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March 6, 2013

The Little Hoover Commission  
925 L Street, Suite 805  
Sacramento, CA 95814

Dear Commissioners:

Thank you for the opportunity to provide written testimony about the use of risk and need assessments in managing pre-trial populations. I have attempted to respond to the specific questions raised in the letter sent to me by Stuart Drown, dated February 21, 2013. Below are the questions and my responses:

1. Your experience with validated risk and needs assessment tools and the influence these tools have displayed at the county jail level. What obstacles and challenges do counties face in implementing such tools? Should counties be required to use validated risk and needs assessment tools to manage their pre-trial populations?

My experience with risk and need assessment tools goes back over thirty years. I have conducted numerous studies and published extensively about the use of actuarial assessment tools. I developed the non-proprietary Ohio Risk Assessment System, which includes the Ohio Pretrial Assessment tool. Part or all of this system is used throughout the United States including some counties in California.

I think it is important for the Commission to understand that there are a lot of methodological limitations when one attempts to develop a tool for pre-trial: 1) short follow-up period (since we are only interested in failure during release) which results in low base rates of failure, 2) certain questions cannot be asked since these are not convicted offenders, but defendants presumed innocent, 3) skewed samples since judges are not releasing the really serious offenders (like violent, very high risk sex etc.), 4) volume of cases which limits the time that can be allocated to the assessment process, and 5) the fact that there are two outcome measures (FTA and new arrest) that we are trying to predict. I believe that the limitations listed above are the reasons we see so many similarities in the tools that have been developed across the country.

There are also a number of obstacles in implementing a pre-trial assessment tool, the greatest being the time needed to complete the assessment, and the acceptance of judges



and law enforcement. The former is really a resource issue, and the second is one that can be addressed by educating law enforcement and the judiciary about the benefits of using validated and reliable assessment instruments, and making sure they understand that these tools help guide decisions – they don't make them—and that professional discretion is an important principle of an evidence based assessment system.

I do believe that counties should be required to use validated assessment tools. These tools can improve decision-making, increase fairness and improve public safety; all hallmarks of our justice system.

2. Equity issues in the current bail system, which involve a disparity of bail amounts from county to county. What role should commercial bail play in managing pre-trial jail populations? Are there alternatives the state should be exploring to better manage populations in light of the state's prison realignment initiative?

In my opinion the best way to address the inequity in the bail process is to develop a public run pre-trial release process. Some jurisdictions have both options, while others, like Kentucky, have greatly limited the role of commercial bonds by requiring all districts to operate a publicly operated pretrial system. While assessment tools play a role, what is needed is a public pre-trial entity that helps the court identify those defendants that should be released on their own recognizance.

3. How the criminal justice system can ensure more equity between counties across the state with bail schedules, and how counties might become more transparent and accountable in setting bail schedules. Is there a role for Community Corrections Partnerships play in helping judges set bail schedules? What should be used as criteria in setting bail schedules?

I am not an expert in developing bail schedules, but again, requiring counties to use a valid pre-trial assessment tool will help ensure more consistency, more transparency and more equity in decisions.

4. How the state can balance a goal of consistency with the goal of allowing bail schedules to be set to reflect different local conditions.

First, develop a public pretrial system either operated by the Court, probation or a non-profit entity. Second, develop a guideline system for bail schedules that sets ranges – it could include seriousness of the charges as well as factor in a "risk" score. This type of matrix would allow some variation; while at the same time build some consistency across the state.

5. How the state can ensure that an adequate portion of realignment funding goes to meet the needs of pre-trial programs and services at the same time there are other pressing needs for scarce funding.

Anyone conducting a review of a jail population would start by looking at those housed in the jail by legal status. Pre-trial defendants are considered low hanging fruit since they are often the easiest to target for release. This saves a considerable amount of money, increases fairness, since the poor are often the ones who cannot make bail, and frees up space for more serious offenders. I believe that devoting a portion of the realignment funds to pre-trial diversion would be a sound investment.

Thank you for the opportunity to provide written testimony, and good luck with you deliberations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Edward Latessa', with a large, sweeping flourish at the end.

Edward Latessa, Ph.D.  
Interim Dean and Professor