

Waukesha County Criminal Justice Collaborating Council
Pretrial Subcommittee
Tuesday, April 13, 2010

The meeting was called to order at 12:01 p.m.

Subcommittee Members Present: Martin Binn, Diane Kelsner, Dave Falstad, Sam Benedict, Sara Carpenter, and Brad Schimel. **Absent:** Chair JoAnn Eiring and Mike Giese.

Also Present: Judge Mac Davis, Karen Phillips.

Approve Minutes of January 26, 2010

MOTION: Falstad moved, second by Binn, to approve the minutes of January 26, 2010. Motion carried by unanimous consent.

Discuss & Consider Guidelines for Pretrial Use of SCRAM

Carpenter stated that the number of people who revert to the enhanced supervision model because of payment issues with SCRAM is very small. She will provide more specific information on this subject to the committee members in the near future.

Schimel arrived at 12:04 p.m.

Carpenter estimated that about 95% or more of clients are paying for SCRAM, based on a caseload of an average of 10-13 clients per week/40-50 per month. Carpenter sees all individuals who cannot afford or refuse to pay for SCRAM, which includes the public defender represented clients. For those clients with financial hardship, the SCRAM installation fee is waived and the daily rate is reduced to 6 dollars. Clients have indicated that SCRAM has helped them with their alcohol issues, and allows for less supervisory appointments at WCS. She emphasized that the vast majority of clients are paying for SCRAM. Carpenter shared a written testimonial from of public defender client in support of SCRAM.

Benedict asked if the testimonials are solicited by WCS. Carpenter said all SCRAM clients are asked for a testimonial after the completion of the program. All of the clients are surveyed, but results go into the Alcohol Monitoring Systems, Inc. (AMS) national survey. Carpenter said she is working with AMS to query the survey results for information specific to Waukesha County. She added that everyone is surveyed, even those who do not complete the program.

Carpenter distributed SCRAM compliances summaries for the following timeframes: 1/01/2009 – 12/31/2009, 1/1/2010 – 4/12/2010, and 1/1/2009 – 4/12/2010. She explained that the violation statistics include all confirmed alerts for the total number of clients. Since one client can be responsible for multiple alerts, the actual compliance rate may be much higher than shown. Types of alerts include alcohol detection and potential tampering. Carpenter said a total of 50 clients were monitored in 2009, when SCRAM participation was voluntary. There was an approximate 80% rate of compliance in 2009. Most of the alerts were for potential tampers. The criteria for court-ordered SCRAM were implemented earlier this year. The compliance rate has improved to 89% in 2010. Carpenter maintained that SCRAM compliance is definitely increasing overall. Binn clarified that a defendant is not considered non-compliant when ordered on SCRAM but cannot afford to pay.

Binn discussed the process which culminated in the development of the criteria to be used as usual norms for the Court to order a defendant to SCRAM monitoring when bail is being set. Input from Binn, WCS, and their respective contacts was compiled, then forwarded to Judge Davis for further follow-up and consultation with other judiciary members. The final SCRAM criteria, as outlined in the handout titled A

Proposal for Broader and Consistent Use of SCRAM for OWI Defendants on Bail, were implemented in late February/early March. Binn compared the criteria of Waukesha County to that of Milwaukee County, pointing out that Milwaukee County pays WCS \$246,000 a year to determine who goes on SCRAM and under what criteria. Waukesha County does not pay WCS and therefore has developed its own criteria; it is more court-oriented than agency-oriented.

Binn and Carpenter continued with an overview of the SCRAM criteria as outlined. Davis added that WCS discussed SCRAM monitoring at a criminal judges meeting in February. The judges agreed that SCRAM should be utilized more. Carpenter reminded the group that one of the primary goals of the pretrial programs is to have individuals enroll in a treatment program as soon as possible pretrial to address their alcohol-related issues.

Benedict commented that he represents the minority of clients who cannot afford SCRAM. He discussed his unemployed client who was ordered to daily reporting (5 times a week) because he had no money to pay for SCRAM. This individual has not had an OWI conviction in 10 years. Benedict said he represents many clients who are not chronic substance abusers or habitual offenders, and questioned the appropriateness of the application of SCRAM. In reaction to the compliance data previously presented, he said it appears that there is now a more indiscriminate application of SCRAM. The pool of people is larger and there is probably a higher percentage of non-problem, non-addicted people, so it is not surprising the compliance rate is higher.

Carpenter reiterated that most clients (greater than 95%) are paying for SCRAM, even the court-appointed attorney clients. The goal of this program is to do something that is effective instead of guesswork. Benedict said he differs on the approach, in that by broadly sweeping everyone into the program, the problem individuals are embedded in that population. Davis said according to the criteria, the only debatable point may be that all 2nd and 3rd offenses with a BAC of .15 or greater may be swept into a broader population. Benedict agreed that is where some of his issues lie; however, the biggest problem for his clients is the payment issue.

Carpenter referred to Milwaukee County's SCRAM program that has been in operating since 2005. Of the thousands of people who have been monitored, most of the 2nd offense drunk drivers are deemed irresponsible users who never return to the program as 3rd time offenders. The criteria were developed based on past experience and what is known about the offenders. There are those who believe that SCRAM should be imposed on all repeat offenders who have shown they have not responded to previous interventions or sanctions; however, Milwaukee County does not have the funds available for all of those cases. Carpenter continued with an overview of Milwaukee County's SCRAM criteria.

Carpenter said she would email Rebecca Luczaj information on the number of clients who have reverted to enhanced monitoring/reporting because of payment issues, as well as a copy of the AMS national survey, for distribution to the Pretrial Subcommittee members.

Falstad, being new to the Pretrial Subcommittee and the concept of SCRAM usage, asked Benedict to further clarify his concerns about SCRAM. Benedict said he is concerned about moving away from an individualized use of a monitoring device that has value in cases that show particular circumstances. Others feel that the circumstances are properly defined, but he does not agree. Benedict stated he is also concerned about losing sight of the fact that SCRAM is being imposed in pre-conviction cases. These people have been accused, not convicted. It is an important component in our judicial system that there is a difference between the presumption of innocence in the people that haven't been convicted versus those who have. It is ironic that the supervision and monitoring is more intense for people pre-conviction than for those who are convicted. Understandably many of the people convicted are in jail, but with the

techniques currently in use, Benedict said many of his clients are being supervised more closely than those people in Alcohol Treatment Court.

Davis said that according to information he has heard or read for decades, prompt addressing, convicting and sentencing is more important than the harshness of sentencing. The SCRAM monitoring method is as prompt as possible, and it is probably a good idea to impose close supervision immediately after arrest than a year later after conviction. The presumption of innocence is important but does not apply in this instance because the monitoring is being used as a condition of bail. The real analysis is not whether it is impinging on the presumption of innocence – it is whether it is impinging on reasonable bail.

Benedict stated this is a lucrative business plan for companies such as AMS who profit from contracts providing this type of monitoring service. They have a strong incentive to increase usage. Benedict said he is somewhat conflicted with the current system, that there is no pre-conviction treatment/diversion program. There is very little incentive for active participation in pre-conviction treatment because the reward is so small compared to that of the Alcohol Treatment Court Program.

While not unsympathetic to Benedict's argument, Binn explained that although SCRAM has its pluses and minuses, it is much better to have someone monitored 24/7 without a WCS office visit than to have them coming in several times a week to deal with work, transportation, and child care issues. It is not a perfect system. SCRAM monitoring, as set forth in this criteria, is better than no SCRAM at all. The system and criteria can be tweaked, refined, and improved over time, to find a broader consensus as to how it can work better. Binn said he believes that, as a court system, community and society, we are better off with SCRAM than without it. This is just the first step in a very long journey in which SCRAM will become an even better component as a reasonable condition of bail before trial.

Davis addressed Benedict's concern of whether there is enough benefit of pre-conviction compliance to make it worthwhile. A thirty-day reduction off a 250-day sentence is significant, in his opinion. He believes that most offenders value the pretrial SCRAM monitoring for the support and treatment it provides and the accountability it demands. Davis further discussed the judicial district's sentencing guidelines that will need to be reconsidered in the near future because of the law changes specific to probation that will take effect on July 1, 2010. He acknowledged the importance of recognizing SCRAM compliance at the time of sentencing. Schimel also anticipates revisions of the district attorney's recommendations, and realizes the difficulty of having a one-size-fits-all recommendation policy.

Discuss/Reevaluate Pretrial Supervision Program's Purpose & Goals

Carpenter clarified how the Pretrial Supervision Program differs from the OWI Pretrial Program. The Pretrial Supervision Program provides monitoring and supervision to a variety of misdemeanor and felony offenders while they await trial or adjudication to assure their appearance in court.

Benedict said in his recollection, this program was intended to supervise people that would otherwise be detained on low amounts of cash bail, allowing a greater number of low offense/high risk offenders to be released from jail into the Pretrial Supervision Program. This definitely has a connection to jail population; however, the increasing number of narcotics abusers has brought new issues to light. It appears the program has morphed into a different program, targeting special population groups – those who are in need of more intensive supervision and monitoring. Pretrial supervision is ordered for people who would otherwise get out on bail, but now there is an additional condition. The narcotic user has been identified as someone in need of more supervision and treatment, according to district attorney recommendations. The program is different than it was before, and it has not been addressed and reanalyzed.

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Carpenter explained that not all clients are referred over to Pretrial Supervision because of drug charges. Everyone is being screened pretrial using a risk tool, and the reports are submitted to the courts. Perhaps the original charge was not related to drugs, but a drug issue was discovered during the screening process. Schimel added that heroin abusers are viewed as a very high risk to reoffend. He recommends a signature bond with pretrial monitoring rather than cash bail for most drug offenders. A huge percentage of these people continue to abuse drugs, and the monitoring is catching it. Carpenter said the success rate is very good for the population and age group they deal with. WCS follows the National Association of Pretrial Services Agencies guidelines, offering support and referrals to treatment in accordance with national standards. The program strives to get the clients through court appearances by stepping up intervention and support as necessary. What happens post conviction is another issue.

Binn said there are many more individuals who could be ordered to pretrial monitoring; however, there is limited space available in the Pretrial Supervision Program. It is a reasonable term and condition of bail. WCS has acknowledged that they are no longer seeing inappropriate referrals to pretrial monitoring. The vast majority with drug related issues are going to pretrial monitoring - times have changed and this is the result. Schimel agreed.

Due to time constraints, the discussion concluded at this point.

Next Meeting Date

- July 27, 2010 at 11:45 a.m.

The meeting adjourned at 1:18 p.m.