

FELONY SENTENCING COMMITTEE

April 24, 2014
MINUTES

Attendees:

Acting Chair Judge Shindurling
Judge Haynes
Judge Stegner
Judge Owen
Judge Nye
Judge Stoker
Patti Tobias

Next Meetings:

<i>June 12th, 2014</i>	<i>Felony Sentencing Committee Meeting 9:30-3:00</i>
<i>July 24, 2014</i>	<i>Conference Call (2:00 – 4:00)</i>
<i>August 13, 2014</i>	<i>Conference Call (9:00 – 11:00)</i>
<i>September 23, 2014</i>	<i>Judicial Conference (6:00 p.m.)</i>
<i>October 30, 2014</i>	<i>Felony Sentencing Committee Meeting 9:30-3:00</i>
<i>January 21, 2015</i>	<i>Felony Sentencing Committee Meeting 9:30-3:00</i>

Guests:

Judge Wood
Judge Wilper
Steve Bywater
Henry Atencio
Terry Kirkham
Shane Evans
Michael Henderson
Ross Edmunds
Ben Skaggs
Christine Iverson

Welcome and Introductions

Judge Shindurling led introductions of committee members and guests. Minutes approved from January 2014. Judge Haynes motioned, Judge Owen 2nd the motion with the motion carried. Patti Tobias expressed appreciation to Steve Bywater for his extensive involvement with the Council of State Government-Justice Reinvestment and engaging the judiciary in the discussions and soliciting feedback.

Justice Reinvestment Initiative-Phase II

Mr. Bywater thanked Patti Tobias and Judge Wood for their immense efforts and success during the CSG-JRI process. He provided details to the committee on the Justice Reinvestment Initiative, Phase I and Phase II and the roadmap for working on the three challenges outlined in the CSG-JRI policy framework with goals and timelines for specific issue teams working on the strategies. Mr. Bywater solicited feedback during the presentation from committee members and guests.

Judicial Comments:

In summary, committee members and guests commented as follows:

- Concern for lack of recidivism rates for the CAPP facility and the ability to break out rates by type of retained jurisdiction category
- Rules are required by IDOC on Interstate Compact offenders to assist with sentencing an individual in Idaho that may live in a neighboring state, etc. The rules should be discussed at a future meeting and/or an educational session with the judiciary.

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- Concern for offenders who owe restitution and the impact on submitting a proposed discharge to the Parole Commission or the Court
 - To be addressed with the JRI Caseload Sub-Committee
- Fixed time: Is there a way to determine at sentencing the amount of fixed time an individual should receive which would determine the pathway through IDOC?
 - Different factors in IDOC contribute to the Parole Eligibility Date (PED) to include offender behavior, STG (gang) involvement, program capacity, etc.
 - Concern raised on the percentage of those offenders held past their PED/fixed time for non-violent crimes
- Time for credit served: Concerned about the accuracy of calculating time, judicial time to calculate, and lack of data from outside jurisdictions
 - Multiple methods/processes appear to be utilized to capture the data
 - Difficult to obtain time for credit served if the offender was arrested out of state
 - Recommended to implement a project to improve this process
- Requirement to report alleged violations to the Court
 - A determination should be made on which violations would be reported to the Court versus delegation to the PPO to utilize an incentive/violation response grid
 - Initiation of Probation Violations: The concern was raised on which agency (IDOC or the PA) could initiate violations to the Court
 - Should the PA's office initiate the violation report if they received communication regarding violations? What is the intent of the statute?
- Does 20-219 limit the use of the term unsupervised?
 - What is the appropriate term to use for those convicted, however, not sentenced to the Board of Correction?
 - What agency would have the responsibility to respond and file reports to violations for an offender not on supervised probation?
 - Need to develop concepts/recommendations on practices to delineate the types of supervision and what that would entail
- Would it be beneficial for DWH to co-chair the Community Treatment Sub-Committee?
- Review of the proposed Discharge Recommendation Report
 - The form should also include the rewards/achievements completed by the offender versus just sanctions received
 - Recommendation to include that the offender has completed all Court Order requirements
 - Recommendation to include admissions of drug use versus just positive urinalysis testing
 - Concern that not all urinalysis testing is provided to the PPO by treatment providers
 - IDOC is currently working on obtaining reports from WITS to the PPO that would provide this information with an approximate date of completion by December 2014
 - Delineate the LSIR categories to include the score and the range (medium, medium-high) etc.
 - Include exclusion for those offenders convicted of a sexual crime, violent crime, involved in a PSC
 - Recommendation to draft a letter to all District Judges on the Discharge Recommendation Report to be completed by Mr. Bywater
- Definition of recidivism from IDOC should be revised to reflect those offenders returning to IDOC custody versus incarceration

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- Recommendation to break out the LSIR scores to include the entire range (medium, medium-high)
- Recommendation to add categories of retained jurisdiction, PSC, etc.
- Idaho Criminal Rule 33(e) discussion concerning the use of discretionary jail
 - Concern for the cap of 5 consecutive days-request to have research available to review
 - How would this process effect ex-parte communication?
 - Should PPOs have the delegation to place an offender in jail on DJT without pre-authorization
 - Does placing an offender in jail on an Agents Warrant (AW) followed by removing the AW and replacing it with DJT constitute abuse of power
 - What is the impact to jails outside of a jurisdiction for DJT and what documentation do they require-will they only accept an offender on a warrant versus DJT?
 - Concern raised of probable cause, hearings and time frames

Mr. Bywater will provide the issue specific teams the judicial feedback to incorporate into the work plan and goals. Pattie Tobias reiterated that all recommendations from the teams will need to be vetted through the Felony Sentencing Committee.

Action: Henry Atencio is to provide the Felony Sentencing Committee the rules of the Interstate Compact at the next meeting.

Action: Mr. Bywater is to draft a letter to the District Judges on the Discharge Recommendation Report explaining the form, the process, and the rationale.

Action: Henry Atencio will report back to the Felony Sentencing Committee on a revised recidivism definition for incorporation into the Pre-Sentence Report. He further will report back on the process of the recommendation to break out the Level of Service Inventory – Revised (LSIR) scores by range.

Action: Scott Ronan to provide research on the evidence based best practice for length of time for discretionary jail.

Returning Rider Recommendations

Shane Evans reported on the updated enhanced APSI report format and provided copies to committee members. He asked that committee members provide feedback and stated at this time due to limited data collection he is unable to provide details on the judiciary following the recommendations of the APSI.

He provided the committee with a report of the Rider Reentry Project with specific goals to include:

- Enhance the APSI to ensure timely, concise, and meaningful information is provided to the courts
- Enhance the rider reentry process to aid in reducing recidivism with this population
- Enhance quality assurance and data collection

Shane Evans reported that IDOC is currently working towards enhancements with the rider reentry population to reduce recidivism to include:

- Increasing the amount of transitional funding to 60 days
- Obtaining a new medical contract for additional medication supplies for mental health offenders

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- Increase the continuity of care for special needs offenders for SSI and employment
- Developing a more rigorous investigation process for reentry to PPOs

Action: *Shane Evans will draft a letter to the District Judges to explain the updated, enhanced APSI. He will provide that to Christina Iverson.*

Enhanced Mental Health Assessment Report

Ross Edmonds, DHW, provided the committee a proposed form to replace the letter format for the 19-2524 Mental Health Review/Screening of the GRSS that is attached to the Pre-Sentence Investigation. He stated that the form has been vetted through HB648 Workgroup and requested feedback from the committee members. The committee members stated that the report format was an improvement.

Mr. Ben Skaggs, DHW, reported on the statistics based upon the GRSS:

- 43% of individuals have no mental health concerns
- 42% of individuals have recommendations to the judiciary on mental health issues
- 7% of individuals will require a full mental health evaluation after review
- 7% of individuals are court ordered to receive a mental health assessment

The committee members stated they had concerns on the lack of in depth recommendations contained on the screening to assist with sentencing. The committee recommended that the form contain specific, detailed recommendations on mental health to include medication management. The recommendation from the committee is for the proposed letter to be re-vetted through the HB648 Workgroup to add more specific information on recommendations.

The committee members were concerned that those sentenced to receive mental health treatment do not obtain the services they require to become stabilized in the community. Ross Edmonds stated that DHW does not receive the Court Orders requiring treatment and there is no identifiable process for notification. The committee recommended that the process be evaluated through the HB648 Workgroup to identify a notification procedure as soon as possible. The statute was effective March 2013.

Action: *Ross Edmonds will make adjustments to the proposed report format to provide more in-depth mental health recommendations. The report is to be re-vetted through the HB648 Workgroup and presented to the next Felony Sentencing Committee meeting and/or implemented as soon as possible.*

Pre-Sentence Investigation Process

Judge Wood stated that the Felony Case Flow Workshop convened on April 15th – 16th and identified concerns with the timeliness of the Pre-Sentence Investigation to the judiciary. On average, the length of time for completion of the report is 8 – 10 weeks. The committee discussed contributing factors to include:

- An increase in requesting continuances from investigators
- Conducting the LSIR at the end of the process versus the beginning
- Mental health assessments provided on a timely basis
- Workload versus resources
- An increase in the amount of Probation Violations that require a PSI

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The committee discussed recommendations that would assist with the timeliness of the process.

- Reduce the amount of the documentation required based upon the LSIR score
 - If the results of the score is low, consider an abbreviated PSI that excludes violent/sex crimes
- IDOC to review the current process in District 7 that has reduced the timeframe

Action: The PSI process will be added to a specific issue team under JRI-Phase II.

Mental Health Assessments

Patti Tobias discussed the concerns from the committee that the current process to receive mental health assessments from DHW needs improvement and requires further discussion.

Action: The process for mental health assessments will need to be placed on the JRI Community Treatment Workgroup for exploration.

Voice Stress Tests

Judge Wood stated that there is a concern that voice stress tests are being used in conjunction with polygraphs for sexual offenders and if this is in accordance with the Standards and Guidelines for the Sexual Offender Management Board.

Action: Christina Iverson will forward this concern to the SOMB Chair Shane Evans to be placed on the next board agenda for discussion. Judge Wood will forward documentation referencing the stress tests.

Calculation of Credit for Time Served

The committee discussed the difficulty with calculating credit for time served. The practice of calculation varies between jurisdictions and it is difficult to locate information on time served if the individual was in an out-of-state facility. In some instances, Judges are calculating the credit which adds to their case workload.

Access to Jails

Judge Wood discussed the concern with attorney access to their clients in jails. Henry Atencio further stated that PPOs and PSI Investigators are also experiencing time delays. The committee will continue to explore this.

Judge Shindurling thanked everyone for their time and work and motioned for adjournment. Judge Nye motioned, Judge Stegner 2nd the motion with the motion carried.

Next Scheduled Meetings/Conference Calls-Webinar

June 12, 2014: Felony Sentencing Committee Meeting

July 24, 2014: Conference Call-Webinar

August 13, 2014: Conference Call-Webinar

September 23, 2014: Judicial Conference

October 30, 2014: Felony Sentencing Committee Meeting

January 21, 2015: Felony Sentencing Committee Meeting