

INDIANA SUPREME COURT
CRIMINAL LAS POLICY COMMITTEE MINUTES
NOVEMBER 1, 2019

Members present:

Judges R. Kent Apsley, Chair, Annie Christ, Matthew J. Rentschler, Rhett M. Stuard, Ryan J. King, Nathan Verkamp, Sheila Carlisle, Lynn Murray, Mary Wertz, and Justice Mark Massa.

Staff present:

Mary K. Hudson, Executive Director, Office of Court Services; Richard Payne and Henry Flores, Staff Attorneys to the Committee, Indiana Office of Court Services; Tom Jones, Records Manager, Legal Support Division, Indiana Office of Court Services.

I. Introduction – The meeting began at 9:35 a.m. and Judge Apsley, Committee Chair, addressed the committee. Technical difficulties with the conference call system prevented Judge Osterday from participating.

II. Best Practice Concepts

A. Weekend or Holiday Probable Cause Determinations

Gaye Lynn Strickland of Trial Court Technology presented the issues related to the legal requirement of a determination of probable cause for a warrantless arrest or the issuance of a warrant at times the courthouse is normally closed. IOCS advice is that an MC case be created for the question of probable cause or that a criminal case be opened regardless of the decision on probable cause.

Discussions revolved around the ability to file a criminal information but issue a summons and the requirement that probable cause be determined within 48 hours of a warrantless arrest.

Committee Consensus: If a court is asked to determine probable cause, there must be a case opened and a record made. If the case cannot be opened at the moment, it must be done promptly and no later than the next court day.

B. Indiana Public Defender Council's Proposed Legislation

Mary K. Hudson presented the proposal forwarded to the committee for potential support. The proposed legislation would require the appointment of counsel for indigent and the ability for consultation with the defendant prior to the initial hearing.

Discussions stressed the difficulty in compliance with the proposal for small counties with limited numbers of public defenders who are likely part-time. Support was stated for the equalization of resources for public defenders with those available to prosecuting

attorneys. Concern was expressed that there was little value to the proposal due to the implementation of objective criteria for establishment of the defendant's bond.

Committee Consensus: The Committee feels it cannot take a position or provide feedback on the proposal. Concerns exist regarding:

- **Fiscal impact**
- **Resource availability**
- **Delay in the initial hearing process and the**
- **Lack of resources for small counties as compared to larger counties.**

A response should go to the Supreme Court.

C. Retroactivity of Costs Reductions for Community Service

Henry Flores presented the issue concerning the retroactivity of the newly enacted provisions of HB 1087 to IC 33-37-2-3.

Committee discussions noted that the General Assembly was silent regarding retroactivity, that the provisions apply when costs are imposed at sentencing and the discretionary status of the language. Concern was advanced that the waivers would result in an income loss to the State.

Committee Consensus: The legislative change is not remedial and retroactive application was not intended.

D. Warrantless Arrest Probable Cause Determinations

Rich Payne presented the issues related to the requirement of a determination of probable cause following a warrantless arrest.

Committee members felt

- the time begins to run at the arrest and release is required if probable cause is not determined within 48 hours regardless of weekends or holidays,
- some suits filed for failure to comply with 48 hour rule,
- evidence obtained after 48 hours could be suppressed,
- Indiana's 72 hour rule relates only to the filing of charges, and
- complications arise due to local rules re judge assignments and bond schedules

Committee Consensus: The committee feels the time commences to run at the moment of the arrest. Judges should follow the 48 hour rule of *Riverside v. McLaughlin* which includes weekends and holidays or release the defendant.

E. Authority to Create CCS Entries

Rich Payne presented the issues concerning authority to create entries for the Chronological Case Summary and committee discussions followed.

Committee discussions indicated a feeling that who may make entries is up to the judge but it should be closely restricted and not extended to anyone outside the office of the court or clerk, e.g. Sheriff.

Committee Consensus: Entry making authority should be restricted to immediate court and clerk staff only. Entries should not be made by extended staff with a potential adversarial position.

III. Future Meetings

Committee Consensus: Meet quarterly on Fridays. Next meeting to consider HB 1006 on

Level 6 felonies in DOC and CR 26 budget, training, and small county impact.

IV. Next Meeting – January 31, 2020 – 9:30 a.m. – 3:00 p.m., IOCS, 7th floor, Room 755, Tech Training Room

V. Adjournment - The meeting adjourned at 11:02 a.m.