

Final Minutes

State Drug Treatment Court Advisory Committee Meeting

9:30 a.m. • Tuesday, November 25, 2008

Legislative Council Conference Room • Boji Tower Building

Members Present:

Judge Patrick Bowler, Chair
Judge William Schma, Vice-Chair
Kathleen Brickley (via conference call)
Pamela Davis
Judge William Ervin
Kevin Jones
Andrew Konwiak
Judge William Rush
Jeffrey Sauter
Homer Smith
Richard Woods

Members Excused:

Charita Coleman-Gladdis
Judge Brian MacKenzie
Beth Morrison

Others Present:

Susan Cavanagh, Office of the Legislative Council Administrator
Judge Harvey Hoffman
John Lazet, Senator Cropsey's Office
Jessica Parks, SCAO
John Strand, Legislative Council Administrator
Others were present, but were not identified

I. Convening of Meeting

The Chair called the meeting to order at 9:30 a.m. and asked the clerk to call the roll. A quorum was present. Absent members were excused.

II. Approval of Minutes

The Chair directed the members' attention to the minutes of the September 23, 2008 meeting and asked for a motion to adopt the minutes as proposed. **Judge Rush moved, seconded by Judge Ervin, to approve the proposed minutes of the September 23, 2008 State Drug Treatment Court Advisory Committee meeting. There was no further discussion. The minutes were unanimously adopted.**

III. Introduction of Dr. Jessica Parks

The Chair called on Mr. Woods to introduce Dr. Jessica Parks of the State Court Administrative Office. Mr. Woods explained that Dr. Parks' primary responsibility is to conduct evaluations on various specialty courts and other assignments related to SCAO's case management system. Dr. Parks then shared information on her background. Judge Bowler welcomed her on behalf of the Commission and asked her to feel free to provide input to the Commission at any time.

IV. Status of Mental Health Courts

Mr. Woods then provided an update on mental health courts and the other grant programs SCAO oversees and shared information he received through his attendance at the 4th Annual State Drug Court Coordinators Symposium. For more details, see Mr. Woods' notes that are attached to these minutes (Attachment 1). Ms. Davis then provided a description of how they are setting up her county's mental health court which includes having two judges preside over a split docket with both drug treatment and mental health participants. Dr. Parks also summarized her experience in setting up a mental health court in Genesee County. A discussion of the criteria used to determine participation in a mental health court and the authority for a diversion followed. Judge Rush noted there may be a need to amend the statute to provide for a delay of sentence in a drug court and specialty court setting. Mr. John Lazet mentioned that Senator Cropsey would prefer to wait for the results of the pilot courts before taking legislative action in order to lay a good foundation for any legislation. Mr. Woods continued with further updates on other programs SCAO administers.

V. Legislative Report

Judge Harvey Hoffman provided an update on the status of the Byrne Grant funding and commented on the extraordinary bi-partisan effort that has been made since the last SDTCAC meeting. He shared that State funding had been restored and he expects drug court funding to hold its ground next year as well. He noted the Center for State Government is evaluating the entire criminal justice system and is expected to release a report in December or January.

Mr. Homer Smith provided an update on legislation dealing with repeat offenders and first time offenders with a high BAC. He noted that the bill affecting repeat offenders will be worked on next year and the first time offender's bill is

not currently moving and he is not sure if the stumbling blocks will be worked out in time for the bill to move during the lame duck session.

VI. Juvenile Issues Update

Ms. Davis reported that the Juvenile Issues subcommittee is still in the process of being formulated and Dr. Parks, Jim Inloes, and Robert Nida have agreed to be a part of the group. She added that they will be working closely with the MADCP juvenile subcommittee to dissect the current drug court legislation to determine what differs from the juvenile family court and family court. Judge Ervin noted the need to have a family drug court judge included in the group.

VII. Committee Projects 2009

The Chair asked the members to consider taking on a project in 2009 that would assess if all DWI courts are in compliance with due process procedures. From the information gathered, the Committee could then put together a manual that would serve as a guide on procedures that Michigan courts should follow. He suggested a team be put together to conduct a survey to determine what procedures are being used and offered that a law student could be used to assist in the project. **Judge Ervin moved, supported by Judge Rush, to initiate movement on this project and that Judge Bowler bring a proposal to the January meeting. There was no objection and the motion passed unanimously.**

Mr. Woods added that one of SCAO's projects for 2009 is to develop a manual to help facilitate uniform development and practices in all drug treatment courts and DWI courts. He commented that the information generated by the Committee's project on due process would be a great piece to add to that manual.

VIII. Committee Goals

The Chair opened a round table discussion of future committee goals. Ms. Davis would like to see more juvenile courts across the state. Judge Schma suggested the Committee continue to follow the mental health court legislation and look for opportunities to contribute to the process. Judge Ervin expressed interest in seeing an expansion of the family drug court and the development of a separate statute to address the issues of juvenile and family drug courts. Mr. Jones would like to see work done on setting standard caseload limits for drug court probation officers. Mr. Konwiak stated that he is also interested in pursuing the goals regarding juvenile courts. Judge Rush noted it is important to keep an eye on funding and he fully supports the due process guidelines project. Judge Schma added that another project for the Committee and/or the Michigan Drug Court Association should consider is the ongoing education of new legislators. Mr. Sauter shared that the confidentiality requirements of 42 CFR are unrealistic and urged a push to make a change at the national level. Mr. Smith suggested educating the public more on the long-term benefits of drug courts and developing a marketing plan to insure continued funding. Mr. Woods' main issue is the funding and sustainability of drug treatment courts, but he is also concerned about what will happen once they begin performing program reviews to see if the courts are in compliance with PA 224. Ms. Brickley also supports the due process project and recommended the Committee review the statutory language that relates to the participant eligibility requirements for drug courts. Judge Bowler noted that work continues in the effort to fill the three vacancies on the Committee and he asked members to join him in acknowledging the assistance Susan Cavanagh has provided the Commission in 2008. Judge Hoffman offered that it is important to show that the court programs work and are cost effective in order to secure continued and increased funding in the future.

A discussion the best way to educate legislators of the benefits of drug treatment courts followed. Judge Schma wished Judge Bowler well on his upcoming retirement. The Chair announced that the 2009 meeting schedule will be sent to members with the fourth Tuesday of every other month to be the regular meeting date.

IX. Public Comment

The Chair asked for public comment. There was none.

X. Adjournment

Having no further business, Judge Schma moved, supported by Judge Rush, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 11:35 a.m.

NEXT MEETING DATE

The next meeting is scheduled for **Tuesday, January 27, 2009.**

(Minutes approved at the March 27, 2009 State Drug Treatment Court Advisory Committee meeting.)

Updates from 4th Annual State Drug Court Coordinators Symposium

October 2-3, 2008 in Washington D.C.

1. SERV Act - Services, Education, and Rehabilitation for Vet Act

Legislation recently introduced in the House and Senate that would establish a \$25 million veterans drug treatment court grant program for courts, either to establish a veterans drug court or to expand their existing drug court to serve veterans (see S. 3379 and H.R. 7149).

2. Mental Health and Substance Abuse Parity signed into law (a.k.a. the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008)

The parity bill does not require health-insurance plans to cover addiction or mental health, but insurers will now be barred from imposing any caps or limits on behavioral healthcare service that are not applied to other health conditions. Most insurance plans do include behavioral-healthcare coverage, and advocates say that past experience shows that passage of state-level parity laws has not led to insurers dropping such coverage.

The legislation that passed both houses of Congress and was signed by the President last week is the historic culmination of a battle for equal coverage of addiction and mental illness that stretches back more than a decade. The parity legislation was included in the Emergency Economic Stabilization Act (**H.R. 1424**).

3. Protecting Outpatient Hospitals and Clinics Act of 2008 (H.R. 7219)

This legislation regulates the use of Medicaid for hospital outpatient and clinical services.

Introduced on September 30, 2008 by Representative John McHugh (R-NY), the legislation seeks to delay or place a moratorium on the proposed medical hospital outpatient regulation until April, 2009. The Senate introduced companion legislation (**S. 3656**) on September 30th as well. Senator Charles Schumer (D-NY) introduced the Senate version of the bill.

Currently, the federal government is planning a change to the Medicaid regulations that NADCP believes represents a policy change that could shift costs to States, thereby disrupting substance use disorder treatment/services and reducing access to services for vulnerable populations, like drug court participants for States that access Medicaid for treatment. New York has analyzed the impact and has determined it would result in a \$500 million statewide loss.

NADCP is actively working with other associations and the Hill to ensure that drug court participants do not suffer.

4. Clinical Laboratory Improvement Amendments of 1988 (CLIA)

CLIA is a federal law that requires laboratories performing drugs of abuse testing to be certified.

There is a distinction between "clinical" and "forensic" testing. Previously, a waiver was provided if the testing was for forensic purposes - as is the case with the compliance testing that occurs in drug court.

However, recently several States (Arkansas, Missouri, Texas, and Virginia) have received notification that the forensic waiver is not applicable to their procedures and testing must be CLIA certified if positive test results are used to refer an offender to treatment or to change treatment conditions.

NADCP is working to ensure that the forensic exception is reinstated when the testing is performed to ensure compliance with court orders or similar legal requirements, even if it results in a referral for further clinical evaluation and possibly treatment by clinicians.

5. Juvenile Justice & Delinquency Prevention Act of 2002 (42 U.S.C. 5601)

This act was originally written in 1974. This law addresses “Status” and “Delinquency” juvenile offenses. The law re-affirmed the four core protections:

- Deinstitutionalization of Status Offenders
- Separation of Juveniles from adults in institutions
- Removal of juveniles from adult jails and lockups
- Reduction of disproportionate minority contact

This Act provides funding to States, which develop and implement a strategy for achieving and maintaining compliance with these four core protections as part of the annual Formula Grants State Plan.

The JJDP Act provides funding to:

- Help state and local governments prevent and control juvenile delinquency and improve the juvenile justice system; and
- Protect juveniles in the juvenile justice system from inappropriate placement and from physical and psychological harm as a result of exposure to adult inmates

Emphasize the need for community-based treatment for juvenile offenders Status offenses are those behaviors that are law violations ONLY if committed by a person of juvenile status. It's when a juvenile is charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. Examples include: runaway; truancy; curfew violation; MIP; or being beyond the control of parents or guardians. Delinquency offenses are those offenses that are a violation of a criminal statute by when committed by an adult or juvenile. A juvenile violator is classified as a delinquent offender, and an adult violator is classified as a criminal offender. Status offenses are not eligible for detention. Thus, those states detaining juvenile status offenders may lose formula grant funds.

Jeanette Scroggins is the Michigan Juvenile Justice Specialist responsible for coordinating compliance.

6. SAFETEA-LU Legislation

The purpose of this program is to provide incentive grants to states that implement effective programs to reduce traffic safety problems resulting from impaired driving.

Requirements

States may compete for two types of basic grants, each equal to 25% of a state's FY 1997 Section 402 apportionment.

A state can receive a grant if it demonstrates that it has implemented at least five out of seven of the following:

1. An administrative license suspension program for drunk drivers
2. An underage drinking program
3. Sobriety checkpoints or other similar intensive enforcement program
4. A graduated licensing law with nighttime driving curfews and other restrictions
5. A program to target drivers with high BACs

6. A program for young adult drinking drivers between 21-34 years old
7. A program for increasing testing of drivers in fatal crashes

A state can receive a grant if it demonstrates:

1. A reduction in the percentage of fatally injured drivers with .10 BAC or greater in each of the last years, and
2. The percentage of drivers with .10 BAC or greater is lower than the national average for each of the last three years

A state qualifying for a basic grant can also receive one or more supplemental grants. Supplemental grants may not exceed 10% of total Section 410 funding in each year. The six supplemental grant criteria are:

1. Videotaping of drunk drivers by police
2. A self-sustaining drunk driving program
3. Laws to reduce driving with a suspended license
4. Use of passive alcohol sensors by police
5. Effective system for tracking DWI's
6. Other innovative programs

States may qualify for Section 410 grants for a maximum of six years. Funds must be used to support a state's impaired driving prevention plan. The federal matching share is 75%, declining to 25% by the fifth and sixth years. Unobligated Section 410 funding may be transferred into the Section 405 or Section 411 programs to ensure that states receive the maximum funding to which they are eligible under the program.

MMHCGP FY09 Grant Awards

Court	County	ORIGINAL BUDGET REQUESTS			GRANT AWARDS (12-3-08)		
		MDCH Requests	SCAO Requests	Total Requests	MDCH Award	SCAO Award	Total Award
53rd District Court	Livingston County	\$ 15,000	\$ 22,500	\$ 37,500	\$ 25,000	\$ 12,500	\$ 37,500
6th Circuit Court	Oakland County	\$ 82,900	\$ 17,000	\$ 99,900	\$ 87,900	\$ 8,000	\$ 95,900
86th District Court	Grand Traverse County	\$ 52,742	\$ 54,388	\$ 107,130	\$ 52,742	\$ 54,388	\$ 107,130
Genesee County Probate	Genesee County	\$ 71,453	\$ 60,221	\$ 131,674	\$ 71,453	\$ 60,221	\$ 131,674
Berrien County Trial Court	Berrien County	\$ 124,340	\$ 36,378	\$ 160,718	\$ 90,000	\$ 21,378	\$ 111,378
72nd District Court	St. Clair County	\$ 28,103	\$ 140,039	\$ 168,142	\$106,440	\$ 60,702	\$ 167,142
87th District Court	Otsego County	\$ 147,776	\$ 36,720	\$ 184,496	\$147,776	\$ 21,520	\$ 169,296
3rd Circuit Court	Wayne County	\$ -	\$ 201,919	\$ 201,919	\$150,000	\$ 132,496	\$ 282,496
4th Circuit Court & 12th District Court	Jackson County	\$ 187,379	\$ 64,458	\$ 251,837	\$187,379	\$ 64,458	\$ 251,837
	TOTAL	\$ 709,693	\$ 633,623	\$ 1,343,316	\$918,690	\$ 435,663	\$ 1,354,353