

**ANNUAL REPORT  
OF THE  
COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION  
TO THE ILLINOIS JUDICIAL CONFERENCE**

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Hon. Walter Williams

October 2004

## I. STATEMENT ON COMMITTEE CONTINUATION

The Committee on Criminal Law and Probation Administration (“Committee”) is charged with providing recommendations regarding the administration of criminal justice and the probation system. The Committee believes the Judicial Conference should maintain a committee to study these issues during the coming Conference year.

The Committee is working on a number of significant issues of a continuing nature, including:

- a comprehensive review of probation programs and practices
- examination of new issues affecting criminal law and procedure
- review of proposals to amend Supreme Court Rules governing criminal cases

Given the importance of these tasks, the Committee requests that it be continued in the coming conference year.

## II. SUMMARY OF COMMITTEE ACTIVITIES

**A. Probation Programs.** In accordance with its charge, the Committee continued to review matters affecting probation programs during the current Conference year. In recent years, the Committee has reviewed broad issues, such as the Broken Windows approach to probation (see 2003 report), while also focusing on specialized probation programs that attempt to address problems unique to specific types of offenders. For the current Conference year, the Committee is providing updates on several probation issues.

1. Mental Health. The Committee's study of probation programs for persons with mental health problems continued during the current Conference year. The Committee found that judges could benefit from training on the complex mental health issues that are often entwined with a criminal case. The Committee is recommending the addition of a two-day seminar on mental health issues to the program of continuing education for judges. Further discussion of this issue is included in the report of the Mental Health Subcommittee (Attachment 1).

2. Sex Offender Programs. In the last Conference year, the Committee reviewed significant new legislation affecting the evaluation and treatment of sex offenders, including sex offenders placed on probation. P.A. 93-616 required evaluation and treatment of felony sex offenders and juvenile sex offenders sentenced to probation or discharged from prison and placed on mandatory supervised release.

The Committee's 2003 annual report included a Subcommittee report that made several recommendations, including extension of the sex offender evaluation requirement to all sex offenses, use of a uniform sex offender probation order, and consideration of longer probation terms for sex offenders.

During the current Conference year, the sex offender management landscape changed once again with the passage of House Bill 7057 and a major redraft of Sex Offender Management Board rules.

House Bill 7057 makes a number of changes to the sex offender sentencing scheme established by P.A. 93-616. For example, House Bill 7057 provides that an order of probation for a sex offender may be conditioned upon successful completion of treatment, refraining from contact with persons specified by the court, and being available for evaluations and treatment programs.

House Bill 7057 also provides that a presentence investigation (PSI), including an approved sex offender evaluation, is not mandatory for a felony sex offender unless probation is being considered. P.A. 93-616 had required a PSI and sex offender evaluation in every felony sex offense case, even when the defendant was to be imprisoned in the Department of Corrections. In addition, the bill provides that the PSI for a sex offender must be completed within 60 days (was 30 days) of a verdict or finding of guilty, and that sentencing on the offense must be done within 65 days (was 45 days).

House Bill 7057 eliminates the \$10 increase in probation fees that was intended to fund sex offender evaluation and treatment. However, House Bill 7057 adds a provision allowing the court or probation department to assess fees on certain sex offenders to pay for all of the costs of the offender's treatment, assessment, evaluation for risk and treatment, and monitoring, based on the offender's ability to pay. The bill also provides that payment of these sex offender fees may be required as costs are incurred or under a payment plan.

With respect to sexually violent persons, House Bill 7057 deletes a provision that limited respondents to use of evaluations conducted by an evaluator approved by the Sex Offender Management Board and in conformance with standards developed under the Sex Offender Management Board Act.

In 2003, the Sex Offender Management Board adopted a comprehensive set of rules to govern evaluation and treatment of sex offenders. On May 27, 2004, the Sex Offender Management Board repealed those rules and adopted a new set of interim rules. The Sex Offender Management Board has proposed adoption of final rules identical to the interim rules.

Given the significant changes in the law regarding sex offenders during the current Conference year, the Committee is making no recommendations at the present time, but will continue to study the issue.

3. Domestic Violence. During the Conference year the Committee continued to review probation programs for domestic violence cases. In the previous Conference year, the Subcommittee assigned to study the issue determined that cognitive and behavioral training may be effective with domestic violence offenders, but found that the training is not always available to probationers because of the cost of private programs and the lack of in-house training resources in most counties. During the current Conference year, members of the Subcommittee have

contacted the Illinois Family Violence Coordinating Council to discuss the creation of a circuit-wide specialized domestic violence probation program. Those discussions are ongoing.

**B. Youthful Offender Programs.** The Committee is recommending the creation of a youthful offender program that will address crime by youthful offenders in ways that will protect the public and rehabilitate the offender. The Committee believes that it is particularly important to provide youthful offenders with the opportunity to avoid the stigma of a criminal conviction. Non-violent youthful offenders who demonstrate the ability to comply with the requirements of the court and to become productive, law-abiding citizens will have a much better chance of long-term success without the burden of a record of conviction. The Juvenile Court Act of 1987 provides such an opportunity for minors, and adults who commit misdemeanors and lesser offenses may be dismissed without conviction or permanent record through the use of court supervision.

The Committee is submitting a model youthful offender statute (Attachment 2), which would authorize a sentence of "youthful offender supervision" for young offenders who have committed non-violent, probationable felony offenses. The model statute provides that conditions of youthful offender supervision may include any standard term of probation, conditional discharge or traditional court supervision, other than a condition that would involve imprisonment in the Department of Corrections (DOC). The restriction on imprisonment is intended to limit contact between persons in the youthful offender program and older and more dangerous inmates.

Upon successful completion of a sentence of youthful offender supervision, the court would have the discretion to discharge the offender and order the charges dismissed. Upon discharge and dismissal, the offender's records would be sealed. The court would also have the option of entering a judgment, with the youthful offender supervision to stand as the (completed) sentence.

Entry of judgment and sentence would constitute a conviction. No youthful offender sentence would be terminated without a specific determination by the trial court.

The Committee will continue to study youthful offender sentencing in the coming Conference year, and will work to refine and improve the model youthful offender statute that is included with this report.

The Committee finds that a youthful offender program would provide the trial courts with a useful alternative to traditional sentencing. The Committee urges the adoption of such a program as a means of punishing and preventing crime that has the potential to provide a good outcome for the offender and the community.

**C. Proposed Supreme Court Rule 604 - Interlocutory Appeals by Municipal Prosecutor.** During the 2002 Conference Year, the Committee considered a proposal to amend Supreme Court Rule 604 to permit municipal prosecutors to appeal certain adverse rulings (Attachment 3). The Committee recommended approval of the proposal.

In reviewing the proposed amendment to Rule 604, the Committee examined several broader questions relating to municipal prosecutions. The Committee has serious concerns

regarding the expansion of municipal prosecutions. One concern addressed by the Committee is that on occasion municipalities will prosecute offenses that are jailable, when they do not have the ability to ensure execution of a sentence of incarceration upon conviction. With respect to offenses subject to mandatory jail sentences, the Committee believes municipal prosecution without facilities for incarceration is improper.

The Committee is also concerned that, in some areas, municipal prosecutions are crossing the line between quasi-criminal ordinance prosecutions and administrative enforcement of the laws. The Committee notes that the concept of using administrative courts or other lesser tribunals conflicts with Constitutional provisions establishing a unified court system in Illinois.

Finally, the Committee recognizes that the impetus behind the expansion of municipal prosecutions and attempts to create quasi-courts is the fundamental problem of financing courts and law enforcement through fees and fines. Local government revenues from fines are often reduced when additional statutory fees are imposed on an offender. The Committee believes questions regarding add-on fees and penalties, as well as the broader issue of state versus local and fee-based funding of the courts, deserve further study.

**D. Criminal Law Revisions.** The Committee continues to support revision of Illinois criminal law statutes to simplify and clarify existing law, to provide trial courts with a range of effective sentencing options, and to provide trial judges with the discretion essential to a fair and effective system of criminal justice. The process by which necessary changes to the Criminal Code may be made is unclear, in part because of the amount of work that would be necessary. The Committee will continue to study this issue in the coming Conference year.

**E. Global Positioning Systems.** As part of its activities during the current Conference year, the Subcommittee on probation programs for gang offenders examined the use of global positioning technology as a way of improving electronic monitoring of probationers. A report on the use of global positioning technology to monitor probationers is appended hereto as Attachment 4.

**F. Confrontation Clause Issues.** The recent U.S. Supreme Court ruling in the case of *Crawford v. Washington* significantly changed the way courts will review Confrontation Clause issues. A Subcommittee has been appointed to review the impact of the decision, and will report on the matter in the coming Conference year.

**G. IPI Instructions.** During the Conference year, the Committee reconsidered its proposal to add a cautionary jury instruction on informants. The proposal would amend the existing cautionary instruction on accomplices (IPI Criminal No. 3.17) to provide that the testimony of a witness, other than an expert witness or law enforcement officer, who provides evidence against a defendant for pay, leniency, immunity from punishment, vindication or any other personal

advantage is subject to suspicion and should be considered with caution. The Committee agreed to resubmit the proposal in light of statutory changes concerning informants in capital cases and continuing interest in problems associated with the use of informant testimony. The proposal was not approved by the IPI Criminal Committee.

### **III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR**

During the next Conference year, the Committee intends to continue its review of probation programs and practices. The Committee will also study ways to simplify and clarify criminal law statutes. The Committee will also continue to review the existing Supreme Court Rules on criminal cases, and consider new and pending proposals to amend the Rules.

### **IV. RECOMMENDATIONS**

The Committee is making no recommendations to the Conference at this time.

# **ATTACHMENT 1**

**ILLINOIS SUPREME COURT  
CRIMINAL LAW AND PROBATION COMMITTEE  
Report of the Mental Health Subcommittee  
for the  
2004 ILLINOIS JUDICIAL CONFERENCE**

Increasing numbers of persons with mental illness are being processed through the criminal justice system. The primary factors leading to the increase in criminal defendants with mental health issues are the decline in availability of mental health treatment facilities as well as changes in procedures for involuntary commitment. Seventy percent of the defendants with mental illness often have a dual diagnosis of drug or alcohol abuse. Consequently, the criminal justice system is viewed as a potential source of treatment for the mentally ill. With the influx of increasing numbers of these defendants, judges will need to be better educated on identifying and fashioning treatment plans for these offenders which may also require additional resources for imposition of appropriate sentencing conditions.

The Honorable Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, in conjunction with the Presiding Judge of the Criminal Division, Honorable Paul P. Biebel, Jr., have established a pilot mental health court in Cook County. The program will identify offenders who may need mental health services early in the course of the proceedings. Offenders will be screened at the jail prior to preliminary hearing. This mental health program is intended to link providers for the defendants and foster a team-approach to their treatment.

The Cook County Mental Health Court will admit non-violent, probationable felony offenders. Nationally, mental health courts have focused on defendants charged with misdemeanors. Historically these programs focused on diversion of defendants from the courts based on the belief that a mentally ill defendant's conduct should not be criminalized.

In the felony Mental Health Court pilot program, defendants will be offered the option to plead guilty and receive a sentence of probation. The terms of their sentence will include mandatory mental health services provided through the Illinois Office of Mental Health (OMH), as well as frequent status hearings before the Mental Health Court judge. The defendants will be linked to social service agencies for assistance with housing and employment. The goal of the pilot project is to eventually open the court to all eligible offenders including those on-bond who will not be screened under the initial protocol.

DuPage County is also in the process of starting a mental health court. Despite the fact that these resources are currently available in only these counties, certainly the issues and concerns of treating defendants with mental illness impact judges statewide.

Judges throughout the state would be receptive to training relating to the issues affecting mentally ill defendants including psychological, medical and scientific aspects of diagnosis and treatment as well as a refresher on the law regarding fitness, involuntary commitment, discharge hearings, insanity, etc. There is a need for exchange of information between the Department of Human Services and the courts regarding problems encountered with committed offenders. Common problems judges encounter with mental health defendants include lack of an adequate treatment plan, offenders who

are not getting needed services and failure to take medication. Judges also raised concerns about availability of mental health services within the Illinois Department of Corrections.

The Committee respectfully recommends that a two-day judicial seminar be presented on mental health issues.

**Respectfully submitted by Honorable Colleen McSweeney Moore and Honorable Walter Williams**

# **ATTACHMENT 2**

## YOUTHFUL OFFENDER SENTENCING

**Sec. 1. Purpose.** The purpose of this article is to create a sentencing program that holds youthful offenders accountable for their actions in a manner consistent with the long-term goal of rehabilitating individual offenders and helping them develop into productive members of society. Many youthful offenders respond positively to existing sentencing options, including restorative elements such as restitution and community service, and rehabilitative components such as treatment, training and education. Coupled with appropriate sanctions and supervision, sentencing that incorporates restorative and rehabilitative goals has a particularly good chance of success when applied in cases involving young offenders. The youthful offender program created by this article incorporates existing sentencing options and authorizes extended supervision to encourage long-term adjustment and reintegration into society. This article also offers an eligible youthful offender who has committed a probationable, non-violent felony the chance to avoid a formal conviction, because experience shows that the rehabilitative effects of existing sentencing options are often undermined by the impact of a record of conviction. The youthful offender sentencing program is intended to help young offenders who are willing to earn the opportunity of a fresh start by complying with the terms of their youthful offender sentences.

**Sec. 2. Youthful Offender - Eligibility Criteria.** (a) No person may be sentenced as a youthful offender under this article, unless:

- (1) the offender was under the age of 25 at the time of commission of the offense;

- (2) the offender is an adult or is a juvenile who is subject to trial in the criminal courts;
- (3) the offender is not charged with a forcible felony as defined by section 2-8 of the Criminal Code of 1961;
- (4) the offender is not charged with any offense that would subject the offender to registration under the Sex Offender Registration Act, and is not required to be registered under the Sex Offender Registration Act as the result of any prior conviction for an offense or prior adjudication of delinquency;
- (5) the offender is not charged with any offense for which a sentence of probation is not authorized under section 5-5-3(c) of this Code;
- (6) the offender has no prior conviction for a forcible felony in Illinois or for an offense in any other state or jurisdiction that has the elements of an offense classified in Illinois as a forcible felony; and
- (7) the offender has no prior adjudication of delinquency for a forcible felony under the laws of this state or any other state;

(b) An otherwise eligible offender charged with a forcible felony or previously convicted or adjudicated delinquent with respect to a forcible felony may be sentenced as a youthful offender, if the offender's culpability for the offense leading to the prior conviction or adjudication of delinquency or the offense currently alleged is based on accountability and the court finds the offender's participation in the offense was

limited and that sentencing the offender under the youthful offender program is consistent with protection of the public and the interests of justice.

(c) An offender who has multiple charges pending may be sentenced for all the offenses under this article, provided that none of the pending charges involves an offense that would disqualify the offender from the program.

**Sec. 3. Youthful Offender - Eligibility for Adult.** (a) Adult defendants. At the sentencing hearing for an adult under section 5-4-1 of this Code, the court may consider evidence and argument regarding the defendant's eligibility for sentencing as a youthful offender under this article. If the court determines that the defendant meets the youthful offender eligibility criteria of section 2 of this article, and that a youthful offender sentence would be consistent with the public interest, the court shall find the defendant eligible for youthful offender sentencing.

(b) Youthful Offender - Eligibility Hearing for Minor. (1) Excluded Jurisdiction and Transfer of Jurisdiction Cases. When a minor is to be sentenced at a hearing under section 5-4-1 of this Code in a case that was excluded from juvenile court jurisdiction under section 5-130 of the Juvenile Court Act of 1987 or was transferred to the criminal courts under section 5-805 of that Act, the court may consider evidence and argument regarding the minor's eligibility for sentencing as a youthful offender under this article. If the court determines that the minor meets the youthful offender eligibility criteria of section 2 of this article, and that a youthful offender sentence would be consistent with the public interest, the court shall find the defendant eligible for youthful offender sentencing. In a case where

the court has the discretion to return a previously transferred minor to juvenile court for sentencing or when the State has filed a motion to sentence a minor under Chapter V of this Code after conviction on a non-excluded jurisdiction offense the court may, in addition to any other relevant factors, consider the availability and appropriateness of youthful offender sentencing in determining whether the minor should be returned to the jurisdiction of the juvenile court.

(2) Extended Jurisdiction Cases. When a minor who meets the youthful offender eligibility criteria of section 2 of this article has violated the conditions of an extended jurisdiction sentence entered under section 5-810 of the Juvenile Court Act of 1987, and the court determines that a continued or modified juvenile sentence is not authorized or is not appropriate under the circumstances, the court may impose a youthful offender sentence in lieu of the adult criminal sentence previously imposed.

(c) Public Interest - Factors. In determining whether it is in the public interest to sentence a person as a youthful offender under this article, the court may consider:

- (1) the seriousness and circumstances of the offense;
- (2) the offender's history of delinquency, if any;
- (3) the offender's criminal history, if any;
- (4) the nature of the offender's culpability for the offense;
- (5) whether the offense was premeditated;

- (6) whether the offender's character and history indicate that specific services are necessary for the offender's rehabilitation, and that the offender is willing and capable of successfully participating in the services;
- (7) whether services that would be helpful in the rehabilitation of the offender are available;
- (8) whether the offender is likely to commit further crimes;
- (9) whether the offender and the public would be best served if the defendant were not to receive a criminal record;
- (10) any other factor that is relevant to the determination of whether youthful offender sentencing is appropriate for the offender and will adequately protect the public.

(d) Presentence Investigation. The court may direct that the presentence investigation include any information necessary to determine the defendant's eligibility for youthful offender sentencing, the potential effectiveness of youthful offender sentencing in light of the circumstances of the case and the defendant's background, and any necessary special conditions of youthful offender supervision.

#### **Sec. 4. Youthful Offender Supervision.**

(a) Order. Upon a plea of guilty, a stipulation of facts by the defendant supporting the charge or a finding of guilt, and upon determining that youthful offender sentencing is authorized and in the public interest, the court shall defer further proceedings and the

imposition of a sentence, and enter an order of youthful offender supervision. The order shall specify the period of supervision and state the conditions of the supervision.

(b) Conditions of Youthful Offender Supervision. (1) Period of supervision. The period of supervision shall be reasonable under all of the circumstances of the case, but may not be less than 2 years, nor longer than 6 years, unless the defendant has failed to pay the assessment required by Section 10.3 of the Cannabis Control Act or Section 411.2 of the Illinois Controlled Substances Act, or an order of restitution under section 5-5-6 of this Code, in which case the court may extend youthful offender supervision beyond 6 years.

(2) Specific Conditions. An order of youthful offender supervision may include any term or condition authorized for a sentence of probation, conditional discharge or court supervision, and any other condition or punishment authorized under Chapter V of this Code for the class of offense committed by the offender, except that youthful offender supervision may not include any condition that would include incarceration of the offender in any correctional facility of the Department. The offender shall be subject to any fees, additional monetary penalties, and costs that would have been imposed had the offender been sentenced to probation.

(3) Intermediate Sanctions. A youthful offender shall be subject to intermediate sanctions for minor violations of any condition of his or her youthful offender supervision in the same manner as a person violating a sentence of probation, conditional discharge or court supervision. However, nothing in this article prohibits the Chief Judge of the circuit from adopting a special program of intermediate sanctions for youthful

offenders, and nothing herein shall prohibit or limit the use of sanctions in connection with county impact incarceration or other programs in which the youthful offender may be required to participate.

(c) Termination - Hearing. (1) Violations. In the event an offender violates any term or condition of his or her youthful offender supervision, that supervision may be continued, modified or revoked in accordance with the procedures for modification or revocation of probation, conditional discharge or supervision, as provided in section 5-6-4 of this Code. Upon revocation of youthful offender supervision, the offender may be resentenced under Chapter V of this Code. Time served on youthful offender supervision shall not be credited by the court against a sentence of imprisonment or periodic imprisonment unless the court orders otherwise.

(2) Completion of Youthful Offender Supervision - Hearing. Youthful offender supervision is not terminated except as provided above in the case of a violation, or as provided in this section. At the conclusion of the period of youthful offender supervision or as soon thereafter as possible, or prior to the conclusion of the period of youthful offender supervision on motion of the offender or on the court's own motion, the court shall conduct a hearing to determine whether the offender has successfully complied with all of the conditions of supervision. If the court determines that the offender has successfully complied with all of the conditions of youthful offender supervision and the court is convinced that the offender and the public would be best served if the offender were not to receive a criminal record, the court may terminate the youthful offender supervision, discharge the offender and enter a judgment

dismissing the charges. In making the determination to discharge the offender and dismiss the charges, the court may consider all the circumstances of the offender's participation in the youthful offender program, including conduct constituting violation of the terms or conditions of the youthful offender supervision that did not result in termination of the supervision. A petition to revoke or modify may be considered at a hearing to determine whether the offender has successfully completed youthful offender supervision. Discharge of the offender and dismissal of charges is within the sound discretion of the court, notwithstanding the fact that there may have been no conduct by the offender that would have warranted termination of the youthful offender supervision for a specific violation. If the court determines that discharge and dismissal of the offender are not appropriate, that the youthful offender supervision is not to be continued or extended, and that there is no violation which would warrant resentencing, the court shall enter judgement and the youthful offender supervision shall stand as the sentence for the offender. Termination of youthful offender supervision without dismissal of the charges and by entry of judgment and sentence shall constitute a conviction of the offender.

(d) Sealing of Records. Discharge and dismissal upon successful completion of youthful offender supervision shall be deemed without adjudication of guilt and shall not be termed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime. When a youthful offender is discharged and the charges are dismissed, the court shall order the official records of the arresting agency, the Department and the circuit court sealed. Sealed records of a youthful offender shall

only be subject to inspection and use by the court for the purposes of subsequent sentencing for misdemeanor or felony violations and inspection and use by law enforcement agencies and State's Attorneys or other prosecutors in carrying out the duties of their offices. The order shall also provide that the name of the offender shall be obliterated from the official index required to be kept by the circuit court clerk under section 16 of the Clerks of Courts Act, or the official index shall otherwise be modified so that the offender's name is not available to the public, but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The order of sealing may not extend to any misdemeanor, petty offense or ordinance violation for which court supervision is not authorized or any record of a misdemeanor, petty offense or ordinance violation that may not be expunged or sealed under section 5 of the Criminal Identification Act.

# **ATTACHMENT 3**

ARTICLE VI APPEALS IN CRIMINAL CASES,  
POST-CONVICTION CASES, AND JUVENILE  
COURT PROCEEDINGS

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State and its Political Subdivisions .

(1) *When State and its Political Subdivisions May Appeal.* In criminal cases the State and its Political Subdivisions may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114--1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence.

(2) *Leave to Appeal by State and its Political Subdivisions.* The State and its Political Subdivisions may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail during the pendency of an appeal by the State and its Political Subdivisions, or of a petition or appeal by the State and its Political Subdivisions under Rule 315(a), unless there are compelling reasons for his continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State and its Political Subdivision is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal Procedure of 1963.

(b) **Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment.** A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see Ill. Rev. Stat. 1981, ch. 38, pars. 1005-6-1 through 1005-6-4), or to periodic imprisonment (see Ill. Rev. Stat. 1981, ch. 38, pars. 1005-7-1 through 1005-7-8), may appeal from the judgment and

may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both. He may also appeal from an order modifying the conditions of or revoking such an order or sentence.

**(c) Appeals From Bail Orders by Defendant Before Conviction.**

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

- (i) the defendant's financial condition;
- (ii) his residence addresses and employment history for the past 10 years;
- (iii) his occupation and the name and address of his employer, if he is employed, or his school, if he is in school;
- (iv) his family situation; and
- (v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

- (i) the court that entered the order;
- (ii) the date of the order;
- (iii) the crime or crimes charged;
- (iv) the amount and condition of bail;
- (v) the arguments supporting the motion; and
- (vi) the relief sought.

No brief shall be filed. A copy of the motion shall be served upon the opposing party. The State and its Political Subdivision may promptly file an answer.

(3) *Disposition.* Upon receipt of the motion, the clerk shall

immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings.* The court, on its own motion or on the motion of any party, may order the court reporter to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument.* No oral argument shall be permitted except when ordered on the court's own motion.

(d) **Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty.** No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending. The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit. The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel. If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. The

defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings. The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

**(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced.** The defendant or the State or its Political Subdivisions may appeal to the Appellate Court from an order holding the defendant unfit to stand trial or be sentenced.

**(f) Appeal by Defendant on Grounds of Former Jeopardy.** The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy.

Amended effective July 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective October 1, 1970, July 1, 1971, November 30, 1972, September 1, 1974, and July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000.

Committee Comments  
(Revised July 1, 1975)

Rule 604 was amended in September 1969 to add paragraph (b), dealing with appeals when probation has been granted. The 1969 amendment made what was formerly the entirety of Rule 604 into paragraph (a) and

## 2004 REPORT

# **ATTACHMENT 4**

Report on Global Positioning Technology  
and its Application to  
The Criminal Justice System

Submitted to:

Illinois Judicial Conference

Committee on Criminal Law and Probation Administration

Submitted by:

Honorable Donald C. Hudson

Honorable James L. Rhodes

Honorable Mary S. Schostok

July 2004

## INTRODUCTION

Many jurisdictions have provided for programs to monitor probationers and other offenders within the Criminal Justice System. With developments in technology over the last decade, advanced remote monitoring has become a widely accepted and relied upon means of offender monitoring. To date, the use of technology for monitoring has been limited in scope to electronic monitoring; the use of ankle bracelets to form an invisible “tether” between an individual and a base station connected to their telephone.<sup>1</sup> If this line of communication is ever broken, the system alerts the authorities that the offender has left the premises. The use of global positioning systems (GPS) is the one of the most recent uses of technology to monitor offenders. Courts are beginning to include GPS monitoring as a condition of probation for sex offenders and domestic violence offenders. The use of GPS technology may also be expanded to monitor gang members on probation, whose activities must be strictly scrutinized.

## NEED FOR GANG MEMBER MONITORING

Many programs have proven ineffective when dealing with gang violence, as shown by high recidivism rates. Gang members are three times more likely to get arrested while on probation than non-gang members.<sup>2</sup> Additionally, only one-third of gang members satisfactorily complete all of the terms of their probation.<sup>3</sup>

Not only is the recidivism rate higher among individuals with gang affiliations, but the types of offenses that gang members are on probation for are generally more serious than the types of offenses that non-gang members are on probation for.

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<sup>1</sup> *Keeping Track of Electronic Monitoring*, National Law Enforcement and Corrections Technology Center Bulletin, October 1999.

<sup>2</sup> Adams, Sharyn et. al., *An analysis of gang member and non-gang members discharged from probation*, Illinois Criminal Justice Authority newsletter, Vol. 6, No. 2, September 2002.

<sup>3</sup> *Id.* at page 3

According to data collected in 2000, nearly 80 percent of gang members on probation were on probation for felony level offenses, while only 45 percent of non-gang members were serving felony sentences<sup>4</sup>. Clearly, there exists a need to closely monitor gang offenders on probation.

## TECHNOLOGY OVERVIEW

Global positioning systems (GPS) work with orbiting satellites.<sup>5</sup> Akin to triangulation in orienteering, these satellites can determine the location of a GPS receiver by comparing distances from multiple reference points. A receiver may be in contact with three or more satellites at one time, and by comparing the time delay of messages sent at the speed of light from the multiple satellite references, the distance from each satellite can be calculated and thus, the exact position of the receiver can be ascertained.<sup>6</sup>

A GPS monitoring system consists of a GPS receiver unit, an ankle bracelet and a communication unit to transmit the position information to a supervising authority.<sup>7</sup> The GPS receiver communicates with satellites to determine the location of the user.<sup>8</sup> The ankle bracelet, similar to that used in electronic monitoring, also communicates with the GPS receiver, verifying that the user is wearing the unit.<sup>9</sup> If at any time the user enters a restricted zone, or too great a distance separates the GPS receiver and the ankle bracelet, the communication unit logs this information for transmission.<sup>10</sup>

Two forms of GPS monitoring are currently implemented by law enforcement, active GPS and passive GPS. Active GPS describes a unit that informs the supervising

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<sup>4</sup> *Id.* at page 2

<sup>5</sup> Crowe, Ann H., et al., *Offender Supervision with Electronic Monitoring* 65 (American Probation and Parole Association 2002) (2002).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 66.

<sup>8</sup> *Id.* at 66.

<sup>9</sup> *Id.* at 66.

<sup>10</sup> *Id.* at 66.

authority of the offenders' location in real time. The communication units on these systems use built in cellular telephone technology to transmit the location information to a supervising authority continuously.<sup>11</sup> These transmissions can occur anywhere from many updates per minute to many updates per day, depending on the specific unit being used. The subject's location and physical movements can be monitored and tracked on a 24-hour basis.

Passive GPS monitors do not use cellular telephone technology to transmit location information, but rather, the subject places the communications unit into a docking station and a wired telephone connection is used to transmit the information. All of the places that the subject has been since the last update are transmitted when the user places the communications unit on the docking station. Depending on the jurisdiction and local rules, these transmissions may be required once a day or even less frequently.

#### USES OF GLOBAL POSITIONING TECHNOLOGY

Currently, many jurisdictions use global positioning systems (GPS) to monitor numerous types of offenders. For instance, Kane County has used passive GPS to monitor sex offenders and Kendall County uses the active GPS technology to monitor domestic violence offenders and many more. According to Mary Hyatt, Deputy Director of Kane County Court Services, the system is very effective, with few instances of noncompliance and lowered recidivism rates.

#### GLOBAL POSITIONING TO MONITOR GANG OFFENDERS

Monitoring gang offenders requires varying degrees of scrutiny based on the specific offender involved. Many contemporary monitoring techniques for gang offenders are either too relaxed or overly strict. Currently, to monitor gang offenders,

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<sup>11</sup> *Id.* at 67.

probation officers and supervisory personnel place telephone calls to offenders' homes, make home and work visits, and use electronic monitoring to watch offenders. The electronic monitoring, as commonly implemented, uses the aforementioned ankle bracelets, which constantly communicate wirelessly with a base unit that is connected to the users' telephone.<sup>12</sup> If the subject wanders too far from the base unit and this wireless connection is interrupted, the unit alerts supervisory personnel that the subject has left their home.<sup>13</sup> Electronic monitoring does not inform the authorities where the offender has gone ~~though~~, however.

GPS monitoring resolves many of the shortcomings of current gang offender monitoring programs. Under GPS monitoring, probation officers and support personnel can specifically identify where an offender is, and has been, in addition to determining that an offender has left their home or entered a protected area. Additionally, the intrusion into an offender's everyday life is less noticeable with GPS monitoring than other monitoring programs. GPS monitoring allows probation officers and supervisory personnel to know the location of a subject without calling the subject or conducting home or work visits.

Active GPS can be used for more serious gang offenders or dangerous individuals because it acts as a prophylactic measure. By monitoring the movements of offenders 24 hours a day, 7 days a week, supervisory staff can prevent, or act immediately on, cases where an offender violates the conditions of their probation. Active GPS comes with a higher price tag, however. The cellular telephone calls that are made as often as twice a minute cost a great deal, not to mention the salary of full time staff to monitor the system

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<sup>12</sup> *Keeping Track of Electronic Monitoring*, *supra* note 1, at 2.

<sup>13</sup> *Id.*

at all times and hardware costs. To monitor offenders on a 24-hour basis, Mary Hyatt expects that it would require four or five full time officers, paid approximately \$32,000.00 per year each. Mere use of the system itself can cost anywhere from \$10.50 to \$12.00 per day for each user.<sup>14</sup>

On the other hand, passive GPS units may be preferred due to their lower cost, \$6.00 - \$7.50 per day for each user.<sup>15</sup> Because information is only reviewed once a day current staff often can be used to monitor offenders. In addition to the lower call volume, as compared to active GPS, telephone calls to transmit information on wired telephone lines are cheaper than those over cellular telephones. However, passive GPS systems can only be used to show if a violation has occurred, not as a preventative measure like active GPS.

Either GPS system could be used to monitor gang offenders, depending on the requirements in each case. If an offender is more likely to violate the conditions of their release, active GPS may prove a wiser choice. Some jurisdictions may alternatively apply active GPS at the outset of any monitoring effort of gang members, only to migrate the offender to a passive system upon a showing of compliance with the court ordered conditions. If cost is the most critical factor, passive GPS systems can still be a significant improvement on current monitoring programs. The use of electronic monitoring and passive GPS in conjunction with one another may provide a cost effective and comprehensive monitoring solution.

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<sup>14</sup> Mary Hyatt, Deputy Director of Kane County Court Services, provided this information.

<sup>15</sup> *Id.*

## DEFICIENCIES WITH GLOBAL POSITIONING MONITORING

Two major problems are encountered in practice when using global positioning system (GPS) monitoring. False alarms can occur due to the inherent inaccuracies of GPS technology; most commercial units are only accurate within 20 feet.<sup>16</sup> If an offender uses a road to get to work that is adjacent to a restricted zone, the system could read this acceptable action as a violation. This problem is remedied by allowing the supervisor to view the actions, in real time or in review, somewhat subjectively, allowing for possible extenuating circumstances.

Areas where cellular telephone service is not available, so called "dead zones", present the second major problem with GPS monitoring in practice. If an offender enters a "dead zone" while being monitored with active GPS, supervisors will cease to know the location of the offender, or if an alarm is triggered, until the offender exits that area. This drawback will most likely cease to exist as cellular telephone service becomes more widespread.

## COST-BENEFIT ANALYSIS

There are many factors to consider when implementing a global positioning system (GPS) to monitor offenders. The financial cost to the state or county is the most obvious of these factors. As mentioned, these costs include staff to monitor offenders and use of the technology itself. Requiring the offenders to pay for some, or all, of the service, can offset this cost. Additionally, there is some degree of intrusion into the privacy of offenders involved with a system like GPS monitoring. This is usually addressed by requiring that offenders sign a consent form or agreement.

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<sup>16</sup> *Id.*

These costs must be weighed against the benefit to society as GPS allows the court system to track and monitor the physical movements of a probationer or gang member whose activities must be strictly scrutinized, on a continuing ongoing basis. Additionally, the subject of the GPS system may also work as a condition of probation, or release from custody, which allows the subject to contribute to the cost of the monitoring system. The benefit to society of having certain offenders maintain gainful employment is obvious.

## CONCLUSION

Global positioning systems (GPS) will most likely be the next step in monitoring offenders by the Court system. Given the expansion of this technology, it is only logical that gang offenders could be monitored with GPS units. The advantages of GPS monitoring are numerous enough to replace the current techniques while the disadvantages can often be managed. GPS allows for a clearer distinction on permissible locations for an offender, thus making it easier to prevent an offender from approaching rival gang territory or other restricted zones. Finally, unlike the electronic monitoring system, GPS provides a solution that seems inherently suited to the demands of monitoring gang offenders, or other probationers, whose specific location and activities need to be strictly scrutinized.

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## 2004 REPORT