

**Idaho Statewide Drug and Mental Health Court
Coordinating Committee
May 26, 2011
Idaho Supreme Court**

MINUTES

Proposed Next Meeting: November 17, 2011

<p><u>Members Present</u></p>	
<p>Chair, Chief Justice Daniel Eismann Vice-Chair, Hon. Ron Wilper Don Marler Matt English Dennis Hardziej Dustin Smith Kathleen Allyn (for Richard Armstrong) Martha Ekhoﬀ Hon. Larry R. Duff Linda Wright Hon. Richard Bevan Timothy Fleming Mark Mimura Hon. George Southworth Hon. Thomas Ryan Roger Bourne Hon. Mike Reardon Maureen Burton Hon. Scott Wayman Hon. Peggy Stanford Hon. Darren B. Simpson Burt Butler</p>	<p>Roger Christensen Michele Sherrer Elizabeth Allred (for Molly Huskey) Kipp Dana Jared Bingham Sharon Harrigfeld Martha Tanner John Tanner Karlene Behringer (for Rita Wickham) David Brasuell Rep. Richard Wills Patti Tobias Hon. John Stegner Lisa Martin David Birch (for Brent Reinke) Norma Jaeger Larry Reiner</p>
<p><u>Guests and Staff Present</u> Scott Ronan Jeff Morris Kerry Hong Hon. Jack Varin</p>	

The meeting was convened by Chief Justice Daniel Eismann, Chairman, and members and guests present at the meeting introduced themselves.

Approval of Minutes of the October 29, 2010 Meeting

Judge Wilper brought to the attention of the committee that there was an error in the minutes from the last meeting on page 11 of the meeting materials handout. The question was asked as to what correction should be, but there was not a consensus as to what the correction should be. **It was moved and seconded that the minutes from the meeting on June 18, 2010 be approved as corrected. Motion was seconded. Motion carried.**

Adult Drug Court Guidelines for Effectiveness and Evaluation Review and Revision

Judge Ron Wilper, Chair of the Guidelines Review and Revision Workgroup reported to the committee on the revisions that had been made to the guidelines and informed all present that the copy of the guidelines before them was a revised copy which included the proposed changes to be made. Judge Wilper noted that extensive research, including several meta-analyses, shows that adherence to the practices reflected in these Guidelines produces positive results in drug court. He also mentioned that there have been some statutory changes, developments in case law which emphasize certain elements of due process for drug court, and changes to the canons of judicial ethics that impact drug court practice. The Workgroup has developed several suggested changes to the guidelines, which can be found beginning on page 13 of the committee meeting materials. Key guidelines have been identified that are proposed to become Standards of operation because of their importance to outcomes.

Norma Jaeger reiterated that a significant amount of research has been collected and analyzed by NPC Research on drug court recidivism and also on cost savings (pg. 28, 29). The guidelines presented for review are consistent with this research. The proposed guidelines would impact all adult drug courts, including DUI courts. It was mentioned that they could be applied as guidelines for child protection courts, with appropriate changes being made. Justice Eismann noted that when the guidelines were adopted, they were not requirements because there was no available evidence upon which to base such practices and make them requirements. However, at present, there is a significant amount of evidence on which to rely.

Maureen Baker Burton asked a question about what the new language “shall” means in reference to the guidelines. There was concern that the courts would not be able to meet every guideline and that failure to meet a more strictly applied guideline would result in a loss of funding.

Norma Jaeger indicated that the language “shall” was intended to mean that it is expected to be implemented. Additional questions were asked about what the response from the committee or the court would be in regard to a newly formed or existing court that was not in complete compliance with the guidelines. Has there been any discussion of removal or elimination of a court? It had been discussed that if a court is not following the guidelines and are not using best practices, it could result poor results and potential loss of state funding and subsequently fewer resources for other drug courts. Such a court could ultimately face closure. The direction of the discussion turned on the question of whether now is the time to define a response from this

committee to non-compliance with the guidelines, or to approve the new guidelines and then discuss an appropriate response to non-compliance. Justice Eismann noted that there may not be a “hard and fast” rule when checking drug court compliance and that the guidelines are meant to be viewed as a way to do better as a drug court, not as a set of rules to be punished by. Norma Jaeger also suggested that the implementation process could include provision to request a waiver which would be considered by the Executive Committee.

Scott Ronan suggested that perhaps it would be beneficial to develop a compliance and process evaluation plan which could be included with approval or rejection of the guidelines. Judge Stegner indicated that he believes there needs to be more time for committee members to review the proposed changes to the guidelines. He indicated that this committee should state that the guidelines or standards-as they may become-need to be enforced or we should not even have them. He added that the intended consequence of failure to meet guidelines should be loss of funding. Roger Christensen agreed with Judge Stegner and indicated that the Committee is expected to recommend and assure the wisest use of the resources that are available. It was the consensus of the committee that the “or else” consequence for not meeting a guideline should initially be a remedial sanction such as education, training, or other technical assistance, before the ultimate sanction of a funding withdrawal. Kipp Dana suggested that there be developed a process of graduated sanctions for failure to meet standards.

It was agreed that members of the committee should review the suggested revisions to the guidelines, compile their suggestions, and send them back to Norma Jaeger by August 1st so that she may have them compiled and any revisions developed to present to the committee by the fall meeting along with a proposal for a monitoring and compliance process. It was also suggested that all coordinators should get copies of this to treatment providers so they can be informed of changes and get input from their teams.

Drug Testing Recommendations

Norma Jaeger discussed the need to reduce the state expenditure for drug testing, noting that at the last meeting there was discussion of creating an operating partnership between state and local levels of government and drug court participants. State funding for drug courts would go to staffing, and local drug court funds should be used for drug testing. At the last meeting the committee also discussed reducing testing dollars. It is recommended that the dedicated fund contribution would be \$325 for 2012, and \$250 for 2013.

It is also recommended that a work group be created to look at funding, costs, and future funding issues for problem-solving courts in general. Maureen Baker Burton asked what would happen with the money that would be saved by this reduction in funding. Norma Jaeger said that the money would stay in the dedicated fund and that the proposed committee to be formed would look into how to better allocate those saved resources. Another question was asked as to what the effect would be of the reduction of funding on the participants. Would it result in less testing? The response was that local funds would be tapped for increases. While participants already pay a portion of the testing costs, there is a significant amount of funding currently in local drug court fund balances.

Judge Stegner raised the point that participants and counties already struggle with the costs of services as they are now and that cost shifting would not be sustainable. The beneficiary of success in these programs is the state and they should not shift costs away from the state onto participants. Burt Butler suggested that a more unified partnership between counties and state partners would be more effective in terms of the use of funds. Scott Ronan added that the proposed sub-committee is intended to work toward such a goal.

Judge Duff moved and Linda Wright seconded a motion to accept the proposal, to establish the per person drug testing state allocation at \$325 for FY2012 and \$250 for FY2013. Motion carried.

FY2011 Expenditures and FY2012 Allocations

Scott Ronan presented information on expenditures and allocations for FY2011 and FY2012 respectively. Materials for his presentation were included in the meeting materials as separate handouts. He said that for the FY2012 Drug Courts, committee members should ignore the recommended drug testing numbers since this committee has just approved a different funding amount. For Coordination and Coordination Enhancement there is no change recommended from FY2011 levels. The mental health court proposed allocations also remain the same. Scott Ronan said that committee members should note the changes to District 1 and District 3 to reflect restoring funds for positions that were not filled for all of FY2011. In summary, the funding will essentially remain the same.

Rich Wills moved and Judge Duff seconded the motion to accept the reported expenditures and proposed allocations. Motion carried.

Legislative Update

Patty Tobias presented relevant and important legislative changes that affect Idaho's problem-solving courts. She indicated that there are 3 bills of interest to mental health courts and drug courts. The three bills are: HB 225, HB 226, and HB 227.

HB 225 referring to section 19-5604 of the Idaho Code that has restricted eligibility to drug court for persons with violent felony histories or current offenses. This was particularly important for the increasing number of veterans that are returning to the state. This bill would allow for more eligible participants to be accepted into the drug court by allowing certain felony offenders with violent histories or charges to be accepted to the drug court, with the agreement of the drug court team and the prosecuting attorney.

HB 226 referring to section 19-2604 of the Idaho Code would provide more judicial discretion in allowing for a previously entered guilty plea to be withdrawn and charges dismissed, (if there have been no actual probation violations entered by the court) as now can be done in the case of successful drug court and problem solving court participants .

HB 227 referring to section 18-8002 of the Idaho Code would give the judge greater flexibility when dealing with all problem-solving court participants, to issue restricted driving permits after a period of 45 day suspension and if there is an ignition interlock device installed. This extends to mental health court participants the provision previously provided for those in drug courts.

Norma Jaeger said that being able to report nationally that we have removed the absolute exclusion of felony offenders from drug court and problem solving courts says volumes about the progress of problem-solving courts in Idaho. It was also mentioned that HB 226 provides a new avenue for the low risk offender previously only available if they were in a drug court. This will help assure that drug court is targeted to those high risk offenders that research demonstrates benefit the most and save the most in offset costs to taxpayers.

Additional discussion on who has access to problem solving courts focused on experience that some attorneys are trying to push low risk offenders into drug court in order to get a restricted driver's license.

Evaluations in Process

Scott Ronan discussed the evaluations currently in progress which include the juvenile drug court outcome evaluation, the mental health court process evaluation, and quality assurance review of data in ISTARs. Scott said that the juvenile drug court outcome evaluation has been complicated by lack of data for the same time frame for the comparison group. However analysis of Idaho data on recidivism and on predictors of success and lack of success in juvenile drug court is currently being worked on by a Utah State University graduate student.

The mental health court process evaluation is being worked on by Jeff Morris, an intern in the problem-solving court program. Preliminary information for a survey will be sent out soon to coordinators for review and comment. The mental health court process evaluation survey looks at several elements of operation that should be in place in all 10 mental health courts.

Scott Ronan also reported that a minimum data set for ISTARs has been provided to all coordinators. Currently efforts are underway to notify coordinators of missing data in their court's ISTARs data. An automated data quality report is being developed for ISTARs that will allow coordinators to assess the completeness of their court's data.

Peer Review Process

Norma Jaeger discussed the current development of a peer review process to assist courts understand their operations and identify areas for improvement. This process is being assisted by NPC Research. NPC Research uses a well-tested protocol for compliance which can be adapted as an evidence-based practice assessment for evaluating problem-solving courts in Idaho. The peer review process would be conducted using coordinators who will be trained to meet with courts and conduct site visits and operations reviews. The peer review process would begin with a survey sent to the court, which is in turn filled out with the entire team. The trained coordinator would then go to the court to conduct a site visit, attend a staffing, a court session, and subsequently produce a report. The benefits of peer review would be multiple. Coordinators would be well trained in best practices, the courts would benefit from having a visitor from outside the court coming to make an evaluation, and the reviewers can compare practices and impart new information to the courts, while at the same time receiving valuable information to take back to their own court. The question was asked as to whether there was a budget associated with this program. It was indicated that the statewide enhancement grant will cover the development and the travel and training costs. In addition the State received a technical assistance grant from the Center for Court Innovation to assist in the development of the process.

Sharon Harrigfeld indicated that when the Department of Juvenile Corrections reviews their community contracted services they always interview juveniles who are participating in the services and highly recommends this practice.

Status of Substance Use Disorder Treatment Funding

Norma Jaeger informed the committee on the recent actions of the legislature which changed how funds are appropriated for treatment for problem-solving courts. This in turn raised questions about how treatment services would be paid for from these funds. It is recommended that a sub-committee (the committee previously recommended) look at the overall treatment allocation, the use of treatment funds and whether additional resources are needed. Since the action of the legislature, there has been little time to make changes in how the money will be administered. Norma presented a proposal that drug and mental health court coordinators continue to complete an intake approval form and authorize treatment in the form of a voucher. This voucher would authorize treatment for either 365 days or a maximum of \$3,880, whichever came first. In cases that required more funding than the initial level provided by the voucher, the court coordinator would contact the statewide drug court and mental health court coordinator for approval for additional time or funds.

There were several questions from the committee in regard to the funding ceiling, length of time allotted for a participant in drug court, and how the funding could be reauthorized in the event that either the dollar amount or time limit is reached. Kipp Dana asked what would happen to people who remain in treatment longer than the allotted 12 months and also pointed out that sometimes there are many more participants in Phase I who are more expensive than those in later phases. He said that his court takes this into account and generally expects to spend less on those in later phases, giving them the ability to put more resources toward those in Phase I. Norma Jaeger replied that if a person hits the ceiling of either time or money, then the case would need to be revisited and funding could potentially be extended. Maureen Baker Burton said that the average number of months for a drug court participant is 17 and asked what the Supreme Court would say about those who stay longer than 12 months. Norma Jaeger replied that it is not meant to impose a ceiling, but that it is more about establishing a point of communication that must be made between the Supreme Court and the coordinator. Sharon Harrigfeld questioned whether the \$3,880 also applies to juveniles and wondered if this level is really adequate for the services needed by that population.

There was also significant debate over whether this additional reporting on a person who hits a time or funding ceiling is merely another layer of cost reporting with some indicating that the way it is reported now is adequate. The indication from many of the committee members and attendees was that most of the drug court participants would hit this proposed ceiling early in their treatment, resulting in 100% of participants being reported. There were also concerns that the courts will be faced with a tradeoff between spending less or lowering intake.

The committee agreed upon a suggestion to change the 365 day ceiling to 545 days and to either remove the dollar amount ceiling cap altogether or replace it with \$5,820. Language was also suggested to read "No more than 545 days."

Norma Jaeger continued that the Supreme Court would continue to send out treatment expenditure reports and that they are asking BPA to develop an outlier report to flag those who are costing more than is reasonably expected, and a report on the total expenditure over an episode in treatment. She also said that they are looking to eliminate some of the Direct Client Services charges that are levied by BPA so as to create some additional savings.

Judge Duff moved and Linda Wright seconded the motion to accept the allocations as proposed (and reflected on the written materials provided on page 6). Motion carried.

Patti Tobias moved and Judge Stegner seconded the motion to accept the Substance Use Disorder Treatment Funding and treatment authorization proposal with the revision of a maximum duration of 18 months (545 days) and without a dollar limit specified. Motion carried.

Veterans Court

Judge Tim Hansen and Larry Reiner provided an update on the development of the Ada County Veterans Court and presented a Letter of Intent to the Coordinating Committee for this court. The proposed start date for the court is set for July 1, 2011. Participants can be either misdemeanor or felony. VA benefits can go to those who were honorably discharged. Participants must suffer from mental health issues, trauma, or substance abuse. The operations application still remains to be completed. The court will be post-plea. Incentive for participation will be the dismissal of charges. For misdemeanors, the incentive is more difficult to establish, as many veterans may simply choose to accept the misdemeanor charge. The goal is to get those veterans into needed treatments through the VA or another veterans' organization. The VA treatment provider will attend the staffing, which will generally be done at the same time as the drug court staffing. They are still working to establish probation supervision coverage.

Judge Southworth moved and Judge Bevan seconded the approval of the Letter of Intent application for the Ada County Veterans Court. Motion carried.

Judge Southworth reported that there have been several well attended meetings to explore establishment of a Veterans Court in Canyon County as well. County Misdemeanor Probation is open to providing supervision and the Canyon County Clerk offered a "coordinator". There is a VA Outpatient Clinic in Canyon County and the VA has been involved in the planning as have other community service organizations. Interested partners are planning a trip to visit the Klamath Falls, Oregon Veterans Court in June.

Mental Health Collaboration Grant-Chief Justice's Criminal Justice Mental Health Initiative

Norma Jaeger reported on the progress of the Mental Health Collaboration grant which is continuing the strategic planning from the Chief Justice's Criminal Justice Mental Health Initiative. She referred the committee to materials in the meeting materials which summarize a review of the available literature on the unmet mental health needs of female felony offenders. This work was completed by Jeff Morris who is currently working with the Supreme Court on the collaboration grant. He is also working on exploring Veterans Treatment Court options and

available literature on mental health diversion courts. These were all priorities established by the Chief Justice's Initiative and are continuing with the Collaboration Grant project.

Other Business

The first Intermountain Mental Health Court Conference is being held June 29 – July 1, 2011 in Logan, Utah.

The Chief Probation Officer in Canyon County has expressed interest in establishing a Juvenile Drug Court in the future and is sending a judge to specific training.

Meeting adjourned at 2:50 p.m.

Action Items:

- Committee members review proposed Guidelines and Standards and provide feedback by August 1, 2011
- Convene a workgroup to review funding, costs and future strategies for financial support of problem solving courts
- Communicate legislative changes to all Coordinators to share with their respective teams.
- Advise Ada County of Coordinating Committee approval for the Letter of Intent to establish a Veteran's Treatment Court in the 4th Judicial District.
- Work with BPA to implement the revised procedure for authorizing treatment and communicate the procedure to all Coordinators.