

Final Minutes

State Drug Treatment Court Advisory Committee Meeting

9:30 a.m. • Tuesday, April 27, 2010

Legislative Council Conference Room • Boji Tower Building

Members Present:

Judge William Schma, Chair
Sophia Burr
Charita Coleman-Gladdis
Pamela Davis
Kevin Jones
Andrew Konwiak

Dennis Priess
Judge William Rush
Jeffrey Sauter
Homer Smith
Richard Woods

Members Absent:

Judge Patrick Bowler
Kathleen Brickley
Judge William Ervin
Christopher Luty
Judge Brian MacKenzie

I. Call to Order

Judge Schma called the meeting to order at 9:30 a.m. and announced that he would be serving as the chair for today's meeting per Judge Bowler's request.

II. Roll Call

The Chair welcomed Sophia Burr who along with Charita Coleman-Gladdis participated in the meeting via teleconference call. He asked the clerk to call the roll. A quorum was present and absent members were excused. The Chair noted that today is the last meeting Ms. Coleman-Gladdis will participate in as she is moving to North Carolina and is resigning from the Committee. On behalf of the entire Committee, the Chair thanked Ms. Coleman-Gladdis for her service and wished her well in her future endeavors. He also announced that he is leaving the Committee and today is his last day as well. He asked members to think of potential candidates that the Committee could recommend for appointment by the Speaker and Senate Majority Leader. The three vacancies include an individual representing domestic violence provider programs, a Circuit Court judge who has presided for at least 2 years over a drug treatment court, and an individual who successfully completed a drug treatment court program.

III. Approval of Minutes of February 23, 2010

The Chair asked members to review the minutes of the February 23, 2010 meeting. No changes were suggested. **Judge Rush moved, supported by Ms. Davis, to approve the proposed minutes of the February 23, 2010 State Drug Treatment Court Advisory Committee meeting. There was no further discussion. The minutes were unanimously approved.**

IV. Annual Report

An updated draft of the 2009 Annual Report was presented and reviewed. Mr. Smith suggested language be added under the "Future Issues to be Reviewed" section to place a stronger emphasis on future funding for expanding resources. After some discussion, the Chair suggested the following language be added after the last sentence of that section:

Such resources and opportunities might also include:

- Expanding eligibility and access to drug treatment courts
- Increasing funding for the drug treatment court system
- Increasing funding for substance abuse and mental health treatment

Mr. Smith moved, supported by Ms. Davis, to amend the 2009 SDTCAC Annual Report by adding the language offered by the Chair after the last sentence of the "Future Issues to be Reviewed" section. There was no objection and the amendment was unanimously approved.

Mr. Sauter presented the following language to the "Issues Reviewed" section of the report under "Confidentiality Issues":

Confidentiality Issues

The primary problem identified by the subcommittee is that the federal law is overbroad in its protection of confidentiality. Applied as written, the federal law would prohibit current practices and on-the-record discussions in drug treatment courts and in traditional courts that would drastically impede the operation of the courts. Future progress in this area depends on initiatives in the amendment of the federal law.

The subcommittee is drafting proposed amendments to the Michigan Drug Treatment Court statute which would enhance participant confidentiality without impeding the operation of the court.

Ms. Coleman-Gladdis moved, supported by Mr. Priess, to amend the 2009 SDTCAC Annual Report by adding the language offered by Mr. Sauter to the "Issues Reviewed" section under "Confidentiality Issues." There was no objection and the amendment was unanimously approved.

The Chair called for a motion to approve the 2009 SDTCAC Annual Report as amended. **Judge Rush moved, supported by Ms. Davis, to approve the 2009 State Drug Treatment Court Advisory Committee Annual Report as amended. There was no objection and the report was unanimously adopted.**

V. Subcommittees Updates

Certification Subcommittee: Judge Rush indicated there was nothing new to report. Mr. Woods noted that there is a national conference of the State Drug Treatment Court Coordinators Group in June.

Confidentiality Subcommittee: Mr. Sauter had nothing new to report, but will offer language to change the drug court statute at the next meeting.

Cross-Assignment Subcommittee: The Chair noted that the last known activity and discussion related to the cross-assignment topic was going on in Kalamazoo. He suggested contact should be made with Mike Hills and Judge Croft to learn what is happening. Mr. Woods also sent out a summary regarding the DTC Order to Transfer Defendant form. He shared that the form was not ready to go to SCAO's Forms Committee for consideration. He suggested the best route at this point is to draft a model form that could be used on an experimental basis for the balance of the year and use the information gathered to design a form that will be ready for the next round of forms that go to the Forms Committee. Mr. Woods will draft a model form, bring it to this Committee for approval, and then make it available for every court to use.

Defense Attorney Participation Subcommittee: The Chair reported that Ms. Brickley had sent an email regarding the defense attorney participation issue and asked members to forward any names of attorneys that might be interested in joining the subcommittee. Ms. Davis shared that she provided the name of an attorney who works with her adult treatment court to Ms. Brickley and Judge Hoffman recommended Thomas Dutcher from Charlotte who was heavily involved in drafting the statute.

Funding Alternative Subcommittee: Judge Hoffman presented an update which included news that mental health treatment funding has been in the discussions recently and ideas to increase treatment program funding are being considered. Mr. Priess suggested the Committee may want to consider the impact of health care reform such as the mental health substance abuse parity legislation. Judge Hoffman agreed with Mr. Priess and noted that a subgroup was created to specifically look at those types of issues.

Juvenile Issues Subcommittee: Ms. Davis reported that they have finished designing the model LAO, but are in the process of fine-tuning it. It should be ready by the next meeting.

Prosecutor Gatekeeper Subcommittee: Mr. Sauter shared that there are ongoing discussions to address this issue, but nothing specific to report.

Vision & Evidence-Based Sentencing Subcommittee: No report was given.

VI. Plan to Amend Drug Court Legislation Subcommittee Timelines

Mr. Woods reported that the strategic plan is set to expire next month and suggested the Committee schedule a meeting to update the plan. He stated it would make more sense to put the timeline together once the strategic plan is updated. Ms. Cavanagh will try to find a date for the Strategic Planning Session which will be held at the Hall of Justice.

VII. Delay of Sentencing Statute

Judge Rush referred the members to a letter he had written to Judge Bowler which provided some background on the delay of sentencing statute issue (memo is attached to these minutes.) Judge Hoffman added that others have raised the same local concerns. Mr. Woods commented that SCAO has not discussed this issue in detail yet, but should start meeting internally and will have analysts review the issue soon.

VIII. Funding Update

Mr. Woods reported that the Governor's recommendation for drug court funding is consistent with what the House and the Senate have recommended. The \$5.1 million includes \$1.8 million in Bryne JAG funds, \$500,000 from the Office of Highway Safety Planning, \$1.9 million from the justice system fund, and the balance from the general fund. The Michigan Drug Court grant application was released on Thursday and the application due date has been extended to June 1 to allow court administrators who attend their spring conference sufficient time to submit the application. He also reported that the Michigan Department of Community Health has submitted a grant application for additional funding for treatment and a small portion for operational expenses for the existing pilot mental health courts.

IX. Legislative Report

Judge Hoffman provided a report on the legislative breakfast meeting set up by Representative Schuitmaker's staff which he noted had good participation. He continued with news that action on the interlock bills should wrap up in the next few weeks. He noted that there have been discussions recently regarding inconsistent reporting of the four different diversions from the various courts and he believes the next step will be bring all the players together to work on language to perhaps have the diversion take effect at the time of sentencing which might simplify the situation.

X. Public Comment

The Chair asked for public comment. There was none.

Mr. Smith shared information regarding a Michigan Alcohol Policy Forum event in Lansing on May 4 and an Ignition Interlock Symposium on June 17. He will have detailed information regarding both of these events forwarded to the Committee members.

Ms. Davis announced that there will be an All Rise Celebration in Oakland County on May 19 at Mott High School.

Mr. Woods presented one final update regarding his work on a Wayne County advisory committee that is in the process of establishing teen courts in the Detroit Public Schools. He noted that the initiative is going very well and there is a lot of support in setting these programs up. He offered that at some point we should start to think about how we can form a grid with the teen court program and the juvenile and family court programs.

XI. Adjournment

Judge Schma moved, supported by Ms. Davis, that the meeting adjourn. There was no further discussion and the motion was unanimously adopted. The meeting was adjourned at 11:00 a.m.

NEXT MEETING DATE

Members will be contacted to find possible dates for the next meeting and the strategic planning session. The date(s) will be announced when they are determined.

(Approved at the 7/23/10 State Drug Treatment Court Advisory Committee meeting.)

Memorandum

To: Pat Bowler
From: Bill Rush
Dated: March 5, 2010
Re: Delay of sentence statute

Background

Most Drug Treatment Court's require a guilty plea as a prerequisite for admission into the program. Some place their participant's on a delay of sentence with the expectation that upon completion of the program the charges will be reduced. For example, a participant may plead guilty to OWI 3rd or felony drunk driving with the Court taking the plea under advisement and the participant being placed on a two year delay of sentence with the customary terms of probation. In this scenario, the participant would generally serve at least the minimum 30 days of jail up front. If the participant graduates from the DTC the charges are reduced to OWI 2nt. While time in the program varies with each participant it is reasonable to expect 15 to 18 months or longer to graduate.

Delay of Sentence Statute

MCL 771.1(1) Provides for probation in all prosecutions for felonies, misdemeanors, or ordinance violations, with some exceptions for major felonies, if "the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law,".

MCL 771.1(2) "In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in a drug treatment court under When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's record. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.

MCL 771.1(3) Establishes supervision fees for circuit court delays.

MCL 771.1(4) Concerns juveniles.

Commentary

The third paragraph of section 22:145 of Michigan Law and Procedure states: "Under the statute allowing the court to delay sentencing for a year, the court does not lose jurisdiction to sentence if the delay is for more than one year, and a defendant who acquiesces in a delay of more than a year waives the requirement that sentencing be within a year of conviction and consents to the courts' exercise of personal jurisdiction to impose sentence beyond the statutory one-year period. A trial court that delays sentencing a defendant may impose **reasonable conditions** during the period of delay. Jail time may not be imposed as a condition of delayed sentencing." (My emphasis)

Drug Treatment Courts Statute

MCL 600.1070 (1) c "Pursuant to the agreement with the individual and the prosecutor, the court may either defer further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771..1, or **proceed to sentencing**, as applicable in that case pursuant to that agreement, and place the individual on probation or **other court supervision** in the drug treatment court program **with terms and conditions according to the agreement** and as deemed necessary by the court." (My emphasis)

MCL 600.1070 (2) "The court shall maintain jurisdiction over the drug treatment court participant as provided in this act until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2 (2yr for misdemeanors and 5yr for felonies)...."

So where are we?

SCAO's delay of sentence form does not provide any space for jail, which appears to be in conformity with the law. The Holmes Youthful Trainee act was amended a few years back to provide for jail as a condition of probation. Are "reasonable conditions" during the delay different from probationary terms? Does "other court supervision" embrace a two year delay with probationary terms including jail? Is consent of the participant compatible with the agreement of the parties? Can the parties agree to a two year delay with up front jail? Or does subsection c of the DTC statute provide for a one year delay or sentencing which arguably does not embrace the concept of a delay?

I believe we should clarify the law to explicitly provide for a two year delay of sentence with standard and not so standard probationary terms that allow for up front jail. I am not sure of the best avenue to follow to achieve that result, which is of course why I am sending you this memorandum so you can enlist the assistance of better minds to address the problem (as I see it).