

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 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 also is 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 605(a) and Rule 605(b). The Committee has made recommendations for the enacting of new rules, specifically Rule 402A and most recently, Rule 430, both of which were adopted by the Court. 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 analyzing and making recommendations concerning the use of video conferencing in the context of criminal proceedings, the charge of exploring the need for a first offender diversion program for those convicted of certain Class 3 or Class 4 felonies, and the charge of examining the utility of a criminal alternative dispute resolution program for Illinois.

The Committee is dedicated to serving the Court in meeting the assigned projects and priorities, and producing quality information and product. The Committee 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 1: 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 details the types of proceedings in which this technology is currently in use, contains suggestions for the broadening of the use of this technology in criminal cases, cautions about how use of video technology impacts a criminal defendant's statutory and constitutional protections, and 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.

On April 7, 2009, a letter from Director Cynthia Y. Cobbs was sent on behalf of the Court to Committee Chair Schostok requesting the Committee to review the Impact Statement and provide analysis and recommendation concerning the use of video conferencing in criminal proceedings and to identify any statutes and/or rules that might be impacted should video conferencing be utilized in criminal proceedings.

During Conference year 2010, the Committee continued to examine this charge to determine what, if any statutes needed to be modified and what, if any, rules would need to be modified or drafted to provide the best possible guidance to trial courts in the use of video technology for certain stages of criminal prosecutions.

The relevant statutes examined by the committee are as follows: 725 ILCS 5/106D-1 Defendant's Appearance by Closed Circuit Television and Video Conferencing specifies when video conferencing technology could be used in criminal proceedings; 725 ILCS 5/110-5.1(c)-Bail; Certain Persons Charged with Violent Crimes Against Family or Household Members permits a person required to appear for bond setting to appear by video conferencing; 725 ILCS 5/106B-5-Testimony by a Victim who is a Child or a Moderately, Severely, or Profoundly Mentally Retarded Person; and 725 ILCS 5/103-6-Waiver of Jury Trial.

The Committee discussed the impact of the use of video conferencing technology on the required admonishments for guilty pleas contained in Supreme Court Rules 402 and 402(a) as well as the appeal advice to a defendant contained in Rules 605(b) and 605(c).

The Committee also examined and discussed relevant case law on the use of video conference technology, primarily the cases of *People v. Bryant*, 391 Ill. App.3d 1072 (4th Dist. 2009), *People v. Lindsey*, 201 Ill.2d 45 (2002), and *People v. Stroud*, 208 Ill.2d 398 (2004).

Finally, the Committee examined statutes and rules from other states such as Montana and Missouri to determine how video conferencing technology is utilized in criminal cases in those jurisdictions.

After discussion of the aforementioned statutes and relevant case law, the Committee concluded that a Supreme Court Rule would be the best method to insure proper use of video conferencing technology in criminal cases. To that end, the Committee has drafted a proposed rule, which will be forwarded to the Director of the Administrative Office of the Illinois Courts for

management with the Court.

Project 2: Explore the need for first offender diversion programs for those convicted of certain Class 3 or Class 4 felonies.

The Committee discussed several options for diversions 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.

However, at the committee meeting held as part of the 2009 Conference, the Committee determined that further exploration of this charge was needed and the charge was continued into Conference Year 2010.

The Committee began re-examining this charge by locating and discussing diversion programs from other states. After examining diversion programs from other states, the Committee determined, that in Illinois the most appropriate stage for diversion would be at the sentencing phase that the sentencing court could maintain strict control over the diversion program and the offender.

Further analysis of other states diversion programs revealed that statutory authority for the use of diversion programs was available. However, Illinois does not have such a statute. In response to this omission, the Committee has drafted a report, which will be forwarded to the Director of the Administrative Office of the Illinois Courts for management with the Court.

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 was obtained from the Colorado 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, the Committee was given a presentation by Ms. Cassie Lively of the Center for

Conflict Resolution 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, and how those cases are referred for mediation. She 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. However, 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 made the following findings:

1. A criminal dispute resolution program is feasible in Illinois.
2. Any criminal dispute resolution programs 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.

In 2010, the Committee continued to examine this issue for the purpose of providing recommendations to the Court. As a result of this continued examination, the Committee recommends that a Supreme Court rule, which if adopted, would authorize the chief judge of each circuit to implement a diversion program and also provide minimum guidelines for the diversion program. A proposed rule will be forwarded to the Director of the Administrative Office of the Illinois Courts for management with the Court.

*Conference Year 2010 Projects/Priorities****Project 1: Update the 2007 Specialty Court Survey.***

The Committee began to undertake updating the 2007 Specialty Court Survey by examining and discussing specialty courts designed to address issues unique to veterans. The Hon. John Kirby, Presiding Judge of the Cook County Veteran's Court program and Mr. Mark Kammerer, Cook County Specialty Courts Coordinator, spoke to the Committee about the Cook County Veterans Court program. Judge Kirby and Mr. Kammerer detailed to the Committee the screening process used to determine participation eligibility, the tools used by the court to address veteran's issues, the resources used, and the success rate of the program.

Due to the in-depth nature of this charge, the Administrative Office of the Illinois Courts is developing a survey instrument capable of providing the Conference with a more comprehensive overview of specialty courts in Illinois as compared to the 2007 survey.

Project 2: Study, examine and report on Supreme Court Rules as they relate to criminal procedure and court process.

The Committee received a request from the Supreme Court Rules Committee seeking comment on proposed amendments to paragraph (d) of Supreme Court Rule 402, amendments to paragraph (d) of Supreme Court Rule 604, and an amendment to paragraph (c) of Supreme Court Rule 651. Discussion of these proposed rule amendments has been deferred until the next Conference year.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR.

While the Committee has made significant progress addressing its charges, much of the Committee's work is ongoing and developing. The Committee is requesting to continue its work in updating the 2007 Specialty Court Survey. The Committee also would like to continue reviewing and making recommendations on matters affecting the administration of criminal law and the probation system, and continue to study, examine and report on proposed Supreme Court Rules as they relate to criminal procedure and court process.

IV. RECOMMENDATIONS

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