

PALM BEACH COUNTY CRIMINAL JUSTICE COMMISSION
PROBATION ADVISORY BOARD

Governmental Center, 10th Floor
301 N. Olive Avenue
West Palm Beach, FL 33401

January 27, 2016 – 12:15 p.m.

MINUTES

Members Present

Leonard Hanser, Chairman	Administrative Judge, County Criminal Court
Rosalyn Baker	Florida Department of Corrections
Glenny Cueto	Professional Probation Services
John Rivera	Public Defender's Office
Louis Tomeo	Clerk and Comptroller's Office

Guests Present

Richard Clausi	State Attorney's Office
Federico Forero	Professional Probation Services
Thomas Gano	Private Defense Attorney
Beth-Kaye Levinson	House Arrest Services, Inc.
Jeanette Marshall	Public Safety
Stewart Saalfield	Court Administration

CJC Staff Present

Damir Kukec	Research & Planning Manager
Candee Villapando	Criminal Justice Analyst

I. Welcome/Opening Comments

Chair Judge Leonard Hanser welcomed everyone to the Probation Advisory Board meeting.

II. Roll Call and/or Introduction of Members & Guests

Damir Kukec did the roll call.

III. Approval and/or Amendments to the Agenda

The agenda was approved without amendments.

IV. Approval and/or Amendments to the November 10, 2015 meeting minutes

The minutes from the November 10, 2015 PAB subcommittee meeting were approved.

V. Old Business/Updates

A. Alternative Sanctions for Misdemeanor Offenders

Judge Hanser noted that the AO had been sent around to all county court judges, and he received only one response; a positive one. He remarked that the silence from the rest of the judges can be inferred as acquiescence, and acquiescence is consent. The proposed AO was voted and accepted by the members; only one member, John Rivera, opposed. Mr. Rivera explained his opposition that he had the same concerns with circuit court AO in that it presents a problem with the offender not having benefit of counsel regarding the alleged violation.

Judge Hanser will send an email, with the proposed AO attached, to Amy Borman, the general counsel for the circuit to review and then present it to Chief Judge to be signed. Judge Hanser clarified that the AO entered by the Chief Judge does not need to be approved by the advisory board. Mr. Rivera concurred, as it is similar to the felony AO. Judge Hanser just want to get buy in from everyone.

Mr. Rivera asked, after Chief Judge signs the AO if there will there be some sort of monitoring. It will be nice to see numbers to know what all the judges and probation are doing. Judge Hanser said that Michelle Spangenberg has requested him to provide a space in the form where the Clerk of Court can put a docket to track the numbers. Louis Tomeo said they will just have to create another docket code.

Ms. Baker talked about some handouts that staff will distribute to members: a document on alternative sanctions program for felonies directed to all the counties currently using the program, what it is all about, and the cost savings in using this program to the state; a copy of a bill brought forth by the DOC Secretary asking the alternative sanctions program be made available to all judges to look at and use if they chose to; and a handout containing talking points about alternative sanctions program. Judge Hanser asked Ms. Baker if each circuit has its own set of alternative sanctions program can build upon it depending on what is going on their county; so it varies among circuits.

B. Annual Monitoring Review for FY 2014-15 – Damir Kukec (*Draft attached*)

Not discussed.

VI. New Business

A. Visual Alcohol Monitoring (Discussed before item V. Old Business/Updates)

Beth-Kaye Levinson, House Arrest Services, Inc. (HAS) thanked the board for allowing her to address a few issues. She brought up a few issues/questions before the board. First were issues that came up regarding violation of probation (VOP) hearings concerning the alcohol monitor they use, Soberlink. She wanted to be sure that all the companies that are now giving out alcohol monitor are listed on court paperwork so the defendants know the different companies they are permitted to go to. She contended that the visual alcohol monitor that they use is way up front in the technology field. She gave a description of the equipment and its characteristics, benefits. Ms. Levinson also wondered how the other companies handle these violations. She said recently, they were asked by the State Attorney to bring in the manufacturer to prove that the equipment was working properly at the time.

Richard Clausi, Assistant SA, talked about the case that Ms. Levinson referred to – an individual that in the course of two months, the first two months in their diversion program, allegedly according to the records ultimately provided by Soberlink failed to abide by his testing regulations at least 10-15 days out of the first 70 days; allegedly blowing a .06, .04, and .03 at random points during that first 70 days. Another point in time he allegedly blew a .395, but then 15 minutes later, blew triple zeroes. So from the state of Florida's point of view, something went awry with that specific blood alcohol number and decided not to go forward with the VOP based on that. They went forward on the other ones which appeared on its face are legitimate. Mr. Clausi said they contacted Ms. Levinson multiple times; the defense attorney was alleging that these were inaccurate readings, and saying that this instrument is not properly reading out what this individual was doing. When he contacted HAS, they was informed that Soberlink was bought out by some other company from out of state and that the only documentation they can provide to as to whether it works or not is a letter from 2013-2014 certifying that when they sent the equipment to HAS on that date that it was working. There has been no recalibration or testing two years later to verify whether or not it was still working. The SAO needed someone to come in and verify and certify instrument was working.

Judge Hanser asked if there are any state regulations on these devices; Mr. Clausi said not that he was aware of. He contends that the SAO has burden of providing evidence that this instrument is working in order to do a VOP. Judge Hanser asked what SAO would do. Mr. Clausi said that at this point only on misdemeanors, and mostly applies to DUI cases; they will not be using the visual alcohol monitoring, go for ignition interlock, or SCRAM monitor through PBSO. Judge Hanser asked Ms. Levinson what back up can the company provide to HAS to address the concerns expressed by the state. Ms. Levinson said a notarized affidavit stating that the machine was in good working condition at the time.

Judge Hanser remarked that if the evidentiary value of the device will be attacked, and questioned, then their utility is marginalized because no one wants to have these hearings constantly determining the accuracy and reliability of the machine. Mr.

Clause suggested documentation or certification that instrument is working at that time before being handed out to defendant. Judge Hanser believed that this is an issue the board needs to look at more closely if that machine will be continued to use. He asked Ms. Levinson to contact the company and convey the concern about the ability of the state to rely on the readings of that machine in terms of being able to prove the alleged violation, understanding that defense counsel will be attacking the reliability of the machine that is not periodically examined by the company. Judge Hanser used breathalyzer as an example that is examined every month, and once a year goes to Tallahassee to be recalibrated by FDLE. They need something for the state that points to the reliability and accuracy of the instrument. Either the instrument needs to be recalibrated, or send someone to certify its reliability. Mr. Clause said that right now, right now just on a county court level, there will be nobody using, or no new pleas from the state that is using the Soberlink program. Judge Hanser clarified that the state will not be accepting a plea agreement in which that machine was used. Additionally, Mr. Clause said they will make recommendations to any judge that is using Soberlink their current problems, but it's up to them whether or not to use it.

Ms. Levinson proposed that she will ask their company to get her certified to be able to recalibrate, and will come back to report at the next meeting. Judge Hanser asked if CJC has some authority to impose recalibrating and maintaining instruments that are used. Mr. Kukec said that in his experience the gate keeper would be the State, similar to discussions about pretrial intervention and diversion programs that do not go to PPS. Mr. Clausi concurred, and a bigger concern may be that other judges may not be aware of the issue, in terms of being able to do a VOP based on the machine.

- VII. Member and Guest Comments** - No member and guest comments.
- VIII. Next Meeting** – To be determined.
- IX. Adjournment**