

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

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## I. STATEMENT ON COMMITTEE CONTINUATION

The purpose of the Criminal Law and Probation Administration Committee, (“Committee”), of the Illinois Judicial Conference is to review and make recommendations on matters affecting the administration of criminal law and to monitor, evaluate and provide recommendations on issues affecting the probation system. The Committee is further charged to review, analyze and examine new issues arising out of legislation and case law that impact criminal law and procedures and probation resources and operations. The Committee is also charged with reviewing and commenting on changes to Illinois Supreme Court Rules which affect the administration of criminal law and/or the probation system. Since the Committee’s inception, a number of critical issues related to criminal law and probation administration have been addressed. Over the years this Committee has been instrumental in sponsoring amendments to Supreme Court Rules, which were then adopted by the Supreme Court, including Rule 604(d), Rule 605(a), and Rule 605(b). The Committee has made recommendations for the enacting of new rules, specifically Rule 402A, which was adopted by the Court. The Committee also has prepared and presented to the Conference a report entitled *The Efficacy and Trends of Specialty Courts* and a detailed inventory of “Problem Solving Courts” was developed. The Committee also has prepared and presented to the Conference a “Pre-Sentence Investigation Report” format incorporating the principles of Evidence Based Practices (EBP). The Committee also prepared and presented to the Conference a one page EBP bench guide and a similar one created for use by probation officers, supervisors, and managers.

This Conference year, the Committee completed the charge of examining the feasibility of a criminal alternative dispute resolution program in Illinois. The Committee also completed the charge of improving the efficiency of accepting guilty pleas. At the request of the Court, the Committee examined and commented on a final draft of a proposed Supreme Court Rule 430 which, if adopted, would provide guidance on the use of restraints upon criminal defendants inside the courtroom. At the request of the Supreme Court Rules Committee, the Committee also examined Proposal 08-01, which would become a proposed rule governing attorney conduct when, during a privileged communication, information is received that discloses the guilt of another party to a crime in which another has been found guilty and sentenced for that crime. Finally, at the request of the Court, the Committee has received a charge to review the Impact Statement prepared by the Judicial Conference Committee on Automation and Technology that analyzes and evaluates the use of video conferencing and its impact on court proceedings. The Committee has been asked to determine whether the Court’s approval for the use of video technology is necessary in certain types of proceedings and to identify any statutes

or rules that might be impacted should the use of video technology be utilized in certain criminal proceedings.

The Committee is dedicated to serving the Court in meeting its assigned projects and priorities, and producing quality information and products. The Committee therefore is requesting to continue addressing the matters affecting criminal law and procedure and the administration of probation services.

## II. SUMMARY OF COMMITTEE ACTIVITIES

### Conference Year 2009 Continued Projects/Priorities

#### ***Project:: Analyze and make recommendations concerning the use of video conferencing in the context of criminal proceedings.***

In 2008, the Judicial Conference Committee on Automation and Technology was charged by the Court to analyze and evaluate the use of video conferencing and its impact on court proceedings. The result of the work done by the Committee on Automation and Technology on this issue yielded an Impact Statement, which sets forth in detail the benefits and burdens of the use of video technology in both civil and criminal cases. With respect to criminal court proceedings, the Impact Statement detailed the types of proceedings in which this technology is currently in use and suggestions for the broadening of the use of this technology in criminal cases. The Impact Statement also contains cautions about how use of video technology impacts a criminal defendant's statutory and constitutional protections. The Impact Statement concludes with recommendations to the Court concerning how the Supreme Court rules relating to procedures in criminal cases might be modified to permit a criminal defendant's court appearance by video conferencing. A copy of the Impact Statement was presented to the Court in Conference Year 2008.

During Conference Year 2009, the Court requested that the Criminal Law and Probation Committee review the Impact Statement and provide analysis and recommendation concerning the use of video conferencing in criminal proceedings and identify any statutes and/or rules that might be impacted should video conferencing be utilized in criminal proceedings. This project remains pending with the Committee.

Conference Year 2008 Continued Projects/Priorities:***Project 1: Study and consider the utility of a criminal dispute resolution program for Illinois.***

In 2007, a subcommittee was formed to examine this charge. To address this charge, information on criminal dispute resolution programs were obtained from the Colorado's Fourth Judicial Circuit, New York, North Carolina, and Ohio for review and comment by the full Committee. Based on the information received from other states, the Committee reached a tentative conclusion that a criminal dispute resolution program would be possible in Illinois but that the program would have to be a mediation type program and limited to misdemeanors, petty offenses, business offenses, and ordinance violations.

In 2008, the Committee was given a presentation by Ms. Sally Wolf, Statewide Coordinator for the Illinois Balanced and Restorative Justice Project on different types of criminal dispute resolution programs in Illinois, which could be considered as potential models for determining the viability of a criminal alternative dispute resolution program in Illinois.

In 2009, Ms. Cassie Lively of the Center for Conflict Resolution gave a presentation to the Committee concerning its criminal dispute resolution program. Ms. Lively detailed for the Committee the history of the Center for Conflict Resolution, its funding sources, nature and extent of volunteer mediator training, the backgrounds of the volunteer mediators, the types of criminal cases taken for mediation, how those cases are referred for mediation, detailed a typical mediation session, explained how if the mediation is successful a written agreement is drafted and signed by the parties, the court is notified of the successful mediation and the charges are dismissed as a result, and how if the mediation is not successful then the case is returned to the referring court for further proceedings.

Based on the information received and reviewed from other states, the presentations by Ms. Wolf and Ms. Lively, review of scholarly articles and treatises on this issue and discussion by the membership, the Committee finds the following:

1. A criminal dispute resolution program is feasible in Illinois.
2. Any criminal dispute resolution program should be limited to misdemeanors, petty offenses, business offenses, and ordinance violations. However, cases in which a weapon is involved should be excluded.
3. Charges of Domestic Violence should never be referred to any type of criminal dispute resolution program.

4. The program should be a mediation type rather than an arbitration type.
5. Referrals to a criminal dispute resolution program should be recommended by the prosecutor's office with the concurrence of the presiding judge.
6. All mediators should be trained and qualified in accordance with rules promulgated by each circuit.
7. Participation by a circuit court in any criminal dispute resolution program should be voluntary rather than mandatory.

If the Supreme Court wishes, the Committee is willing to continue to examine this issue for the purpose of providing specific recommendations.

***Project 2: Study and consider the feasibility for improving court efficiency in the acceptance of guilty pleas.***

The Committee continued to discuss and analyze this charge in 2009. The Committee continued to examine multiple different types of written guilty pleas used in other states and by some judges in Cook County. These written guilty pleas are used as an acknowledgment of various waivers and stipulations by the defendant and defendant's counsel. After much discussion and debate, the Committee reinforced its previous conclusion that there are potential benefits to the use of a written guilty plea in that such a written guilty plea could potentially reduce ineffective assistance of counsel claims; however, a statewide mandate is not necessary. The Committee suggests that a statewide mandate is not necessary since certain enumerated verbal admonishments are required by Supreme Court Rules 402 and Rule 402A in the taking of guilty pleas as well as case law and the aforementioned admonishments must be placed on the record. However, the Committee believes that each individual judge should have the option of using a written guilty plea form. The Committee has drafted such a form for possible inclusion in judicial education training materials, which will be forwarded to the Administrative Director.

Conference Year 2009 Projects/Priorities

***Project 1: Explore the need for a first offender diversion program for those convicted of certain class 3 or class 4 felonies.***

The Committee discussed several options for diversion programs for those convicted of different types of class 3 or class 4 felonies. Based on these discussions, the Committee concluded that the effect of the various diversion programs would be in conflict with the Court implemented principles of Evidence Based Practices. Therefore, the Committee requests that exploration of this charge be discontinued.

***Project 2: Explore the use of “Shock Incarceration” to the Illinois Department of Corrections for certain offenders as part of the terms and conditions of probation.***

The Committee examined the “shock incarceration” programs of Missouri and Indiana as well as other materials. Based upon the information received concerning those programs, the Committee has concluded that the principles of “shock incarceration” are in direct conflict with the Court implemented principles of Evidence Based Practices. Therefore, the Committee requests that exploration of this charge be discontinued.

***Project 3: Study, examine and report on Supreme Court Rules as they relate to criminal procedure and court process.***

In Conference Year 2008, the Committee gave consideration to proposed Supreme Court Rule 430 to reflect the Supreme Court’s rulings regarding the use of restraints on criminal defendants as detailed in *People v. Boose*, 66 Ill.2d 261 (1977) and *People v. Allen*, 222 Ill.2d 340 (2006). During this Conference year, the Court requested that the Committee review the final draft of a proposed rule to determine if it was substantively complete to address any potential due process issues, which could arise because of the use of restraints during the course of a criminal trial. The Committee determined that the final draft was substantively complete and did address possible due process issues. The Committee submitted a letter outlining these findings to the Court.

During Conference Year 2009, the Supreme Court Rules Committee submitted to the Committee for review a proposed rule that would authorize an attorney, who learns of the conviction for a crime and the lawyer is reasonably certain the person convicted is innocent because of facts disclosed to the lawyer in a privileged communication, to disclose this information to the proper authorities. The Committee determined that the draft rule, as submitted, potentially violates the United State’s Constitution’s Fifth Amendment right against self-incrimination. The Committee also determined that a Supreme Court Rule was not the correct forum to address the issue presented in the proposed rule; but rather, discussion to amend the Rules of Professional Conduct was the more appropriate forum. The Committee forwarded its conclusions to the Supreme Court Rules Committee.

***Project 4: Continue to monitor the impact of Crawford v. Washington and its progeny on the Illinois Courts.***

The Committee has continued to discuss and monitor the impact of the U.S. Supreme Court ruling in the case of *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed2d 177 (2004) and its progeny on the Illinois courts.

***Project 5: Undertake any such other projects or initiatives that are consistent with the Committee charge.***

In prior Conference years, the Committee was charged with studying, examining and reporting on the efficacy of “Problem Solving Courts” in the management of criminal felony and misdemeanor cases that culminated in the submission of a Problem Solving Courts Survey. During this Conference year, the Committee received information concerning the formation of new specialty courts aimed at assisting veterans charged with crimes in Cook County, Madison County and Rock Island County. The purpose behind these specialty courts is to provide veterans with the resources to address underlying issues that could be a factor for the veteran’s criminal behavior. Such underlying factors include abuse of alcohol and/or abuse of drugs and/or post-traumatic stress disorder. The Honorable Ann Callis, Chief Judge of the Third Judicial Circuit, is keeping the Committee apprised of the start up and operation of the Madison County Veteran’s Court.

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

The Court requested that the Committee review the Impact Statement presented in Conference Year 2008 by the Judicial Conference Committee on Automation & Technology. Specifically, the Committee is to provide analysis and recommendations concerning the use of video conferencing in criminal proceedings and identify any statutes and/or rules that might be impacted should video conferencing become utilized in criminal proceedings. This project remains pending with the Committee.

The Committee continued its consideration of the utility of a criminal dispute resolution program in Illinois. After examining programs from other states, reviewing and discussing scholarly treatises and articles on this issue, and hearing presentations from persons involved in existing Illinois dispute resolution programs, the Committee’s report outlines its findings on this project.

The Committee also requests to update the 2007 Specialty Courts Survey since new specialty courts have arisen since 2007. More importantly, an update will provide an improved understanding of the efficacy of the various specialty courts in Illinois.

**IV. RECOMMENDATIONS**

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