

Winona County Criminal Justice Coordinating Council

Sentencing Orders Workgroup Minutes

January 2023 – December 2023*

*The committee may not have had a meeting in every month. The attached minutes are from every month in which a meeting was held

CJCC Courts Committee
Sentencing Orders Workgroup
January 14, 2022 at 10:00 a.m.

Present: Karin Sonneman, Kalene Engel, Kelsie Horst, Mike Kuehn, Renee Rumpca, Judge Buytendorp, Lacey Bartsh, Mike Flaherty, Becky Brandt

Issue of Concern: (1) Inaccuracies and inconsistencies in Rule 15 plea petitions by mail (which then get converted into sentencing orders) and (2) sentencing orders arising from in court hearings which contain inaccurate information are creating problems in supervision for the Department of Corrections.

Examples of issues:

- An order for no use or possession, but no order for random testing means there is no way to enforce that part of the order
- Rule 15 petitions for gross DUIs that do not have standing conditions for testing
- An in court hearing where the written order did not contain what the judge actually ordered.
- Ordering supervision of a petty misdemeanor; DOC cannot supervise a petty.

Source of the problem:

- Part of this could be attributable to the way things are negotiated, where it might be missed or is not discussed or the plea petitions are deliberately made vague by the defense attorney.
- This could also happen because sometimes the conditions are missed by the court clerks during in person hearings. There are several newer clerks and if the information is stated in order that is different from the norm, it could get missed. Besides that, the clerks are now managing the Zoom hearings and trying to take notes on the order.

How this affects the DOC:

- If there are errors or missing data, it is a process to try and get it fixed.
- DOC modifies their probation agreement to conform to what is ordered and can only enforce what is in the sentence.

Possible Solutions:

- Mike F. received a list of standard conditions from DOC and has been including those in the plea petitions he is doing. He noted that it would be helpful to have DOC provide the words/phrasing that the DOC would like to see, should the prosecutor and defense attorney incorporate that condition into the agreement.
 - DOC could provide language for standing conditions and optional conditions so that if the parties want to include that in the order, it is phrased correctly.
- Years ago, Brian Pafundi prepared a Rule 15 petition that incorporated a list of standing conditions. That seemed to work well while it was in use but it hasn't been used in years.
- Lacey created a fillable standard plea petition and took it to the state level to see if they would approve a more standard format for plea petitions. They declined. She screenshared the template

and showed where the standard conditions could be incorporated. State court administration was supportive of attaching standard conditions as an attachment.

- Having the judge recite the sentence in a certain order would help her clerks to take accurate notes. Lacey shared a checklist that they are using when processing plea petitions. The order of the checklist aligns with the court clerk's order.
- If a judge orders "no use" but the court clerk does not also hear "random testing" the clerk should seek clarification.
- Judge reviewing mail in Rule 15s can screen them more carefully for missing conditions.
- Probation officers attend hearings and catch the issues as they occur. Renee stated this was not always possible due to lack of staff.
- More training for court staff and judges.
- Prosecutor being more careful about what to include.

Understandings:

- Plea petitions are a joint recommendation and the judge can fix/amend it
- Just getting the standard language from the DOC does not mean that they are dictating what should be sentenced. That's a matter of negotiation between prosecutor and defense attorney.

Conclusions:

- It is important to have some standardization of the language being used, so getting the language from DOC will help
- Everyone can be watchful for inconsistencies.
- Having the judge use the checklist for sentencing will help keep the order consistent for clerks and should increase accuracy

Next Steps:

- Lacey will provide Kalene with the checklist and Rule 15 Plea Petition template
- Renee will send the standard DOC language on conditions for 2nd, 3rd, and 4th degree DWIs and misdemeanor assault to Kalene.
- Kalene will distribute the above with the minutes.
- Becky will make sure judges and clerks have the checklist in an area accessible to them at the time of sentencing
- Prosecutors and defense attorneys and judges be more mindful of inconsistencies and use standard language when conditions are agreed to/ordered
- Next meeting: March 10, 2022 and 10 a.m.

Adjourned: 11:00 a.m.

Minutes by Kalene Engel

CJCC Courts Committee
Sentencing Orders Workgroup Meeting Minutes
March 10, 2022, at 10:00 a.m.

Present: Kalene Engel, Mike Kuehn, Renee Rumpca, Judge Buytendorp, Mike Flaherty, Becky Brandt, Christina Galewski

Issue of Concern: (1) Inaccuracies and inconsistencies in Rule 15 plea petitions by mail (which then get converted into sentencing orders) and (2) sentencing orders arising from in court hearings which contain inaccurate information are creating problems in supervision for the Department of Corrections. These issues end up creating a lot of work and extra time for the DOC in trying to get an accurate sentencing order. DOC cannot open a file if the sentencing order is incorrect, which causes delays/cancellations for client appointments which can become very critical in cases where a client has time sensitive concerns (such as moving out of state).

Issues With Orders:

- This week, the DOC received 9 referrals; four of them contained issues that prevented DOC from being able to open a file.
 - One issue was that the plea petition does not say whether it is a stay of imposition or stay of execution or a stay of adjudication. If it is a stay of execution, DOC needs to know the number of days stayed.
- Sometimes the standard conditions of probation are missing (see handout).
- Another issue is where the defendants live out of state, such that the ICPC might apply, but the appropriate language is not included. This creates problems because DOC only has a certain amount of turnaround time on ICPC cases—they have 7 calendar days from sentencing to get the ICPC signed and transferred to another state; many times they don't even get the order until 3 days after sentencing.
- A frequent issue is not addressing the amount of the fine.
- Another issue arises when a person receives a conviction for a driving offense as opposed to a stay of adjudication with respect to the Driver's License Return Program. The goal for the Driver's License Return Program is to get a person driving legally with the least amount of expense to them. Having another conviction on the driving offense just revokes the license and starts the program all over again. In order for them to benefit from the program, it needs to be a stay of adjudication.
- Sometimes when a person pleads guilty to a petty misdemeanor and a higher-level offense, the sentencing order places them on probation for both the petty and the higher-level offense. Probation does not/cannot supervise petty misdemeanors.

Process:

- The mail in plea petitions come into the Judge electronically, who must sign off on the plea petition but can give specific instructions to the CPT (Central Processing Team). A plea petition is merely a joint recommendation from the prosecutor and the defense attorney not binding on the judge; the judge has discretion and final authority in issuing the final sentencing order.

- The Central Processing Team then prepares the sentencing order for the Judge's signature. Lacey B. prepared a checklist for the CPT to use to make sure that the order contains the necessary information (attachment).
- The Judge then signs the order, and it is e-served. The sentencing order is what DOC and everyone else must follow with respect to the sentence and conditions.
- Probation gets the order and must make sure that it contains the information needed for them to be able to open a file.
 - If there are issues with the Order (such as mentioned above), Renee reaches out to the attorneys for clarification, as that is what she was originally directed by someone in court administration to do.
 - Renee should be contacting Court Administration and CPT Supervisor Lacey Bartsch when there are issues with the sentencing order and copying the attorneys. Court Administration will then send it to the judge.

Possible source(s) of the problem: There are several stages at which omissions can occur (1) plea agreement stage; (2) judge review of plea petition and input to CPT on sentencing order; (3) CPT preparation of sentencing order. The main issue is the plea petition including all the terms of the disposition. Receiving information that is complete and accurate is the key. Suggestion for CPT to add the different types of sentences to the Plea Petition checklist.

Action Plan:

- Add the stay of adjudication, imposition, execution option to the CPT Checklist. Becky will talk to Lacey about this.
- When a judge orders standard conditions, all the standard conditions as listed in the list Renee provided should be incorporated into the order.
- The standard conditions lists should be provided to judges.
- Judges should be more careful about reviewing plea petitions and letting CPT what additional/different information to include.
- Renee will keep track of any more errors in sentencing orders that come in between now and the next meeting (starting next week).
- From now on, when there are issues in sentencing orders, Renee will contact Court Admin as per the above.

Next Meeting: April 20, 2022, at 8:00 a.m.

Adjourned: 10:54 a.m.

Minutes by Kalene Engel

Winona Sentencing Order Workgroup Meeting Minutes
April 20, 2022

Attendance: Judge Buytendorp, Kalene Engel, Rene Rumpca, Rena Patterson, Michael Kuehn, Michael Flaherty, Kelsie Horst, Christina Galewski, Becky Brandt, and Erin Vieths.

Approval of the minutes

Discussion: Becky requested changes under Process, bullet point 4, Possible Sources of the Problem regarding the Case Processing Team, and Action Plan, bullet point 1.

Decision: Becky will send out updated Meeting Minute from March 10, 2022.

Plea Petitions with Separate document

Discussion: A few attorneys have been attaching a separate attachment to the Plea Petitions outlining the sentence which has been helpful. Habitually, defense attorneys are copying and pasting the offer from an email into the plea petition. Rene has been tracking sentencing errors and there has been significant improvements. Court staff cannot make assumptions or enter any condition not listed on the petition. The Third District Judge Subgroup have made it very clear that staff are not to assume or add anything that is not on the plea petition or ordered by the court. Judges can add notes in Task Manager to communicate with staff on what they want added or not included on the sentencing order.

Decision: Rene will continue to monitor sentencing orders and send any issues to Becky and Lacey. Becky will forward to Judge Buytendorp.

Misdemeanor/Gross Misdemeanor Dispositions – Defendant Lives Out of State

Discussion: Becky received a phone call from All Godfrey, DOC Fields Services Director/Interstate Commissioner. He wanted the judges to be aware and to bring to their attention attorneys trying to circumvent the interstate compact by sentencing defendant for 11 months instead of one year. Interstate Compact requires a year sentence and supervised probation. Neighboring states would be concerned if a defendant charged with person crimes were residing in their state with no supervision. There is a discretionary/voluntary process but according to Rena other states do not like it and usually do not accept it. Defendants would still be supervised and would have to show up for meetings in Minnesota to complete assessments, etc. Rena has noticed a lot of 11-month sentences and the purpose is to circumvent the interstate compact and place defendants on unsupervised probation. Renee shared a few file numbers with Becky and Karin. Rena informed the group that the Director of the State will be more than happy to answer questions.

Decision: Rena will send out the contact information and ask Tracy to set up another training and invite judges.

Next Meeting date: Will not meet unless there is an issue.

Meeting Adjourned: 8:30 a.m.