person could likely afford would adequately assure the person's appearance before the court. CJRA also incorporated the requirement for written or orally recorded findings of fact and reasons why, in cases where the bail amount set would likely lead to a defendant's pretrial detention, that unaffordable amount is necessary rather than an affordable bail or nonfinancial conditions of release. CJRA went beyond the Brangan decision by requiring an additional finding of why the Commonwealth's interest in bail or a financial obligation outweighs the potential adverse impact on the person, their immediate family or dependents resulting from pretrial detention.[9] It is worth

[9] *See* Ch. 69, Acts of 2018 §§166-168, 170-172

noting here that both the SJC and the Legislature recently chose to maintain the ability of a judicial officer to impose a financial condition, even if it results in pretrial detention, while establishing parameters for the appropriate use of cash bail rather than abandoning the practice.

The Massachusetts Trial Court provided the Commission with data from the seventeen months prior to the Brangan decision and the seventeen months after the decision[10] to evaluate the impact on bail determinations. The data set captured over 300,000 cases filed and disposed of in the District and Boston Municipal Courts from March of 2016 to January of 2019. The data showed a slight decrease in the rate of individuals held subject to bail since Brangan went into effect. Based on the data in this report, Massachusetts had a low rate of individuals held subject to bail and a high-rate of individuals released both before and after the decision.[11] Defendants who were facing felony charges were more likely to be held, either subject to bail or without bail. To assess this relatively small amount of cases where the defendant is held subject to bail, the Commission would need to review the written findings by the judge in each case. The number of defendants not held, released on bail, held subject to bail, or held without bail remained largely consistent throughout this 34-month period before and after Brangan. For the Commonwealth to evaluate the effects of the Brangan decision and the CJRA, it would need to compile considerably more post-Brangan data.

States, including New Jersey and California, that have eliminated cash bail entirely or for certain crimes have also implemented risk assessment tools to determine a person's likelihood of reoffending and showing up for court. New Jersey eliminated cash bail for some crimes, and established non-monetary bail alternatives. New Jersey also implemented the use of a Public Safety Assessment, a risk assessment tool that determines the likelihood that the person will be charged with another crime or fail to return to court. California recently passed legislation, which would have eliminated cash bail, and implemented pretrial risk assessments for crimes other than non-violent low-level misdemeanors. California's law would have also allowed a judge to hold

[10] Pre-Trial Release Decisions Pre and Post Brangan v. Commonwealth May 7, 2019 ***("Exhibit C")***

[11] 79.8% of individuals were released or not held before Brangan and 80.2% were released or not held after Brangan. An additional 9.4% of individuals were released on bail before Brangan and an additional 9.2% were released on bail after Brangan. Thus, a total of 89.2% of individuals were not held or were released on bail pre-Brangan and a total of 89.4% of individuals were not held or were released on bail post-Brangan. 7.8% of individuals were held subject to bail and 3.0% were held without bail before the decision, while 6.9% were held subject to bail and 3.7% were held without bail after.

persons or release them with conditions if they failed the pretrial risk assessment. This law, which garnered pushback from civil rights groups and law enforcement, is currently on hold due to a ballot referendum. As noted earlier, at this time the Commission does not recommend the use of risk assessments, which often accompany the elimination of cash bail. [12]

The Commission does not recommend the elimination of cash bail or substantially altering conditions of release at this time. The SJC and the Legislature recently put procedures in place to account for the indigency of the defendant without eliminating cash bail. It was certainly in the Legislature's prerogative to eliminate cash bail in the CJRA but the members chose not to take that step. This Commission has determined that it is premature to eliminate cash bail before allowing the most recent amendments to the law to show results. It would be beneficial to continue training judicial officers on the changes to the law to ensure compliance and reduce the pretrial detention of those who cannot afford to post bail. It will also be valuable for all criminal justice stakeholders to receive similar training. Further data collection will also be vital to tracking the pretrial detention population to determine if taking the defendant's ability to post a bail amount into consideration is enough to bring down the number of those incarcerated solely on an inability to pay.

[12] *See* https://knowledgecenter.csg.org/kc/content/time-bail-cash-bail-growing-number-states-are-scrutinizing-current-systems-and-exploring

V. Disparate Impact of Pretrial Decisions

The Commission evaluated the impact of race and gender on in-court pretrial bail decisions through information provided by the Trial Court.[13] During the seventeen-month period after the Brangan decision, judges arraigned and disposed of roughly 150,000 cases in the District and Boston Municipal Courts. The data showed some disparities in bail decisions for males and females and between white and non-white defendants.

The data provided by the Trial Court showed some disparities between the bail imposed on male and female defendants. First, judges released higher portions of female defendants (89.3%) on personal recognizance compared to their male counterparts (77%). Of those defendants not released on personal recognizance, twice as many males as females (18.5% to 9.2%) had bail set and three times as many (4.4% to 1.5%) were held without bail. The bail amounts also favored the female defendants with bail under $500 set in 46.8% of their cases as opposed to 30.8% for male defendants. Twice as many male defendants (16.3% to 8%) had bail set in an amount over $5,000.

The race of the defendant also had an impact on bail decisions specifically for the amount of bail set. White and non-white defendants were released on recognizance in similar numbers (81.5% to 78%) and held without bail in roughly equal numbers (3.1% white to 3.7% non-white). Non-white defendants were slightly more likely than their white counterparts to have bail set (18.4% to 15.4%) but the amount of bail required differed significantly. Generally, bail amounts were higher for non-white defendants with a higher proportion of non-white defendants subject to bail over $5,000 (19.1% to 11.3%) and a lower proportion subject to bail amounts under $1,000 (53.7% to 63.2%).

The data from the Trial Court shed important light on disparities in bail decisions depending on the race and gender of the defendant. However, the information is limited in scope to the District and Boston Municipal Courts and only covers seventeen months after Brangan. The data are also limited to comparing "non-white" to "white" defendants but lack a breakdown by race and ethnicity. The Commission is encouraged that the court is keeping this data and

[13] Pre-Trial Release Decision. Initial Release Outcome and Bail Amount By Race and Gender. Massachusetts Trial Court, Department of Research and Planning. June 4, 2019 ***(Exhibit D)***

strongly recommends the continued tracking of how the demographics of a defendant affect the bail determination. The Commission also recommends that the court, probation, District Attorneys, and police departments continue to implement anti-racism and implicit bias training.

The Commission recommends that future data collected be further separated by race and ethnicity and that alternative methods be explored to gather data on gender identity and sexual orientation. Furthermore, the court should continue to report this information to the Legislature as a tool to track the progress in this area.

VI. Bail Commissioners

Over the course of its study of the pretrial system, this Commission discussed the process by which bail is set and paid at police stations prior to arraignment and the process by which bail is paid when the person is at a jail or prison. Massachusetts relies on a small group of Bail Magistrates and Bail Commissioners to set or process bail for defendants when courthouses are not open. Bail Magistrates are court employees who have the authority to set bail while Bail Commissioners are usually retirees, former court staff, or law enforcement officers overseen by the Massachusetts State Bail Administrator. There are roughly 150 Magistrates and 50 Bail Commissioners.

Bail Commissioners sometimes hold day jobs and generally fill the gaps by processing bail in geographically isolated areas of the state. They receive one, three-hour training session from the State Bail Administrator and must shadow experienced Bail Commissioners before being authorized to process bail. This training has not changed much since the Brangan decision but that update to the law is covered in the training.

A defendant arrested after court hours has the ability to call a Magistrate or Commissioner to come to their place of detention and set or process bail for their release. The Magistrate or Commissioner is entitled to a $40 fee for their services, which the defendant pays, and is, unlike bail, nonrefundable at the conclusion of the defendant's case. Apart from cases involving certain statutorily excepted crimes such as murder, restraining order violations, or probation warrants, either bail is set or the defendant is released on personal recognizance. The Magistrate relies on information that is available to them at the time, including the defendant's criminal record and history of defaults when setting bail. Once bail is set, the defendant may post the bail and be released. The Magistrate or Commissioner counts the money, deposits it in a personal account created for this purpose, makes a manual record, and physically sends a check to the court of jurisdiction for the pendency of the trial.

This process is unique to Massachusetts. Other jurisdictions provide a fully staffed office in places of detention for people to post bail any time. In investigating this process, the Commission has concerns with the inconsistency in the setting of bail during court hours compared to after court hours, and the fee that the individual must pay to the Bail Magistrate or

Commissioner. Summoning a Magistrate or Commissioner to a police department or detention center often leads to delays in release and confusion as to the process at each individual facility. Furthermore, the limited training provided to those processing bail and the arcane physical record keeping requirements add to the confusion.

This unique system merits further investigation of who may set bail outside of court, the powers of those judicial officials, fees collected for their work, record keeping procedures for the collection of money, and data collection on their bail decisions like those made by a judge. The complex practice of setting and processing bail outside of court merits consideration that is beyond the scope of this Commission. The Commission recommends that the Legislature further study or form a commission to address issues surrounding bail set outside of court, with input from the State Bail Administrator, Trial Court clerk magistrates, and individuals impacted by the procedures for posting bail.

VII. Special Commission Other Recommendations

The Commission makes the following recommendations based on its work in evaluating the policies and procedures related to the current bail system.

1. Accessible guidelines on the procedures for bail should be available to the public at the courts and criminal justice agencies

The process of where and how to post bail emerged as a persistent problem during the Commission's work. Different facilities have different procedures and the process for posting bail at one place of detention may not apply to another. Furthermore, those who have posted bail have experienced additional confusion on how to have bail returned after the conclusion of a case. The Commission recommends that every police department, jail, and court prominently post the process of how to post and collect bail on their websites and in a publicly accessible location at their physical facility.

2. Training on Brangan and the Criminal Justice Reform Act (CJRA) should be continued and expanded to other agencies and entities involved in the bail process

Training is imperative to ensure that those making bail determinations follow the principles of the Brangan decision and the reforms made in CJRA. The Trial Court has been training judges, clerks, and Probation Department staff on the recent changes to the bail process and the Commission recommends a continuation of that practice, especially as more data becomes available. The Commission recommends that District Attorneys, CPCS, Bail Commissioners, Bail Magistrates, Sheriffs and police department staff also receive training to increase uniformity throughout the criminal justice system.

3. The practice of setting and processing bail outside of the courtroom requires further study

Evaluating the pretrial bail process highlighted the use of Bail Magistrates and Bail Commissioners to set or process bail after court hours in Massachusetts. The use of Bail Commissioners to accept out-of-court bail has led to inconsistent access and confusion among those trying to post bail. The Commission declines to abolish the use of Bail Commissioners without advancing a suitable replacement but this practice warrants further study and analysis of

feasible alternatives. The Commission recommends that a further study or commission be established to evaluate how Bail Magistrates and Bail Commissioners set or process bail, and recommend an alternative process for the setting and processing of bail outside of court hours, if appropriate.

In the meantime, however, there should be improved training and oversight of Bail Magistrates and Commissioners to promote uniformity and ensure compliance with Brangan and the CJRA while a potential alternative is under consideration.

4. Data collection

The Trial Court and those agencies and entities involved in the pretrial process must collect adequate and accurate data for the Legislature to ensure the implementation of the recently enacted bail reforms. The Commission acknowledges the Trial Court for providing data for consideration but continued data collection on bail determinations, both in court and after hours, is necessary to monitor the effectiveness of the legislation and training of court and law enforcement personnel. The Commission also recommends collecting data on dangerousness hearings pursuant to §58A as potentially impacted by changes to bail determinations. The Trial Court did provide data to this Commission but the statistics on race were only broken down into "white" and "non-white" and characteristics such as gender identity and sexual orientation were not provided. The Commission recommends collection of data by more entities and developing more detail into sub-groups for a more accurate assessment of the impact of bail on different communities.

5. The use of alternative tools to remind defendants of upcoming court dates

The Trial Court has implemented a pilot program for using text notification of upcoming court dates to reduce defaults and is undertaking a review of other causes of defaults across the Commonwealth. The Commission recommends evaluating these programs and making the findings available as a way to improve judicial efficiency and lower the likelihood of defaults.

6. Improve record-keeping practices and information sharing on defaults

An accurate criminal record in the hands of a judicial officer making a bail determination is paramount since that is often the only information at his or her disposal when making the decision. Current record keeping practices, however, make it difficult to differentiate between "no show" defaults and a default for another reason such as failing to pay a court ordered fine on time. In addition, a default can be entered in one court due to a defendant missing a court date because he or she was being held in another county. The Commission recommends that the annotation for a default in the criminal record system be updated to differentiate the various ways that a default could be entered. For example, determining how money defaults, same day defaults, and "no show" defaults can be distinguished.

7. The policies and procedures of bail in Massachusetts be evaluated further in the future

As noted earlier in the report, Massachusetts recently made changes to its bail statute and the Commission concluded that it did not have enough data due to the limited time between the implementation of CJRA and Brangan and the work of the Commission. The Commission recommends that the effects of these changes be reviewed in the future when more data is collected.

VIII. Appendix

A. *FY2018 Disposed Cases Post-Arraignment Defaults- "Failure to Appear," May 2019*

B. *Pretrial Risk Assessment Tools presentation by Colin Doyle*

C. *Pre-Trial Release Decisions Pre and Post Brangan v. Commonwealth May 7, 2019*

D. *Pre-Trial Release Decision. Initial Release Outcome and Bail Amount By Race and Gender. Massachusetts Trial Court, Department of Research and Planning. June 4, 2019*