2012 REPORT

ANNUAL REPORT

OF THE

COMMITTEE ON CRIMINAL

LAW AND PROBATION ADMINISTRATION

TO THE ILLINOIS JUDICIAL CONFERENCE

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October 2012

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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 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 inception of the Committee, a number of critical issues related to criminal law and probation administration have been addressed. Over the years this Committee has been instrumental in recommending amendments to Supreme Court Rules which were subsequently 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 430, which provides guidelines to trial court judges for the use of restraints on criminal defendants. Rule 430 was adopted by the Court on March 22, 2010 and became effective July 1, 2010. The Committee has also prepared and presented to the Conference a pre-sentence investigation report format incorporating the principles of Evidence Based Practices, (EBP). In addition, the Committee prepared and presented to the Conference a one page EBP bench guide, and a similar document created for use by probation officers, supervisors, and managers. Finally, the Committee also made recommendations on the use of videoconferencing technology in criminal cases.

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This Conference year, as part of the charge to update the 2007 Specialty Court Survey, the Committee circulated an initial assessment to the Trial Court Administrators in order to ascertain the nature and extent of problem solving or specialty courts in each judicial circuit. Based on the information received from the initial assessment, the Committee prepared and circulated an enhanced survey instrument for the purpose of obtaining additional details about specialty court operations in Illinois. Further, at the request of the Rules Committee, the Committee began discussion on a proposed rule amendment which would authorize the use of conditional pleas similar to the methodology detailed and authorized in Federal Rule of Criminal Procedure 11. The Committee also discussed the impact of the Third District Appellate Court opinion of *People v. Rippatoe* on Supreme Court Rule 430.

As a final matter, the death penalty was abolished in Illinois on July 1, 2011 pursuant to Public Act 96-1543. In response to Public Act 96-1543, the Court charged the Special Supreme Court Committee on Capital Cases, (Capital Cases Committee), to prepare and submit a comprehensive report, descriptive of the Capital Cases Committee's work and chronicling its activities to date. The Court specifically requested the final report include commentary regarding recommendations on Supreme Court Rules concerning capital cases. As part of the Capital Cases Committee's final report, a minority of that committee believed further discussion was warranted regarding whether a rule similar to the language contained in Rule 416(c), (f), (g) and (h) should be drafted and made applicable to all felony cases. The Court agreed with the minority, and on April 5, 2012, a letter was sent asking the Criminal Law Committee to examine the feasibility of applying 416(c), (f), (g) and (h) to other felony cases. The Committee is currently examining this

issue and will report its findings to the Conference in 2013.

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

II. SUMMARY OF COMMITTEE ACTIVITIES

Continued Projects/Priorities 2011

Project 1: Update the 2007 Specialty Court Survey.

In 2010, the Committee began to undertake an update of the 2007 Specialty Court Survey by examining and discussing problem solving courts designed to address issues unique to veterans. The Hon. John Kirby, Presiding Judge of the Cook County Veterans 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 veterans 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, in conjunction with the Committee, developed an initial assessment for the purpose of determining the nature and extent of problem solving courts in each judicial circuit. The initial assessment was sent to the Chief Judges and Trial Court Administrators of each judicial circuit. The initial assessment sought to elicit the following: the types of specialty courts in each circuit; the inception

date of each specialty court; and the keeper of data for each specialty court.

Once the responses contained in the initial assessment were analyzed, the Committee, in conjunction with the Administrative Office of the Illinois Courts, developed a detail oriented survey instrument which is capable of providing the Conference with a more comprehensive overview of specialty courts in Illinois. The detailed survey seeks to elicit the following information: titles of all persons involved in each specialty court in each circuit; whether the presiding judge is an associate or circuit judge; the number of successful participants since the specialty court's inception; number of successful participants since inception who received sanctions during their time in the specialty court; the nature and type of sanctions available, minimum number of sanctions allowed before a participant is terminated from the specialty court; number of persons who left the program whether voluntarily or involuntarily; and how frequently the specialty court is convened. During the summer of 2012 the detailed survey was e-mailed to the Trial Court Administrators for data collection.

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

On October 12, 2011, a letter was sent on behalf of the Supreme Court Rules Committee seeking comment on a proposed amendment to add paragraph (g) to Supreme Court Rule 402. The proposed amendment would authorize the defendant, with the permission of the court and prosecution, to enter a plea of guilty conditioned upon his or her ability to have the adverse pretrial suppression motion reviewed by an appellate court. Proposal 11-07 is drawn directly from Federal Rule of Criminal Procedure 11 and is commonly known as a "conditional plea".

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A subcommittee was formed to examine this proposed rule. During discussions of the proposed rule, a consensus was reached that stakeholder comments were needed because conditional pleas exist only in the federal system. As a result, the subcommittee is currently seeking input on the feasibility of implementing conditional pleas from the Illinois State's Attorneys Association, the Illinois Public Defenders Association, including appellate defenders, and the Criminal Justice Section of the Illinois State Bar Association. Once the stakeholders have provided their input and insights, the Committee will further discuss this charge and report back to the Conference in 2013.

Conference Year 2012 Projects/Priorities

Project 1: **Discuss and make recommendations on the possible effect of *People v. Rippatoe, 408 Ill. App.3d 1061 (2011) on Supreme Court Rule 430 (Trial of Incarcerated Defendant).***

The *Rippatoe* decision stemmed from an appeal on a post-trial claim of ineffective assistance of counsel. The Third District Appellate Court, while noting that the Defendant first raised the restraint issue on appeal, held that defendant's rights were denied because he was kept in restraints during post-trial proceedings without a hearing on whether or not the restraints were necessary as required by *People v. Boose*, 66 Ill. 2d 261 (1977) and *People v. Allen*, 222 Ill. 2d 340 (2006). The *Rippatoe* decision caused concern because in 2010, the Committee recommended, and the Court adopted, Rule 430 which codifies the *Boose* and *Allen* decisions governing the use of restraints. As part of the discussion leading to the formulation of Rule 430 the Committee concluded that *Boose* and *Allen* were applicable only to the guilt/innocence phase of a criminal proceeding.

To accomplish this charge the Committee reviewed and discussed the *Rippatoe* decision and re-examined the holdings of *Boose* and *Allen*. Based on this discussion and review, the Committee again reached a consensus that the *Boose* and *Allen* decisions regarding whether or not to place a defendant in restraints applies only to the guilt/innocence phase of the proceedings. As a result, the Committee concluded that a conflict exists between the holding in *Rippatoe* and the Supreme Court's holdings in *Boose* and *Allen*. As a result of this conflict, the Committee recommends that absent an opinion from the Supreme Court expanding the *Boose* and *Allen* opinions to include post trial proceedings, an amendment to Rule 430 to incorporate the *Rippatoe* decision is not required at this time.

Project 2: Discuss and make recommendations on possible actions concerning the reliability of the current method used by Illinois trial courts for determining admissibility of eyewitness testimony.

The Committee examined multiple judicial opinions from Illinois, and other states along with scientific treatises on the reliability of eye witness testimony. In particular, the Committee examined the New Jersey Supreme Court case of *State v. Larry Henderson*, 27 A.3d 872 (2011), the United State's Supreme Court decision of *Manson v. Brathwaite*, 432 U.S. 98 (1977), the Illinois decisions of *People v. Manion*, 67 Ill.2d 564, (1977), and *People v. Slim*, 127 Ill.2d 302 (1989) and the New Jersey Attorney General Photo Identification guidelines. After thorough discussion of this project, the Committee believes that the process in Illinois provides adequate guidance to trial courts to determine the reliability of eye witness testimony.

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 and the feasibility of conditional pleas in Illinois. The Committee further requests to examine and comment on whether or not Supreme Court Rule 416(c), (f), (g) and (h) should be expanded to all felony cases. Finally, the Committee 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.