

**Statewide Drug Court and Mental Health Court  
Coordinating Committee  
October 10, 2008  
Idaho Supreme Court**

**MINUTES**

**Members Present:**

**Vice Chair, Brent Moss  
Patti Tobias  
Norma Jaeger  
Judge Ron Wilper  
Eric Olson  
Burt Butler  
Roger Christensen  
Kerry Hong  
Marreen Burton**

**Roger Bourne  
John Tanner  
Martha Tanner  
Scott Fouser  
Debbie Field  
Joan Nuxoll  
Linda Wright  
Barry Jones  
Kipp Dana**

**Corrie Keller  
Judge Richard Bevan  
Judge George Southworth  
Judge Thomas Ryan  
Judge Larry Duff  
Brent Reinke**

**Guests Present:**

**Rita Wickham  
Kevin Kempf  
Michael Henderson  
Kathleen Allyn  
Scott Tiffany  
Scott Ronan  
Bethany Gadzinski**

**Paul Meigio  
Craig Barnes  
Martha Ekhoﬀ  
Jan Carpenter  
Kathy Skippen  
Larry Reiner**

**NEXT MEETING DATE  
April 3, 2009  
8:30 - 4:00**

**\*\*\*\*\*  
IDAHO SUPREME COURT  
LOWER LEVEL CONFERENCE  
ROOM**

Vice-Chair Judge Brent Moss convened the meeting and welcomed members and guests, and all participants introduced themselves.

**Judge Wilper moved and Roger Christenson seconded approval of the minutes of the April 4, 2008 meeting, as distributed. Motion carried.**

**Review of Actions Taken Following the April 4 Meeting**

Norma Jaeger reviewed actions taken from the April meeting. She highlighted the following actions from a more extensive written list provided to the committee, including:

- Several meetings, conference calls and a survey of current practice and identified issues resulted in revisions to the Code of Judicial Conduct to permit certain ex parte communications to facilitate effective communications in problem-solving courts
- Two new child protection drug courts have become operational under a federal grant
- Courts are now tracking and reporting felony, misdemeanor and DUI offenders in their courts separately
- Mental Health Courts are nearing full utilization of their capacity and some districts are actually at or above full capacity

Committee members were referred to the written summary report provided with meeting materials for the full list of actions taken.

### **Ethical Considerations in Problem-Solving Courts**

Michael Henderson, Counsel to the Supreme Court reported on the actions taken to problems related to a recent Judicial Council opinion holding that communications taking place in problem-solving court hearings and staffings in which the prosecutor and defense attorney were not both present would constitute ex parte communications under the Canons of Judicial Conduct. After gathering information and input from a variety of stakeholders the Supreme Court adopted a revision to the Code of Judicial Conduct in Canon 3B(7) which permits scheduled court proceedings to take place in absence of a party who had notice of the proceeding, and which also permits ex parte communications at staffings or by written documents provided to all members of the problem solving court team. A judge who has received such communications shall not then preside over subsequent proceedings to terminate the participant from the problem-solving court, sentence the individual or hear a probation violation action. The code section also defines “staffing”. Michael indicated that his research indicated that Idaho is leading the country in effectively addressing this issue. He also pointed out the strong interest from the Supreme Court in finding ways to assure full participation of counsel in problem-solving court activities as envisioned by the Drug Court key components. The question was raised whether a problem-solving court coordinator is considered “court personnel” for purposes of being excepted from the prohibition against ex parte communications with the Judge. Michael indicated that there is no clear answer to that question. **It was agreed that an opinion will be requested from Bob Hamlin at the Judicial Council. Corrie, Norma, Michael, and Patti will work on the request.** Joan Nuxoll also indicated that a local attorney in District 2 had objected to the judge hearing a termination recommendation because he had received “unfiltered” communications that would cause him to be biased against the participant. Consensus was that such communication or information was not unique to problem-solving courts and that this was a matter for each Judge to determine on a case-by-case basis. **Vice Chair Moss asked all present to provide feedback on how the new approach was working and any problems encountered so that they can be resolved.**

### **Introductions of Meeting Participants**

All participants in the meeting introduced themselves. In addition, Burt Butler was recognized for his receipt of the Kramer Award and Judge Ron Wilper for his receiving the Granata award at the recent Idaho Judicial Conference. These awards recognize their dedication, commitment and outstanding performance and further acknowledge appreciation and understanding of the work in problem-solving courts.

### **Chief Justices’ Criminal Justice / Mental Health Leadership Initiative**

Norma Jaeger reported on Idaho’s selection as one of four states to participate in the Chief Justices’ Criminal Justice / Mental Health Leadership Initiative. This initiative sponsored by the Council of State Governments Justice Center provides a small grant to support the work of a task force or similar organization convened by the State’s Chief Justice to explore ways in which the judicial system can achieve better outcomes for persons with mental illness who become involved with the judicial system. Idaho will join Wisconsin, New Hampshire and Delaware in this one-year project. Idaho’s proposal is to examine the next best two to five actions to improve our system and to build more front end responses to link with our current later stage efforts, such as mental health courts. A one time summit meeting of stakeholders will be brought together in January, in conjunction with the planned drug court and mental health court institute. The recommendations from this summit will then be referred to a subcommittee of the Statewide Coordinating Committee for implementation oversight. The Coordinating Committee was asked to appoint such a subcommittee. Chief Justice Daniel Eismann, Judge Brent Moss, Judge Richard Bevan, Eric Olson, Judge Stephen Dunn, Martha Ekhooff, Norma Jaeger, along with designees to be

named from the Departments of Health and Welfare and Correction and the Idaho Sheriff's Association were nominated to this subcommittee. **Judge Ron Wilper moved and Linda Wright seconded appointment of these nominees to a Mental Health Subcommittee. Motion carried.**

Patti Tobias asked that Norma Jaeger be acknowledged for her work in developing the application for this grant which received the highest score among the proposals received by the Council of State Governments. Judge Moss reported that at a recent meeting he attended in New York, Idaho was recognized as being in the forefront of development of approaches such as mental health courts and in achieving cooperation and collaboration, based on our ability to work together across agencies and all branches of government. Such collaboration is the exception rather than the rule.

### **Drug Court Implementation**

Norma Jaeger reported on current utilization in drug courts and indicted that there is still considerable newly authorized misdemeanor and DUI court capacity but that most of the rest of the capacity is near full utilization. There will be some treatment funds reallocated among districts due to Ada County Drug Court not yet utilizing its state funded treatment allocation. Norma indicated that drug courts have established a solid foundation. **There will be a review of operations through a self administered checklist to be sent out to coordinators for review with team members and then to be sent back to the Supreme Court for compilation. There will also be subcommittee work to review and where needed revise statewide guidelines for adult drug courts. There will also be a review with each district to identify the needs for effective levels of coordination and plan for strengthening coordination in the future.**

### **Funding for FY2009**

While it was originally anticipated that there would be growth of 10% - 15% annually in the dedicated fund, this has been revised to a 3% - %5 growth. As a result, we are currently over-allocated by about \$300,000 for the current fiscal year. Because we had a positive balance in the fund going into this year we will not have to cut current expenditure levels but our planned expansion of 3.0 FTE for coordination will not be able to be allocated this year. We will be able to award all treatment slots as long as courts can manage these slots with existing coordination support. The Administrative Conference did pass a motion to recommend to the Supreme Court a legislative proposal to enhance fee revenues from drug and alcohol cases to augment revenues into the dedicated fund. Judges Moss, Murray, and Savage recently presented information to the Joint Finance and Appropriations Committee in a visit to eastern Idaho. Idaho's problem-solving courts continue to have very strong support from the Legislature and the recent presentation further strengthened that understanding and support. The next year or two will likely be a time of stabilizing our system and strengthening performance rather than expanding it.

Kipp Dana asked if there could be efforts made to enable reimbursement for in jail assessment, individual and group substance abuse treatment by qualified professionals in those facilities that could offer an appropriate setting. He further recommended that the treatment records not be kept on site in the jail but at the primary location of the treatment provider. He suggested that such treatment could allow for stabilization of drug court participants who were at risk of being sent on a rider or to prison. Kathleen Allyn expressed willingness to explore what might be the current barriers to such a policy. Judge Ryan suggested it would be necessary to work with the Sheriff's Association or local sheriffs to assure their support. Kerry Hong raised the issue of evidence basis for in jail treatment versus the proven effectiveness of community based treatment. Drug courts have long looked to community based treatment. The fiscal impact of this change needs to be considered as well as the potential impact on outcomes for drug courts. Marreen Burton indicated that Ada County has been providing treatment in the jail for some time, at county expense and it has been effective for a small percentage of their participants

who have needed that level of secure treatment. **Kipp Dana moved and Kerry Hong seconded a motion to establish a subcommittee to determine the necessary steps for Health and Welfare to approve reimbursement for substance abuse treatment to be continued for drug court participants who are incarcerated in local jails. Motion carried.**

Joan Nuxoll expressed concerns about the time it takes to get a facility approved when only one person in the Department of Health and Welfare can make the necessary site visit. She asked if there could not be some accommodation for a legitimate entity (such as the local fire marshall or a Regional Health and Welfare representative to make the physical site visit. **Kathleen expressed willingness to look into this issue as well.**

### **Ada County Drug Court Facility Approval Status**

The County has purchased a building that will house the treatment program along with other county activities. The new space will be far superior to current facility. Major remodeling of the facility has been necessary. The current timetable for completion is between December 2 and December 15 with treatment beginning to utilize state funds by January 1, 2009.

### **Mental Health Court Implementation**

Kathleen Allyn reported on the major progress in approaching full utilization in the past year. She also provided a number of the department's regularly reported indicators of activity in the behavioral health program including such indicators as community hospitalization and state hospital utilization, substance abuse treatment expenditures, and children's mental health out of home care. She reported that there seems to have been a significant increase in the number of 19 2524 assessments being conducted but that full statewide numbers are not yet available. She will provide them for the committee as soon as they are compiled. The Regions are concerned because since there were no added resources to provide these assessments, the workload of assessment results in a decrease in the Regional Mental Health Program being able to serve other patients. Patti Tobias commended the Department and Kathleen and Scott Tiffany in particular for their significant and sustained efforts to encourage the Regions to reach full utilization of the mental health court capacity.

### **Substance Abuse Treatment for Mental Health Court participants**

Scott Tiffany indicted that the Department remains committed to assuring that ACT teams build capacity to provide for the needed co-occurring substance use disorder treatment of mental health court participants but acknowledged that the capability to do so is not there yet. The Department is aware that there will be a shortfall of substance abuse funds (which currently cover the cost of contracted substance abuse treatment for participants in mental health courts) once Ada County Drug Court begins to utilize its allocation for treatment. Scott also proposed exploring a pilot project or two to look at diverting some FTE from ACT teams to take on caseloads of mental health court participants who do not meet the severity of mental health diagnosis required for mental health court and who require the level of intensity provided by ACT. In this way, more individuals could be served. Patti Tobias commended the Department for its willingness to seek innovative ways to expand capacity, now that the mental health courts are reaching full utilization across the state. The court had requested the Department look for ways through a budget decision unit for FY2010 but was too late in the process and with current fiscal projections it is unlikely such a request would have gone forward. Eric Olson and Judge Moss expressed concerns that reduction in ACT, FTE must not be allowed to undermine the integrity of ACT services and the effectiveness of the current mental health courts. Numbers served should not displace effective outcomes for the most difficult and costly participants. Scott Fouser supported efforts to reach more individuals. There are major problems in capacity in the Third District and the judges recently convened a meeting to seek other resources beyond the Department of Health and Welfare. Norma Jaeger will work with Scott Tiffany to bring a proposal back to the committee for expanding the capacity of mental health

courts in ways that will not undermine the fidelity of treatment for or the effectiveness of current mental health court efforts.

### **Mental Health Process Evaluation**

Scott Ronan reported that since mental health courts are now well along in their implementation, plans are moving forward to develop a mental health court process evaluation. Boise State University has been working with the court for some time to develop a process evaluation design and has provided an intern to assist in this work. As with the drug court evaluation, the plan includes a first step process evaluation, potentially a second step being an outcome evaluation of the first mental health court, in Bonneville County, followed by an outcome evaluation of all the mental health courts. Norma Jaeger suggested to those from the 7<sup>th</sup> District that they give thought to how a comparison group might be identified. Scott also reported that work had been done this past summer with mental health court coordinators to look at changes needed in ISTARS to support the mental health courts. **A minimum data set for mental health courts will be disseminated for comment by the end of the year.** Martha Tanner recommended attention be given to following up with participants some time after graduation. There are concerns that the gains achieved in mental health court may not be sustained once the person has graduated.

### **Peer Support Specialists Implementation**

Martha Ekhooff, Director of the Office of Consumer and Family Affairs reported on the plans underway to develop, though a contract with Mountain States Group, a statewide peer support specialist program. Peers with training have been shown to be an evidence based and cost effective approach to supporting people in mental health recovery. There will be a recruiting effort, followed by Peer Specialist orientation and specific training. Peers Specialists do not replace clinicians. They offer experience in the system, in recovery and in ongoing community support. Peer Specialists will be placed at .5 FTE in each Region and will be available to work with mental health courts as well as other mental health clients. The timetable anticipates having peers recruited by end of this year with an initial training in the WRAP (Wellness Recovery Action Plan) model in January and Peer Specialist Training in February. Idaho is looking into how Peer Specialist work can be reimbursable under Medicaid. Martha introduced Jan Carpenter who has been hired as an assistant in the project.

### **Expansion of DUI Courts**

Larry Reiner reported on the efforts to establish a DUI court in Ada County. The planning team attended a national planning initiative training last summer, a grant has been received from the Office of Highway Safety and treatment slots have been designated for a DUI court in Ada County. Both the Public Defenders Office and the City and County Prosecutor's offices have given their support for the court. **Larry Reiner moved and Patti Tobias seconded a motion to approve continued development of a DUI Court in Ada County. Motion carried.**

Linda Wright reported on efforts in Jerome and Gooding Counties to implement a DUI Court. A Letter of Intent was approved by the Coordinating Committee in April. A grant application to the Office of Highway Safety was not approved as a separate application for each county as the numbers of cases was too small. However, plans are now in place to submit an application for the two combined. There are treatment slots available but there is no funding available for a separate coordinator. It may be possible to combine probation supervision with the needed coordination work. **Linda Wright moved and Larry Reiner seconded a motion that the Coordinating Committee approve continued efforts for Jerome and Gooding Counties to develop a new DUI Court with existing treatment funding while continuing to work to secure a coordinator. Motion carried.**

### **Office of Drug Policy and Interagency Committee on Substance Abuse Update**

Debbie Field reported on activities of the Office of Drug Policy and Interagency Committee on Substance Abuse. She recently attended a conference in Washington DC on state systems of substance abuse treatment and prevention. She was somewhat surprised at how far ahead of other states Idaho is particularly with respect to collaborative efforts and also to adoption and implementation of a single statewide assessment instrument. The Center for Substance Abuse Treatment is very supportive of our efforts and willing to provide significant technical assistance according to our needs. Recent discussions with the Governor have emphasized his continued interest in seeing results of our outcome data. Debbie believes that he will be pleased with what we can provide. She also reported that the Statewide Assessment is now available on line through a system called WITS which will eventually streamline the administration of this instrument. ICSA is also studying current best practices under a subcommittee headed up by Dr. Bill Hazle. There is also a review underway to explore a statewide RFP for drug testing. Patti Tobias recommended that at our next Coordinating Committee meeting there be a report on the WICHE (Western Interstate Commission on Higher Education) report on reform in the Idaho mental health system. Barry Jones commented that he had seen more progress in the past two years, with the Office of Drug Policy and Interagency Committee on Substance Abuse, than he had seen over the years from 1980 to 2006.

### **Child Protection Drug Court Grant – Update**

Norma Jaeger reported that there were now two additional operations child protection drug courts, located in Bannock County and Twin Falls County. Considerable work was done since the last meeting, with the assistance of committee member Molly Huskey, to revise participant agreement and consent forms and also participant policies and procedures. Bethany Gadzinski reported that the federal granting agency had sent a representative to conduct a site visit. This visit went very well and the feds were very pleased with the progress made on the project. There are ten drug court affiliated grant projects in the overall project. The project has a particularly strong evaluation component, through Idaho State University. **District 2 has requested to be a part of the grant project and the Stakeholder Advisory Group will consider this request at a meeting later in October.** It is anticipated that these projects will see similar success as demonstrated in the national multi-site evaluation where parents completed treatment at a greater rate, children spent less time in out of home placement, and were permanently reunified in more cases than in traditional handling of the child protection cases.

### **Juvenile Drug Court Update**

Scott Ronan reported on some data recently collected showing the rate of graduations from juvenile drug courts as a percentage of all terminations of 35%. During the past summer Juvenile Drug Court Coordinators and Probation Officers met to review needed changes in the ISTARS system. It was determined that data for juvenile drug courts will be kept in the ISTARS system. Judge Southworth asked about the effectiveness of Juvenile Drug courts based on national research. Scott indicated that less evaluation has been done for juvenile drug courts but that it, on the whole the evaluations that have been done have indicated that juvenile drug courts do not have as great an effect on recidivism as adult drug courts. In Idaho, efforts need to continue to implement the recommendations from our earlier process evaluation to improve outcomes in Juvenile Drug Courts.

### **Juvenile Mental Health Court**

Eric Olson reported on the status of the Juvenile Mental Health Court in District 7. The court had 22 participants as of August 31, 2008. There has been one graduate. At a recent Legislative visit, Judge Savage reported on two juveniles who had shown no progress until entering juvenile mental health court. Their progress since then has been dramatically positive. Family reactions have been very positive. Families feel that they have a say in the plan that is developed and feel supported and less overwhelmed by the problems faced with their child. Juveniles also report positive feelings about the court.

“Wraparound” service is identified as the major element with positive impact in the court. It provides a focus on strengths and engages the family as well as other community supports. It also includes Flex funds to assist the family and the youth with things needed to support recovery. There is a structured process to assure fidelity to the wraparound model.

### **Department of Correction Update**

Kevin Kempf reported that there is a request for FY2010 for 2.0 FTE for support of problem-solving courts from dedicated liquor funds that seems promising. The Department considers these courts to be at the top of the list of reasons for declining growth in prison population. District 4 is taking on administration of the LSI-R for Ada County Drug Court and still plans to add another probation officer to support Judge Copey’s drug court once the numbers justify the added staffing. Kevin was asked about the department’s experience with the Passport eyescan technology. Some drug courts are having significant problems with participants becoming very agitated when they come up positive on the Passpoint system but then it turns out to be a false positive result. Kevin indicated that the problems seem to decline considerably after a few months of operation. That has been the experience in the pilot districts. Offenders are not being sanctioned for positive test results on the Passpoint, without confirmation. There has also been a positive outcome in detecting that offenders have quit taking prescribed psychotropic medications much earlier, before negative behavioral changes take place.

### **Annual Report**

Norma Jaeger called the committee’s attention to the draft annual report included in their materials. She requested feedback on the report. Judge Ryan recommended strengthening the final section to highlight the commitment of judges across the state to the positive benefits of problem-solving courts despite their personal investment of the significant added workload and time. It is generally estimated by judges that they spend at least 8 added hours per week. Brent Reinke reflected on his recent interactions with the Legislators in their visit to eastern Idaho that they are very concerned with sustainability planning, in general, and suggested that further description of sustainability efforts and opportunities should be highlighted in the report.

### **Judicial Drug Court and Mental Health Court Institute**

Norma Jaeger reported that planning is underway for a Drug Court and Mental Health Court Institute to be held in January in Boise. A committee, Chaired by Judge Lowell Castleton, representing problem-solving court stakeholders met to brainstorm topics and presenters. Some key presenters have been contacted (Carl Dawson, Jennifer Skeem and Carolyn Hardin) and the National Association of Drug Court Professionals has committed financial support. However, based on the state holdback expectation, it will not be determined whether the conference can be held until after October 14, 2008.

### **Use of AA / NA in drug and Mental Health Courts**

Norma Jaeger reviewed a proposed guideline of the use of 12-Step support groups as part of drug court or mental health court expectations. Because it is demonstrated that early engagement in 12-Step Recovery support has positive impact on long term sobriety and recovery it is important to do all that is reasonable to encourage such engagement. The meeting materials also include a report from Narcotics Anonymous on issues related to getting attendance cards signed at meetings. Patti Tobias recommended that efforts be made beyond the problems solving court guidelines to share this information with the rest of the judiciary through other avenues including such things as the Bench Guides. Barry Jones also reported on concerns that come up in AA meetings around having drug addicts referred to participate. Some groups will not accept them. He reported on an approach recently used in District 6 to convene some members of the 12-Step community, together with court representatives, to discuss issues and problem-solve resolutions. Each area in the state should have a 12-step committee (CPCPI - Cooperation with Professionals and Community Public Information) that is delegated to work on such issues. Kerry Hong recommends

inviting the committee to “lunch” and reported that the meeting was very helpful. **Patti Tobias moved and Barry Jones seconded a motion that Proposed Guideline on Use of 12-Step Recovery Support Groups for Participants in Adult Drug Court / Mental Health Court be adopted and that additional approaches be identified to disseminate helpful information on this topic throughout the judiciary. Motion carried.**

**The meeting adjourned at 3:05**

**Next Meeting: April 3, 2009 (proposed)**

**Preliminary April Agenda Items:**

Legislative Update

Utilization and Expenditure Report

Statewide Drug Testing System Workgroup Report

FY10 Funding and Allocations Proposals

Chief Justices’ Criminal Justice Mental Health Initiative Update

DUI Courts Expansion Update

Pilot Juvenile Mental Health Court Update

Child Protection Drug Courts Update

Expansion of Mental Health Courts Update

Office of Drug Policy Update

Integrated Substance Abuse Budget

Implementation of Statewide Standardized Assessment

Statewide Guidelines and Rules for Drug Courts and Mental Health Courts

Update on ex parte implementation Issues

WICHE Report on Mental Health System Reform

Statewide Guidelines Revisions - Adoption

**Action Items:**

- Seek opinion from Bob Hamlin as to whether a Drug Court or Mental Health Court Coordinator falls within the definition of “court personnel” as related to communication restrictions (ex parte)
- Monitor the implementation of the new Code of Judicial Conduct provisions on ex parte communications
- Work with DHW to explore strategies to increase capacity for mental health courts including use of alternative modalities of treatment
- Implement Chief Justices’ Criminal Justice / Mental Health Leadership Initiative project
- Convene Mental Health Subcommittee of Coordinating Committee to oversee the ongoing implementation of CJCJ/MHLI plans and recommendations
- Complete allocation of new misdemeanor/DUI slots to selected courts
- Review the Problem Solving Court Coordination needs and needed and available resources with each district
- Complete drug court operations review for compliance with guidelines
- Review and recommend revisions needed to Adult Drug Court Guidelines
- Review and recommend revisions needed to Adult Mental Health Court Guidelines
- Convene a subcommittee to explore reimbursement for jail based treatment for drug court participants
- Work with DHW to determine potential alternatives for expediting physical facility inspections under IDAPA rules requirements for facility approval



- Disseminate minimum required data set for mental health courts in ISTARS
- Incorporate Guideline on use of 12-Step programs in problem solving courts
- Develop informational materials to be shared with the judiciary through varied means on effective use of 12-Step recovery programs throughout the state