

FELONY SENTENCING COMMITTEE

June 15, 2015
9:30am – 3:00pm

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

Important Dates:

August 3, 2015	11:30am-1:30pm Conference Call
September 21-23, 2015	District Judges Breakout- Judicial Conference
September 22 nd , 2015	6:00pm-8:00pm FSC Dinner meeting
December 15, 2015	11:30am-1:30pm Conference Call
January 25-27, 2016	District Judges Conference
January 28, 2016	9:30am-3:00pm Idaho Supreme Court

GUESTS:

National Center for State Courts-Patti Tobias
Senior Judge Wood
Steve Bywater
Kerry Hong
Ryan Porter
Christine Iverson
Idaho Department of Health and Welfare-Chief Administrator Ross Edmunds
Candace Falsetti
Idaho Department of Correction-Deputy Director Henry Atencio
Idaho Department of Correction-Deputy Chief David Birch
Idaho Department of Correction-Whitney Ascuenza-Bolt
Council of State Governments: Justice Center-Erin Harbinson

Welcome and Introductions

Chair Justice Horton led the introductions and called for a motion on the March 2nd, 2015 Felony Sentencing Committee conference call minutes. **Judge Lansing motioned to approve the March 2nd meeting minutes. Judge Owen seconded. Motion carried.**

SB1357 Rules & Polices

The Limited Supervision Unit (LSU) Policies

Steve Bywater provided a summary of the Idaho Department of Corrections Limited Supervision Unit (LSU) Standard Operating Procedures (SOP) and requested committee feedback on drug screening, disqualifying factors, and early discharges. The SOP was adopted April 30, 2015.

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- **Drug Screening:** The Standard Operating Procedures (SOP) language states that a candidate needs to have a documented history of negative urinalysis results in the past 90 days to be considered for LSU. A negative urinalysis is defined as one test in the last 90 days.
 - The language in the SOP needs to further specify that a candidate will have no positive urinalysis results in the past 90 days. Deputy Director Henry Atencio stated that will be added.
 - Judge Kerrick voiced concern over the lack of frequency for alcohol testing for those supervised for DUIs. Specifically, is it the intent of IDOC to provide standards and frequency in policy for testing? Deputy Chief David Birch stated it will depend on the level of treatment and history of abuse. Currently there is no standard identified in policy to develop a level of frequency for testing. Henry stated that individuals are reviewed on a case by case basis in regards for appropriateness for LSU that includes testing.
 - Kerry Hong suggested that the IDOC Supervision Standards SOP could be reviewed to include specific language regarding testing frequency.

Action: Scott Ronan will track drug testing frequency on agenda for future meetings.

- **Disqualifying Factors from LSU:** Henry discussed the new limitation of “within 24 months” regarding the commission of a felony for consideration to LSU. This would allow sufficient time for a PPO to assess an individual’s ability to comply with conditions of supervision after an adjudication of a new felony prior to submission for LSU.
- **Early Discharge:** The early discharge outlines the process for both probationers and parolees; however, it does not address parolee assignment to LSU. Henry stated this was an oversight and will be remedied. The Committee discussed the LSU unit numbers and the ability for IDOC to see a reduction in caseload size.
 - David Birch briefed that there are currently 800 individuals on LSU and the department has requested an additional administrative assistant to conduct data entry. The LSU has 90 to 100 referrals per month and the projected size of the unit is 2,000 to 3,000. Henry stated that as the unit grows, there will be a need for additional resources to manage the numbers. There is no direct impact on current caseload sizes in the districts; however, it is anticipated that as LSU continues to grow than a reduction of caseloads should be observed.
 - Judge Owen asked for clarification on the number of individuals a PPO can refer per month. Henry stated that each officer is to refer 2 individuals per month, but if there are more than 2 eligible, than officers can refer more.
 - Judge Owen stated that he has 3 – 7 early discharge requests per week. If he denies the request, then would IDOC have concerns with the judge referring to LSU? David stated that each denial received to IDOC is automatically reviewed for the LSU unit.

Use of Approved Order on Request to Terminate Probation

The Committee discussed methods of communication and dissemination of a statewide order. David Birch briefed that it is difficult getting orders back from the courts with the decision to grant/deny termination of probation. IDOC would like to enhance the data collection of why discharges are denied to provide feedback to the IDOC District Managers for inclusion into PPO training.

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- Judge Haynes requested that a check box is added for objection/no objection to also allow a space for response
- Chair Justice Horton requested that the middle check box for “denial without explanation” is deleted. Instead, add the language for grants/denies for the following reasons.
- Judge Kerrick stated that initially the clerks were filing the report due to lack of clarification on the form. That has since been corrected.

Action: Scott Ronan will send request form to all District Judges for feedback.

Use of Discretionary Jail Time and Draft Order

David Birch asked the Committee to provide comments on the process and the standardized notice for discretionary jail time (DJT). He stated that all districts will be aligned with only utilizing 2 days of DJT. Kerry Hong stated that the rule and statute are now aligned and will be effective July 1, 2015.

- Judge Haynes requested dissent on the record that the Administrative Conference voted to amend no more than 3 consecutive days with the consensus that the 3 days is inappropriate and not a best practice. It has been addressed that 3 days is best practice; however, what hasn't been addressed is the reference for the best practice or the offender type. He stated that both limits trial judge's discretion and need to be amended to remove the 3 days.
- Judge Kerrick stated that the pronoun language needs to be consistent in using his/her versus the.
- Chair Justice Horton inquired if attending treatment has been an issue with DJT. Judges have been including in the order for DJT to attend treatment and jails have been responsive.

Steering Committee Update

Patti Tobias provided an update for the Committee on the makeup and frequency of the Justice Reinvestment (JRI) Steering Committee and engaged the committee on additional SB1357 areas of interest.

- **Percentage of Time Served Report and Letter:** There was considerable concern that inmates were serving 207% of their fixed term. IDOC and The Council for State Governments have recalculated the figure and fiscal impact. It now reflects that inmates, for drug and property offenses, are serving 149% of the fixed portion of the sentence with a projected savings of \$134-157 million dollars. IDOC and the Commission of Pardons and Parole are working together to identify areas to streamline the process and Patti thanked everyone for their teamwork and cooperation.
 - Judge Shindurling stated he continues to be concerned about the meaning of inmates serving a percentage past their fixed time and the implications to JRI. He stated that in his experience the fixed time is already exhausted by the time an inmate violates and is sent to prison. Patti Tobias stated it is imperative that the time is credited and is accurately calculated so they can be released shortly after prison arrival. IDOC and the Commission of Pardons and Parole have identified that their current policy requires an inmate to serve at least 6 months before consideration for release. The policy is being reconsidered.
 - Judge Lansing inquired if the same analysis is being conducted for those serving between 100 – 150% of their fixed time? Patti Tobias stated that presently the data collection is manual and time consuming to obtain. Presently, the Commission of Pardons and Parole is focusing on the statutory requirements; however, hope to have automation to extend to further analysis for those in that range.

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- **LSI-R Validation Study:** SB1357 requires the LSI-R to be revalidated every 5 years. There remain three questions that include methodology, Problem Solving Courts, and Misdemeanor.
 - Erin Harbinson stated that IDOC did conduct the methodology that included the Problem Solving Court probationers. Those supervised on misdemeanor probation were not included.
- **Inmate Restitution Collection:** SB1357 requires that restitution will be collected while an inmate is incarcerated. IDOC stated that only Ada County has provided the orders for restitution. Patti Tobias inquired on the process from the judicial districts. Generally, an order for restitution is included in the Judgment of Conviction (JOC). If there is a concern on restitution, then an order follows the JOC.

Action: Patti Tobias, Kerry Hong, and Scott Ronan will map out process and potential changes to the order to include restitution.

- **Program Assessment Report:** Erin Harbinson stated that the Program Assessment Report is due November 2015 that will include available programming in the community and correctional facilities. The areas will review the target population, specific programs that are offered, and the quality of program delivery. The Council of State Governments (CSG) will conduct observations with a review of data based upon the criminogenic risks and needs profile. The draft will be completed by August 2015. Deputy Director Atencio requested from CSG that the draft is shared with stakeholders that include the judiciary and IDOC staff.
 - Chair Justice Horton inquired if the report will identify gaps within the programs. Patti Tobias and Deputy Director Atencio stated the statutory GAP analysis report is due in January with an independent group (WICHE) as a preliminary analysis to help guide budget requests.
- **Steering Committee Composition:** Patti Tobias stated that additional members will be added to the Steering Committee with IDOC Director Kempf as Chair that includes the Department of Health and Welfare, the Idaho Criminal Justice Commission Chair, and a representative from the Felony Sentencing Committee to ensure coordination and communication between branches of government.

SB1357 –IDOC Training & Regional Briefing Update

David Birch stated that training on Motivational Interviewing/LSI-R began in August 2014 with IDOC leadership. He stated that all effective department staff will be trained by the first full week of July 2015.

The second portion of training will incorporate the Idaho Response Matrix (IRM) with anticipated training for IDOC staff complete by the end of July 2015. IDOC will conduct regional training briefings for stakeholders (district judges, trial court administrators, prosecution, and defense) at each District Court that will incorporate the IRM and JRI items. The training may be extended to the District Judges Conference in September 2015 as a break out session.

The Agreement of Supervision

David Birch discussed the progress of the new Agreement of Supervision (AOS) for adoption for all probationers. Michael Henderson discussed using the new AOS with those currently on probation and inclusion of the IRM that officers have not been trained on and if it is problematic to have an offender review the new AOS with the PPO versus the Court.

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- Judge Stoker stated he makes the AOS as an exhibit in the JOC. Henry Atencio stated that this process was originally identified as a potential statewide model.
- Judge Owen indicated that his JOC is largely a duplicate of IDOC's AOS.
- Kerry Hong inquired if a hearing is required for existing probationers signing the new AOS. Judge Kerrick stated that if the new AOS includes the IRM that it could raise concerns.

Action: Scott Ronan will send Judge Stoker's JOC as an example with additional IDOC language to committee members prior to the next FSC.

Proposed Data Metrics

David Birch provided an update on the progress towards the development of the report and timelines for availability to Committee members. A caseload data dashboard report is in development and Henry will send this to Judge Wood. The Supreme Court Planning and Research Department remains willing to provide data elements when called upon for tracking JRI items. Further discussion will be on the frequency of reporting and incorporation of recidivism data.

LSU Discharge Reporting

David Birch requested feedback from Committee members on the report format and information. Judge Owen requested that a summary sheet be provided with the report to include if IDOC is reaching the target population. Patti Tobias requested that the report be sorted by judge name and that it is sent to all district judges.

Action: David will make the adjustment and forward to Scott Ronan for dissemination to District Judges.

Pre-Sentence Investigation-Mental Health Revisions

Ross Edmunds reviewed the suggested changes for the mental health recommendation report, the algorithm for determining the need for a full mental health review, the process to allow an override for the review, and the Pre-Sentence Investigation Order regarding collateral information.

- Pilot project on the new 19-2524 report for mental health that included Judge Owen, Judge Bevin, and Judge Dunn is completed.
- Candace Falsetti discussed the issue of self-reporting and the concern that was raised by Judge Owen on identification of an individual that presents possible mental health issues in court. Candace stated it was difficult to verify the self-report information.
- Judge Shindurling stated that the review conducted by the DHW central office is not as helpful as the local review when recommendations are to continue with medication management and treatment. Ross Edmunds stated he would review for consideration for regions to better provide treatment in the community and what possible role judges could do to ensure delivery of services.
- IDOC stated that there are issues with the order process and getting information for DHW. Kerry Hong further asked about collateral information and capturing the 5% of the cases that judges are ordering at the time of the PSI. Scott Ronan stated the HB648 Workgroup will further discuss this concern.
- Judge Owen stated that he felt the process from the DHW on the algorithm, report, and override should move forward.

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The Pre-Sentence Investigation Paperless Pilot

Whitney Ascuenza-Bolt provided a pilot report with recommendations for a statewide paperless Pre-Sentence Report. The pilot currently has 23 judges participating. The PSI is password protected and is sent as an attachment to all parties (Judge, Prosecution, and Defense). The PSI can be transmitted electronically 375 pages at a time. If a PSI is larger than a second password protected e-mail is sent with the additions.

- Kerry Hong stated that the new system, Odyssey, will be able to support digital PSIs as an electronic document to the “event” of the submission of the PSI.
- At a minimum, Adobe Acrobat VII is required to participate in the paperless PSI. The District Judge Judicial Conference is an opportunity to provide education for Adobe. Further, it would be beneficial for those piloting the project to provide a presentation on the experience with an opportunity for discussion. Kerry Hong sent the request to Judge McLaughlin with Judicial Education.

Sex Offender Management Board-Tiered Registration

Christine Iverson reviewed statutory changes that have provided the catalyst for formation of the Sex Offender Management Board (SOMB) and the need to revise the registration process.

- The SOMB revised the registration to a five-tiered process that is risk based and includes static and dynamic factors for consideration on placement of the tier. SOMB provided a fiscal impact statement that included \$297,000 annually for review of placement change requests. The legislation did not pass during this session and will not be presented until the 2017 legislative session.
- Christine Iverson reviewed the judiciary comments regarding the proposed legislation that included concerns on the fiscal impact, indigent offenders, and the process which appears confusing.
- The SOMB created a Sub-Committee to refine the proposed legislation and streamline the process. She requested that the committee consider a judiciary representative to serve on the Sub-Committee which meets monthly. Judge Owen will speak with judges in the 4th Judicial District for interest to volunteer.

Retained Jurisdiction Feedback

Deputy Director Atencio solicited feedback from the committee on the Trio of Options and further direction.

- Judge Nye expressed concern about the lack of overall options for the trio.
- Judge Shindurling stated that the options are not listed on the IDOC website.
- Judge Kerrick expressed the concern if CAPP is too short.
- Judge Owen inquired on the data available (recidivism) to support if the Trio of Options is a better alternative than probation.
- Scott Ronan requested that IDOC review the need for Safe and Sober Housing and Residential treatment.

Action: Henry Atencio committed to obtaining data for the next FSC meeting on the following:

- **Identification of the Reentry Process**
- **Strategic Planning**
- **Volunteers to assist with Reentry**

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Committee Priorities

Chair Justice Horton requested feedback from committee members on priorities for the coming year. The discussion areas included the following for possible consideration:

- Unsupervised Probation
- Pretrial-Should the FSC have a presentation/update from Judge Cawthon on the Pretrial Justice Planning Committee
- Gap Analysis Review
- Individual Sentence Practices and what works
- Ideas to enhance communication with all judiciary members on issues presented in the FSC meeting
- Penalties

The Committee will continue to discuss the priorities during future FSC meetings.

Judge Nye motioned to adjourn and Judge Owen seconded. Motion carried. Meeting adjourned at 3:00 p.m.

Next Meeting:

August 3rd, 2015 Conference Call

11:30am-1:30pm