

## VII. APPROVE PRESENTENCE INVESTIGATION REPORT DRAFT

### MOTION #19-29: APPROVE PSI DOCUMENT WITH CHANGE

**MOVED:** Judge Rumbaugh

**SECONDED:** Tim Wettack

**PASSED:** Passed

Discussion: Make change to language to read “The SGC recognizes that there exists the risk of perpetuating racial disproportionality by increasing the amount of PSI information to the courts and increasing the reliance on risk assessment tools.”

Keri-Anne: Ok, so the red language [see below] is what I was asked to add. I took it from Mick’s comment about increasing cultural competency and reducing disproportionality in PSIs, and also that the exclusion of risk assessment information and the sentencing recommendation as part of the PSI.

#### **Increase cultural competency and reduce disproportionality in PSIs**

The SGC recognizes that there exists the risk of perpetuating racial disproportionality by increasing the amount of PSI information provided to the courts. Some of the information reported can be subjective in nature and there may be barriers to obtaining all the relevant information for persons from different cultures. The SGC recommends to whichever agency has the duty to complete PSIs that they actively look for ways to increase cultural competence so as to help reduce disproportionality.

#### **Exclude risk-assessment information and sentencing recommendation**

The reasoning behind the expanded use of the PSI is to provide additional information related to the defendant and the circumstances of the crime to the judge, the prosecution and the defense. Not all risk assessments are of equal quality and efficacy and the tools used by an agency or county can varies. This creates too much uncertainty about the risk assessment provided and SGC members felt the PSIs were better without that information. Likewise, probation or community supervision staff providing recommendations for sentencing outcomes was deemed unnecessary.

Keri-Anne: So, did I...the increase in cultural competency and reduce disproportionality, does that...is that ok the way it’s written?

[silence]

Judge Houser: I’m going to take a look at Department of Corrections again.

Alex MacBain: Yes.

Judge Houser: Do we have any kind of action we’d like to take on that?

Judge Rumbaugh: I would observe that while it is clearly true that there is a risk of perpetuating racial disproportionality by increasing the amount of PSIs, really it is the risk assessment tools that...because they incorporate the number of prior arrests, number of prior offenses that have either been plead to or have resulted in a conviction, it’s that which I think is largely responsible for perpetuating racial disproportionality in sentencing. I don’t see any reference to the risk assessment tool itself as being the driver. I mean it’s just something that proxies for racism, frankly.

Keri-Anne: Ok. Is that a recommendation to add “by increasing the amount of PSI and risk assessment information provided to the courts”?

Judge Rumbaugh: I think by increasing the reliance of risk assessment tools in the context of pre-sentencing investigation information...PSIs, in and of themselves, identify lots of culturally-relevant issues that a sentencing judge takes into consideration when thinking about mitigation or a low end of the range sentence as opposed to one mid-range or upper range. It’s the risk assessment tools with their significant reliance on prior arrest and conviction history that unfortunately impact the minority communities, and so that’s the way I...

Greg Link: I think that’s true. I think the point Mick had, and I think I agree with it too, is that the PSI, even though it doesn’t have these concrete things that have, you know, baked in racism, the narrative sometimes can bring that...I read a juvenile probation report yesterday. It was plainly written from a perspective of someone who distrusted mentally ill people. And, I trust the judge to see through that but that’s there still, right? The narrative, the facts that are highlighted in the PSI, those can carry forward those sort of cultural problems.

Judge Rumbaugh: Yeah, but that’s not actually racial disproportionality, that’s another, you know, protected class.

Greg: I know, but I’ve seen the same thing with PSIs pertaining to different, you know, minority groups or whatnot. No, I think that is there still, so yes, I think you’re right, the risk assessment poses the greater risk, but the PSI has that same risk as well. To the extent that we are going to change that, I would suggest changing it to say “and risk assessment”.

Judge Rumbaugh: “By increasing the amount of PSI information, and it’s increasing reliance on risk assessment tools.”