

FELONY SENTENCING COMMITTEE

January 14th, 2015 – 12:30pm – 3:30pm

Riverside Hotel- North Star Room

Minutes

The Committee observed a moment of silence for the victims in Moscow, Idaho

MEMBERS:

Chair Justice Horton
Judge Lansing
Judge Haynes
Judge Stegner
Judge Kerrick
Judge Stoker
Judge Nye
Senior Judge Shindurling
Michael Henderson
Scott Ronan

GUESTS:

Chief Justice Burdick
Patti Tobias
Senior Judge Wood
Senior Judge Wilper
Steve Bywater
Kerry Hong
Ryan Porter
Christine Iverson
Director Kevin Kempf
Deputy Director Henry Atencio
Chief Terry Kirkham
Chief Shane Evans
Judge Norton
Judge Greenwood
Judge Bail
Judge Moeller
Judge Southworth
Judge Buchanan
Judge Ford
Judge Hoagland
Judge Anderson
Council of State Governments- Elizabeth Lyon
Council of State Governments- Erin Harbinson
Council of State Governments- Allison Berger

Important Dates:

March 2, 2015	11:30am-1:30pm	Conference Call
May 18, 2015	11:30am-1:30pm	Conference Call
June 15, 2015	9:30am-3:30pm	Idaho Supreme Court
August 3, 2015	11:30am-1:30pm	Conference Call
September 21-23, 2015	TBD	Judicial Conference-District Judges Breakout
September __, 2015	6:00pm-8:00pm	FSC Dinner meeting
December 15, 2015	9:30am-3:30pm	Idaho Supreme Court
January 25-27, 2016	TBD	District Judges Conference- JRI Update
January __, 2016	9:30am-3:00pm	Idaho Supreme Court

Welcome and Introductions

Justice Horton introduced Steve Bywater to the Committee and guests in attendance.

FELONY SENTENCING COMMITTEE

Justice Reinvestment Initiative-Implementation Overview and Update

Steve Bywater provided an overview of the Justice Reinvestment Initiative (JRI) - Phase II. Steve reviewed the soon to be published IDAPA Supervision/Matrix Rules and the Limited Supervision Unit Rules.

Steve reviewed the inclusionary and exclusionary criteria for transfer into the Limited Supervision Unit (LSU), as well as, the supervision processes. Steve reported that the Idaho Department of Correction (IDOC) is drafting policy for the LSU that will address frequency of drug testing, contacts, drug testing, and reporting. There was some discussion regarding a proposed monthly report that IDOC would distribute that will identify by district, judge, case number, and probationer those that have transferred in and out of the LSU. Concern was raised if this report would constitute ex parte communication if not provided to all parties. It was suggested that the information could be made public or available on a website for all parties to access.

There was concern that sex offenders could potentially be placed on the LSU; however, Director Kempf articulated that sex offenders will not be in the LSU without the most intensive scrutiny. Further, the Director suggested that through policy, they may opt for the signature of the Director on any sex offender case recommended for transfer to the LSU.

Discharge from Probation

IDOC is currently reviewing cases and starting to refer probationers for early discharge. As the funnel narrows in the possible cases that could be referred, early observations are that those that still owe legal and financial obligations may not be referred.

IDOC received feedback from the judges that the early discharge report needs to clearly identify it is defendant initiated or IDOC initiated. District Judges acknowledged that clerk training is important. Kerry Hong indicated that a Uniform Business Practice (including District 5 forms/orders) will be developed as soon as possible.

Draft Idaho Criminal Rule 33 Addressing Discretionary Jail Time

Kerry Hong provided an update on areas of interest to the Committee. Kerry clarified that by definition, sanctions under a Problem-solving Court (PSC) are not included in Rule 33 draft. As part of SB1357 the statutory language indicates that a jail sanction would not exceed 3 days, but the draft rule identifies 5 days. Kerry explained that the Criminal Rules Advisory Committee was purposeful in their draft rule language to limit jail sanctions to five days by rule with full knowledge of the statutory language.

Judge Stegner motioned to modify the language in the proposed ICR 33- section e, subsection 3 - to reflect that the jail sanction shall not exceed 3 days to be consistent with the statute. Seconded by Judge Shindurling. Motion carried.

Justice Reinvestment Initiative National Summit Observations and Comments

Justice Horton described the training and shared his observations that the Justice Reinvestment Initiative from other states means different things. The approaches varied state by state significantly but with the similar core concepts. Kerry Hong reported that other states did not see the same level of involvement and support from their judiciaries on the same level as Idaho. Judge Moody articulated that the focus on “reinvestment” was difficult to identify with individual state legislatures. Those that attended agreed that the main takeaway is that the judiciary and other key stakeholders need to continue to emphasize the “reinvestment” piece of JRI to the legislature.

FELONY SENTENCING COMMITTEE

IDOC Training Schedule

Director Kevin Kempf shared the IDOC Level of Service Inventory -Revised (LSI-R) training schedule. IDOC is in the process of training every single leadership staff and are now focusing on Probation and Parole staff throughout the entire system, with a target date of completion of July 1st, 2015. Director Kempf also highlighted that Motivational Interviewing (MI) training for all existing staff and for those in the academy (MI will be added as a training item for all future officers) will be completed by July. Lastly, Director Kempf identified that training for probation officers on use of the Idaho Response Matrix will begin in February with a target completion for July 2015; annual trainings will be conducted thereafter.

Re-norming of the Level of Service Inventory-Revised (LSI-R) for Idaho

Director Kempf reported that the re-norming report will be delivered January 21st. The Director reported that the re-norming will not change significantly based on the preliminary information provided. He indicated that there may be more offenders that would be considered low risk. The LSI-R will be re-normed every five years in Idaho.

Parole Board

Proposed rules have been filed and policies developed in conjunction with parole experts from the Council of State Governments. **A full briefing of the parole board and parole board impacts from JRI should be considered for a future Felony Sentencing Committee agenda.**

Behavioral Health Gap Analysis

Director Kevin Kempf reported that the gap analysis will be delivered as a framework for future efforts due to challenges with the data. The report will recommend to the legislature that decisions are not made based on the initial report. Judge Bail cited Dr. Ed Latessa and his assertion that community based treatment is the most effective in her comments expressing the importance of an expansion in resources for community based treatment.

Call for additional comments from all district judges on all JRI items

Judge Bail commented that the easiest way to get a bang for the buck is to reexamine the mandatory minimums. In Judge Bail's experience the only time she sentences a low risk/low need offender to prison rather than probation is on a mandatory minimum.

3:12pm-Motion to adjourn by Judge Stegner-with unanimous consent-adjourned

FELONY SENTENCING COMMITTEE

January 15th, 2015- 9:30am-12:30pm
Idaho Supreme Court – Lincoln Room
Minutes

MEMBERS:

Chair Justice Horton
Judge Lansing
Judge Haynes
Judge Stegner
Judge Kerrick
Judge Owen
Judge Stoker
Judge Nye
Senior Judge Shindurling
Michael Henderson
Scott Ronan

GUESTS:

Chief Justice Burdick
Patti Tobias
Senior Judge Wood
Senior Judge Wilper
Steve Bywater
Kerry Hong
Ryan Porter
Christine Iverson
Deputy Director Henry Atencio
Chief Terry Kirkham
Chief Shane Evans
Council of State Governments- Elizabeth Lyon
Council of State Governments- Erin Harbinson
Council of State Governments- Allison Berger

Welcome and Introductions

Chair Justice Horton called for a motion on an addendum on the October 2014 Felony Sentencing Committee minutes and for consideration of adoption for the November 2014 minutes. **Judge Nye motioned to adopt the addendum; seconded by Judge Kerrick. Motion Carried.**

Judge Lansing motioned to approve the November 20th, 2014 Felony Sentencing Committee minutes; seconded by Judge Stoker. Motion carried.

FELONY SENTENCING COMMITTEE

Agreement of Supervision

Steve Bywater reviewed submitted comments from district judges regarding the most recent draft of the Agreement of Supervision (AOS) and called for any suggested changes.

Condition 10: Needs to reflect the misuse of prescribed medication

Judge Stegner motioned to change condition #10 to read, “Controlled Substances: I will only purchase, possess or consume controlled substances lawfully prescribed for me, and then, only in the manner prescribed. Nor will I use or possess any substance my probation/parole officer forbids me from using or possessing.” Judge Owen seconded. Motion carried.

Condition 11: Needs to remove “I understand” language and to consider refusal to test.

Judge Lansing motioned to change condition #11 to read, “Substance Abuse Testing: I will submit to any test for alcohol or controlled substances as requested and directed by any IDOC agent or other law enforcement officer. A dilute or adulterated sample, or a failure to provide a sample, will be deemed a positive test. I agree that I may be required to obtain tests at my own expense I hereby waive any objection to the admission of those blood, urine, or breath test results presented in the form of a certified affidavit.” Judge Stegner seconded. Motion carried.

Condition 18: Needs to be removed as a condition, but reference to receipt of the Idaho Response Matrix needs to be included as per statute.

Judge Haynes motioned to eliminate condition #18 and amend the final AOS statement to read the following, “I have read or have read to me the above agreement and have been provided with a copy of the Idaho Response Matrix. I understand and accept these conditions of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to my sentencing/paroling authority.” Judge Owen seconded. Motion carried.

Judge Owen motioned to approve the amended Agreement of Supervision. Judge Stegner seconded. Motion carried.

Data Metrics and Reporting

Scott Ronan reviewed the preliminary draft of data and reporting concepts important to district judges. There was feedback on expanding populations (all three rider options) and lining up terminology for consistency (rather than 19-2524 as a population, it should be called treatment supervision).

The previous day, Director Kevin Kempf identified that a singular or common report has been discussed that could be shared with IDOC and the judiciary for consistent reporting. The Director also asked for feedback from district judges.

It was suggested to add a new report relating to caseloads per officer and by district. The draft should also include considerations for a real-time (potentially online) rider bed space report. The Committee also recognized the importance of receiving the parole caseload reports when prepared and when they are made available annually thereafter. Lastly, it was articulated that all key stakeholders are interested if there will be a reduction in time on probation for offenders as a result of an implemented JRI.

FELONY SENTENCING COMMITTEE

District Judge Discharge Report Pilot

Judge Stoker volunteered to participate in a pilot wherein IDOC would submit a discharge report for probationers for judicial review. Judge Stoker agreed to review the cases in a timely manner in an effort to realize to obtain the effective caseload sizes as identified through statute. Terry will work with Judge Stoker and Dawn Anderson (IDOC District 5 Manager) to submit discharge requests and capture those that have been discharged and those that haven't and why, to inform the larger process.

Credit for Time Served-Update

Judge Wood reported that the Idaho Supreme Court has approved the legislative changes and the statutory changes have been distributed to legislative services. The Idaho Prosecuting Attorneys Association has issued a statement responding to the potential changes. All district judges will receive a copy of the proposed bills and the prosecutors' objections.

Pre-Sentence Investigation Process and Report

Scott Ronan informed the Committee that the HB 648 workgroup is developing potential changes in the following areas:

- 1) to the MH recommendations/report that will address mental health risk
- 2) in the algorithm for determining the need for a full mental health evaluation
- 3) in the process to allow an override for the mental health reviews
- 4) to the PSI order, providing an opportunity for the Court and parties to identify collateral information for the DHW-mental health review unit to follow up on

These changes are meant to address concerns expressed from district judges regarding the consistency, quality, and timeliness of evaluations attached to the PSI report. During the development it will be helpful to receive some focused feedback in quick fashion from a judicial perspective, and to that end, Judges Owen, Bevan, and Dunn have agreed to provide judicial input on any potential changes towards the March 2nd Felony Sentencing Committee meeting. In addition, this effort will work parallel to a PSI revision and will communicate with those tasked with redesigning the Pre-Sentence Report.

Action: Scott Ronan will provide the Committee prior to the March 2015 meeting a packet of draft changes to the mental health information provided as part of a Pre-Sentence Report

Felony Sentencing Committee- Justice Reinvestment Initiative Phase II Principles

Scott Ronan reviewed a draft of Felony Sentencing Committee JRI Phase II principles. This document would formalize the Committee's views regarding the implementation and provide an opportunity to emphasize the judiciary's support for IDOC to receive critical resources for the successful implementation of JRI. The Committee also articulated that JRI has been a primary focus for the last two years and although district judges have a vested interest in the success of JRI, there are other matters relating to the Felony Sentencing Committee order that should be addressed at future meetings.

Sex Offender Management Board (SOMB)

Shane Evans provided an overview of the charge of the Board and accomplished tasks. Of these, the SOMB was tasked to revise the sex offender registration methodology and process. Shane highlighted that the SOMB had responded to the judicial comments stemming from a webinar addressing the tiered sex offender registration. Shane addressed concerns of time on registration by identifying that the research tells us that their risk drops significantly after ten years as does the probability of recidivism. Shane also addressed the concern that funding

FELONY SENTENCING COMMITTEE

for two support staff would be better spent for probation and parole. A written response from the SOMB will be finalized and distributed to all district judges.

Action: Shane will provide a written response from the Sex Offender Management Board to the judiciary and will ask for any following comments from district judges to be in 2-3 weeks.

Motion to adjourn by Judge Stegner and Judge Owen seconded. Motion carried.

12:30pm Adjourn

Important Dates:

March 2, 2015	11:30am-1:30pm	Conference Call
May 18, 2015	11:30am-1:30pm	Conference Call
June 15, 2015	9:30am-3:30pm	Idaho Supreme Court
August 3, 2015	11:30am-1:30pm	Conference Call
September 21-23, 2015	TBD	Judicial Conference-District Judges Breakout
September __, 2015	6:00pm-8:00pm	FSC Dinner meeting
December 15, 2015	9:30am-3:30pm	Idaho Supreme Court
January 25-27, 2016	TBD	District Judges Conference- JRI Update
January 28 th , 2016	9:30am-3:00pm	Idaho Supreme Court