

MINUTES
Criminal Justice Oversight Council Working Group
September 19, 2018

Attendance:

Working Group: Judge Kurt Krueger, Chair
Marty Lambert, Gallatin County Attorney
Peter Ohman, Public Defender Division Administrator
Kim Lahiff, Probation and Parole Bureau Chief, Missoula
Brian Gootkin, Gallatin County Sheriff
Rich St. John, Chief of Police, Billings (by phone)

Other: Ingrid Rosenquist, Yellowstone Senior Deputy County Attorney
Adrienne Cotton, Operations Manager, DOC (by phone)

Welcome and Introductions:

Judge Krueger, Chair, welcomed the group and thanked everyone for attending.

The committee members as well as additional attendees introduced themselves.

Conditional Discharge from Supervision (CDFS):

Judge Kurt Krueger, Chair, advised that Marty had provided the working group with changes and we will move right into proposed changes.

Marty Lambert, Gallatin County Attorney, handed out the proposed changes and reviewed with the committee.

Kim Lahiff, Probation and Parole Bureau Chief, said that she missed something regarding risk assessment because the new language suggests there must be a current assessment. Assessments are done annually.

Marty said that any or all of these tools should be done within 6 months.

Marty advised that a motion must be served in Rule 2 but not need accompanying brief. This would define, explain, and be standardized. Marty said that it requires the formality of service.

Peter Ohman, Public Defender Division Administrator, said that formal service is going to slow down the process if they have to give notice to County Attorney's Office.

Marty said that service can be made by mail or e-mail under the Rules of Civil Procedure.

Peter said that the defendant coming to OPD, the process was OPD prepares documents and defendant actually files DOC form in front of the process.

Kim said that they were told to stop giving certificate of service. I don't want the defendant serving the county attorney unless they have everything they need.

Judge advised that you can't take away judicial review. Either the department supports or doesn't support the motion.

Ingrid Rosenquist, Yellowstone Senior Deputy County Attorney, likes language Marty put in and would rather have probation and parole deliver ROV's, etc.

Marty said DOC is going to have to take ownership of this.

Ingrid said she has never received just the motion. Motions shouldn't be submitted without recommendations from probation officers. Doesn't need to be changed in statute.

Peter advised that appointment terminates when Judgment is done. If you have time you help them out. Based on stress in our system try to figure out – not to get more cases.

Kim said that OPD was filling out bond motion and order and giving to defendant – giving to probation. Order would still come from the Court.

Marty said presented to Advisory Council of which we are a group on October 1st. Up to them – Senate Bill 59 – to request legislation. Generally, we have to start with this process. DOC counsel can change it, sponsor it. If they don't, County Attorneys will try to find someone to sponsor.

A vote was taken on the proposed legislative changes and it passed the working group on a 5 affirmative, 1 no, and 1 not voting.

Early Termination from Supervision:

Marty discussed changes to early termination. We need to strike all references to petition. Marty said court may hold a hearing on the motion or if the court requires a hearing on the motion, the court may grant the motion.

Judge talked about Leslie Thomas. Motion for early conditional discharge of supervision. The original sentence came out of Helena but DOC asked for him to sign off in Butte-Silver Bow. It has to be made in the Court that had jurisdiction in the first place.

Peter said some of the language says certificate of service. Marty said leave those as drafted. Having serviceable motion that starts the process best.

It was moved and seconded for the draft changes on Early Termination. They were approved and will be forwarded to the Criminal Justice Oversight Council.

46-23-1002 Powers of department:

Marty advised that the powers of the department language change.

(5) The department is an “agency as defined by the Montana Administrative Procedure Act, Sec. 2-4101. et seq., MCA.

Marty said simple change to make it clear that the DOC is subject to Montana Procedures Act, Title 2. Marty said that all state agencies are subject to this.

Marty said that Kevin Olsen advised that the DOC is not subject to rule-making authority and need to map out a different process. Marty said provide openness and accountability. This is an example of why we should be able to review your procedures of this type so that others can provide input from judges and county attorneys. County attorneys can weigh in.

Marty also provided the working group with a recommendation for the definition of agency. After discussion, he requested that this provision be removed.

The draft language defining the department under the Montana Administrative Procedure Act was approved with two abstaining votes and will be forwarded to the Council.

Other:

Judge handed out a draft Resolution to resolve the underutilization of facilities and treatment facilities. Documentation about chart show how all prison facilities over beds while treatment facilities are under. Judge also referenced the CJOC is a formal group out of the research done by the Council State Governments and their findings in June 2018.

Overview of Resolution – in 1993, the legislature gave DOC the ability to make placement decision based on recommendations from the Court. DOC is now not making these placements even with recommendations and orders from the court. Placement programs are underutilized, and DOC is making determination that is going beyond the courts. Judge McLean noted that he will order MSP commit when you are not following the recommendations of the Court. Placement programs have a big impact on our system and the Council needs to address this issue. The Resolution asks that DOC collect and analyze data on commitment placements and new crimes by those being supervised. The Resolution is also asking CJOC to reestablish for the next biennium.

Adrienne said CJOC members directed for the Working Group to assist in addressing two specific areas. Anything above and beyond will have to be decided before they may hear from the Working Group.

Judge said he was aware of the parameter, but the Working Group has the ability to examine all issues related to Criminal Justice Oversight. This Resolution reflects the concerns of Judges, County Attorneys, and law enforcement and should be addressed by the Council.

Judge said this Resolution requires DOC to honor and follow placement recommendations made in court orders and sentences for offenders convicted of a felony offense. It appears DOC is abusing its limited authority and overriding judicial decisions and recommendations. In referring to the daily population snapshot, it shows that the DOC is not following judicial decisions and

making its own determinations and in essence, overruling judges. If this continues, Judges will stop making DOC commits and start giving more MSP and MWP sentences.

Adrienne said that her earlier statement is not to discourage recommendations – has tremendous amount of respect – didn't want to give any expectations as to what the Council would do.

Marty said he thinks this Working Group does have authority to look at other issues including the Resolution. Under Senate Bill 59, the Council may appoint a working group for justice reform to examine, identify, and track any legislation as a result of criminal justice reforms.

Adrienne said she would never challenge interpretation of statutory language – particularly if the CJOC requested. DOC always represented open to talking to anyone in the criminal justice system. CJOC may choose only to hear recommendations that they choose.

Brian Gootkin, Gallatin County Sheriff, advised that the second Whereas needs to be amended to put in Montana Sheriff's and Peace Officers Association and they fully support the Resolution. Brian wants Director Michael to be open to our recommendations and also this Resolution. All we are doing is trying to help. Thinks DOC goes into defensive mode – keep an open mind and work with us.

A Motion was made to amend the Resolution to add the Montana Sheriff's and Peace Officers Association.

Adrienne advised that she would carry these concerns to Director Michael.

Peter said that it appears that DOC will place offenders where they like yet is unsure as to the Resolution.

Judge said you just have to look at the numbers. Judges make recommendations to treatment programs and DOC doesn't follow through.

Peter concerned about the problem, he is not sure what is being considered by DOC. He would like to return to a program where defendants are prescreened so we knew where they were going.

Judge indicated that he recently had a defendant with multiple burglaries and DOC hadn't prescreened. He continued the sentencing and ordered the prescreening so that proper placement would be made.

Kim said that often the defendant does not have a chemical dependency evaluation, and this is why Nexus will not screen without it.

Judge said you are not presenting it to Nexus for screening. Kim said get a chemical dependency evaluation and we will. The Judge indicated that the public defenders in the community lack the resources for CD evaluations and it's the responsibility of the DOC.

Kim said we will when they are on supervision with them.

Judge indicated that the judicial system wants defendants to be prescreened and sentences to be followed. This is a significant problem and the Judges and prosecutors are being ignored and defendants are being shortchanged. These decisions being made by DOC go beyond their statutory and constitutional authority.

Peter said he hears similar stories and he doesn't disagree. Oversight Council should make decisions on making Judge's recommendations permanent.

Judge said they should honor and follow the orders and recommendations and the DOC should be held accountable.

Marty said he would support this Resolution. Oversight Council can do what they like with it but wants to make it clear to DOC and Oversight Council that treatment programs are a viable alternative to incarceration and that the numbers indicate that they are not filling treatment beds. The DOC should take a step back and utilize these appropriate placements.

Peter supports the spirit of the Resolution.

The Judge indicated that the ACLU recently came out with a 78-page study that also confirms the underutilization of treatment beds and community placements.

The Judge indicated that the DOC is not recognizing their partnership with Judges, county attorneys and communities and they are changing the playing field.

The amended Resolution was moved and seconded and was passed unanimously by the entire Working Group.

Marty advised that the next meeting of the Oversight Committee was October 1, 2018.

The Judge advised that Chambers would provide the Oversight Committee with the final version of the proposed statutory changes together with the amended Resolution and the Minutes and the same would be provided to each member of the Working Group.

The Judge thanked everyone for their hard work in the Working Group.

Other members of the Working Group also indicated their thanks and expressed how worthwhile this group had been and hoped that the Council would review and approve the recommendations.

Meeting was adjourned.