

# Idaho Treatment Court Committee

February 15, 2022  
1:30 pm – 3:30 pm (MST) Zoom Virtual Meeting  
Minutes

<p><b><u>Members in Attendance</u></b> Justice Gregory Moeller, Chair Hon. Rick Carnaroli Hon. Darren Simpson Hon. Eric Wildman Hon. Cynthia Meyer Hon. Nancy Baskin Commissioner Brent Reinke Ron Christian Lisa Martin Megan Roumanis Marilyn Miller Richard Neu Jennifer Romero Hon. David Hooste Dr. Magni Hamso Marreen Burton Kerry Hong Paul Meigio Scott Bandy Lisa Crook, IDJC, in Director Monty Prow's stead Jamie Robb, in Ron Christian's stead Judge Thomas Whitney, in Judge Debra Orr's stead Judge Victoria Olds, in Judge Gregory Fitzmaurice's stead</p>	<p><b><u>Members Not in Attendance</u></b> Senator Patti Anne Lodge Director David Jeppesen, DHW Director Director Josh Tewalt, IDOC Jared Larsen</p> <p><b><u>Staff</u></b> Administrative Director of the Court, Sara Omundson Jason Spillman, Legal Counsel Justice Service Director, Taunya Jones Scott Ronan Ryan Porter Jason Dye Lynn Proctor Lorrie Byerly Jana Filer</p>
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## **Meeting Convening and Minutes**

The meeting was convened at 9:03 a.m. by the Chair, Justice Moeller, who welcomed the Committee to the meeting. Justice Moeller called for a motion on the draft minutes from the January 4, 2022, committee meeting. **Scott Bandy moved and Kerry Hong seconded adoption of the minutes from the January 4, 2022, committee meeting. Motion carried with none opposed.**

## **Legislative Brief**

Administrative Director of the Courts, Sara Omundson, briefed the Committee on the status of budget legislation to increase the spending authority of the Substance Use Disorder (SUD) and Drug Court funds. She informed the Committee they are working to provide a new model for the funding of coordination and certain services. Telehealth and residential service costs have been increased by the Idaho Department of Health and Welfare (IDHW) and the Idaho Department of Correction (Corrections), although IDHW will provide support for the increase through the fiscal year. Sara indicated the most important budget request for Deputy Treatment Court Administrators for every judicial district has a lot of support, although a budget request adding full-time positions is always a tough request for the legislature. Legislators continue to support treatment courts and an expansion in Ada County, which is a good motivator for adding a district judge to the Fourth Judicial District

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Sara said she is meeting with the Finance Division to work on a larger budget plan to restructure treatment courts, with the goal to provide more money for quality assurance and the standards the court has adopted.

### **Daniel T. Eismann Award**

Justice Moeller reviewed the process for the Daniel T. Eismann Award for Excellence (DTE Award) in Treatment Courts, solicited nominations for the DTE Award and called for volunteers to sit on a recommendation subcommittee that will provide three recommendations to the Court for their final selection. Seven volunteers with some regional diversity were sought for the recommendation committee which should convene and make 3 award recommendations. Kerry Hong, Megan Roumanis, Judge Baskin, Judge Whitney and Judge Wildman volunteered to serve on the committee, and anyone who later decides to volunteer can email Scott. The DTE Award will be presented at the statewide treatment court conference in May.

### **FY22 Budget Update**

Scott Ronan, the Statewide Treatment Court Coordinator, reviewed FY2022 Treatment Court Funds and Allocations with the Committee. He provided updated expenditure figures for the substance abuse and testament dollars through December, and said at halfway through FY2022, about 34% of the substance abuse disorder treatment budget has been spent due to low utilization caused by the pandemic. The Committee discussed whether the 34% utilization reflects the participant census count and the increased percentage of Medicaid edibility and the percentage of patients who might lose Medicaid eligibility at the end of the public health emergency.

In response to Committee questions on whether monthly drug testing fees could be lowered for participants to whom it is a burden, Sara responded that the mechanism for providing such relief is not to lower the monthly fee but to explore using year-end funds to accommodate a 3-month hiatus of fee payments to ease the financial burden of participants. Lowering the fee amount on an ongoing basis could create an issue when it is raised again. She reminded the Committee that judges order participants to remit such fees, and they would need to order a break in such fees.

### **Three-Year Spend Plan Review & FY23 Budget Priorities**

Taunya Jones, Director of the Justice Services Division, briefed the Committee on the findings from the Budget Summit and reviewed the status of the Three-Year Spending Plan for Treatment Courts, (the Plan), put together last year that was designed to ensure that treatment courts are adequately resourced and able to achieve best practice standards. Taunya said FY2023 is year two of the spending plan. Many of the recommendations she will make are contingent on additional spending authority for drug court and SUD funds from legislative budget setting.

Last year, estimates for requirements to achieve the best practice standards for treatment courts were made, and each year of the Plan, treatment court funding is increased by one-third to reach that level over the next three years with the first budget increase last year in FY 2022. Taunya reviewed FY2022 Plan spending, discussing decreased spending due to the pandemic, capacity challenges within the private treatment provider network, residential rate increases, workforce shortages, and implementation of a budget increases to address testing, treatment and coordination.

Taunya outlined considerations for FY2023 in the Plan, including: addressing the gap that exists in all jurisdictions between funding levels and costs for drug testing; maintaining the residential rate increase implemented by justice partners that is believed will reflect the rate for Medicaid reimbursements;

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increasing resources for Coordination; analyzing and determining the feasibility of making coordinators state court positions for a recommendation in FY2024; working with Trial Court Administrators and District Managers to truly budget an increase fitting their needs rather than allocating an amount based on a rough guess of need; and holding on the work plan the entrance into a contract with a managed care organization pending IDHW's new behavioral plan.

Based upon the Plan and the Budget Summit with the TCAs and Division Directors where they collectively identified statewide budget priorities for FY2023, it is recommended the Committee approve the following budget enhancement requests for incorporation into the proposed spending plan for FY2023. Treatment, Drug testing, Coordination, and DM operations were all identified as statewide budget priorities:

- Treatment: Follow the proposed spending plan and increase that budget by an additional one-third of what is needed to meet standards.
- Drug Testing: Proposing an additional \$100 a slot to bring funding to \$900 a slot.
- Coordination: Proposing an increase in the allocation to the districts utilizing the last fiscal year's methodology. We don't have a precise amount yet but anticipate it would be similar to the \$200,000 allocated last year, assuming that funding is available. Before an exact determination of the amount can be made, we need to work with the Finance Office on what is available in the funds.
- RRSS: Proposing a budget increase of approximately \$548,400 to specifically accommodate residential rate increases.
- DM Operations: Proposing an increase to the budget based upon an amount determined in collaboration with the TCAs and DMs and which will vary by district due to travel variations by district.
- The Contract: Proposing to maintain a placeholder in the budget for the cost even though we do not know exactly when we are going to move forward.

The Committee discussed the impact of inflation on economic projections, specifically for personnel recruitment and retention, and drug testing costs. Taunya assured the Committee the dedicated funds which are dependent upon beer and wine taxes are very healthy. Sara advised the Committee of a recruitment benefit in the Workforce Readiness Plan that is being considered in the legislature that would provide aid to pay off student loans. Dr. Hamso provided useful information to the Committee on the Medicaid medical necessity determinations for drug testing.

**Hon. Cynthia Meyer moved and Hon. David Hooste seconded adoption of the findings from the Budget Summit and their recommendations for FY2023. Motion carried with none opposed.**

Taunya informed the Committee of additional budget priorities being contemplated for FY2023 that need further analyses: creating a pool of funding from our RRSS budget for MAT in preparation for incorporating into the FY2024 budget; budgeting for language access services for Coordination; exploring a health enhancement proposal for a physician consultant to provide education, consultation and technical assistance around implementation of MAT and other medically related topics such as medical and dental needs of participants; budgeting resources to address the housing crises; and creating a fund reserve to be used for purposes of starting up new courts should a district our county expansion occur mid fiscal year.

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### **Treatment Court Rule Draft, Timeline, and Public Feedback**

Scott briefed the Committee regarding the status of draft Idaho Rules for Treatment Courts (IRTC), summarized workgroup changes made as a result of public comments received, and provided a timeline of next steps, including a target date of July 1st for the rules to be effective. He commended the IRTC Workgroup (WG) and the Committee for their hard work during ten marathon drafting sessions and for volunteering their time. Moeller recognized Judge Simpson, Judge Wyman and Judge Hooste, saying they were owed a huge debt of gratitude for two years of labor on the project.

Justice Moeller advised the Committee that some of the rules would receive an individual vote for approval and that a motion for approval of the IRTC as a whole at the end of the rule review would cover rules not receiving an individual vote.

The following Rules and their changes were presented, and no discussion ensued or approving votes taken: Rule 3(b)(1); Rule 4(a); Rule 4(b)(3); Rule 19; Rule 12(c); Rule 13(a); Rule 13(c); Rule 19 (d).

### **Rule 2(a) absconded.**

Scott reminded the Committee this is just the definition of “absconded,” and further in the rules the activities around identifying someone who has absconded, hearings they are granted and due process are discussed. The WG added “rebuttable presumption” language, so the definition is not too broad and protects the participant while allowing the courts to proceed in manner they feel is appropriate.

**Justice Moeller called for a vote approving the definition of “absconded” in Rule 2(a). Rule 2(a) was approved with none opposed.**

### **Rule 5. Treatment Court Proceedings**

Scott shared with the Committee that Rule 5 had a lot of significant revisions that addressed concerns with how staffing and hearings were scheduled while allowing flexibility for all districts and counties in how they run things.

### **Rule 5(a)(3)**

No further changes were made.

**Justice Moeller called for a vote approving the changes to Rule 5(a)(3). Rule 5(a)(3) was approved with none opposed.**

### **Rule 5.1**

No further changes were made.

**Justice Moeller called for a vote approving the changes to Rule 5.1. Rule 5.1 was approved with none opposed.**

### **Rule 5.1(c)**

A scrivener’s error was corrected. Justice Moeller stated a specific vote on the remainder of Rule 5 was not necessary.

### **Rule 8(b)**

The Committee discussed the use of “shall,” “should,” “may” and “could” and the concept of minimum data and higher-level data for what to include in a participant’s Treatment Court Supervision Module Records. They concluded separating what “shall” be in the module and what is optional to be in the module should be broken down into categories. Justice Moeller asked for a strong consensus on what

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should be included in the “shall” category, and after Committee discussion, the consensus was to include subsection (1), (3) and (7).

**Justice Moeller tabled a decision to approve Rule 8(b)** until the WG drafts and circulates the proposed changes to the Committee. He indicated if the changes were finished today, they would be readdressed later in the meeting.

### **Rule 9**

Justice Moeller said Rule 9 would be addressed by the Committee when the Committee reviews the IRTC forms.

### **Rule 11(3)**

Rule 11(3) was changed to add “(Termination)” after I.R.T.C. 18 and “(Neutral Discharge)” after I.R.T.C. 21, as follows:

**Justice Moeller called for a vote approving the changes to Rule 11(3) Rule 11(3) was approved with none opposed.**

### **Rule 12.1(b). Transfers Between Treatment Courts**

The Committee brought up and discussed concerns about a participant’s right to due process in transfers between treatment courts and added a sentence, “[I]f the participant objects to the transfer, the current Treatment Court shall hold a hearing to determine whether the transfer is appropriate” to the end of Rule 12.1(b).

**Justice Moeller called for a vote approving the changes to Rule 12.1(b) Rule 12.1(b) was approved with none opposed.**

### **Rule 14. Ex Parte Communication and Staffing**

After discussing ex parte communications made inside and outside staffing and whether and when the substance of ex parte communications should be made on the record and whether parties should have an opportunity to respond, the Committee made the following changes (bold, underlined, and italics):

(a) A Treatment Court Judge may initiate, permit, and consider ***an*** ex parte communications with participants, attorneys, Treatment Court staff, Treatment Court team members and others in preparation for or during a Treatment Court staffing or proceeding.

(b) If a judge receives ***an*** ex parte communication relating to a participant ***not contemplated under subsection (a) of this Rule,*** the judge shall promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond. If the communication was in writing, the judge shall promptly provide a copy to the parties. ***A record shall be made of the relevant substance of the ex parte communication and the parties shall be provided with an opportunity to respond.***

**Justice Moeller called for a vote approving the changes to Rule 14. Rule 14 was approved with none opposed.**

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### **Rule 8. Treatment Court Supervision Module Records**

After taking a break for lunch and upon learning that the WG had made the changes in Rule 8(b) previously tabled, Justice Moeller called up Rule 8(b), specifically asking for feedback from the Treatment Court Coordinators. The Committee reviewed and discussed the following changes (bold, underlined, and italics):

***(b) The Treatment Court Supervision Module Records shall contain a copy of the application to participate in the Treatment Court, an acknowledgment of the Treatment Court Participant's orientation, as required by I.R.T.C. 11, and the participant confidentiality agreement or consent that acknowledges treatment information shall be used only for purposes of Treatment Court. The Treatment Court Supervision Module Records shall also contain information related to the participant's diagnosis, treatment, progress, and related medical and psychological information, which may include:***

***(1) Information gathered to evaluate the application;***

***(2) Relevant medical information and history of substance abuse, diagnosis, drug and alcohol use, monitoring, medical and psychological reports, prescriptions;***

***(3) Treatment team progress reports; and***

***(4) Information regarding case management provided to the Treatment Court Coordinator.***

Justice Moeller called for a vote approving the changes to Rule 8(b). Rule 8(b) was approved with none opposed.

### **Rule 15. Appearances and Attorneys**

To meet best practice standards, the Committee discussed clarification of designated attorney, assigned attorney, substitute attorney, whether a designee has to be a defense attorney and assigned to the Treatment Court Team, and made the following changes to Rule 15(a) (bold, underlined, and italics):

(a) Attorneys assigned as members of the Treatment Court Team, ***or designated attorney***, shall attend all Treatment Court staffings and proceedings, unless excused by the Treatment Court Judge.

(b) The defense attorney ***assigned*** to a Treatment Court, ***or designated attorney***, represents the interest of all participants. However,

**Justice Moeller called for a vote approving the changes to Rule 15. Rule 15 was approved with none opposed.**

### **Rule 18(e)**

The Committee discussed the importance of adding language to ensure the hearing associated with an abscondion was added (bold, underlined, and italics):

(e) A participant who has absconded, may be deemed to have forfeited their participation in a treatment court. ***Upon an absconded participant's*** arrest or voluntary return, the Treatment Court Judge participant's case may continue the participant in the Treatment Court program or the participant's case may proceed to a termination hearing

**Justice Moeller tabled a decision to approve Rule 18 (g) saying it would be taken up with discussions on mandatory forms.**

### **Rule 20(f)**

The Committee discussed the disparity of practice in the different judicial districts regarding who is the assigned judge and whether the problem-solving judge becomes the assigned judge or the original criminal sentencing judge, and made the following changes to Rule 20(f) (bold, underlined, and italics):

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(f) In post-sentence treatment courts, when a defendant *continues* on probation after graduating from a Treatment Court, and when it is alleged that a defendant thereafter violated any term or condition of probation, the probation violation will be heard by the *assigned judge*.

**Justice Moeller called for a vote approving the changes to Rule 20(f). Rule 20(f) was approved with none opposed.**

### **Rule 21**

Justice Moeller recommended Rule 21 (d) be removed in toto. He discussed that Rule 21(d) is making policy which is the prerogative of the legislature, and using a treatment court rule to tell a sentencing judge how to sentence goes beyond the scope of a treatment court rule into a criminal court rule. After discussion, the Committee agreed and decided Rule 21(c) should be removed as well. They changed “Notice for Neutral Discharge” to “Notice of Neutral Discharge” in Rule 21(b)

**Justice Moeller called for a vote approving the changes to Rule 21. Rule 21 was approved with none opposed.**

### **Forms.**

Scott informed the Committee the mandatory category for forms was removed in its entirety, and in its place, Part 1: Mandatory and Part 2: Recommended forms were created.

**Justice Moeller called for objections to the designation of the forms into Part1: Mandatory and Part 2: Recommended and to the designation of the forms within those categories. There were no objections.**

The Committee, after discussion of the procedures in their district and their use or non-use of the Notice of Report of Proposed Termination From Treatment Courts form, the possible use of a notice of grounds and Rule 18, made the following changes to Rule 18(a) (b) and (f).

(a) If a Treatment Court Judge, after consultation with the Treatment Court Team, finds that a participant is *may no longer be* amenable to supervision within the Treatment Court, the Treatment Court Judge shall ***advise the participant that it has been proposed that they may be terminated from the Treatment Court***, and enter, unless waived, a Notice of Proposed Termination of Defendant from Treatment Court which shall include notice to of the grounds upon which termination is proposed.

(b) A termination hearing shall be held within twenty-one (21) days ***of the filing of a motion to terminate*** of the entry of the Notice of Proposed Termination of Defendant from Treatment Court. The time limit in this subsection may be extended on a showing of good cause. Good cause may include the assignment of another judge to preside over a termination hearing.

(f) A participant shall be advised by the Treatment Court Judge of the proposal to terminate the participant from that Treatment Court. ***After the filing of a motion to terminate, the participant shall be advised*** of the alleged grounds for termination, the date and time set for the termination hearing, and any terms of bail imposed, pending the termination hearing.

There were no objections to the Notice of Report of Proposed Termination From Treatment Court form, but it was moved to Part 2: Recommended forms. The Notice of Neutral Discharge From Treatment Court and Stopping Fees and The Notice of Termination for Treatment Court and Stopping Participant Fees forms were reviewed by the Committee and no objections were made to the forms. On the Notice of Graduation form language at the end was changed to “must petition the assigned judge.”

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**Hon. Cynthia Meyer moved and Hon. Rick Carnaroli seconded the motion to approve the amendments to the Idaho Rule for Treatment Courts and send them to the Administrative Conference. Motion carried with none opposed.**

Scott indicated that the WG would fine tune fonts, margins and non-substantive language changes, paying particular attention to consistency in references to “defendant” instead of “participant.” Jason Spillman outlined the timing and next steps to achieve a July 1st effective date. Taunya inquired if, given the extensive rule changes, the Committee had addressed additional training or outreach for judges and attorneys, and the opportunities in the Spring conference and being a project in the fourth quarter of FY 2022 were discussed. The possibility of retroactivity of the rules was also discussed, and the WG directed to address any issues raised during their final reviews.

### **Spring 2022 State Treatment Court Conference**

Scott provided a brief review of the agenda and speakers for the May 5th and 6th Idaho Treatment Court Conference and informed the Committee of the thinking behind having an all-virtual conference. He outlined the focus for each day of the conference and when a final invitation would be forthcoming.

Justice Moeller said the national conference in Nashville, TN on July 25-28 would be held with social distancing in place, and Scott indicated requests to attend utilizing year-end funds are being received and forwarded to the Director.

### **Draft-Three Year Strategic Plan for Idaho Treatment Courts**

Scott presented a draft three-year treatment court plan after first discussing and providing a history of the prior three-year strategic plan which was based upon the implementation and charges to the committee made in Idaho Code Section 19-5606 and was focused on long-term sustainability and stability. The larger goals are to focus on access to and increased community and justice partner collaboration, enhanced services for participants, team sustainability and implementing new Idaho rules for treatment courts.

A larger goal is to improve access to education resources for treatment court teams, including planning and drafting a proposal of how to implement an education assessment survey for all team members to be implemented every three years and which can be utilized to deliver educational content to team members that is more focused, directional, thoughtful and strategic; developing a full training curriculum for treatment court coordinators with the understanding that DMs have a lot of local responsibility for onboarding new coordinators and would like additional structured resources; develop a full curriculum for Idaho treatment court judges; drafting a proposal to develop and deliver training that prioritizes reaching as many treatment court team members as possible throughout the state through venues such as holding conferences virtually and in several locations throughout the state; and develop digestible or bite sized training publications and videos to educate local level law enforcement and other vocational stakeholders on treatments.

To increase community and justice department collaboration, we need to develop an education plan to increase community awareness for those who will benefit by referrals to treatment courts by the development of a community outreach initiative that looks at focus groups such as criminal justice partners to identify and respond to participants needs to be stable and focused. We want to give more technical support and assistance to help jurisdictions with their utilization assessment deficiencies by cutting time from referral to engagement via a mapping process of some kind.

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Services for participants to have better outcomes can be enhanced through a gap analysis that looks for services we are not currently able to employ and that can help us strategize on how and where to deliver those services on not only a district-by-district basis but a county-by-county basis. We want to be more focused on providing resources and approaches to increasing services in rural areas, and we think enhancing services could come with a more integrated approach of peer support for treatment courts through the use and statewide leveraging of other resources like Recovery Idaho or recovery coaching for us to build multiple services within our matrix.

We would like to implement a health enhancement proposal to get a consultant or some technical assistance resources such as having a doctor on call through virtual telehealth services that would be a benefit to teams throughout the state for consultation and education purposes.

To ensure team sustainability, we need to provide resources and education to address team member roles so they can better understand each other's ethical responsibilities and have better communication and flow. We also need to access resources and services to help individual districts with local treatment court leadership succession planning through developing long-term plans and by drafting a judge's sustainability plan that allows for breaks from the treatment court and which has a long term strategy to encourage and maintain dedicated judges

For the next three years we understand that there will be a lift with implementation of the rules that will include development of educational materials for stakeholders and bench cards on how to utilize the rules. Rule 55 about stopping or starting a treatment court is now a part of treatment court rules, and a new application needs to be revised and additional supporting materials are needed, such as example handbooks, example policy and procedures, examples of orders or forms or a written sample triage process. We will want to reform the current WG for reassessment of the rules and supporting materials or let them volunteer on another WG.

**Justice Moeller said if anyone has immediate feedback or comments on the three-year strategic plan proposals let Scott know.**

**Hon. Nancy Baskin moved and Hon. Darren Simpson seconded the motion to adjourn. Motion carried with none opposed and the meeting adjourned at 3:31 p.m. MT.**

### Next Meeting(s):

**September 13, 2022**