

FELONY SENTENCING COMMITTEE

November 3, 2016
9:30 a.m. - 3:30 p.m.
Lincoln Room

Minutes

Members:

Chair Justice Joel Horton
Judge John Melanson
Judge Lansing Haynes
Judge John Stegner (By Phone)
Judge Patrick Owen
Judge David Nye
Judge Juneal Kerrick
Judge Dane Watkins
Michael Henderson
Scott Ronan

Next Meeting:

January 24, 2017
9:30am-3:30pm Idaho Supreme Court

Guests:

Justice Roger Burdick
Administrative Director of the Courts - Sara Thomas
Director of Idaho Department of Correction (IDOC) – Kevin Kempf
Deputy Chief of Probation and Parole of Idaho Department of Correction - David Birch
Pre-Sentence Coordinator Whitney Ascuena-Bolt
Ryan Porter
Christina Iverson
Duane Dickey

Welcome and Introductions

Chair Justice Horton welcomed the Committee members and guests and called for a motion to approve the minutes from the previous meeting.

Judge Haynes motioned to approve the April 29, 2016 meeting minutes, and Judge Melanson seconded. Motion carried.

Pre-Sentence Report Revisions

Ryan Porter briefed the Committee on recent discussions held by an [IC 19-2524] workgroup on potential revisions to the screening and assessment process for offenders with behavioral health issues. Ryan identified where the various evaluations and documents that are provided to judges at sentencing are at times redundant, and can be contradictory due to the differing actors that administer the tools at different points. In order to address issues with quality and to provide efficiency in not only the assessment process but for offenders in the community receiving services, Ryan has worked closely with the Department of Health and Welfare (DHW) and IDOC to develop an alternative process. This pilot process would allow for judges to receive the full information contained in the Pre-Sentence Investigation (PSI) interview and write up as well as the risk and protective factors as provided via the Level of Service Inventory-Revised (LSI-R). After an offender is sentenced to the community, they would receive a full substance use disorder evaluation and/or mental health

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evaluation. The results of these evaluations will determine the needs that would be addressed by IDOC and DHW respectively.

It was determined that although this pilot process may be more efficient and result in more services delivered to offenders in the community, there remains a legal concern district judges are required to order evaluations prior to sentencing. The next steps will be to convene a small work group to review statutory language, court rule, evidence based sentencing practices, and evidence based behavioral health treatment practices, to provide initial recommendations to the Felony Sentencing Committee at the January 2017 meeting.

LSI-R Training and Scoring Update

David Birch briefed the Committee on the statutorily required trainings and validation of the LSI-R. IDOC has provided training to all staff over the course of the past two years, and new hires will be trained within 90 days of employment. In addition, the training requires that each trained staff must provide a taped interview to receive feedback on techniques and scoring fidelity. David also reported that IDOC will continually reinforce training practices, such as the need to ensure that collateral information is incorporated. David reiterated that IDOC is required by statute to revalidate the LSI-R due to the realignment in training and administration of the tool, and a timeframe for revalidation has not been selected as of yet.

Christina Iverson shared that similar efforts are underway for misdemeanor probation offices throughout Idaho. It was identified that as a result of the re-training efforts conducted by IDOC that offenders on misdemeanor probation may be scored higher. Christina is working closely with misdemeanor probation administrators and the LSI-R training contractors utilized by IDOC to provide the same training and scoring principles that IDOC has received. Both IDOC and misdemeanor probation offices will benefit from a network of trained trainers and all probation offices will be trained by the fall of 2017.

Sex Offender Evaluations-Content and Sentencing Recommendations

Christina Iverson reviewed samples of sex offender evaluations that contained recommendations of sentence type, sentence length, and supervision practices. Committee members agreed that some of the language found in the example provided was problematic. Recommendations beyond risk to re-offend and amenability to treatment are concerning because of the impact it may have on plea bargaining and even in contradiction to the sanctions and incentive matrix employed by probation officers.

Action: Christina Iverson will provide the Committee's feedback to the Sex Offender Management Board.

Idaho Sentencing Information Database

The Committee approved the use of the Idaho Sentencing Information Database (ISID) to strengthen information provided to district judges regarding common sentencing practices throughout Idaho. The Committee was asked as to their opinions on the current ISID information provided to them as part of the PSI. In general the Committee agreed that the tool is of use, specifically citing that defense attorneys and judges that are newer to the bench benefit from the information. Director Kempf asked if district judges could be surveyed to gain further understanding of the use and content.

Action: Scott Ronan will query all district judges on the usage of the Idaho Sentencing Information Database report.

Whitney Ascuena-Bolt, the Pre-Sentence Coordinator for IDOC solicited feedback from the Committee as to modifications to language included in the PSI that provides context to the attached ISID report. The Committee

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agreed that the proposed language was appropriate and Whitney responded that she would incorporate the changes.

The Committee also questioned if the act of including the sentencing information in PSIs or other efforts have led to a more uniformed sentencing approach for district judges throughout Idaho. As a response, the Committee agreed that updated sentencing information would be beneficial to identify if discrepancies exist, and if so, what factors could be driving the sentencing differences?

Action: Scott Ronan will work with the Idaho Supreme court Planning and Research Department and IDOC to collaborate on a re-evaluation of sentencing data to determine if sentencing differences are occurring. Scott will provide a draft methodology to the Committee for feedback at the January meeting.

Idaho Criminal Justice Stakeholders - Norway Expedition

Director Kempf and Justice Burdick shared their experiences from a recent informative trip to learn about Norway's prison system. They were joined by a delegation of Idaho criminal justice stakeholders, and toured numerous correctional facilities. Director Kempf shared that at one time; Norway utilized the United States model for the management of offenders in correctional facilities but has now embraced an alternative method. Norway employed dynamic supervision, principles of normality, a work and living environment, and accountability with a purpose in their efforts to reform the management of offenders.

Below are some observations made by the Idaho delegation:

- The maximum security facility had incredibly high external security, but inside looked more like dormitories
- Relationships between inmates and staff were safe and guards were perceived as mentors
- No gangs in the prison system, but there were terrorists
- No drug offenders as offenders with drug issues were treated in hospitals and clinics and not criminalized
- Almost no inmates on inmate violence
- No prison uniforms-inmates could wear their own clothes
- Every inmate is expected to learn or work. Those that do not, are treated more like traditional prisoners
- Generally, life on the inside is meant to mirror life on the outside as almost all will be back in the community
- Recidivism is significantly lower than in Idaho

When asked by the Committee what the observations of the delegation could mean for Idaho, Justice Burdick indicated that we should explore some key issues, such as length of sentences, ensuring credit for time served is applied for any and all incarcerations, why judges make a determination for early release when they know little of what has happened for the duration of the probation sentence.

Retained Jurisdiction Placement Letter

At the September 2016 District Judges Conference, district judges agreed that the letter received from the IDOC regional diagnostic unit regarding program placement was not as informative as it once was due to the streamlining of IDOC program delivery for those on a rider. The Committee provided input on what information they do need regarding the program delivery and timing of those returning from a rider.

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Consensus was reached that the letter as it currently exists should be discontinued. District judges need to know if their program recommendation (if given) will not be followed. The Court will need an email with the potential return date. An APSI should also include contact information in case there is a follow up question. In only those cases where the treatment deviates from the judge's recommendation, judges need to be notified and what the offender will receive instead of the recommended program.

Supervision Standards & Focused Supervision

David Birch discussed the concept of focused supervision based on the principles of quality of supervision and accountability with purpose. Focused supervision will drive the methods of supervision of offenders by their risk level. There would be some exceptions based on the unique categories of offenders, for example, sex offenders will be supervised on a specialized caseload and by risk level and problem solving-court participants would be supervised at the moderate high to high risk level.

David reported that the supervision standards have not been finalized but in consultation with IDOC district managers, there will be some flexibility/creative with resources. Additionally, it was observed that hiring practices (ability to have entire array of skills) of probation officers will change to reflect the operational shift in practices.

Judge Kerrick identified a concern that some probationers with a history of DUI offences may be tested and supervised at a low rate based on the LSI-R but that may be counter-intuitive. David Birch responded that for the first time, IDOC is developing a drug testing frequency standard to try to address this issue but resources are limited to test all offenders at a high frequency.

Director Kempf indicated that there is the possibility of strategic planning with the judiciary to address the frequency of testing. Not sure with the amount of probationers in the community that the level of frequency for testing can be consistent the entire time of probation. Scott addressed that drug testing should be consistent based upon emerging best practice evidence for high risk and high need offenders in the community.

Action: Scott Ronan will convene a meeting with Director Kempf and Josh Tewalt to discuss shared drug testing needs and resources.

Odyssey Update

Scott Ronan updated the Committee on upcoming Go-Live events for the implementation of Odyssey. Judge Owen provided some feedback based on his experiences in Ada County. In general, fairly positive experience thus far, but in three to four years the system will be even more efficient. There are some challenges such as the sheer volume of scanned documents. Judge Owen indicated the training was not as helpful prior to go-live, but after go-live, judges and clerks learned quickly. Large files are difficult to read through Judges Edition, but more positively, it can be viewed outside of the courthouse with a large enough screen.

Whitney Ascuena-Bolt reported that providing electronic PSIs to the court was an efficient process prior to iCourt implementation, but now some PSI writers have indicated that the use of the iCourt Portal makes it more difficult to provide a full Idaho criminal history as part of the PSI.

Action: Scott Ronan will follow up on access to Odyssey and iCourt portal for IDOC PSI writers.

Learning Management System

The Committee is asked via the Felony Sentencing Committee order to make education recommendations for training content that would be developed and delivered to district judges at New Judges Orientation, The

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September Judicial Conference, and the January District Judges Conference. In addition to the face-to-face training opportunities provided to district judges in Idaho, The Idaho Supreme Court Education Department has expanded the use of an online learning management system. Duane Dickey, Idaho Supreme Court Education Specialist, provided an overview of the Learning Management System to the Committee that allows for on demand educational content, self-tracking progress on online courses, and a resource for new and historical educational content.

The Committee was asked to consider the new system as an addition to the currently available educational delivery techniques for future education recommendations. Judge Stegner recommended that district judges would benefit from training on the Level of Service Inventory-Revised principles, revised administration, and scoring information. Other Committee members agreed and suggested that other instruments and evaluations that are submitted as part of the PSI should also be a training component for district judges.

Action: Scott Ronan will convey the education recommendation from the Felony Sentencing Committee to deliver training on the evaluations provided to district judges at sentencing, to the Education Department.

Adjourn

Judge Melanson motioned to adjourn the meeting and Judge Nye seconded, motion carried.