

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE**

**Minutes of Meeting
Friday, April 17, 2015**

A quorum being present, the Colorado Supreme Court’s Advisory Committee on the Rules of Criminal Procedure was called to order by Judge John Dailey at 12:45 p.m., in the Colorado Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge John Dailey, Chair	X	
Judge Susan Fisch	X	
Judge Shelley Gilman		X
Judge Deborah Grohs	X	
Judge Morris Hoffman		X
Matt Holman	X	
Abe Hutt		X
Steve Jacobson	X	
Kevin McGreevy	X	
Judge Dana Nichols	X	
Donna Skinner Reed		X
Karen Taylor	X	
David Vandenberg	X	
Robin Whitley	X	
Non-Voting Participant		
Terri Morrison	X	
Karen Yacuzzo		X

I. Attachments & Handouts

- A. Agenda
- B. January 16, 2015 Meeting Minutes
- C. Presentence Report (PSIR) Subcommittee’s adopted amendment
- D. Failure to Pay (FTP) Subcommittee’s proposed amendment
- E. PSIR & FTP Subcommittees’ adopted and proposed amendments combined

II. Approval of Minutes

The committee approved the January 16, 2015 Meeting Minutes with no corrections.

III. Announcements from the Chair

Judge Dailey announced that he had not submitted to the supreme court the committee's proposal to amend the PSIR parts of Crim. P. 32. He thought it best to await the committee's decision on further proposals to amend the rule, as recommended by the FTP subcommittee. All of the proposed amendments to Crim. P. 32 would then be submitted to the supreme court.

Judge Dailey reported that the committee's proposed amendment to Crim. P. 44(a) with respect to law student representation was adopted by the supreme court on March 25, 2015, effective immediately.

IV. Old Business

A. Crim. P. 32, Failure to Pay

In light of the revisions to section 18-1.3-702, C.R.S., the subcommittee proposed adding new sections (c)(3) and (g). Crim. P. 32 (c)(3) adds new advisement language so if the defendant is unable to pay the monetary amount due the defendant must contact the court or appear before the court, and if the defendant is able to pay the monetary amount, but willfully fails to pay, the defendant may be imprisoned for failure to comply with a court's lawful order. Also, Crim. P. 32(g) adds when a defendant fails to pay a monetary amount imposed by the court, the court will follow the procedures in section 18-1.3-702(3), C.R.S.

Mr. Whitley suggested that (c)(3) be amended to substitute the word "that" for the phrase "as follows". Judge Fisch suggested that the statutory citation referenced in section (g) be changed from "18-1.3-702" to "18-1.3-702(3)". Both suggestions were accepted, and the subcommittee's proposals, as amended, were seconded and passed unanimously by the committee.

As previously mentioned, the proposed FTP amendments were to be presented, along with the PSIR proposed amendments, in one integrated, proposed Crim. P. 32. Mr. Whitley offered to go through the proposal and to make its format consistent. He asked if the committee would be comfortable with him making these changes without sending the proposal back for a vote. The committee agreed that would be fine, and thanked Mr. Whitley for doing this.

Mr. Whitley will prepare the PSIR portions, and Mr. Vandenberg the FTP portions, of the transmittal letter accompanying the proposed amendments to Crim. P. 32. The committee agreed the amendments should be effective immediately.

Crim. P. 32 as amended and adopted by the committee reads

Rule 32. Sentence and Judgment

- (a) **Presentence or Probation Investigation.**
- (1) **When INVESTIGATION AND REPORT REQUIRED and How Made.**

~~(I) IN GENERAL. In any felony case where the court has discretion as to the punishment and on court order in any misdemeanor case, the THE probation officer shall MUST make an A PRESENTENCE investigation and written report to the court before the imposition of sentence or granting of probation. PROBATION:~~

~~(a) IN ANY CASE IN WHICH THE DEFENDANT IS TO BE SENTENCED FOR A FELONY AND THE COURT HAS DISCRETION AS TO THE PUNISHMENT, OR~~

~~(b) WHEN THE COURT SO ORDERS IN ANY CASE IN WHICH THE DEFENDANT IS TO BE SENTENCED FOR A MISDEMEANOR.~~

~~(II) WAIVER. THE COURT, WITH THE CONCURRENCE OF THE DEFENDANT AND THE PROSECUTING ATTORNEY, MAY DISPENSE WITH THE PRESENTENCE INVESTIGATION AND REPORT UNLESS A PRESENTENCE REPORT IS REQUIRED BY STATUTE, INCLUDING BUT NOT LIMITED TO THE REQUIREMENTS OF SECTION 16-11-102(1)(b), C.R.S.~~

~~An application for probation shall be in writing upon forms furnished by the court, but when the defendant has been convicted of a misdemeanor or class 1 petty offense, the court, in its discretion, may waive the written application for probation.~~

~~(2) COURT MAY ORDER EXAMINATION. The court, upon its own motion or upon the petition of the probation officer, may order any defendant who is subject to presentence investigation or who has made application for probation to submit to a mental and physical examination.~~

~~The court, with the concurrence of the defendant and the prosecuting attorney, may dispense with the presentence examination and report unless a presentence report is required by statute, including but not limited to the requirements of section 16-11-102(1)(b).~~

~~(3) DELIVERY OF REPORT COPIES. THE PROBATION OFFICER MUST PROVIDE COPIES OF THE PRESENTENCE REPORT, INCLUDING ANY RECOMMENDATIONS AS TO PROBATION, TO THE PROSECUTING ATTORNEY AND TO DEFENSE COUNSEL OR THE DEFENDANT IF UNREPRESENTED. THE COPIES MUST BE PROVIDED:~~

~~(I) AT LEAST 72 HOURS BEFORE THE SENTENCING HEARING, OR~~

~~(II) AT LEAST 7 DAYS BEFORE THE SENTENCING HEARING IF EITHER THE PROSECUTING ATTORNEY, DEFENSE COUNSEL, OR THE DEFENDANT IF UNREPRESENTED, SO REQUESTS OF THE COURT WITHIN 7 DAYS OF THE TIME THE COURT SETS THE DATE FOR THE SENTENCING HEARING. IF THE PROBATION DEPARTMENT INFORMS THE COURT IT CANNOT PROVIDE THE REPORT COPIES AT LEAST 7 DAYS BEFORE THE SENTENCING HEARING, THE COURT MUST GRANT THE PROBATION DEPARTMENT ADDITIONAL TIME TO COMPLETE THE REPORT AND MUST RESET THE SENTENCING HEARING SO THAT IT IS HELD AT LEAST 7 DAYS AFTER THE PROBATION DEPARTMENT PROVIDES THE REPORT COPIES.~~

~~(2) Report. The presentence report shall include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, an evaluation of the alternative dispositions available for the defendant, and such other information as the court may~~

~~require. In addition, the court, as it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted mental and physical examination of the defendant. Within a reasonable time prior to sentencing, copies of the presentence report, including any recommendations as to probation, shall be furnished to the prosecuting attorney and defense counsel or to the defendant if the defendant is unrepresented. The report shall also include a statement showing the amount of time during which the defendant was confined prior to the imposition of sentence for the offense for which the defendant is being sentenced.~~

(b) Sentence and judgment JUDGMENT.

(1) Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford the defendant an opportunity to make a statement in his or her own behalf, and to present any information in mitigation of punishment. The state also shall be given an opportunity to be heard on any matter material to the imposition of sentence. Alternatives in sentencing shall be as provided by law.

WHEN IMPOSING SENTENCE, THE COURT SHALL CONSIDER RESTITUTION AS REQUIRED BY SECTION 18-1.3-603(1), C.R.S.

(2) Upon conviction of guilt of a defendant of a class 1 felony, and after the sentencing hearing provided by law, the trial court shall impose such sentence as is authorized by law. At the time of imposition of a sentence of death, the trial court shall enter an order staying execution of the judgment and sentence until further order of the Supreme Court.

(3) Judgment

(I) A judgment of conviction shall consist of a recital of the plea, the verdict or findings, the sentence, the finding of the amount of presentence confinement, and costs, if any are assessed against the defendant, the finding of the amount of earned time credit if the defendant had previously been placed in a community corrections program, **AN ORDER OR FINDING REGARDING RESTITUTION AS REQUIRED BY SECTION 18-1.3-603, C.R.S.,** and a statement that the defendant is required to register as a sex offender, if applicable.

(II) IF THE DEFENDANT IS FOUND NOT GUILTY OR FOR ANY OTHER REASON IS ENTITLED TO BE DISCHARGED, JUDGMENT SHALL BE ENTERED ACCORDINGLY.

(III) ALL JUDGMENTS SHALL BE SIGNED BY THE TRIAL JUDGE AND ENTERED BY THE CLERK IN THE REGISTER OF ACTIONS.

(c) Advisement.

(1) Where judgment of conviction has been entered following a trial, the court shall, after passing sentence, inform the defendant of the right to seek review of the conviction and sentence, and the time limits for filing a notice of appeal. The court shall at that time make a determination whether the defendant is indigent, and if so, the court shall inform the defendant of the right to the assistance of appointed counsel upon review of the defendant's conviction and sentence, and of the defendant's right to obtain a record on appeal without payment of costs. In addition, the court shall, after passing sentence, inform the defendant of the right to seek postconviction reduction of sentence in the trial court under the provisions of Rule 35(b).

~~If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. All judgments shall be signed by the trial judge and entered by the clerk in the register of actions.~~

(2) Where judgment of conviction has been entered following a plea of guilty or nolo contendere, the court shall, after passing sentence, inform the defendant that the defendant may in certain circumstances have the right to appellate review of the sentence, of the time limits for filing a notice of appeal, and that the defendant may have a right to seek postconviction reduction of sentence in the trial court under the provisions of Rule 35(b).

(3) WHEN THE COURT IMPOSES A SENTENCE THAT INCLUDES PAYMENT OF ANY MONETARY AMOUNT, THE COURT SHALL INSTRUCT THE DEFENDANT THAT:

(I) IF AT ANY TIME THE DEFENDANT IS UNABLE TO PAY THE MONETARY AMOUNT DUE, THE DEFENDANT MUST CONTACT THE COURT'S DESIGNATED OFFICIAL OR APPEAR BEFORE THE COURT TO EXPLAIN WHY HE OR SHE IS UNABLE TO PAY THE MONETARY AMOUNT; AND

(II) IF THE DEFENDANT HAS THE ABILITY TO PAY THE MONETARY AMOUNT AS DIRECTED BY THE COURT OR THE COURT'S DESIGNEE BUT WILLFULLY FAILS TO PAY, THE DEFENDANT MAY BE IMPRISONED FOR FAILURE TO COMPLY WITH THE COURT'S LAWFUL ORDER TO PAY PURSUANT TO SECTION 18-1.3-702, C.R.S.

(d) - (f) [NO CHANGE]

(g) PROCEEDINGS IN THE EVENT OF FAILURE TO PAY. WHEN A DEFENDANT FAILS TO PAY A MONETARY AMOUNT IMPOSED BY THE COURT, THE COURT SHALL FOLLOW THE PROCEDURES SET FORTH IN SECTION 18-1.3-702(3), C.R.S.

B. Crim. P. 17(e), Electronic Service of Subpoenas

On behalf of the subcommittee, Ms. Taylor proposed that Crim. P. 17(e) be amended to read

(e) Service. Unless service is admitted or waived, a subpoena may be served by the sheriff, by his deputy, or by any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena may be made by delivering a copy thereof to the person named. Service may also be made in accordance with Section 24-30-2104(3), C.R.S. Service is also valid if the person named has signed a written admission or waiver of personal service, including an admission or waiver signed using a scanned or electronic signature. If ordered by the court, a fee for one day's attendance and mileage allowed by law shall be tendered to the person named if the person named resides outside the county of trial.

Ms. Taylor noted that definitions for the terms “electronic signature” and “scanned signature” could be found in Crim. P. 49.5(c)(6)(I) and (II). When asked if the proposal expanded personal service to receiving a summons electronically, Ms. Taylor said no, the amendment concerned only waiver of service by allowing the electronic return of a scanned signature or e-signature.

A motion to adopt the proposal was made, seconded, and unanimously approved, with one member abstaining. The committee agreed the amendment should be effective immediately. Ms. Taylor will write the transmittal letter on behalf of the committee.

C. SB 14-190, E-Discovery Sharing System

Mr. Jacobson reported that the Discovery Project Steering Committee is still trying to choose a provider. Once a provider is picked there will be a demonstration of the system. Someone asked if Mr. Jacobson could give some general information about the provider. Mr. Jacobson said that the provider is the company that will get paid to perform the functions related to e-discovery; users will e-file documents, and the provider will maintain the central electronic depository.

D. CRCP 106

Mr. Jacobson reported that in 2002 he and a former committee member were on a similar subcommittee, but the issue was tabled after not receiving requested information from surveyed parties. Mr. Jacobson said he will meet with Ms. Reed and report back to the committee.

V. New Business

2015 Bills

There were no 2015 Bills on today's agenda, but Judge Dailey wanted to New Legislation Subcommittee to look at the new bill spreadsheet from the State Court Administrator's Office and be ready to report at the July 17 Meeting.

VI. Future Meetings

July 17, 2015

October 16, 2015

January 15, 2016

The committee adjourned at 2:00 pm.

*Respectfully submitted,
Jenny A. Moore*