

# FELONY SENTENCING COMMITTEE

April 29, 2016  
9:30 a.m. - 3:30 p.m.  
Lincoln Room

## Minutes

### Members:

Justice Joel Horton  
Judge John Melanson  
Judge Lansing Haynes  
Judge John Stegner (By Phone)  
Judge Patrick Owen  
Judge Randy Stoker  
Judge David Nye  
Judge Dane Watkins  
Scott Ronan

### Important Dates:

November 3, 2016	9:30am-3:30pm Idaho Supreme Court
January 24, 2017	9:30am-3:30pm Idaho Supreme Court

### Guests:

Deputy Director of Idaho Department of Correction - Henry Atencio  
Deputy Chief of Probation and Parole of Idaho Department of Correction - David Birch  
Kerry Hong  
Ryan Porter  
Christina Iverson

### Welcome and Introductions

Chair Justice Horton welcomed the Committee members and guests and acknowledged the newest Committee member from the 7<sup>th</sup> judicial district; Judge Dane Watkins. The Committee reviewed the minutes for the previous meeting and the following motion was made:

**Judge Stoker motioned to approve the December 15, 2015 meeting minutes, and Judge Watkins 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 reviewed a document that summarized what other states are receiving for information prior to sentencing. Generally, most states provide a single entity substance abuse or mental health screening as part of the Pre-Sentence Report for judges. Some jurisdictions provided only the Pre-Sentence Investigation report and no screeners or assessments as the information was already imbedded within the report.

Ryan shared some preliminary concepts for revisions to the process of collecting and reporting behavioral health information to judges for sentencing. Ryan shared that a restructured process could focus on providing the full Pre-Sentence Investigation Report and behavioral health screening responses and conducted by one entity; The Department of Correction (IDOC). Ryan emphasized that these discussions were only preliminary and he is seeking initial feedback from the Committee. Ryan also identified that any significant changes for the Department of Correction would need to have adequate resources. Henry reiterated that IDOC sees a benefit to streamlining this process and for IDOC to be the sole source of behavioral health (substance abuse and mental

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health) information for judges and treatment services; however, the funding is a critical issue. IDOC is exploring what it would take to address these needs.

Kerry Hong briefed the Committee on initial efforts that have led to the current conversation. Draft language was developed last session for the Idaho Department of Health and Welfare (DHW) and IDOC to review in order to make changes to current 19-2524 process. Director Armstrong indicated they would bring everything to the table for changes to [IC19-2524] including FTE/resources to make a change to engage in this transformative dialogue.

Kerry Hong also shared that in the current system, there is a gap of identifying if offenders have accessed mental health treatment services through DHW. Kerry stated that this will be addressed with a specific draft order for [IC19-2524] mental health treatment.

**Action: Kerry Hong will distribute a sample distinct 19-2524 order for treatment for use by all district judges along with instructions for clerks to forward to DHW/IDOC district mailboxes.**

Timing of recommendations will be driving some policy recommendations to be developed at the end of May and first part of June. The Felony Sentencing Committee will be the first group to review for additional feedback prior to any final policy or budgetary decisions by the Idaho Supreme Court, DHW, and IDOC.

The Committee expressed support of preliminary work towards consolidating the behavioral health information and treatment under one entity.

## **Idaho Department of Correction JRI and JPA Update**

David Birch reviewed several items regarding the status of the Justice Reinvestment Initiative.

## **Implementation of Sanctions and Incentives Matrix**

The Idaho Response Matrix went live in August 2015. David reported that probation officers are still learning how to use it and it has been built into the IDOCs auditing process, which will help pinpoint training needs. Committee members relayed information they have been hearing in the districts in regards to concerns of sharing of too much information and if offenders have figured out how to manipulate the system. David responded that a special progress report is shared with all parties as part of IDOCs efforts to maintain transparency during the implementation. David also indicated that they are aware that probation officers feel as if offenders may be able to game the system to avoid reaching a cumulative of nine points which results in an automatic Probation Violation (PV). David indicated that there is more training and follow-up to be conducted for use of the matrix to balance between filing a PV too early and too late.

## **Discharge Requests and Order Change (Update on Committee Vote)**

David Birch reported that IDOC is still strongly encouraging that the right offenders are continually being referred for early discharge. Further, it was reported by David that the standard order form for discharge requests that the Committee voted to approve in December 2015 (7 in favor, 0 opposed, 5 did not vote), is not being used statewide. The Committee members were encouraged to share that information with their colleagues.

Judge Stoker indicated that he has seen some discharge requests submitted for offenders on probation that are only a few months (2 or 3) away from the end of their sentence and that perhaps those individuals may be transitioned to the Limited Supervision Unit (LSU) until such time that their sentence expires. With the time

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and resources it takes to process and review the requests, IDOC may be better served submitting requests for offenders with more time to serve on their sentence.

There was some discussion among the Committee members as to information they receive and request (it was noted that supervision notes can provide additional information), the duration of sentence served for an offender where a typical request would be considered (half their sentence at a minimum), and that there may be some sentence length and recidivism difference between the districts.

**Action: David Birch will provide the Committee with data regarding the length of probation sentence and recidivism rates.**

## **Limited Supervision Unit & Progress on Caseload Goals by Supervision Level**

David Birch informed the committee that the LSU has grown to 1,175 offenders, with approximately 100 offenders entering per month. David went on to report that average caseload sizes for probation officers have decreased in some districts but it is deceptive and can be skewed by the sex offender officer and Problem-solving Court caseloads.

David indicated they will be adding a second probation manager to assist with the growth in the LSU. David reported that IDOC is currently reviewing potential policy changes to include DUI offenders with interlock devices and limited licenses as potential referrals to the LSU. They are currently excluded and originally it was a resource issue with IDOC to track down interlock usage but now they have the ability to receive interlock reports. The Committee reached consensus that there were no immediate objections. Henry Atencio indicated that if there were any policy changes, they would reconvene the original rule workgroup that developed the LSU IDOC policy recommendations for discussion.

## **Use of Discretionary Jail Time**

IDOC has conformed to Idaho Criminal Rule 33 in how Discretionary Jail Time (DJT) is utilized and IDOC is tracking the data on days used via the Response Matrix. There has been some discussion that although IDOC is adhering to the 48 hour DJT rule, officers and some judges would support a review of the rule for potential; changes to increase the time frame for DJT to provide more discretion. There was a question as to the body of research that was referenced as part of the drafting of the rule. Kerry Hong provided some copies of the problem-solving court research that indicated that for drug courts that utilized longer jail sanctions (over 3-6 days) had worse recidivism outcomes. Scott noted that although the research did not examine general probation population outcomes, it would stand to reason that there is some application of the research for high risk and high need offenders on probation (similar to that of those in a drug court).

## **Gap Analysis Findings and Actions**

Henry Atencio stated that the statutorily required joint report to the legislature known as the Gap Analysis was submitted in January 2015. The report indicated that there is a significant gap in recorded behavioral health services provided to moderate high to high risk offenders in Idaho. Henry reported that Department of Health and Welfare (DHW) will stand beside with IDOC a submission for additional resources as indicated by the Gap Analysis. Additionally, Henry identified a potential need for an increase in probation officers to support problem-solving courts in Idaho; pending additional analysis.

## **Justice Programs Assessment Update**

Henry Atencio reviewed the Council of State Governments Justice Programs Assessment background, findings, and initial steps taken by IDOC:

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- Three out of 12 programs delivered in the institutions were not research based.
- The Therapeutic Community (TC) focused more on shame based interventions and was not therapeutic.
- September 19, 2015 ended TC programs.
- The pathways were redundant and confusing for offenders and staff
- Moved to adopt five new programs Cognitive Behavioral Interventions for Substance Abuse (CBISA) Thinking 4 Change, the Cincinnati Sex Offender Treatment Program, Aggression Reduction, and CBISA- advanced skills practice (aftercare for programs).
- In January 2016, started training institutional staff on new programs.
- By August, staff will be fully trained and implemented in the institution.

Henry also indicated that judges will receive a letter for all offenders returning from a Rider program. There was a question as to when IDOC will be able to determine if the new programs are effective. Henry replied that a report of effectiveness will be conducted every two years, so the first report will be available in approximately two years. Henry also reported that staff was initially uncertain about the change, but once the curriculum was made available and the trainings have occurred they are very positive about the changes.

## **Order for Retained Jurisdiction**

Scott Ronan reviewed with the Committee the need for the Committee to provide some guidance on communicating with judges the changes by IDOC to the Retained Jurisdiction programs and any potential revisions to a Judgment of Conviction, Order Retaining Jurisdiction. Potentially some judges are using orders (either the standardized order for retained jurisdiction adopted by the Felony Sentencing Committee or their individualized orders) with outdated information. Typically the Orders provide a recommendation for programming that is delivered to the IDOC Regional Diagnostics Unit as a consideration for final determination for program placement. The Committee was presented with the Felony Sentencing Committee adopted Order for Retained Jurisdiction that only removed the programming options, but the Committee did not vote for final approval (3 aye, 2 nay, 6 did not vote).

**Action: Scott will draft a communication to District Judges on recommended changes to either individual judges own Judgment of Conviction, Order Retaining Jurisdiction and Commitment based on the programmatic changes (and the removal at IDOC request of language concerning the PSI fee). Scott will communicate with the District Forms Committee on the changes for their order, and the Committee will work on a uniformed order for Odyssey for a more consistent statewide approach for those courts using ISTARS.**

## **January District Judges Conference Follow-Up**

Henry Atencio reported that there may be some increases in the next year for the frequency of drug testing for moderate to high risk offenders in treatment. Judge Owen inquired if an offender (for example a probationer with a DUI offense) is not receiving treatment services, will they still be tested at a higher level? David Birch responded that IDOC is in the process of revising their supervision standards that includes drug testing frequency by risk level and will be reviewing their budget for available drug testing funds.

Ryan Porter briefed the Committee on the early development of a Criminal Justice Provider Network. IDOC and the Idaho Supreme Court have been discussing the components of what a special network consisting of private providers that focuses on those offenders with criminal justice (specifically an IDOC felony offender on probation and those in Problem-solving Courts). Drug testing frequency (high and moderate high two times a

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week), training in CBISA, and consistent and regular case communication with probation officers are examples of the components for those providers that would opt into the CJ Network.

## **Sentencing Continuum Framework and Gaps**

Scott Ronan solicited feedback from the Committee on the development of a potential educational document that would identify Idaho sentencing alternatives and programs based on risks and needs. This document could be provided to all district judges and be addressed in further detail at New Judges training. This led to further discussion about what is currently available in Idaho for each risk and need quadrant as supervised by IDOC in conjunction with available services or programming.

**Action: Scott Ronan will provide to the Committee a draft document that outlines currently available programming and supervision by each risk and need level, in addition to a 2009, Doug Marlowe, authored Chapman Journal of Criminal Justice National Institute article entitled, "Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs."**

## **Odyssey Update**

Scott Ronan briefed the Committee on the adjusted timeframes for the Ada County 'go-live' of Odyssey as the court filing record system in Idaho. The revised go live date for Ada County is now August 8, 2016, while the go live date for wave one counties (all remaining D4 and D5 counties) will remain at April 3, 2017. Judge Stoker shared with Committee members his experiences with the Twin Falls Odyssey Pilot, indicating that he had doubts as to the ability of courts to go paperless, but found that he is now paperless at the bench and that e-filing seems to be working. IDOC has been e-filing Pre-Sentence Investigation reports and Judge Stoker has requested that the Addendum PSIs (APSI) be e-filed as well. David Birch and Kerry Hong both indicated they will meet and start planning for inclusion of the APSI as an e-filing.

Judge Stoker highlighted some additional areas regarding his experience as a district judge transitioning to Odyssey:

- Clerk underestimated the problem of getting files scanned into the system. The backlog of scanning physical files is an issue and could slow down older cases coming before the court again.
- There is an e-filing queue and sometimes it takes 3 days to receive a file (PSI from IDOC) and attorneys have had to learn that they cannot file on Friday afternoons as it takes a day or two to refresh the system.
- All the training is good until go-live then it's a bit of relearning. The Tyler training was not that helpful. Training for one day with one week to go was not that helpful, but once judges had their hands on the system, it has not been difficult to re-learn or to teach yourself areas not covered in training.
- Deputy clerks and law clerks need to be trained to fully understand documents that relate to a case. Need info on arraignment and other sheets to help with large files.
- Senior Judges are not as familiar with Odyssey and would not use it as frequently, which may result in returning to paper for those judges

## **Education Feedback**

The Committee provided recommendations for training content for all district judges at New Judges Orientation, the September Judicial Conference, and the January District Judges Conference. There was a suggestion that following the New Judges Orientation sentencing presentation, it may be beneficial to develop a plan for topic generated refresher trainings for judges. Justice Horton describes a list of topics that the

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Education Committee has utilized and recommended the Felony Sentencing committee review that last and provide feedback. It was also observed that with expanded local training, Idaho could replace the need for the Reno judicial college trainings. Lastly, the Committee agreed that it would be helpful for judges to receive some training on ICRE 404(b) regarding the exception of “other crimes” committed by a defendant presented as evidence.

**Action: Scott Ronan will communicate the Committee recommendations to the Education Committee for consideration, and provide a copy of the Education Committee’s list of potential training topics for the Felony Sentencing Committee’s review and comments.**

## **Legal Financial Obligations Feedback**

Henry Atencio attended a recent Idaho Criminal Justice Commission (ICJC) subcommittee tasked with reviewing and providing recommendations back to the ICJC regarding legal and financial obligations (LFO) of offenders, and provided the Committee with an update.

Henry reported that the subcommittee developed the following preliminary goals:

- Develop one statute for all LFO with a ranking to determine priorities of partial payments.
- Educate the judiciary on the issues and challenges of LFO
- Identify a long term plan for how to address the issue of LFO (for example: how to replace cost of supervision funded resources with general funds)
- Address the issue of waivers for fines and court costs
- Application of the tax intercept issues (for example: a spouse of an inmate at IDOC may lose out on income via tax intercept for an incarcerated tax non-payers)
- Renew efforts towards the passing of HB348 to realign priority of payments with identified needs.

It was recommended that the subcommittee also review the \$100 fee for DNA analysis and the cost of prosecution investigations.

## **Adjourn**

## **Next Meeting:**

- November 3, 2016 9:30am – 3:30pm