
September 13th, 2022
9:00am – 3:30pm (MST)
Lincoln Conference Room, Idaho Supreme Court and via Zoom
Minutes

<p><u>Members in Attendance</u> Justice Gregory Moeller, Chair Hon Michelle Evens Hon. Rick Carnaroli Hon. Darren Simpson Hon. Cynthia Meyer Hon. Nancy Baskin Hon. Debra Orr Commissioner Brent Reinke Ron Christian Lisa Martin Megan Roumanis Israel Enriquez Aimee Austin Jennifer Romero Hon. David Hooste Dr. Magni Hamso Marreen Burton Kerry Hong Scott Bandy Lisa Crook Ross Edmunds</p>	<p><u>Members Not in Attendance</u> Senator Patti Anne Lodge Director Josh Tewalt, IDOC Jared Larsen Eric Wildman</p> <p><u>Staff</u> Jason Spillman, Legal Counsel Scott Ronan Lynn Proctor Lorrie Byerly Emily Carroll</p> <p><u>Guests</u> Erin Bullard</p>
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Meeting Convening and Minutes

The meeting convened at 9:08 a.m. by Chair, Justice Moeller, who welcomed the Committee members and guests.

Justice Moeller called for a motion to approve the minutes of the February 15, 2022 Committee meeting. Judge Simpson said corrections needed to be made on pg. 2 in the second paragraph under FY 2022 Budget Update to remove “because” in the second to the last sentence and to remove the apostrophe in “judge’s” in the last sentence of that same paragraph. He further said the word ‘session’ in “during 10 marathon drafting session” in the first paragraph on pg. 4 should be changed to ‘sessions.’

Commissioner Reinke moved and Judge Simpson seconded adoption of the minutes from the February 15, 2022, committee meeting as corrected. Motion carried with none opposed.

FY22 Budget Report and FY23 Update

Scott Ronan, the Statewide Treatment Court Coordinator, reviewed FY2022 substance abuse disorder expenditures and reported that statewide approximately 68% was spent for the fiscal year that ended in June. He clarified the report tracks state dollars and not Medicaid dollars. Medicaid eligibility changes that were enacted during the pandemic will continue which will likely impact the use of state dollars. Scott asked for input from the districts since numbers do not provide context.

District 1 reported Medicaid is the main funding source since most of their participants are coming from jail. District 2's Veteran Treatment Court uses Idaho Supreme Court (ISC) funds since most of the veterans have a disability. Districts 2 and 4 are at about 67% capacity with Medicaid, which is also the predominate funding source for the same reason as District 1. District 5 reported in their drug courts the majority qualify for Medicaid, and Twin Falls and District 5 Mental Health and DUI Courts are currently at capacity. DUI Court participants use more state funds.

Dr. Hamso explained there is still a public health emergency and with inflation it creates the current uncertainty. In response to Scott's inquiring how many providers in residential facilities are in the network and able to bill Medicaid currently, she replied both Cottonwood and Intermountain can provide ASAM level 4.0 and 3.7 residential inpatient treatment. Level 4.0 is ICU level of care and Level 3.7 is 24-hour nursing and daily physician evaluations focused on detoxification. They are working on enrolling ASAM Level 3.5 facilities run exclusively by behavioral health professionals (no psychiatrist evaluation or requirement for nursing on staff), and although none are currently enrolled, they have posted what they are paying. Part of the delay is facilities are still working towards ASAM certifications. Juvenile facilities caring for adolescents are not ASAM certified, and they are trying to get them enrolled as outpatient providers because they are licensed as childcare facilities even though they are providing substance abuse disorder services and mental health services in a residential setting.

Scott spoke about the interactive expenditure dashboard that was presented to the Trial Court Administrators and Treatment Court District Managers. They will still receive the static monthly report, but now they can drill down to review expenditures at the court level with the new dynamic reporting.

Medicaid's lack of impact on spending on drug testing was discussed and input from the districts was taken. Best practice standards clearly indicate there are better outcomes if testing is random and observed twice a week through the duration of the treatment court. Funding those tests with substance disorder treatment funds is cost prohibitive, but funds provided to judicial districts allow for more cost-effective local solutions. Medicaid is a good resource but there is a difference between medical necessity and program necessity, creating some challenges when applied to the high volume that the treatment court model utilizes. If there are any special population exemptions Medicaid would be willing to grant, it would be an exciting opportunity.

Treatment Court Spend Plan Review

Scott presented information on the FY 23 treatment court budget funding and allocations for the state and by district. He defined case load capacity to meet best practices as how many each court could serve irrespective of funding and advised drug testing slots were increased to \$900 per slot. The ISC SUD treatment funds, not Medicaid eligible funds, were increased from FY 22. Dedicated ISC funds supporting treatment court coordinators were increased by \$200,000 for the second year in a row with each district getting a percentage based on their previous use of funds, and Trial Court Administrators (TCA) and Administrative District Judges (ADJ) determine the use of those funds. ISC doubled their Residential and Recovery Support Services (RSS) funds from last year since the impact of Medicaid eligibility is unknown and rates are currently about \$90,000 a month. If Medicaid reimburses some of the funds, we can then look at the best use for those dollars, including for transitional housing or housing in the network. By the spring meeting, we can see the financial impact of providers getting into the Optum network and address a proposal to the ISC for an infusion of funds to possibly work with a managed care organization on housing, similar to what IDOC is doing.

Scott went over the FY23 Treatment Court Budget and Management of ISC Funds Memo which shows increases in key areas. Although funds for drug testing have increased, they need to do a significant analysis looking at variance and frequency of drug testing per district and trend to address adding more funding and

whether it should be a statewide contract. The second year of increases in treatment dollars for assessment, case management, and counseling services, are part of a three-step approach to achieve the standards of 6 to 10 hours in the first phase of counseling with 200 hours overall. The budget for telehealth had a per service increase which is an additional \$5 per hour on top of the service cost but provides access to rural and frontier areas. Dr. Hamso said telehealth pays at parity with in-person and video service, but phone-based telehealth may decrease with the addition of a video or in-person visit every six months.

Scott provided a brief history of coordination funding and shared the results of talks with Treatment Court District Managers, TCAs, the ISC Chief Financial Officer and the Justice Services Division Director on what the District Manager position looks like and the funding level needed. He also talked about the complex and complicated district by district funding for coordination and how it is on a quarterly allocation schedule. He said good conversations are held at the level of leadership in the districts and at the ISC on what it would take for state dollars to take care of all coordination and the county positions becoming state employees. He talked about what other states do and answered questions on whether counties report to the ISC on how funds are spent, which the ISC can request, or what happens to unspent funds, which are rolled over. District Manager operations have increased since 2013 and recently they have been increased based upon the needs articulated by the district TCAs.

The ISC approved the request for one-time funds this year of \$31,000 for a health enhancement project. Sandy Jones is taking the lead on the project that will contract with Dr. Sadacharan to help build a network of education and resources for health issues in treatment courts for participants. The impact will be for everyone in Idaho.

Dr. Hamso said Medicaid and the Division of Behavioral Health (DBH) announced the formation of a joint bureau to supervise the Idaho Behavioral Health Plan managed care contract, and in the fall, a bureau chief position will be posted, and a team built out largely with existing DBH and Medicaid staff.

Scott said they worked with the ISC Human Resources Department and Language Access Services to get Court approval of language access services in treatment courts. This Funding will allow around \$37,000 per person for a year, on a case-by-case basis, to have language access services in a treatment court with funding consistent with other interpreter or language access services for foreign language and deaf and hard of hearing translation.

Scott addressed spend plans and sought feedback for FY24, FY25 and FY26.

- Treatment: FY24 continue with 3-year SUD plan, increase \$357,096 and engage ISC Data and Evaluation to revise projections. FY25 and FY26 reevaluate approach and potentially propose a different funding strategy for treatment courts.
- Drug Testing: FY24 no proposal to increase drug testing but seek input. FY25 complete analysis and make recommendation.
- RRSS: FY24 need to monitor in FY23 and see if Medicaid reimburses and at what level. FY25 look at adjustments from FY24.
- Medication Assisted Treatment: Potential for FY24 to utilize Idaho Response to the Opioid Crisis (IROC) IDHW funding pending analysis. FY25 access pending trends to determine any need for establishing an ISC budget or continue to explore use of IROC funds.

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- Coordination: FY24 increase efforts, transition coordinators to state employment, and collect data on true state of coordination throughout state. Seek Committee feedback on approach or come back in FY25. FY25 have full strategy dependent on feasibility study of transition to state employment.
 - Treatment Court Administration: FY24 implement contract with MCO to manage funds. May need to go to Legislature for more spending authority. FY25 look at spending trends MCO may have new perspective for reimbursing providers.

FY26 spending plans are not written yet, but we will determine budget adjustments to all categories of spending and examine other areas to support such as juvenile justice or provide opportunities to increase quality of services. Budget enhancements for FY24 are due today, although ISC is receptive to recommendations for adjustments. For FY25 and FY26, revenue health will be considered and would prioritize internal allocations. The Committee will work on budget priorities for budget setting in the spring

Committee members voiced concerns with the housing situation and absence of providers. Suggestions were:

- for housing assistance from the EPA and the need to ask right now if there is any funding at the beginning of the fiscal year;
- Oxford housing's national effort to buy houses and rent rooms;
- partnering with local housing authorities for one or two months in a hotel or in short-term apartments;
- double checking Envision Centers through HUD and the head of HUD.

Several districts mentioned IDOC competing and outbidding them for housing resources. The issue is important. IBHC brings all agencies and the Legislature together, so Sara Omundson will be made aware of the conflict.

FY23 Quality Assurance

Scott provided a history of the ISC adoption of treatment court best practices standards and a comprehensive quality assurance plan. He provided information on quality assurance measures such as the peer review process, which is a cost-effective scenario that allows, peers, judges and coordinators to go as a team and have a structured process for interviewing team participants and reviewing and comparing policy procedures and handbooks to the standards. All quality assurance processes, particularly for certification or peer review, start with and are contingent upon a survey administered to individual team members with the survey results generating a report comparing the results to the standards so that teams have some place from which to start. All the processes were kicked off in the late spring with a survey on a voluntary basis.

Scott introduced Lynn Procter to explain what the voluntary reports look like and to share the results of the survey process. Lynn said a communication was sent to district leadership on June 29th letting them know what was being sought in the new revised program and asking who they might volunteer for their courts. By July 15th there were 23 volunteer courts who were sent a survey to be returned by August 15th. An adequate report cannot be generated without responses from all team members, so the survey return date was extended to the end of August. Six of the 23 courts had missing data and were not generated a report, but reports are available and will be rolled out soon for 17 courts. Based upon certification qualifications set up originally for implementing the certification process, three courts received 80% which would achieve certification, and 14 courts scored between 60-79%, which would require a performance improvement plan if the survey was other than voluntary which is a base-line report not tied to certification. It is good opportunity to have that baseline for information and to make some improvements with feedback from teams. The volunteer teams can

elect to engage in other activities including peer review, sight visits, or a policy and participant handbook review. Lynn thanked all the participating volunteers.

Scott shared a sample report. All survey questions were designed from the standards. The report provides information about fidelity scores that come from 10 different standards from the Best Practice Standards, Vols. I and II, and gives an overall snapshot of where each of them are based on the responses to the standards by all the team members who received the survey. There is a lot of sub information broken out in more detail. Scott gave an example of a court that scored 64% in the standard about target populations, and shared actions they could take. He recommended team members be given an opportunity to discuss during time scheduled outside of staffing because the evidence says when that is done outcomes are better in general. Scott said there is an opportunity for AOC staff to come and talk or have an informal conversation. Good information is generated that can be read, reacted to and programmatic changes made, although it is all voluntary and no performance improvement plans are required.

When the initial reports are out and have been reviewed by teams, it is hoped those that participated in the survey will volunteer for the peer review process. There may be an opportunity for sight visits for those who received a score they decided they want help improving or for educational resources. In addition, upon request, AOC staff will review policy and procedures and handbooks. It is all volunteers this year, but next year, we will ask the Court to continue with the original plan, and at the beginning of FY24, will send surveys in the spring looking for certification from some courts. Three groups will cycle with some courts doing peer reviews, some a certification after a survey, and others getting a report back to implement at their leisure. Whichever group receives certification in year one, the following year will be a rest year.

Justice Moeller added the ISC will be supportive of moving ahead. He said he understands the issues judges are dealing with, but the stewardship and responsibility for oversight of treatment courts is one of the five justices' priorities. He believes in the fidelity of the model, and the Court's legitimacy and funding depend on it. He said it is a good way to get objective information back on what they need to work on, and they are not under any false assumptions they got it right the first time. Justice Moeller indicated they would like feedback, especially on the format of the report.

Draft-Three Year Strategic Plan for Idaho Treatment Courts

Scott reviewed progress and feedback on the three-year strategic plan goals and focused on items for which there was a status update. He reported access to treatment court education resources is improving. An education assessment was compiled with ISC Data and Evaluation (D&E) which about 200 people filled out. It is being utilized to build a plan to engage and contact with national partners on educational content which will continue to be updated and refined by the Committee. A New Coordinators Tool Kit was created, which is a living document that will be updated on an annual basis, and full training for coordinators and a New Treatment Court Judge Toolkit are next to be developed. Committee members want it moved up in priority. Israel and others will be called upon this year to collaborate on developing a communications plan to increase community awareness and education of treatment courts that allows opportunities to engage with communities. A statewide webinar was held on peer support in treatment courts and two NADCP 2022 presentations were uploaded. Increasing education of an integrated approach to peer support has not been completely addressed yet.

Sandy Jones is leading a one-time project to contract with Dr. Sadacharan to create educational and resource materials and presentations for participants and team members. This project seeks to enhance awareness and responses of health issues that go beyond behavioral health. Areas to be addressed are medication assisted treatment, integrated trauma therapy, a larger telehealth strategy, and a gap analysis for participant services.

Judges Simpson, Hooste, and Meyer hosted question and answer presentations for the community on implementing the new rules for treatment courts. The workgroup will meet for any additional revisions and bench cards, as well as revisions to the new court application form if needed.

MHC Transition Reports

Justice Moeller asked for Committee input on the status and any barriers or concerns they may have to transitioning away from the Department of Health and Welfare-Assertive Community Treatment (ACT) Teams to services provided by private providers. The response was many mental health court applicants are rejected because they do not meet the ACT criteria which is too stringent and cuts out high need individuals, so perhaps ACT criteria for entry needs to be revised.

Ross Edmunds offered to explain the necessity for moving away from ACT and why the transition is happening. He presented a three-year history of legislative budget changes, explained the way the appropriations work and why it limited mental health court coverage. Ross explained that a move from ACT provided services to a statewide managed care contract will cover all Medicaid and non-Medicaid covered inpatient and outpatient services. IDHW Division of Behavioral Health will no longer deliver direct services or operate ACT teams, medical clinics, or have case managers or therapists. They will still have clinicians, but they won't be delivering clinical care. They expect a go-live managed care contract somewhere between May and July of 2023. As a part of the overall transition, one of the challenges is to move to a model in which mental health court services are delivered by the provider network that does and will exist on an ongoing basis because that is where all services will be delivered.

Justice Moeller asked who will have input in the new contract. Ross said it is negotiated by the Department of Administration through an ITN (Invitation to Negotiate) and not a standard RFP where our system parameters are put out, a response is received, and a period of clarification and negotiation is entered, which is where we are currently. Once the contract is awarded, which hopefully will be in October, it will move into an implementation phase and the contractor will have 6-8 months to prepare a go-live date. Ross will require the contractor to work with providers and courts around the state with the new Idaho Behavioral Health Plan (IBHP) to determine what that set of services will be, including working with ISC on the services they expect to be delivered, the parameters in which it will be done, and how it will be funded. Not everything a mental health treatment court provider will do is a Medicaid reimbursable services, such as getting paid from Medicaid to go to a status hearing, graduation, or staffing. They will have non-Medicaid funds that can reimburse those administrative costs under the new approach with mental health providers and Medicaid reimbursement for the maximum number of services. A different level of care or treatment need can be discussed with the contractor and the level of service figured out instead of an ACT level of care. Once the contractor is known, we will work with them to set down with mental health courts, judges and team coordinators across the state to talk about building mental health courts, the capacity to deliver mental health court services, and making sure the needs of participants are met.

Committee members brought up concerns about monitoring outsourced contracts, staffing shortages, the gap in funding for medication, increasing funding to pay private treatment providers, and the use of telehealth in districts with no providers. Ross said one of the benefits of a large managed care system operating in other states is you can use their resources. Some courts decided it is premature to look for providers until the contract is finalized, and Ross concurred that holding until a contractor is in place makes sense.

Treatment Court Rules-Feedback and Next Steps

Justice Moeller acknowledged the great work done by Judges Hooste, Simpson, Wayman, and Meyer. The Treatment Court Rules Workgroup will be meeting to discuss feedback received and will determine if the issues are education related or require revisions. They will bring back the rules for the spring meeting for revisions before they go to Administrative Conference.

Judges Simpson, Hooste, Meyer and Orr bought up feedback from their districts. Although the treatment court rules are well liked, they could be more practical for processing, and there was feedback from several courts that the termination procedures are bulky and more unwieldy than the usual Probation Violation. Some confusion on who should draft the notice of termination was also reported. A common theme is that even with the good design there are operational things needing refinement. Also, judges in the district need to be on the same page in handling termination or it will create uncomfortable situations. Scott mentioned the rules were developed for and give flexibility which causes problems for some, but the issues thus far have been solvable.

District by District Report

Justice Moeller requested a report from each of the districts.

District 1 – They have treatment courts in all their counties. The Kootenai County Courts are always full and strong. Boundary County is restructuring and has two new judges, and they are making a presentation to their commissioners to have misdemeanor probation take over coordination. Bonner County has problems with treatment court providers not being available in the community, but they hope for new proposals with the new Managed Care Act.

Justice Moeller thanked Marilyn Miller for her service and all she has done for the Committee.

District 2 – Their capacity is good, and their Mental Health Court is exceeding its capacity with the Nez Perce County average growing from 12 to 20. They currently have four new judges and will have a fifth judge after the election who will be covering the Clearwater County Drug Court. They have 3 counties with treatment court programs. Housing is their biggest issue.

District 3 - Their courts are at capacity with their DUI Court graduating and bringing participants in. They are getting people to sobriety, and one participant has been over 1,000 days in sobriety because he has not done community service. Judge Bever took over the Veteran's Treatment Court, and they have a Juvenile Drug Court and Mental Health Court that is in the forefront of mental health changes. Judge Smith who runs their Gem County Felony Drug Court, and their Tri-County Drug Court has some new judges running it. Fentanyl is a prevalent problem in their drug courts and tests for it are more expensive.

District 4 – Their treatment courts were 60% full during Covid but are now where they are supposed to be. Judge Norton took over the Veteran's Drug Court for Judge Reardon. They adopted forms right when the rules were switched over, and they would be happy to share the forms. They would love to see Judge Simpson's form on termination.

Justice Moeller asked to include Scott if sharing forms so they can be made available to everyone.

Judge Orr from district 3 said fentanyl and staff shortages are a problem and create a struggle for staff. Participants use fentanyl after their tests come back negative since fentanyl passes through the system faster than meth or other opiates. When they are flagged, they are pop tested which is ridiculously expensive. Is advocacy for an injectable MAT program being considered in the contracts and negotiations for Medicaid reimbursement? There might be a greater success with compliance if a way could be found to fund through the Medicaid program or state funding. Dr. Hamso said long acting injectables are administered in a doctor's office and the way the physician-administered drugs are paid make it impossible for federally qualified health

centers to administer them. She also encouraged moving away from pill counts as it sets up a barrier to success and life-saving treatment

Judge Simpson asked District 3 and 4 judges about their interactions and logistics in dealing with their tremendous number of overlapping cases. Judge Orr said they often have people transfer back and forth, and through Zoom they can take Ada County people and consolidate for a date in Canyon County. The Canyon County Sheriff's Office did not go on Odyssey and the Ada County Sheriff did, so there is a disconnect on who's in jail, and they have to run jail rosters in Canyon County to find people. Thanks to Zoom, they have been able to make it work. Judge Baskin indicated when transferring to Ada County Drug Court they need to see if there are significant positive supportive ties to Canyon County. There are great open communications and support from public defenders and prosecutors to transfer people to give them the best chance of success. Judges do not have a problem giving up jurisdiction to Canyon County.

District 5 – They have had a lot of changes in the last six months, but they finally have their staff set. Out of 11 treatment courts they have 5 at full capacity. Many Twin Falls referrals are sent to Cassia and Jerome Counties' DUI and Drug Court, so it is expected they will be at full capacity in a couple of months. There are not a lot of referrals for the Veteran's Treatment Court or Juvenile Drug Court.

District 6 – They are interviewing for a district-wide treatment court manager on Thursday. They are close to capacity at all their treatment courts. There is a new Judge in Soda Springs involved in the treatment court. Judge Call is taking over both family treatment court and juvenile drug court for Judge Murray who just retired. Bear Lake County will be host of the south county coordinator. Because of the three-year spending plan, they got to the level of coordination dollars where they could hire a full-time position in Bear Lake County that will coordinate three of their southern counties in the district. Judge Cousin is the new magistrate judge in Caribou County and will be taking over for Judge Aaron Thompson in the Mental Health Treatment Court. One of the challenges in the district is drug testing, especially in Franklin County.

One of their smaller counties is struggling to find and retain employees because the salaries are not competitive with other public entities. A conversation with the Committee about what can be done with funding and incentivizing in rural conditions might help. In their district, they are seeing an evolution from pride and ownership in treatment courts shift to an unwelcome responsibility at the county level. Champions in the state legislature and within our county governments are needed to work with peers and elected officials to remind everyone the value of treatment courts. The ongoing support from the ISC is appreciated.

Justice Moeller inquired about county commissioners being invited to drug court graduations, which they do in the district with mixed results. Justice Moeller said if they need help to market and engage with the counties, they will help. He said he, Justice Bevan and Justice Stegner, as well as Scott, would attend county meetings to help persuade counties if invited. Commissioner Reinke will try to engage and reengage them at county meetings.

District 7 –The Bonneville County Felony Drug Court had six graduations and Bingham County had four. Bonneville County's vacancies fill up just as fast as they open. They have only one judge who is not serving in drug courts. Their biggest challenge is the ACT transition. They continually retain the best prosecutors and public defenders for rehabilitating people.

Justice Moeller was thanked for coming with Justice Bevan to the Bonneville Drug Court graduation which had a big impact on participants. Justice Moeller said it was the best time they had in court, and they would love to come to other treatment court graduations if invited.

Motion to Adjourn

Judge Simpson moved and Marilyn Miller seconded a motion to adjourn at 2:29 p.m. Motion carried with none opposed.

Next Meeting:

A Doodle Poll will be sent out for a meeting date in February 2023