

# final minutes

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## State Drug Treatment Court Advisory Committee Meeting

9:30 a.m. • Tuesday, July 25, 2006

Legislative Council Conference Room • Boji Tower Building

### Members Present:

Judge Patrick Bowler, Chair  
Ken Aud  
Lawrence Belen  
Kathleen Brickley  
Andrew Konwiak  
Constance Laine

Judge Brian MacKenzie  
Judge William Rush  
Jeffrey Sauter  
Chuck Spence  
Phyllis Zold-Kilbourn

### Members Excused:

Judge William Schma, Vice Chair  
Beth Morrison  
Terrence Sizeland  
Homer Smith  
Judge Edward Sosnick

### Others Present:

John Strand, Legislative Council Administrator  
Susan Cavanagh, Legislative Council Administrator's Office  
Dan Voss, Senate Democratic Staff  
Jim Kirsch, Senate Democratic Staff  
Ellen Hoekstra, Capitol Services  
Caryn Ferrick, Senate Majority Policy Office  
Judge Harvey Hoffman  
John Lazet, Senator Cropsey's Office

## I. Convening of Meeting

The Chair called the meeting to order at 9:35 a.m. and asked the clerk to call the roll. A quorum was present. **All absent members were excused.**

## II. Approval of Minutes

The Chair noted there were some proposed amendments to the draft minutes of the May 23, 2006 meeting. He called on Dr. Zold-Kilbourn to summarize the changes presented for the Committee's consideration. Except for changing Judge Meyer's comments from using a central registry approach to using LEIN or a similar data system in the second paragraph under the Discussion and Conference Call section, all of the other amendments were accepted. Judge Bowler asked that an asterisk be placed next to the reference that Robin Kandel was not speaking on behalf of SAMHSA so that her formal disclaimer statement is made an official part of the meeting record. Judge Bowler asked for a motion to adopt the minutes as amended. **Judge MacKenzie moved, seconded by Judge Rush, to approve the minutes of the May 23, 2006 meeting as amended. There was no further discussion. The minutes were adopted, a majority of the members present and serving voting therefor, by yeas and nays, as follows:**

### Yeas—11:

**Judge Bowler**  
**Mr. Aud**  
**Mr. Belen**  
**Ms. Brickley**  
**Mr. Konwiak**  
**Ms. Laine**

**Judge MacKenzie**  
**Judge Rush**  
**Mr. Sauter**  
**Dr. Spence**  
**Dr. Zold-Kilbourn**

### Nays—0

## III. Certification Subcommittee Report

Judge Rush presented the report from the Certification Subcommittee. He explained that the Subcommittee recommends that the Michigan Legislature amend the wording in the statute to "shall" so that drug treatment courts are required to comply with the 10 key components promulgated by the National Association of Drug Court Professionals. Ms. Laine inquired if including the 16 strategies for juvenile courts and the 10 guiding principals for sobriety/DUI courts had been discussed. She recommended that they be referenced. Judge Rush responded that he did not recall specifically addressing the standards for juvenile courts and Mr. Aud noted that other than the fact that sobriety and juvenile courts would have different sets of standards, the focus of the Subcommittee's discussion was to see if an accreditation process could be promulgated through the association. Dr. Zold-Kilbourn

recollected that the issue of family dependency drug courts not being part of the legislation was brought up at the subcommittee meeting as a sidebar. A discussion regarding the differences between the 10 key components and the 16 strategies and 10 guiding principals followed. Judge Bowler wondered if adding 26 additional principals would confuse the issue and asked for comments from John Lazet of Senator Cropsey's Office. Mr. Lazet offered that he was not concerned about the potential for confusion, but suggested that, if there is a move to mandatory certification, a very clear evaluation process will be needed. He inquired if the intent is to leave the evaluation process in the hands of some professional group. Judge Rush responded that the idea was there should be mandatory certification and drug courts should be required to follow the 10 key components, but the association would be the one to develop how that would be accomplished. Mr. Aud added that changing the "may" to "shall" is an easy thing to do and a good start. Judge MacKenzie also urged to keep it simple. Judge Bowler suggested that the recommendation to the legislature and the Supreme Court could include the Committee's general discussion and intent. Dr. Zold- Kilbourn noted her concern with the exclusion of family dependency courts in the legislation in that they do apply for grants. Judge Bowler responded that those courts would be included under the broad definition of a drug treatment court. **Judge Rush moved, seconded by Judge MacKenzie, to adopt the Report of the Certification Subcommittee. There was no further discussion. The motion passed, a majority of the members present and serving voting therefor, by yeas and nays, as follows:**

<b>Yeas—11:</b>	<b>Judge Bowler</b>	<b>Judge MacKenzie</b>
	<b>Mr. Aud</b>	<b>Judge Rush</b>
	<b>Mr. Belen</b>	<b>Mr. Sauter</b>
	<b>Ms. Brickley</b>	<b>Dr. Spence</b>
	<b>Mr. Konwiak</b>	<b>Dr. Zold-Kilbourn</b>
	<b>Ms. Laine</b>	

**Nays—0**

#### **IV. Regional Drug Courts/Cross-Jurisdiction Subcommittee Report**

Judge Bowler submitted the Subcommittee's report and shared news of Judge Schma's retirement announcement. He continued with a review of the Subcommittee's discussion which focused on the need to insure there are regional drug and sobriety courts around the state and the need to encourage cross assignment. Dr. Spence added it is important that the funding follow the individual from one area to another as well. The question of the differences in the criteria used in each jurisdiction to determine a defendant's eligibility for services was raised by Dr. Zold-Kilbourn. Dr. Spence agreed and commented that, just like a memo of understanding, a system could be developed. A discussion regarding the fact that procedures vary from jurisdiction to jurisdiction followed. Dr. Zold-Kilbourn inquired if the language applied to family dependency cases that are civil since the legislation references cases that are criminal. Judge Bowler responded that it might require taking a look at redefining the definition in the statute. Dr. Zold-Kilbourn noted that the cross assignment of a child abuse and neglect case could have significant impact on the Family Independent Agency, protective services, foster care and adoption agencies within different jurisdictions and may not be possible. Mr. Sauter then pointed out that the transfer to a drug court has to be agreed to by the prosecuting attorney in the jurisdiction where the defendant is charged, but the receiving court only requires the approval of the judge. He suggested that the decision be approved by a drug treatment court team and, after discussion, the amendment was changed to include the prosecuting attorney of the receiving drug treatment court. Judge Bowler also suggested that the transmittal of the report to the Supreme Court should include a recommendation that the presently promulgated Supreme Court rules on cross assignment be amended to include this language. **Judge MacKenzie moved, seconded by Mr. Sauter, to adopt the Report of the Regional Drug Courts/Cross-Jurisdiction subcommittee as amended. There was no further discussion. The motion passed, a majority of the members present and serving voting therefor, by yeas and nays, as follows:**

<b>Yeas—10:</b>	<b>Judge Bowler</b>	<b>Judge MacKenzie</b>
	<b>Mr. Aud</b>	<b>Judge Rush</b>
	<b>Mr. Belen</b>	<b>Mr. Sauter</b>
	<b>Ms. Brickley</b>	<b>Dr. Spence</b>
	<b>Mr. Konwiak</b>	
	<b>Ms. Laine</b>	

**Nays—0**

**Abstained: Dr. Zold-Kilbourn**

#### V. Statute Change Recommendations to the Legislature

Mr. Sauter provided a review of his memorandum to Committee members regarding his suggestions for revisions to Michigan's statute to reduce conflict with federal regulations. He recommended the following:

1) Non-public diversionary disposition:

Sec. 600.1076. Make the report to the state police non-public in the same fashion that the diversion and dismissal is non-public by adding the following to subparagraphs (7) and (8):

THE REPORT OF PARTICIPATON IN A DRUG TREATMENT COURT SHALL BE CLOSED TO PUBLIC INSPECTION, AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, BUT SHALL BE OPEN TO THE COURTS OF THIS STATE, ANOTHER STATE, OR THE UNITED STATES, THE DEPARTMENT OF CORRECTIONS, LAW ENFORCEMENT PERSONNEL, AND PROSECUTORS ONLY FOR USE IN THE PERFORMANCE OF THEIR DUTIES.

Sec. 600.1066. Limit the public access to the finding that the offender qualifies to participate in the drug court by adding the following subparagraph (h):

(h) THE FINDING OR STATEMENT SHALL BE CLOSED TO PUBLIC INSPECTION, AND IS EXEMPT FROM PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, BUT SHALL BE OPEN TO THE COURTS OF THIS STATE, ANOTHER STATE, OR THE UNITED STATES, THE DEPARTMENT OF CORRECTIONS, LAW ENFORCEMENT PERSONNEL, AND PROSECUTORS ONLY FOR USE IN THE PERFORMANCE OF THEIR DUTIES OR TO DETERMINE WHETHER AN EMPLOYEE OF THE COURT, DEPARTMENT, LAW ENFORCEMENT AGENCY, OR PROSECUTOR'S OFFICE HAS VIOLATED HIS OR HER CONDITIONS OF EMPLOYMENT OR WHETHER AN APPLICANT MEETS CRITERIA FOR EMPLOYMENT WITH THE COURT, DEPARTMENT, LAW ENFORCEMENT AGENCY, OR PROSECUTOR'S OFFICE. THE RECORDS AND IDENTIFICATIONS DIVISION OF THE DEPARTMENT OF STATE POLICE SHALL RETAIN A NONPUBLIC RECORD OF AN ARREST AND THE DISCHARGE AND DISMISSAL UNDER THIS SUBSECTION.

2) Amend the statute to require a participant's consent to participate in the drug court and clarify that the consent includes the sharing of information necessary to the operation of the drug treatment court. May recommend that the participant's consent to provide and allow sharing and reporting of confidential information has a specific time limitation.

3) Amend the statute to provide for an anonymous evaluation of the success of drug courts.

A discussion regarding Mr. Sauter's recommendations and the issue of putting information into the LEIN system followed. The option of creating a virtual database or relying on the defender, in Mr. Sauter's opinion, is not realistic. Dr. Zold-Kilbourn offered, for the Committee's consideration, that SCAO has a statewide system that could be used to collect information if evaluation is the motivation, but there is no real mechanism to insure that drug courts will report into that system. The option of the defendant agreeing to a waiver to the federal statute requirements was raised by Judge Hoffman and Judge Bowler shared Dr. Zold-Kilbourn's approach has some merit, but there might be some political and funding issues that would need to be addressed. He suggested that, in the meantime, if Mr. Sauter's recommendations are accepted, it demonstrates that Michigan is attempting to comply with 42CFR. After further discussion, Judge Bowler noted that a watchdog group on HIPPA and 42CFR will be releasing a book in a few months and suggested that the Committee wait to take any action and set up a subcommittee to review the issue further. Dr. Zold-Kilbourn asked that it be noted for the record that SCAO needs to advise courts that they are to comply with the statute and are required to report information into LEIN even though it is a violation of the federal statute. **Judge MacKenzie moved, seconded by Judge Rush, to table the discussion on this issue until the next meeting and to form a subcommittee to review this issue further with Dr. Spence as Chair, and Judge MacKenzie, Mr. Sauter, and Dr. Zold-Kilbourn as members. There was no further discussion. The motion passed, a majority of the members present and serving voting therefor, by yeas and nays, as follows:**

<b>Yeas—11:</b>	<b>Judge Bowler</b>	<b>Judge MacKenzie</b>
	<b>Mr. Aud</b>	<b>Judge Rush</b>
	<b>Mr. Belen</b>	<b>Mr. Sauter</b>
	<b>Ms. Brickley</b>	<b>Dr. Spence</b>
	<b>Mr. Konwiak</b>	<b>Dr. Zold-Kilbourn</b>
	<b>Ms. Laine</b>	

**Nays—0**

#### **VI. Other Issues**

Judge Bowler raised the issue of how to communicate the Committee's recommendations to the legislature and the Supreme Court and asked for input. Mr. Lazet explained the timetable for legislators to request bills and suggested that a formal recommendation be transmitted to the legislature, the Secretary of the Senate, and the House Clerk. Mr. Strand added that the Committee is required by statute to submit an annual report and he recommends that it be a written report and submitted early next year. **Judge MacKenzie moved, seconded by Mr. Sauter, that the Chair of the Committee submit a written report to the legislature by February 1 of each year. There was no further discussion. The motion passed, a majority of the members present and serving voting therefor, by yeas and nays, as follows:**

<b>Yeas—11:</b>	<b>Judge Bowler</b>	<b>Judge MacKenzie</b>
	<b>Mr. Aud</b>	<b>Judge Rush</b>
	<b>Mr. Belen</b>	<b>Mr. Sauter</b>
	<b>Ms. Brickley</b>	<b>Dr. Spence</b>
	<b>Mr. Konwiak</b>	<b>Dr. Zold-Kilbourn</b>
	<b>Ms. Laine</b>	

**Nays—0**

#### **VII. Public Comment**

The Chair asked for public comment. John Lazat spoke on behalf of Senator Cropsey and asked for the Committee's input on establishing a high BAC offense category and what to do with repeat high BAC offenders. Judge Harvey Hoffman shared that many judges have commented on the high BAC and repeat offender issues and he requested that this item be placed on the next meeting agenda. Judge MacKenzie formally requested that the issues be placed on the next agenda as well. After further discussion, Judge Bowler added that this might be an item that the association may need to flush out.

Dr. Zold-Kilbourn inquired if there would be any other sessions to bring up other legislative changes or recommendations. Judge Bowler indicated that there would be and called on her to explain. She noted there may be areas that need to be addressed by the Committee including a potential conflict in the requirement for discharging individuals and individuals giving up their rights for dismissal in the future. The chair asked Dr. Zold-Kilbourn to put the issue she raised in writing so that it can be referenced when it is added to the next meeting agenda. In response to an inquiry by Judge Hoffman, Dr. Zold-Kilbourn provided a further clarification of the data reporting issue.

Judge Bowler concluded that he will share a new client waiver that was proposed at the confidentiality session he attended in Seattle. He also suggested that an updated best practices list for courts to follow should be prepared at the annual meeting of the association.

#### **VIII. Adjournment**

**Having no further business, Judge MacKenzie moved, supported by Judge Rush, to adjourn the meeting. Without objection, the motion was approved.** The meeting was adjourned at 11:20 a.m.

#### **NEXT MEETING DATE**

The next full Committee meeting is scheduled for **Tuesday, September 26, 2006**. A proposed agenda and the location of the next meeting will be sent to members.



## State Drug Treatment Court Advisory Committee

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DATE: June 9, 2006

TO: Members of the State Drug Treatment Court Advisory Committee

FROM: Members of the SDTCAC Certification Subcommittee  
The Honorable William Rush, Chair  
Ken Aud  
Constance Laine  
Dr. Phyllis Zold-Kilbourn

RE: Certification Subcommittee Report

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On January 24, 2006, the Certification Subcommittee was created and charged with the task of reviewing the drug treatment court certification issue.

The Certification Subcommittee held a public meeting on Tuesday, May 23, 2006. The following individuals were in attendance at this meeting: The Honorable William Rush (Chair), Subcommittee Member Ken Aud, Subcommittee Member Constance Laine, Subcommittee Member Dr. Phyllis Zold-Kilbourn, The Honorable Patrick Bowler, Homer Smith, John Strand, and Susan Cavanagh.

The Subcommittee makes the following recommendation:

Recommend that the Michigan Legislature amend MCL 600.1060 (c) so that a drug treatment court "shall" comply with the 10 key components promulgated by the National Association of Drug Court Professionals.

PROPOSED AMENDMENT TO MICHIGAN'S DRUG COURT STATUTE  
Submitted By  
"Regional Drug Courts/Cross-Jurisdiction Subcommittee"

Amendment to Section 1062:

- (1) ....same....
- (2).....same....
- (3)....same...
- (4) A Court that has adopted a drug treatment court pursuant to this Section may accept participants from any other jurisdiction in this state based on the residence of the participant in the receiving jurisdiction or based on the unavailability of a drug treatment court in the jurisdiction where the participant is charged. The transfer must be agreed to by the judge, prosecuting attorney, defense attorney and defendant of the transferring court, and the judge **and prosecuting attorney** of the receiving drug treatment court. The transfer shall occur pursuant to "guidelines" promulgated by the State Court Administrative Office.

Submitted by: Patrick C. Bowler and  
William G. Schma

*Approved by the State Drug Treatment Court Advisory Committee at the September 26, 2006 meeting.*