



## **Tioga County Legislative Worksession Minutes** **November 21, 2019 – 10:00 a.m.**

### **Legislators Present:**

Legislator Balliet  
Legislator Hollenbeck  
Legislator Mullen  
Legislator Roberts  
Chair/Legislator Sauerbrey  
Legislator Standinger  
Legislator Weston

### **Legislators Absent:**

Legislator Monell  
Legislator Sullivan

### **Guests:**

None

### **Staff Present:**

County Attorney Peter DeWind  
Legislative Clerk Cathy Haskell  
Sheriff Gary Howard (*departed @ 10:10 a.m.*)  
Probation Director Joy Bennett (*departed @ 11:03 a.m.*)  
Public Health Director Lisa McCafferty  
Chief Accountant/Budget Officer Rita Hollenbeck  
Civil Service Administrator Linn Bruce

### **Call Meeting to Order –**

Chair Sauerbrey called the meeting to order at 10:02 a.m.

### **Seventh Special Legislative Meeting –**

Chair Sauerbrey called the Seventh Special Legislature Meeting of 2019 to order at 10:02 a.m. with seven Legislators present, Legislators Monell and Sullivan being absent, for Legislature consideration of the following resolution:

- ✓ **Authorize to Create and Fill One (1), Temporary, Full-Time Accounting Associate III Position – Sheriff's Office**

Special Meeting adjourned at 10:09 a.m. with regular worksession immediately following.



## **Bail Reform Presentation -**

Probation Director Bennett reported this presentation has been done at the NYS Probation Directors Association Conference, NYSAC, and various other forums.

Ms. Bennett reported the NYS Bail Statute was adopted in 1970 to reduce the number of un-convicted inmates in the jail. Bail was authorized as cash, insurance company bail bond, surety bond, secured appearance bond, and a partially secured bond noting the two most restrictive forms of bail as cash bail and commercial bond.

In August 2018, California became the first state to eliminate cash bail, which just went into effect October 2019. This eliminated bail, bail bond agents, and allowed the local courts to decide on whom is to remain in custody and who is to be released. Ms. Bennett report California created pre-trial assessment tools; however, this is going to be an issue for NYS. In addition, non-violent and misdemeanor cases are released within 12 hours with other cases scored on the seriousness of the crime, likelihood of recidivism, and likelihood of appearing in court. NYS has none of these things in place.

Ms. Bennett reported data was sent out to all counties with ATI (Alternatives to Incarceration) programs. For Tioga County, Ms. Bennett reported 67.2% of the people in our jail were un-sentenced with NYS overall being 66% un-sentenced. Ms. Bennett reported the intent of this legislation is to reduce or eliminate any un-sentenced people in jail.

In addition to California, Ms. Bennett reported Washington D.C. is the only other municipality to eliminate cash bail.

Ms. Bennett reported bail reform is a presumption of release, which means almost all misdemeanors will be ROR. This legislation eliminates bail, jail, and bail bond for release. The new law stipulates appearance tickets will be issued by police officers for most misdemeanors and most E felony charges. This has always been in the law it is just now going to be a much bigger push. The arresting officer, before issuing the appearance ticket, must inform the arrestee that they may provide their contact information for the purpose of being reminded of their court appearance date. This can be text, email, phone, or address for first class mail. Ms. Bennett reported part of this problem is that the information provided may not be current where they actually reside, therefore, foresees this will be a big issue for Probation.

Ms. Bennett reported the language in this legislation has been changed from "defendant" to "principal". The Legislation also indicates the courts may partner with a certified pre-trial services agency to provide the reminder notice.



Ms. Bennett reported Tioga County does not have staffing to do this, as we have a part-time person doing pre-trial release and we receive \$5,000 from the State. This is not a role-funded position.

Ms. Bennett reported Office of Court Administration (OCA) has recently made the decision that they will provide the initial, but not subsequent, notification of the court date. Ms. Bennett reported we have been waiting for OCA to provide rules/regulations, however, no information has been received and the new legislation takes effect January 2020.

Ms. Bennett reported there are a couple of carve out charges where an appearance ticket does not have to be issued and the arresting officer can take the principal directly into custody to appear before the judge. These are for A, B, C, or D felony charges and specific E felony charges. However, there is no guarantee that the principal would be remanded because they appeared in front of the judge.

In regards to misdemeanors, Ms. Bennett reported no bail can be set, except for sex offenses and criminal contempt, Second Degree, which is typically used when there has been a violation of an Order of Protection for a domestic violence case. You can no longer be remanded to jail on any misdemeanors charges.

Ms. Bennett reported bail and detention are eliminated for all Class A drug felonies with the sole exception of operating as a major trafficker. All the indictments the DA has been working on for the last few years to get heroin dealers off the streets in Tioga County will be arraigned and released.

Legislator Weston inquired as to who is responsible for infiltrating this new legislation into our court system. Ms. Bennett reported law enforcement, DA, and Probation Director. Ms. Bennett reported the legislation has changed and we are required to implement. Ms. Bennett reported OCA has been educating the magistrates. Law enforcement has been educating themselves and the DA and law enforcement have been meeting regarding how to handle the new legislation changes. Chair Sauerbrey reported a roundtable discussion with all parties in Tioga County has been conducted.

Ms. Bennett reported this is a massive philosophy change in how to prosecute people and what to do with them. First, we have to educate ourselves and then educate the public. Ms. Bennett reported educating the public still needs to occur, as the media has focused on the concept that poor people are not going to be remanded to jail for inability to pay bail. Ms. Bennett reported this is an element of the bail reform, but the impact is much larger.



Chair Sauerbrey reported the challenge is how to educate the public.

In regards to violent felonies, Ms. Bennett reported there are 60 crimes listed in NYS.

Ms. Bennett reported the following five options are available when appearing before the judge:

1. Presumptive – this is the ROR default for almost everybody unless the courts make an individualized determination that the principal is a flight risk. Ms. Bennett reported everything is about returning court.
2. Placed in a reasonable pre-trial supervision – In Tioga County, you need to come to Probation once a week.
3. Electronic Monitoring at no cost to the principal. This can only be from a not for profit company. There are no not for profit companies in NYS. In Tioga County, we do not have 24/7 electronic monitoring. Not sure how Tioga County will proceed with monitoring, as decision still needs to be made.
4. Fix bail.
5. Commit to the custody of the Sheriff.

Ms. Bennett reported Probation would no longer be able to utilize the 2-page survey asked of the principal, as we cannot prove it has been studied and determined by a university that it is free of bias (race, age, sex, or gender). Ms. Bennett reported she does not have budgeted funds to pay a university to do this type of document evaluation, therefore, no documents will be used. This holds true for the Failure to Report Risk Assessment tool of eight questions determining risk for court appearances. This is a NYS tool, but again has not been studied and determined by a university that it is free of bias. No assessment tools can be used in Tioga County.

Ms. Bennett reported this is a long process before bail and jail are an option:

- Release on own recognizances (ROR)
- Failure to appear
- Pre-trial release (Call in to report)
- Additional court hearings
- RUS (Released under Supervision) – This would be probation.

Ms. Bennett reported the legislation passed in April and we are still waiting for re-certification process of pre-trial agencies in each county.

Ms. Bennett reported the judge needs to wait 48 hours to issue a bench warrant for a failure to appear for a court hearing unless there is a new crime or evidence of a willful failure to appear.



Ms. Bennett reported many justice courts in Tioga County meet only twice a month and most do not have full-time staff. This legislation was not designed for Upstate NY. Some of the towns and village courts limit the time the court clerk can be present due to salary issues, therefore, may only work when court is in session. This creates the issue of timely response.

Ms. Bennett reported the potential impact is hard to determine as we are still operating without full knowledge of the rules. Ms. Bennett estimates the bail reform legislation will significantly reduce pre-trial detention and is estimated that 43% of the almost 5,000 people detained in NYC will be released. This will most likely be a higher rate in Upstate NY as we put more people with misdemeanor charges in jail than they do in NYC. Ms. Bennett reported she predicts Upstate NY will have to become more like NYC in that our prosecutor is going to have decide which cases to prosecute. There is going to be more misdemeanor, low-level cases that will just be dismissed.

Ms. Bennett reported the DA is predicting very few principals will use the Drug Treatment Court.

Ms. Bennett reported the DA has stated that he cannot possibly take every case to trial, as we do not have the capability; therefore, he plans to do plea deals to probation sentences. The DA will then wait for Probation to create a Violation of Probation, but that is difficult a process. If able to put a case together to support a Violation of Probation, this would then go back to the Judge who placed the principal on probation. Ms. Bennett reported this process would undoubtedly impact the Probation Department.

Chair Sauerbrey reported she inquired with Sheriff Howard as to the plan for releasing inmates on January 1, 2019. Chair Sauerbrey reported the inmates will not all be released at once. Upon release, most, if not all, will go to Social Services to apply for needed services, as they have no money, food, or place to live.

In County Court, Ms. Bennett reported Judge Keene is already looking at the cases coming before him and making the determination whether the case is eligible for release in January 2020, therefore, potentially releasing them now.

Legislator Roberts reported this new legislation would deter law enforcement from making arrests.

Legislator Mullen concurred stating that it will look like the crime rate has dropped when in fact it is creating a population of offenders who know how to work the system.



Ms. Bennett reported this new legislation would give the public perception that the government is not doing their job of protecting the citizens who are paying taxes for these services.

County Attorney DeWind inquired as to whether the DA has given Ms. Bennett an estimate of the number of cases that will be going for probation sentences. Ms. Bennett reported this information was not provided.

Ms. Bennett reported as part of the statute data statistics are required for reporting by the pre-trial agency to the Office of Court Administration (OCA). Ms. Bennett reported Tioga County Probation does not have the software system to capture this data, therefore, will create an Excel spreadsheet and hand count the data. Ms. Bennett reported she believes the State should provide the necessary software. Ms. Bennett reported this is another State mandate where zero funding is coming to the local counties and we do not have the staff, funds, or equipment to do this. Ms. Bennett reported there is no assessment tool that has been authorized or the means and availability to have the assessment tool evaluated for utilization.

Ms. Bennett reported Warren County has addressed these issues in a resolution.

Ms. Bennett reported on how pre-trial is going to change in Tioga County. After January 1, 2020, the Probation Department will no longer do daily visits to the jail for screening to determine pre-trial eligibility. There are limited conditions of RUS (Released under Supervision), as the Courts can only revoke RUS for arrests of a new felony while out on a felony charge, Violation of Order Protection, Intimidation of a Witness, and Violation of Travel Restrictions. Ms. Bennett reported that since the courts cannot violate an offender for violation of a urine test, she would cease urine testing as of January 1, 2020 for the pre-trial population as there are no consequences. Ms. Bennett reported the new release conditions would be for the principals to show up for court and show up for Probation.

Ms. Bennett reported the DA informed the judges that if they currently have warrants out now they should dismiss them and clear the deck of any pending charges we have now before January 1, 2020. The only cases the DA wants going forward at this time is the murders, child murder, and bank robbery and all others are to be cleared as of December 31, 2019. Ms. Bennett reported the same process would need to be done for the offenders on RUS and in December all judges will need to be notified that the 19 RUS cases will need to change to ROR as of January 1, 2020.



# Legislature



Ms. Bennett reported this legislation did not change the process for probation violations. Bail can still be set on a probation violation and remanded to jail. This will be the tool used by the DA going forward by using the Probation system.

Today's presentation will be emailed to all legislators.

**UPDATE: Presentation was mailed to Legislators and County Attorney on 11/21/19.**

## **Budget Update -**

Budget Officer Hollenbeck reported she is in the process of filing the constitutional tax limit, but this cannot be completed until all town and village budgets are assessed. Ms. Hollenbeck reported the tax cap filing is completed. Ms. Hollenbeck reported she is doing the final adjustments from the tentative to final budget, which includes validating salaries from 2019 to 2020. Ms. Hollenbeck reported a retirement bill adjustment was necessary due to increased billing as an individual was placed in the wrong employment tier. Ms. Hollenbeck reported the adjustments do not change the tax cap, as adjustments for more or less are through the fund balance.

Ms. Hollenbeck reported she did not receive any follow-up questions from the Legislature or public from the public hearing on November 12, 2019.

## **Approval of Worksession Minutes – November 7, 2019 -**

Legislator Hollenbeck motioned to approve the November 7, 2019 Legislative Worksession minutes as written, seconded by Legislator Weston with Legislators Balliet, Hollenbeck, Mullen, Roberts, Sauerbrey, Standing, and Weston voting yes with Legislators Monell and Sullivan being absent. Motion carried.

## **Action Items -**

Currently, there are no action items.

## **Other –**

- **Week of November 25, 2019** – Chair Sauerbrey reported she will be out-of-town the week of Thanksgiving, therefore, Deputy Chair Hollenbeck will be responsible for signing any documents in her absence.
- **December Committee Meeting Notice** – Chair Sauerbrey reported the notice has been distributed with the highlighted change of the 2<sup>nd</sup> December worksession changing from Thursday, December 19<sup>th</sup> to Tuesday, December 17<sup>th</sup>.
- **December 5, 2019 Worksession** – Chair Sauerbrey reported she will be attending the NYSAC Board of Directors meeting in Albany on this date, therefore, Deputy Legislative Chair Hollenbeck will conduct the worksession meeting.



- **Legislator Fund** – Legislative Clerk Haskell reported throughout the year Legislators contribute towards flowers, memorial donations, etc. for various reasons. In talking with Legislator Standinger, he shared an excellent idea of establishing a fund where all Legislators make a one-time contribution of \$20.00 in January to be used throughout the year. Ms. Haskell reported she would manage this fund and notify the Legislators when expenses are made. If there were funds available at year-end, this would just roll over to the new year. Chair Sauerbrey suggested sending an email to the Legislators along with a printed copy in each of the Legislator's mailboxes. Ms. Haskell thanked Legislator Standinger for the suggestion. All Legislators in attendance were in favor of this fund.

## **Executive Session –**

Motion by Legislator Hollenbeck, seconded by Legislator Mullen to move into Executive Session to discuss an individual personnel matter. Motion carried to go into Executive Session at 11:09 a.m. with Civil Service Administrator Linn Bruce remaining in attendance.

Executive Session adjourned at 11:33 a.m.

Meeting adjourned at 11.33 a.m.

Next worksession scheduled for Thursday, December 5, 2019, at 1:00 p.m.

Respectfully submitted,

*Cathy Haskell*

Legislative Clerk