

# Final Minutes

---

## **State Drug Treatment Court Advisory Committee Meeting**

9:30 a.m. • Tuesday, January 25, 2011

Legislative Council Conference Room • Boji Tower

Lansing, MI

### **Members Present:**

Judge Patrick Bowler, Chair  
Judge William Rush, Vice Chair  
Pamela Davis  
Judge William T. Ervin  
Andrew Konwiak  
Dennis Priess  
Jeff Sauter  
Richard Woods

### **Members Absent:**

Kathleen Brickley  
Sophia Burr  
Kevin Jones  
Chris Luty  
Judge Brian MacKenzie

### **I. Call to Order**

The Chair called the meeting to order at 9:30 a.m.

### **II. Roll Call**

The Chair asked the clerk to call the roll. A quorum was present and absent members were excused.

### **III. Approval of Minutes of October 26, 2010**

The Chair asked members to review the minutes of the October 26, 2010 meeting. **Judge Rush moved, supported by Ms. Davis, to approve the proposed minutes of the October 26, 2010 State Drug Treatment Court Advisory Committee meeting. There was no further discussion. The minutes were unanimously approved.**

### **IV. Committee Appointments**

The Chair noted that since there is a new Senate Majority Leader and a new Speaker of the House, a letter to the new leadership from the Committee will be prepared to recommend candidates for the vacant positions. He then announced his plans to resign from the Committee as soon as a replacement is appointed. He also reported that Mr. Priess has submitted his resignation effective February 28, 2011. The candidates the Committee will recommend for the six vacancies are as follows:

**Ms. Janette Kolodge**—for the advocate for the rights of crime victims position. Ms. Kolodge is the Michigan executive director of "Mothers Against Drunk Driving" (MADD).

**Judge Allen Garbrecht**—for the circuit court judge position. Judge Garbrecht is the Chief Circuit Court Judge of the 37<sup>th</sup> Circuit.

**Ms. Nadine Issacs** of Okemos, Michigan—for the individual who has successfully completed an adult drug treatment court program position. Ms. Issacs is a graduate of the 54-A District Court drug treatment court program and was recommended by Judge Louise Alderson.

**Judge Amy Ronayne Krause**—for the domestic violence provider program position. Judge Krause has a strong background in domestic violence issues and is currently appointed to the Michigan Court of Appeals.

**Judge Michael J. Haley**—for the individual representing the Michigan Association of Drug Court Professionals position.

**Mark A. Witte**—for the individual representing a substance abuse coordinating agency position.

### **V. Changes to Treatment Services**

The Chair asked that a summary of the earlier discussion of possible changes to the delivery of substance abuse treatment services in Michigan be included in the minutes and the topic be included as an agenda item

for future meetings. He will invite Jim Haveman to attend a future meeting to find out more about what changes are being discussed.

Notes on earlier discussion: The Chair called on Mr. Priess to provide an update on treatment services. Mr. Priess explained he has learned that a number of significant changes are in the works by the administration including eliminating coordinating agencies in Michigan and moving ahead with the early adopter program which extends Medicaid coverage to people at or below 133% of the poverty level. The federal government is also planning to transition the federal block grant which means the elimination of one of the major sources of funding for treatment services in Michigan. He added that it looks like treatment services will be financed primarily through Medicaid and administered by a prepaid inpatient health plan (PIHP). Mr. Konwiak added that even though the new Medicaid eligibility level will bring in more people, single males will not be as easily eligible and this means that the most common population served in drug courts will not be covered for treatment by Medicaid. He noted it will be a real challenge if the advocacy role the coordinating agencies have played for almost forty years disappears. The issue of whether anyone has put out a primer on what the changes are and what they could mean to specialty courts was then discussed. Mr. Woods shared that he and a work group have been working on a letter of agreement regarding screenings and assessment. He found it interesting that the issue of the elimination of coordinating agencies may tie into why the work group has not heard back from the Department of Community Health regarding the form. Judge Rush suggested that Mr. Priess and Mr. Konwiak collaborate on putting together an information piece on how things will be changed. The Chair will distribute the information through MAACP.

## **VI. Subcommittees Updates**

Certification Subcommittee: Judge Rush asked Mr. Woods to provide the update. Mr. Woods reported that at the State Drug Treatment Coordinators' meeting held last year, there was a consensus that the states and the statutes that govern drug courts were different enough that it is almost impossible to come up with a set of credentialing standards and criteria that would meet the needs of every state. As a result, the decision was made to work with the NADCP to help provide the state drug court coordinators with guides on how to go into local courts within their states to verify the courts are operating drug courts in compliance with the 10 key components or, if it is a juvenile program, the 16 strategies. NADCP will identify resources and work with the state drug court coordinators to come up with a checklist to use when onsite reviews are conducted. Mr. Woods continued that there is some concern among the state drug court coordinators that there will be funding implications tied to certification and if there is no financial benefit for certification then there would be no incentive for courts to pursue it. Mr. Woods noted that Michigan is ahead of most other states and the requirements needed to be on the official list of drug courts are tied to the 10 key components. When the national product is completed, Mr. Woods will make sure the members receive a draft copy upon receipt.

Confidentiality Issues Subcommittee: Mr. Sauter reported that Mr. Woods has discovered that in 2008 a Florida Supreme Court Task Force had taken the position that 42CFR does not apply in a broad sense to drug treatment courts because they are not treatment agencies. He and Mr. Woods will try to get a copy of the task force report for the Committee members.

Cross-Assignment Subcommittee: Mr. Woods distributed a draft Agreement and Order of Transfer form. Since the statute does not give much guidance, he proposed making the form optional for a pilot period of a year allowing for feedback on how it is used by the courts. He commented that until JIS is able to come up with a transfer code to tag transfer cases, SCAO is recommending that a transfer be treated just like a courtesy probation supervision case where the file stays open in the originating court, the originating court also enters a final disposition, and the defendant submits all payments of fines, costs, and restitution directly to the originating court. Program participation fees and any other fees associated with participation in the drug treatment court program are to be payable to the receiving court. After some discussion, the Chair noted that, after the 1-year trial period, the Committee may need to recommend to the Legislature that the statute be clarified that jurisdiction stays with the original court and supervision is the only thing that is transferred. Ms. Davis shared that the biggest issue is the payment of treatment costs, but her judges are fine with the fact that the transfer of a case is optional.

Defense Attorney Participation Subcommittee: Ms. Brickley was absent from today's meeting but wanted members to know that she is working with CDAM (Criminal Defense Attorneys of Michigan) on putting a presentation on the agenda for their fall conference. The topic would cover the role of the defense attorney in specialty courts. She asked that if anyone has any names of persons who may be interested in speaking, either

defense attorney or judge, she would appreciate their contact information. Mr. Sauter suggested Tom Dutcher who is a defense attorney from Charlotte and was the original defense attorney representative when the statute was being drafted. The Chair will relay this information to Ms. Brickley. A discussion of the history of the establishment of drug treatment courts followed.

Funding Alternative Subcommittee: The Chair shared an update from Judge Hoffman which included information that 1) MADCP has been asked to participate in a work group dealing with legislation on the medical marijuana law and he has solicited ideas from the members of the MADCP Board, and 2) the language that was worked on last session (to amend the diversion statute to create uniform language to make all diversions effective on the date of the plea rather than at the end of probation) was nearly complete, but they ran out of time. He hopes this issue will start moving in the next few weeks. Judge Rush added that his only concern is that the legislation not interfere with any of the judicial discretions that are currently in place. The Chair noted that no action is necessary by this Committee, but asked that the Committee continue to follow these issues and keep the topic on the agenda for future action. Mr. Woods then provided an update on the mental health services for drug court participant program.

Juvenile Issues Subcommittee: Ms. Davis reported that the Juvenile Drug Court Forum held on November 19 was very successful and shared some of the highlights of the event.

Prosecutor Gatekeeper Subcommittee: Mr. Sauter noted that Public Act 177 of 2010 addressed the gatekeeper issue and he asked that a copy of the public act be attached to these minutes. He suggested that there is no further need for the subcommittee. **Ms. Davis moved, supported by Judge Rush, to dissolve the Prosecutor Gatekeeper Subcommittee. There was no objection and the motion prevailed by unanimous consent.**

Vision & Evidence-Based Sentencing Subcommittee: The Chair noted that his report is the adoption by reference to a report entitled, *Research on the Effects of Drug Courts and Other Problem-Solving Courts*, that will be given by Dr. Douglas Marlowe at the upcoming MADCP Annual meeting.

## **VII. MADCP Annual Meeting**

The Chair pointed out that there will be a roundtable discussion of the drug court statute at the MADCP annual meeting. The statute and the SDTCAC Annual Report will be made part of the CD and some strategic plan handouts will be part of the session as well. He asked that any feedback be brought back to the Committee. Mr. Woods noted that there is also a session on the ignition interlock legislation.

## **VIII. Public Comment**

The Chair asked for public comment. There were no comments.

## **IX. Adjournment**

**Judge Rush moved, supported by Judge Ervin, that the meeting be adjourned. There was no further discussion and the motion was unanimously adopted.** The meeting was adjourned at 11:20 a.m.

## **NEXT MEETING DATE**

The Chair announced that the next meeting is tentatively scheduled for **Tuesday, March 22, 2011.**

*(Minutes approved at the May 24, 2011 State Drug Treatment Court Advisory Committee meeting.)*

Act No. 177  
Public Acts of 2010  
Approved by the Governor  
September 30, 2010  
Filed with the Secretary of State  
September 30, 2010  
EFFECTIVE DATE: September 30, 2010

**STATE OF MICHIGAN**  
**95TH LEGISLATURE**  
**REGULAR SESSION OF 2010**

**Introduced by Senators Switalski, Cherry and Bishop**

**ENROLLED SENATE BILL No. 1354**

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 1062 and 1068 (MCL 600.1062 and 600.1068), section 1062 as amended by 2006 PA 620 and section 1068 as added by 2004 PA 224.

*The People of the State of Michigan enact:*

Sec. 1062. (1) The circuit court in any judicial circuit or the district court in any judicial district may adopt or institute a drug treatment court, pursuant to statute or court rules. However, if the drug treatment court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the drug treatment court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, such as any other prosecutor in the circuit or district court district, local law enforcement, the probation departments in that circuit or district, the local substance abuse coordinating agency for that circuit or district, a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board, and community corrections agencies in that circuit or district. The memorandum of understanding shall describe the role of each party.

(2) The family division of circuit court in any judicial circuit may adopt or institute a juvenile drug treatment court, pursuant to statute or court rules. However, if the drug treatment court will include in its program individuals who may be eligible for discharge or dismissal of an offense, or a delayed sentence, the family division of circuit court shall not adopt or institute a juvenile drug treatment court unless the family division of circuit court enters into a memorandum of understanding with each participating county prosecuting attorney in the circuit or district court district, a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers.

The memorandum of understanding also may include other parties considered necessary, such as any other prosecutor in the circuit or district court district, local law enforcement, the probation departments in that circuit, the local substance abuse coordinating agency for that circuit, a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board, and community corrections agencies in that circuit. The memorandum of understanding shall describe the role of each party. A juvenile drug treatment court is subject to the same procedures and requirements provided in this chapter for drug treatment courts created under subsection (1), except as specifically provided otherwise in this chapter.

(3) A court that is adopting a drug treatment court shall participate in training as required by the state court administrative office and the bureau of justice assistance of the United States department of justice.

(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 upon either the residence of the participant in the receiving jurisdiction or the unavailability of a drug treatment court in the jurisdiction where the participant is charged. The transfer is not valid unless it is agreed to by all of the following:

(a) The defendant or respondent.

(b) The attorney representing the defendant or respondent.

(c) The judge of the transferring court and the prosecutor of the case.

(d) The judge of the receiving drug treatment court and the prosecutor of a court funding unit of the drug treatment court.

Sec. 1068. (1) If the individual being considered for admission to a drug treatment court is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission is subject to all of the following conditions:

(a) The offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol.

(b) The individual, if an adult, must plead guilty to the charge or charges on the record. The individual, if a juvenile, must admit responsibility for the violation or violations that he or she is accused of having committed.

(c) The individual must waive, in writing, the right to a speedy trial, the right to representation at drug treatment court review hearings by an attorney, and, with the agreement of the prosecutor, the right to a preliminary examination.

(d) The individual must sign a written agreement to participate in the drug treatment court.

(2) In the case of an individual who will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the prosecutor must approve of the admission of the individual into the drug treatment court in conformity with the memorandum of understanding under section 1062.

(3) An individual shall not be admitted to, or remain in, a drug treatment court pursuant to an agreement that would permit a discharge or dismissal of a traffic offense upon successful completion of the drug treatment court program.

(4) In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the

defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.

(5) An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court, shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.

This act is ordered to take immediate effect.

Secretary of the Senate

Clerk of the House of Representatives

Approved

Governor