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Joint Meeting of the Conference of Circuit Judges and District Administrative Judges

MINUTES OF THE JOINT MEETING OF THE CONFERENCE OF CIRCUIT JUDGES AND DISTRICT ADMINISTRATIVE JUDGES

A joint meeting of the Conference of Circuit Judges and the District Administrative Judges was held Monday, September 17, 2018, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. Kathleen Gallogly Cox, Chair, Conference of Circuit Judges
Hon. John P. Morrissey, Chief Judge, District Court

Hon. Sheila R. Tillerson Adams
Hon. Theresa M. Adams
Hon. Keith A. Baynes
Hon. Pamila J. Brown
Hon. Audrey J.S. Carrion
Hon. Christy Holt Chesser
Hon. Marjorie L. Clagett
Hon. W. Timothy Finan
Hon. Dino E. Flores, Jr.
Hon. Robert A. Greenberg
Hon. Susan H. Hazlett
Hon. J. Barry Hughes
Hon. Lisa Hall Johnson
Hon. Stephen H. Kehoe
Hon. Laura S. Kiessling

Hon. John P. McKenna
Hon. Patricia L. Mitchell
Hon. Mickey J. Norman
Hon. Viki M. Pauler
Hon. W. Michel Pierson
Hon. H. Jack Price, Jr.
Hon. Gerald V. Purnell
Hon. Bonnie G. Schneider
Hon. Brian D. Shockley
Hon. Barbara Baer Waxman
Hon. Brett W. Wilson
Hon. Dorothy J. Wilson
Hon. Amy Craig
Douglas Hofstedt

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Also, Present Were:

Hon. Yolanda L. Curtin
Hon. Harris P. Murphy
Hon. Jonathan G. Newell
Hon. Thomas G. Ross
Hon. William V. Tucker
Faye Gaskin
Carole Burkhart
Tyler Jones
Nadine Maeser
Kelley O'Connor
Eliana Pangelinan

Suzanne Pelz
Lisa Preston
Jamie Walter
Roberta Warnken
Nicole Burkhart
Marcy Clementi
Joseph Clocker
Craig-James Fohl
Secretary Robert Neall
Janean Ohin
Webster Ye

Judge Cox and Chief Judge Morrissey welcomed everyone to the meeting, stating that there are several issues that span both trial courts, prompting the joint meeting.

1. Best Practices on Execution of Warrants by ICE

Craig-James Fohl, U.S. Immigration and Custom Enforcement (ICE), provided an overview on how ICE agents operate within the courthouses. He noted that while the agents make some arrests in the courthouse, they never arrest anyone in the courtroom, nor will they make arrests prior to a court hearing. Mr. Fohl added that arrests are made in the courthouse because it tends to be safer (e.g., guns/weapons are not present) and individuals are hard to locate otherwise. The agents do not wear uniforms, but they wear some type of identification. In addition, the agents communicate with the field office before making arrests and they work in conjunction with court security. Mr. Fohl stated that ICE does not target victims of domestic violence and human trafficking, or witnesses.

A question was raised about whether a writ is required to bring an ICE detainee to court on State charges to which Mr. Fohl responded in the affirmative. With respect to warrants, ICE will make the arrangements for individuals to be transported, if possible, for outstanding warrants in the State system. There are times, albeit seldom, that the Sheriff will be asked to transport defendants. If there are simultaneous actions, ICE proceedings take precedence. The writs can be addressed to the local detention center who will send them to ICE for review.

2. 8-505 and 8-507

Secretary Robert Neall, Webster Ye, and Nicole Burkhart, Maryland Department of Health, briefed the judges on the improvement efforts underway within the Department. Secretary Neall stated that Department representatives meet monthly with Chief Judge Morrissey and other Judiciary representatives to discuss issues of mutual concern. The Department is developing a master facilities plan that is expected to take about a year to complete. Other initiatives underway include a plan to improve employee safety, the creation of a central admissions office, and institution of an incident reporting system to enable staff to respond more quickly. Secretary Neall stressed the importance of the Judiciary working through the Centralized Admissions Office and using standard or uniform orders. He noted that custom

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orders complicate and slow down the process. Secretary Neall added that progress has been made in placing individuals as quickly as possible and asked that individuals be given judicial hearings within the 10-day time frame to free up bed space for others when they have been restored to competency.

Chief Judge Morrissey commented that Secretary Neall is willing to meet with him and others to work collaboratively. He noted that while the 10-day period is challenging, the Judiciary will continue to find ways to address matters in the statutorily-mandated time-period. Chief Judge Morrissey suggested the formation of a collaborative work group to develop best practices regarding aftercare plans. Secretary Neall agreed that doing so would accelerate the Department's planning that is already underway.

Judge Cox stated that each District and Circuit Court has designated liaison mental health judges to serve as the points of contact with the Department. She will circulate the list to all Circuit Court judges. Chief Judge Morrissey noted that he reviewed every relevant form with the Department and made the necessary changes to ensure that they are up-to-date.

3. JRA Update and Noah's Law Revisited

Chief Judge Morrissey and Joseph Clocker, Division of Parole and Probation (Division), gave an update on the Justice Reinvestment Act (JRA). They noted that the Judiciary and the Division have met several times to address issues of mutual concern. There continue to be challenges, requiring refresher training for Parole and Probation agents, as well as Judiciary clerks. In addition, it was agreed that reporting to the courts would be modified so that technical violations internal to the Division, for which the Division is not requesting any action by the court, will be reported on the informative report, with no probation supervision summary form attached. Technical violations, under JRA – 1st, 2nd, and 3rd violations, which require the court to take some action, will be reported on a probation supervision summary with requests for warrants or summons. It is hopeful that this change will help to provide clarity, resulting in more accurate reporting. The issue is that the law requires both to be termed *technical violation*. Chief Judge Morrissey stressed that, ultimately, it is the judge's discretion to determine if there is a technical violation that requires action. The courts should start seeing the revised forms in October.

Marcy Clementi stated that the agents are being trained on proper submission to the courts. She noted that the series of sanctions that can lead to a technical violation, expire after a 60-day compliance period, prompting the sanction process to restart. Mr. Clocker stated that the Division is hiring 100 more agents over the next six to eight months, which will help to improve timeliness of reporting.

Chief Judge Morrissey asked the administrative judges to remind their benches that reporting on the technical violations is mandatory. The data, thus far, seems to indicate under-reporting. Chief Judge Morrissey added that the information most commonly missed is the reason for sentencing over the cap. He stressed the importance of not only reporting the information, but of being clear with respect to the reasons for exceeding the statutorily-mandated caps.

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Judge Cox noted that one of the difficulties is that, initially, clerks were instructed to report on every violation that came in after the October 1, 2017 effective date for JRA, but a lot of the cases were pre-JRA. As such, the violation may not have been the first, but rather the first since the implementation of JRA. The question becomes if it should be considered a technical violation under JRA.

Discussion ensued with several questions raised, including whether an arrest and *Nolle Prosequi* or someone absconding are considered technical violations. Chief Judge Morrissey responded that they are not technical violations. He added, however, that it is the judge's discretion to make that determination.

Chief Judge Morrissey then discussed Noah's Law, which went into effect October 1, 2016 and expanded the circumstances that require participation in the Ignition Interlock System. He noted that, under the law, the court shall require participation if the individual is convicted of violating §21-902 (b) or (c) of the Transportation Article and the judge finds beyond a reasonable doubt that individual refused to take the field sobriety test. Noah's Law requires participation to be part of the sentence rather than a probation condition as it had been prior to passage of the law; however, the judge also can include participation as a probation condition. The Motor Vehicle Administration (MVA) already could impose participation as part of its administrative action. The law provides that participation may be concurrent with any other participation in the ignition interlock program. Noah's Law does not apply to PBJs, only convictions.

Chief Judge Morrissey noted that vendors have agreed to put dashboard cameras on the ignition locks to verify the identity of the individual who blows into the lock. The MVA is working on legislation in this regard.

4. Documents to Transmit Between the District and Circuit Courts

Jamie Walter and Lisa Preston brought to the judges' attention a question raised in a meeting of the MDEC User Group regarding standardization of the documents transmitted between the two trial courts when cases are forwarded to the Circuit Court, either on appeal or for a jury trial prayer, in MDEC. The issue encountered by the clerks is the variation in the documents judges want the clerks to transmit, which complicates the process. The MDEC Steering Committee discussed the issue and determined that each court should decide which documents to transmit for that respective court. Once the list is agreed upon by the bench, every judge will receive the same set of documents. That does not preclude the judge or his/her staff from retrieving additional documents, but it does establish a consistent process for the clerks.

5. HB 388/SB 170 – Criminal Procedure – Violation of Conditions of Release

Chief Judge Morrissey briefed the judges on HB 388/SB 170 that expands the list of charges to which prohibitions against violating conditions of pre-and post-trial release apply. The prohibitions include contacting, harassing, or abusing an alleged victim or going in or near an alleged victim's residence or place of employment if the individual is charged with violating a crime where the victim is a minor, the offense is deemed a crime of violence, or a crime against a victim who is eligible for relief under §4-501 of the Family Law Article. Chief Judge Morrissey

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stated that he worked with JIS and law enforcement to ensure conditions of pre- and post-trial are viewable in Secure CaseSearch.

6. Department of Judicial Education

Stacey Saunders and Stenise Sanders briefed the judges on the work of the Department of Judicial Education and the Judicial Education Subcommittee. Among the initiatives are development of in-house judicial education courses, platforms, and resources; development of a course slate to enhance the ability of judges and magistrates to execute their responsibilities; and development of educational programming at the Judicial Conference. The delivery of the courses has changed so that participants are able take a combination of half-day and full-day courses at the Judicial College Education and Conference Center (JCECC) that must include interactivity. In addition, facility tours and field trips have been incorporated into the educational experience where there is onsite and behind the scenes learning at facilities impacted by the judicial system. In 2018, there were field trips to prisons in Jessup, Spring Grove Hospital, and Spring Field Hospital. To accommodate judges who sit in the Western Maryland and the Eastern Shore, courses have been offered in those regions of the State. The Department has ensured that the best adult learning principles are incorporated in the courses that include a combination of lecture, role plays, case studies, learning games, brain-storming, small groups, videos, debates, and tests or quizzes.

Other Departmental projects include the New Trial Judges Orientation Program (formerly Baby Judges School), which now includes a focus on the *Art of Judging* that teaches practical skills; the New Trial Judges Orientation Update, which is offered six months after NTJO and provides additional training on substantive law; Family Law University; New Law Clerk Orientation; Orphans' Court Judges Orientation; and the Judicial Conference.

Ms. Sanders discussed the educational resources available to judges and magistrates, including 24-hour access to judicial education materials through the digital library, bench books and bench cards. The mentor program, which pairs a mentor with a new trial judge, has proven to be a valuable resource. To assist magistrates, the first annual Magistrates Conference is planned for November 2018.

Among the upcoming initiatives are the pilot of the webinar program for judges where judges will be able to earn one-half of their required hours through online courses; proficiency-based education for administrative judges that will provide the judges with the core skills needed to be effective in their administrative role; and expanded use of faculty from other disciplines.

A question was raised regarding access to the digital library. Ms. Sanders will develop a quick reference guide to assist users and will discuss with JIS alternatives to improve access.

Chief Judge Morrissey commended the Department on usage of the assigned course coordinator, which forced him to prepare for the course and to plan his lesson in advance. He also noted that he participated in one of the field trips and stated that it was an eye opener, changing his understanding of how judges deal with individuals with mental health issues.

7. HB 1646 – Criminal Procedure – Firearms - Transfer

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Chief Judge Morrissey discussed HB 1646, which requires the court to inform a defendant, verbally and in a written notice, convicted of a domestically-related crime that he or she is prohibited from possessing regulated firearms, rifles, or shotguns. The defendant is required to sign the written notice. The State's Attorney is charged with the responsibility of serving a written notice on the defendant, the defense attorney, and the court when the defendant has been charged with a disqualifying crime that would support a finding by the court of a domestically-related crime. The notice should be served prior to trial.

The court is required to order the defendant to transfer the firearms owned by the defendant or in the defendant's possession to a state or local law enforcement agency or to a federally-licensed firearms dealer within two business days after the conviction. If the individual is incarcerated, there is a provision in the law that permits someone else to surrender the firearm on the defendant's behalf. Chief Judge Morrissey noted that a big issue is whether the firearm is the defendant's or someone else's. The agency or dealer receiving the firearm is required to provide written proof of the transfer. If the defendant fails to transfer the firearm, the court may authorize execution of a search warrant for removal of any firearm believed to be possessed or owned by the defendant, upon application by the State's Attorney and probable cause that the defendant failed to surrender the firearms.

Judge Hazlett asked how the finding is communicated to law enforcement to which Chief Judge Morrissey responded that it will be noted in Secure CaseSearch. Judge Norman inquired about what happens if the conviction is reversed and what law enforcement does with the firearms. The law does not address that possibility. Judge Cox noted that the materials that have been developed to implement the law suggests that the notice be served on everyone convicted of domestically-related offenses because there is no way for the court to know if the defendant owns or possesses a firearm. Judge Hughes asked how law enforcement will know if a firearm hasn't already been surrendered in preparation for the warrant. Chief Judge Morrissey stated that the State's Attorney is supposed to verify before requesting a warrant.

8. HB 1302 – Extreme Risk Protective Orders

Chief Judge Morrissey discussed HB 1302 – *Public Safety – Extreme Risk Protective Orders* (ERPO). The legislation establishes the new category of interim, temporary, and final protective orders. The District Court has exclusive jurisdiction, but the decision may be appealed to the Circuit Court. The legislation permits commissioners and judges to order respondents to surrender or refrain from purchasing or possessing firearms and ammunition. There are provisions for referring the respondent for an emergency evaluation. The legislation also permits the petitioner to file for ERPO and a domestic violence or peace order. The list of possible petitioners includes medical professionals, therapists, law enforcement officers, spouses, cohabitants, relatives, individuals who have children in common with the respondent, current dating or intimate partners, or current or former legal guardians. Respondents can be adults or juveniles. There are two Attorney General opinions indicating that the District Court is required to handle any petitions filed against juveniles although they are otherwise under the jurisdiction of the Circuit Court.

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A District Court commissioner may issue an ERPO and require the respondent to surrender all firearms and ammunition to law enforcement and it also shall prohibit the respondent from purchasing the same. If the commissioner finds probable cause that the respondent meets the requirements of an emergency evaluation, the commissioner shall refer the respondent to law enforcement for a determination of whether the respondent should be taken for an emergency evaluation.

With respect to the temporary ERPO, the judge must find reasonable grounds that the respondent poses an immediate and present danger of causing personal injury to him or herself, the petitioner, or another person by possessing a firearm. The judge shall refer the respondent for an emergency evaluation if there is probable cause that the respondent meets the necessary requirements. The temporary order is effective for not more than seven days after service, but it may be extended for up to six months. The judge may proceed with a final hearing rather than a temporary hearing if the respondent appears for the hearing, the respondent has been served with the interim order, or if the court has personal jurisdiction over the respondent. Additionally, the judge may forego the temporary hearing and proceed to the final hearing if the petitioner and the respondent expressly consent to waive the temporary hearing.

The final hearing shall be held no later than seven days after the temporary hearing, but may be rescheduled at the respondent's request no later than 30 days after the originally-scheduled date. The final order is effective for one year unless extended and the standard is clear and convincing evidence. Unlike the temporary hearing, the judge *may*, as opposed to *shall*, refer the respondent for an emergency evaluation if probable cause is found to do so. The judge may review all relevant open and shielded court records before granting, denying, or modifying a final order. The final order may be modified or rescinded during the term of the order with proper notice and a hearing. The court shall hold a hearing on a motion to extend the term of the order within 30 days after the motion is filed. The term may be extended for six months.

All interim, temporary, and final extreme risk protective orders must state that a violation may result in criminal prosecution and imprisonment and/or a fine. In addition, violations of temporary or final orders may result in a finding of contempt. The ERPOs are not part of the DVCR system, so law enforcement will not be automatically informed. They are viewable through Secure CaseSearch.

A judge may issue a search warrant for removal of firearms if a State's Attorney or law enforcement officer applies and probable cause is found that the respondent, subject to an extreme risk protective order, failed to surrender his or her firearms as ordered.

Law enforcement is required to issue a receipt to the respondent upon taking possession of the firearms and provide the respondent with information about how to retake possession. The respondent may retake possession upon request 14 days after expiration of the interim or temporary order; 14 days after the court terminates a final ERPO; or 48 hours after expiration of a final ERPO.

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The court records pertaining to ERPOs are confidential and can only be viewed by certain individuals and/or agencies. The legislation does not include among the individuals permitted access to the records the petitioner or the petitioner's counsel. Chief Judge Morrissey stated that he believes the omission was a legislative oversight. He will bring it to the attention of the bill's sponsor to address during the next session.

Chief Judge Morrissey commented that there are a lot of unanswered questions and asked the judges to compile their issues for further discussion.

9. Active Shooter Presentation

Special Police Officer Efren Diaz conducted an active shooter training.

10. For the Good of the Order

Chief Judge Morrissey briefly discussed HB 1448. The legislation permits individuals to apply for a payment plan if they have traffic costs and fines totaling \$300 or more. It is not required that the costs and fines be limited to one court or jurisdiction. As such, the Circuit Courts have decided that to be eligible for the payment plan, the individual must have \$300 in total traffic costs or fines in one jurisdiction because of the complexities involved with the allocation and disbursement of monies in Circuit Courts. The District Court made a policy decision to limit the eligible tickets to those associated with moving violations, but will permit inclusion of tickets from any District Court in the State to meet the \$300 threshold.

The payment plans must be reported to the Motor Vehicle Administration, as well as non-compliance on the part of the defendant.

Judge Cox noted that the fine should be assigned to a ticket, not just a general fine, in the event of mixed charges. She commended the Forms Subcommittee on its work on the forms created to facilitate implementation of this, as well as other legislation. Judge Cox also took the opportunity to ask for Circuit Court judge volunteers for the subcommittee.

Judge Clagett commented on feedback from the State's Attorney's Office on MDEC, specifically a concern with the requirement to file in all cases when the defendant has multiple cases. The State's Attorney asked about the possibility of adding a drop down in MDEC to permit the attorney to file a motion in one case that would then populate the other related cases. Chief Judge Morrissey thanked her for the feedback and stated that he would ask the vendor, Tyler Technologies, to explore possible solutions.

Judge Purnell commented that the joint meeting was very productive, adding that having periodic joint meetings is a good idea.

There being no further business, the meeting was adjourned at 2:30 p.m. The next meeting of the Conference of Circuit Judges will be held Monday, November 19, 2018, at the Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m. The District Administrative Judges will next meet on January 25, 2019, at the

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Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,



Faye D. Gaskin
Conference Secretary