



Waukesha County Criminal Justice Collaborating Council
Evidence-Based Decision Making Pretrial Workgroup Minutes
Monday, October 31, 2016

Team Members Present:

Judge Jennifer Dorow (Co-Chair) Sue Opper (arrived 9:12 a.m.) Craig Kuhary (arrived 9:12 a.m.)
Sara Carpenter (Co-Chair)

Team Members Absent:

Laura Lau Sam Benedict

Also Present:

Rebecca Luczaj Abbey Nickolie Mary Wittwer
JoAnn Eiring Alison Ries Carla Matz
Kelsey Morin (on behalf of Sam Benedict)

Dorow called the meeting to order at 9:09 a.m.

Approve Minutes from September 19, 2016 Meeting

Motion: Kuhary moved, second by Opper to approve the minutes from September 19, 2016. Motion passed unanimously.

Discuss & Consider Workgroup Membership Additions

Motion: Kuhary moved, second by Carpenter to approve the addition of Abbey Nickolie, Assistant District Attorney to the CJCC EBDM Pretrial Workgroup. Motion passed unanimously.

Motion: Kuhary moved, second by Carpenter to approve the addition of JoAnn Eiring and Mary Wittwer, WCS Program Directors, to the CJCC EBDM Pretrial Workgroup, as well as the approval of Kelsey Morin, Assistant State Public Defender, as an alternate for Benedict. Motion passed unanimously. Wittwer will eventually replace Carpenter on the workgroup.

IDIP Supervision Update

Luczaj distributed a *Memorandum to Waukesha County Circuit Court Criminal Traffic Judges Re: Waukesha County Pretrial Intoxicated Driver Intervention Program (IDIP)*. The memo addresses the new service model for the pretrial IDIP that was developed by the workgroup, resulting from the expiration of state funding for the program on June 30, 2016. The memo specifically addresses the protocol for situations involving defendants who are refusing or unable to pay for services at WCS.

Opper left at 9:18 a.m.

Dorow believes that an offender's inability to pay should not be grounds for discharge from the program. Carpenter explained WCS is offering the lowest rate available to those who claim an inability to pay, with a payment plan for as little as \$10.00/week. This does include program fees if a defendant is assigned a program fee. She reported that, so far, WCS has had no issues with defendants not being able to stay in

compliance with payment plans. Further, WCS will allow defendants to remain in the program as long as they are consistently paying something to the program.

Dorow stated the memo should include the fact that there are fees associated with the new service model, and to clarify that there are limited indigent funds available. Further, the memo should also indicate that police departments are no longer offering free testing services and include the cost associated with PBTs, which is typically \$2-\$5/test. Court intervention should be a last resort.

Opper returned at 9:26 a.m.

Carpenter reported that new research has been done showing that defendants can get around daily PBTs and test zero even though they have been drinking. Carpenter will provide Dorow with the research to present to judges and commissioners.

Carpenter stated an inability to pay is determined through a review of the documentation the defendant completes and provides to WCS. Verification of a public defender and public aid qualifies them as well. Carpenter stated that for the most part, WCS is taking the defendant's word that they are unable to pay.

In determining the difference between refusal to pay and inability to pay, Dorow suggested defining refusal as a lack of cooperation and unwillingness to comply with the process. The workgroup agreed to include in the formal protocol that if WCS determines there is not an inability to pay, but the defendant does not agree and wishes to appeal, they would then have to complete an "Affidavit of Indigency" and appear in court for an official determination.

Carpenter will make the modifications to the memo as discussed and will forward it to Dorow for presentation at the 11/9 Judges' meeting. Revisions will also be sent to the workgroup.

Continue Discussion on Data Collection Project

Dorow reported that the Clerk of Court's office is still working on the data collection spreadsheet that will be used to determine if low risk defendants are being held in jail and if high-risk defendants are posting bail with no supervision. There are no updates available at this time, but Amy Rendall will be invited to the next workgroup meeting to give an update.

Discuss Next Steps and Set Date for Next Meeting

Next meeting date is Tuesday, December 6 at 9:00 a.m.

Adjourn

The meeting adjourned at 9:58 a.m.