Late Release
Incident Review Report
Department of Justice
February 25, 2011

Introduction:

This review focused on circumstances surrounding a sentence involving "default time". When someone receives a Summary Offence Ticket (SOT), default time may be ordered as an alternate to paying the fine. An individual may serve default time in a correctional facility instead of paying a cash fine.

If an individual is already in custody, default time may be ordered consecutively or concurrently to the sentence being served. *Consecutively* means sentences for two or more offences are served one after the other. *Concurrently* means the sentences for two or more offences are served during the same time period, essentially creating one sentence period for multiple offences.

Considerations:
The review considered:

- The complexity of sentence calculation
- The importance of accuracy in updates in the JEIN system
- Processes required to be in place
- Staff persons' knowledge of the procedures involved
- The computer program (Justice Enterprise Information Network - JEIN)

Issue:

An offender was convicted of two SOT charges on April 22, 2008. Default time was specified by the Presiding Justice of the Peace. At a subsequent hearing on August 30, 2010, the offender made application to serve default time for seven Summary Offence Tickets (SOTs) including the two for which the offender had been sentenced on April 22, 2008.

On November 17th 2010, Court Services determined that the offender's SOT default time had incorrectly been entered as *consecutive* instead of *concurrent* and therefore the offender had been kept in jail longer than necessary.

The Facts

Default time for two of the fines had been specified by the Presiding Justice of the Peace on April 22, 2008 as follows:

- SOT #1 - 45 days
- SOT #2 - 7 days

At that time, the Presiding Justice of the Peace did not specify whether default time should be served concurrently or consecutively. Absent any such indication, default time is deemed to be *concurrent*.

On April 22, 2008, the night court clerk entered the hearing results in relation to the offender's tickets into JEIN. JEIN records indicate that default time for SOT #2 was entered as concurrent, but default time for SOT #1 was entered incorrectly, as consecutive.

This error from 2008 remained in JEIN. It was either not identified through the verification process or was identified through the verification process but not addressed in JEIN.

On August 30, 2010 the Judge confirmed the decision made by the Presiding Justice of the Peace on April 22, 2008 and specified default time for all of the fines as follows:

- SOT #1 – 45 days concurrent
- SOT #2 – 7 days concurrent
- SOT #3 - 14 days consecutive
- SOT #4 - 14 days consecutive
- SOT #5 - 14 days consecutive
- SOT #6 - 8 days concurrent
- SOT #7 - 4 days concurrent

The Judge ordered that the default time for SOTs #3,4 and 5 (42 days in total) run consecutive to the 45 days default time ordered for SOT #1. The judge also ordered that 87 days (45 days for SOT #1 and 42 days for SOTs #3-5) run concurrent to the offender's existing period of incarceration. On August 30. 2010, the court staff person correctly entered the default time, and also correctly entered whether that time would be served consecutively or concurrently, for SOTs #3,4,5,6 and 7.

However, because default time for SOT #1 was incorrectly entered into JEIN as consecutive, as opposed to concurrent to the existing period of incarceration, the 87 days default time ordered by the Judge did not begin to run until after the offender's existing period of incarceration expired.

The staff person described the day of August 30, 2010 as extremely hectic and the office as short staffed that day.

On November 17, 2010, the court staff person was contacted by a representative of the Central Nova Scotia Correctional Facility (CNSCF). CNSCF had been contacted by legal counsel for the offender who indicated that his client might be in the correctional facility in excess of his custodial sentence. The court staff person immediately consulted the court file and NOVO[1]. The staff person identified the error and notified the supervisor by e-mail. The staff person confirmed the error with CNSCF by e-mail and the offender was consequently released from custody later that day.

Findings

There is a reliance on the JEIN computer system for information. It is however recognized that occasionally, errors occur in the JEIN system and are not always picked up.

When entering default time in JEIN, there is a single field where either a "C" for *concurrent* or an "S" for *consecutive* should be entered. The single letter represents the sentence type that was decided during the court hearing. The sentence type is part of the *hearing result*.

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[1] NOVO is a digital audio recording system that records the audio of court proceedings

It is speculated that on April 22, 2008, the hearing result (a single letter), was simply entered incorrectly due to human error and, for reasons we cannot clearly determine, it was not addressed through the regular verification process. The verification report [2] in relation to that hearing result is unavailable because the reports are retained for only one year. Default time and cumulative sentencing are not covered in any of the existing court manuals.

On this particular day, Monday, August 30, 2010, 5 staff out of 10 court reporter positions were away. Three were on vacation, one was on general illness, and a fifth was on maternity leave and that position had not been backfilled yet. Staff complements do not include any redundancy to cover short term staff vacancies.

Recommended Improvements:

Computer Program – JEIN

- It is recommended that consideration be given to modifying the JEIN computer system so that the Consecutive / Concurrent field always defaults to Concurrent unless the court officer overrides the hearing result to Consecutive.

- It is recommended that consideration be given to modifying the JEIN computer system so that an original verification report from any given date can be generated without reflecting subsequent versions of that verification report.

- It is recommended that consideration be given to modifying the JEIN computer system such that multiple cases may be linked to generate a single Warrant of Committal. This is a paper document from the court, delivered to the jail by the sheriff that gives the correctional facility the authority to hold the offender. A single Warrant of Committal for

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[2] A Verification Report is a digital transaction record that shows the history of all data entered, the day before, for any particular case.

multiple sentences would provide a total tally of all default time to be served. This would reduce the number of paper documents and make the sentence calculation more clear for court and corrections staff.

Process

- Update existing court services manuals to address default time, cumulative sentencing, and the corresponding hearing results recorded in the JEIN computer system.

- Through the verification process, continually monitor night court staff work entered in JEIN, as their exposure to and experience with the court administration system is limited. Recurring issues should be raised with staff and additional training identified.

- Review the verification policy with night court staff.

- Consider developing a JEIN verification manual and training package for all staff, including night court staff.

- Consider establishing a vacation policy that acknowledges and addresses operational needs.