

Idaho Treatment Court Committee

September 21st, 2021
9:00am – 1:00pm (MST) Zoom Virtual Meeting
Minutes

<p><u>Members in Attendance</u> Justice Gregory Moeller, Chair Hon. Rick Carnaroli Hon. Darren Simpson Hon. Debra Orr Hon. Eric Wildman Scott Bandy Ron Christian Lisa Martin Megan Roumanis Marilyn Miller Richard Neu Jennifer Romero Hon. Gregory Fitzmaurice Hon. David Hooste IAC Dr. Magni Hamso Marreen Burton Kerry Hong Paul Meigio</p>	<p><u>Members Not in Attendance</u> Hon. Cynthia Meyer Senator Patti Anne Lodge Hon. Nancy Baskin Director David Jeppesen, DHW Director Monty Prow, IDJC Director Josh Tewalt, IDOC Commissioner Brent Reinke, Director Jared Larsen JoAnn Martinez Eric Olson</p> <p><u>Guests</u> Hon. Scott Wayman, in Hon. Cynthia Meyer’s stead Director Lisa Crook, IDOC, in Monty Prow’s stead Ross Edmunds, in Director David Jeppesen’s stead</p> <p><u>Staff</u> Administrative Director of the Court, Sara Omundson Jason Spillman, Legal Counsel Justice Service Director, Taunya Jones Scott Ronan Ryan Porter Sandy Jones Jason Dye Stephanie Pustejovsky Jim Arnold</p>
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Meeting Convening and Minutes

The meeting was convened at 9:01 am by the Chair, Justice Moeller, with an introduction and welcome to the virtual meeting. Justice Moeller led the introductions for each of the Zoom attendees and called for a motion on the draft minutes from the February 10, 2021 committee meeting.

Hon. Scott Wayman motioned and Marilyn Miller seconded approval of the minutes from the February 10, 2021 committee meeting. Motion carried with none opposed.

FY22 Budget Update

Scott Ronan, the Statewide Treatment Court Coordinator, provided the Committee with an FY22 update of expenditures, including information regarding state Substance Use Disorder Funds (SUD) and Medicaid expansion. He presented a chart that provided an overview of judicial district budgets with the caseload capacity identified by each individual court which tells them how many they can serve given all available resources handled within the standards. He presented information on the Idaho Supreme Court (ISC) drug testing slots and their associated funding, as well as figures on the ISC SUD Treatment Funds, and Residential and Recovery Support Services statewide. Scott gave a special thanks to the Idaho Department of Health and Welfare (IDHW) for reaching out and providing some available assistance for a monthly offset for the residential rate increase that took effect. He shared the process of how they use data to inform their estimates that, hopefully, translates into a sustainable plan.

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In response to committee questions regarding whether slot allocations would change, Scott said the utilization is the lowest in ten years, much of which can be attributed to the COVID health crises. Rather than make adjustments and changes while the data is unpredictable, they are looking at different options so they can make an informed recommendation. Taunya Jones, the Justice Services Director, said in the three-year spending plan they are trying to increase the treatment budget so all treatment courts have enough funding to achieve the best practice standards related to treatment, although it may take some time to achieve that goal.

In response to committee concerns regarding their court numbers being impacted by the lack of clinicians, case managers, recovery coaches and peer support specialists, Sara Omundson, Administrative Director of the Court, said one of the recommendations prioritized by the Idaho Behavioral Health Council (IBHC) is to build up the number of treatment providers in the state. There is a partnership being created between IDHW and the Idaho Department of Labor to increase capacity in Idaho by providing scholarships for people going into the behavior field. It is a long-term solution.

Idaho Rules for Treatment Courts (IRTC), Timeline, and Committee Feedback

Scott shared a brief history of the IRTC and outlined the extensive information the Workgroup (WG) reviewed and the lead they took in drafting key language before submitting a draft to the committee in June seeking written feedback. The WG received, reviewed, and adjusted the written comments which are on the agenda for review today.

Scott presented a timeline for the IRTC from today and going forward:

- Today, committee review of written comments, WG responses and the addition and cataloging of committee comments.
- November and December, WG review and make adjustments responsive to committee comments.
- February 2, 2022, meeting, have full draft to the Committee requesting their recommendation.
- April, If the Committee makes a recommendation to adopt, the draft will go out for public comment. The WG will reconvene after the public comment period, make any adjustments needed, and send to either the Executive or full Committee to review, make additional comments or make a motion with, hopefully, a Do Pass recommendation.
- May, draft of the IRTC presented to the Administrative Conference.
- If recommend to adopt, IRTC will be provided to the ISC for their consideration.

Justice Moeller introduced the IRTC subcommittee members, Judge Simpson, Judge Wayman and Judge Hooste, and asked for their perspective.

Judge Simpson said the WG drafted rules would meet the expectations of the Court and not hinder or change the way treatment courts statewide were operating. They tried to come up with chronological process rules to implement that would take current standards into consideration and other applicable rules and statutes while instituting procedural safeguards for each district court's operations and due process for the individuals participating in the programs.

The WG addressed a transfer rule coming up with two flexible options that would allow each district the opportunity to transfer participants from one court to another without disrupting their flow and establishing a good court record. The WG also addressed rule implementation and forms to help gather data and track participants in Odyssey not only for data mining purposes but for a reference when addressing due process requirements.

Judge Hooste advised the Committee to review the notes on the rules which show how other rules work with the IRTC and have a list of other things that will be affected, such as a recommendation for adjustments to Idaho Court Administrative Rule (ICAR) 32 to complement the rules. Judge Wayman said

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they drafted the rules to retain some flexibility but encourage consistency so best practices can be implemented uniformly.

Scott said rules get better with feedback and the best use of the Committee's time is to focus on the written comments.

Rules 7, 9, 15 and 17 had no changes or committee discussions.

Rule 2. Definitions.

The WG said who does the case plan is in the definition, so no changes were made.

Child Protection and Juvenile Drug Courts are excluded because they have different processes and are geared more to criminal justice procedures. When there is a complete draft of the IRTC, a copy will be given to the Child Protection and Juvenile Drug Court committees to review and see if they want their own set of rules.

In identifying treatment courts, the IRTC indicates the rules apply to Wood Courts. There are two Wood Courts funded by the Idaho Department of Correction (IDOC), but they are still treatment courts. The Committee questioned how the application of the IRTC would intersect with the Wood Courts when the actual standards do not apply. Scott responded that although the standards do not apply to Wood Courts, the rules would apply because the standards are about evidence-based best practices that are a part of those courts. Wood Courts are courts, and they still operate as a court, and that is what these rules pertain to, rather than the standards.

Committee members suggested the Wood Court judges have an opportunity to give feedback on the IRTC. It was also suggested that IDOC should be included in Wood Court discussions. Ms. Omundson said she is not opposed to the IRTC applying to Wood Courts, but Wood Court judges have made it very clear they are not treatment courts or subject to treatment court standards, and they want direct input on anything impacting their courts. She highly recommended, as a part of this process, to give them a copy of the rules and allow them to provide feedback.

The definition of absconded was changed from saying "2 or more weeks" to "two or more consecutive court sessions" if a participant fails to appear. Changing the word "weeks" to "court sessions" has no impact but allows flexibility for courts who do not convene every week.

The WG made no changes to the definition of "monitor" because they did not want to be too prescriptive about what monitor really means and labeling that.

Committee members said it is dangerous to have meetings off the record with participants. The judge may close a meeting from the public, but it is trouble if substantive matters related to the case off the record are discussed. The WG added language in the definition of staffing and added that participants are not to attend staffing to make it absolutely and abundantly clear. They made other changes as well in Rule 5. If matters need to be discussed with a participant, that can be discussed in a court proceeding on the record and not at a staffing.

Rule 3. Treatment Court Formation and Dissolution.

This is formerly Rule 55 on how to start and stop a treatment court. The WG wanted to include administrative matters such as Rule 55 in the IRTC and put them in Rule 3, not changing much at all except the terminology of "formulation" and "dissolution." Based upon comments, a spelling error was fixed, and a comma removed.

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Rule 4. Treatment Court Program File.

The WG added the adjustment language because they know if a court has been in existence for years, there will be changes in time to the handbook.

Rule 5. Treatment Court Proceedings.

Although the WG had no changes, Committee members expressed concern regarding the qualified first amendment right of the public in proceedings, and they wondered if the good cause standard is sufficient considering how broad the rule is. It was suggested to make sure the right standard is being applied to the right type of proceeding. Justice Moeller said if not only the public but the media are involved, the question is generally resolved by the Press Enterprise Test, a US Supreme Court decision. The very first consideration is whether the type of proceeding is normally open to the public, and if it is normally open to the public, it raises the threshold to close or adjust it. He said we may need to look at that language and create a little more flexibility for ourselves in it. It is also addressed later in the rules.

ACTION ITEM: Judge Hooste asked that Scott add a note to review this by the WG, particularly in the context of other existing Idaho rules. Justice Moeller encouraged him to take a look at the four-part Enterprise rule because it is directly on point and doing so would head off some problems. It was suggested to look at the emergency orders from the ISC concerning a test for when something must be streamed, and the public is not allowed in.

5.1 Record of Treatment Court Proceedings.

Rule 5.1(d) says a court clerk or deputy court clerk must be present in Treatment Court proceedings, and several members of the Sixth Judicial District inquired whether a coordinator may serve in place of a court clerk or deputy court clerk in the proceedings except *Rogers* termination proceedings. The WG said if a coordinator is sworn as a deputy clerk, and they serve in that function in court matters as described in this rule, they may have dual roles, but each role should be trained and supported. While the WG did not have any changes and do not specifically say a coordinator can or can't, they clarified what a court clerk or deputy court clerk can do if they are sworn.

Rule 6. Criminal Case File.

The WG did not have any changes at this time. One of the emphases in these rules and this section is that the treatment courts are courts, and the ISC directive was to draft the rules to emphasize and address that.

ICAR 32 deals with certain confidential records that would not be present in the file and would be sealed. The WG did provide ICAR 32 and did review it in sections that pertained to what they were drafting. Scott said this is commented on in notes where they say they are going to recommend the other WG review ICAR 32, in particular, and its interaction with this rule. The better place for that to be addressed is in ICAR 32 rather than this rule because ICAR 32 is more specific on what should remain private and what open. A committee member pointed out that work is going on to revamp ICAR 32.

Concerns about the paper file and preservation time for post-conviction relief are addressed in Rule 7. Paperwork of a participant that is of a sensitive nature is covered in ICAR 38 which we are recommending be modified.

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Rule 10. Admission to Treatment Court.

The WG understood the comments but did not make any changes with the underlying idea being to provide some uniformity and provide some flexibility. This is where uniformity is warranted. The WG added new language at subsection (e) “the Treatment Court Team shall screen each applicant to determine if the applicant meets eligibility requirements and criteria for admission into the particular Treatment Court.” So instead of saying who shall screen, it was made broader saying it is the treatment court team.

Rule 11. Orientation and Advanced Notice to Participants.

The WG received multiple affirmations for this rule from comments of Treatment Court Committee Members.

Rule 12. Participation and Treatment Courts Outside the Originating County.

This is the transfer rule. The WG had provided two options with the choice of if you take option A here are procedures in place for that and if you want to take option B here are the procedures for that. So given the options, a court can proceed in whatever matter it wishes to depending on how they do it in their jurisdiction. Mr. Neu’s comments and examples of challenges he’s had in the past were reviewed, but the WG determined the options in Rule 12 can address each of his examples with additional communication and follow up from attorneys. The two options allow for consistent options in either cases between counties or districts.

Rules 14, 18 and 20 had the changes made by the WG as outlined in the table in the meeting materials provided to the committee.

General.

The WG has talked about and had concerns over the years about cases in treatment court being sealed since a lot of treatment information is confidential and questions whether a rule with a procedure for an automatic seal for treatment cases be written. The WG does not think it is necessary to automatically seal treatment court cases and recommends following the procedures in ICAR 32. There are some exceptions for case proceedings in 42 CFR 2, so from a legal standpoint it is alright in a case proceeding. But from a sensitive nature and what is the right thing to do, some additional training in the future on how to address cases in a respectful way should be provided.

The WG does not believe judges should be signing contracts or handbooks. Judges sign orders.

Scott opened the discussion for comments and proposed changes on the rules, and Justice Moeller called upon the members of the Committee that are Treatment Court District Managers to share their thoughts. They discussed notice of termination but overall liked the utility of the rules as a whole and thought the WG did a great job drafting them.

On the appendix drafts on neutral discharge from the initial treatment court, a good definition for “neutrally discharged” is needed. It is uncertain if it is defined in the rules but is in the order. There is a definition provided for termination which means full cessation of participants involvement in treatment court. Neutral termination might have a data definition, but it may not translate to treatment court rules.

ACTION ITEM: Scott will highlight as a WG item to discuss.

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From a due process standpoint, concerns were brought up regarding the automatic order for termination when a client has absconded, and they might not have the opportunity to address the court, or the court address them, before a termination is signed, and they go straight to sentencing or disposition on the probation violation. Justice Moeller said we need to clarify what the last sentence in 19(b) means. The WG left the rule as it is to try and balance due process with the limited nature of competing slots. Justice Moeller asked if concerns would be alleviated if the second sentence said, “failed to appear for two or more consecutive weeks without permission is presumed to have absconded.” Another committee member had a language suggestion in Rule 18(e), 3 lines down, that said “a treatment court judge may (instead of shall) enter an order and issue a bench warrant and upon the arrest or return, the judge shall notify the participant if (instead of that) they have been terminated for absconding and then shall proceed to termination, hearing, disposition or sentencing.” It gives the judge the discretion to give a hearing or not depending upon the nature of how long the person absconded and why.

It was mentioned that more work on the transfer policy needs to be accomplished to provide clarity and direction. A committee member brought up Rule 12 transfer issues regarding a judge’s authority.

ACTION ITEM: After discussion, Justice Moeller asked Scott to put the matter on the WG agenda to see if changes were needed to address anything on local in county transfers.

Justice Moeller asked how difficult it would be to implement these rules. It was mentioned that draft rules need to be presented to the Wood Courts. The continuity and streamlining will make it so much easier to do things unilaterally within the districts as well as with others. The draft rules need to go to the ISC and should be acted upon with 30 to 60 days after that. It should be a smooth transition.

Justice Moeller said the IRTC draft is not being closed, tabled or voted on but is ongoing. He asked the Committee to please submit any additional comments to the WG.

Review of [I.C. 19-5606] Statute and Potential Committee Action

Justice Moeller reviewed his request to review the statutory language providing guidance to the Committee and its responsibilities. Scott discussed six different sections, providing context on our current status, what we have been doing, should be doing, and suggested recommendations for action.

Recommendation 1: We recommend a subcommittee be appointed to review, revise, and recommend a new three-year strategic plan.

The Committee discussed whether a subcommittee is necessary or can the Committee as a whole work as the subcommittee. It was suggested that Scott send the prior strategic plan to everyone and get input from the Committee. Once he has that input, he will either present it at the next meeting or we can decide to form a subcommittee.

Recommendation 2: We recommend a subcommittee be appointed to draft a strategy to strengthen and enhance partnerships between treatment courts, public agencies, and community-based organizations.

Rich Neu motioned for Scott to send information on Recommendations 1 and 2 to the full committee for review and response as soon as possible. Seconded by Judge Wildman. Motion passed unanimously.

Recommendation 3: We recommend the review of the 2019 family treatment court (child protection drug court) best practice standards for potential committee recommendation and court order for adoption.
https://www.cffutures.org/files/OJJDP/FDCTTA/FTC_Standards.pdf

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It would be beneficial to have guidelines to ensure courts are following the best practices and to help the judges presiding over those cases, Judge Murray in Bannock County and Judge Riddoch in the 7th Judicial District. Sandy Jones recommended the AOC take the lead, reach out to those judges and form a work group to come up with something to bring back to this committee. She said the AOC is in the process of recruiting and hiring a Court Program and Services Coordination for Child Protection, and it would be important for this individual to be involved in that effort, as well as Ryan Porter and Jason Dye, as a subject matter expert because there is so much overlap between child protection and juvenile.

Judge Carnaroli moved to table Recommendation 3 until the position of Court Program and Services Coordination for Child Protection is filled, and to put the recommendation on the agenda for the next committee meeting. Seconded by Lisa Martin. Motion passed unanimously.

Recommendation 4: The Justice Services Division in Coordination with the Treatment Court District Managers, the Education Department of the ISC, and Data & Evaluation, develop an education & training survey to annually inform educational needs for treatment court teams.

ACTION ITEM: Scott will convene the appropriate stakeholders and develop an education & training survey to annually inform educational needs for treatment court teams.

Recommendation 6: We recommend asking Jason Spillman to review the statutory language regarding, "participation in the statewide substance abuse evaluation plan..." for a potential defect or legal analysis in the law action.

The Committee discussed whether Mr. Spillman should explore just archaic or irrelevant language in the statute that needs to be removed or look at references of drug courts or mental health courts and change it to treatment courts and is that something for which we should bother the legislature. Mr. Spillman said he knows about the naming issue throughout the statute, and it was something he put in front of the ISC in their legislative packets last year, and they decided not to tackle that last session. He can revisit it and look at it with a little broader scope.

ACTION ITEM: Justice Moeller directed Mr. Spillman, to look at the statute and provide the Committee a report before the legislature convenes with any recommendations regarding items in the statute that are either obsolete or no longer applicable, and whether addressing them is reasonable, necessary or not.

Support of Treatment Courts Plan

Ryan Porter reviewed a plan that prioritizes engagement and support in the next year, prior to the rolling out of the full quality assurance plan. Mr. Porter outlined the support, resources and tools available to treatment courts, virtually, and in on-site visits with new and existing courts. The best way to disseminate information regarding the support plan is through discussions with leadership teams or through Trial Court Administrators or Administrative Judges who can contact Ryan.

Spring 2022 face-to-face State Treatment Court Conference

Scott asked the Committee for suggestions regarding topics or speakers for the upcoming state conference in the Spring 2022. He said it is likely parallel plans will be made for a face-to-face, hybrid, or virtual conference. He said they would like to deliver educational content in the Spring of 2022 for all treatment courts in Idaho, and based on our action items today, it is hoped we will have more broad input on educational requests. We have focused on standards at the last couple of conferences and would like to focus on team building and strengthening your teams to avoid or handle crises situations. Mr. Neu had a name to recommend for a person to address how to deliver trauma in an informed way, not just understand and assess for trauma but to deliver a therapeutic intervention that takes trauma into consideration. He could provide practical application instead of just resources.

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Committee Brief and Open Discussion: Rider Re-Entry Track or Court?

There is a grant opportunity from IDHW that could provide funding in the next year on a reentry program. That stimulated a conversation about a pilot program for rider reentry or a rider court. The grant may not be something we would apply for, but due to the timing, it was added to the agenda for discussion.

The Committee members discussed how they currently take rider returns into their courts and whether a reentry track might be more efficient. Currently rider returns put them into treatment court programs and are they more stable than a person who just came to the court and lacks key areas needed for stability? Are they a high risk, but low need person? It was suggested that rather than applying a pilot court or new court type, we should work with IDOC for procedures for treatment courts following a rider so rider reentries can be engaged at a faster and more effective rate. Scott informed the Committee they have a monthly meeting with IDOC and are reaching out to them, but the issue is broader.

ACTION ITEM: Scott will engage with IDOC to start a conversation. For additional conversations, an email thread can be started to keep the discussion going, and we will proceed from there.

Justice Moeller inquired whether the committee preferred no lunch break section in the future, and the committee responded affirmatively.

Next Meeting(s):

February 8, 2022

September 13, 2022

Motion to adjourn at 12:37pm by Kerry Hong, seconded by Judge Carnaroli. Motion carried. Meeting adjourned.