



2010
Annual Report
of the
State Drug Treatment Court
Advisory Committee

Submitted to the

Michigan Legislature and the Michigan Supreme Court

Pursuant to MCL 600.1082, Public Act 224 of 2004.

For the period

January 1, 2010 through December 31, 2010

State of Michigan

The Honorable Patrick C. Bowler, Chair

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INTRODUCTION

This report of the State Drug Treatment Court Advisory Committee (SDTCAC) activities during the period of January 1, 2010 to December 31, 2010 is submitted in compliance with MCL 600.1082 (Public Act 224 of 2004).

OVERVIEW

ORIGIN AND SCOPE:

Public Act 224 of 2004 created the State Drug Treatment Court Advisory Committee within the Legislative Council. The advisory committee consists of the State Court Administrator, or his or her designee, plus 16 members appointed jointly by the Senate Majority Leader and the Speaker of the House, as follows:

- A circuit court judge who has presided for at least 2 years over a drug treatment court.
- A district court judge who has presided for at least 2 years over a drug treatment court.
- A judge of the family division of circuit court who has presided for at least 2 years over a juvenile drug treatment court program.
- A circuit or district court judge who has presided for at least 2 years over an alcohol treatment court.
- A court administrator who has worked for at least 2 years with a drug or alcohol treatment court.
- A prosecuting attorney who has worked for at least 2 years with a drug or alcohol treatment court.
- An individual representing law enforcement in a jurisdiction that has had a drug or alcohol treatment court for at least 2 years.
- An individual representing drug treatment providers who has worked at least 2 years with a drug or alcohol treatment court.
- An individual representing defense attorneys, who has worked for at least 2 years with drug or alcohol treatment courts.
- An individual who has successfully completed a drug treatment court program.
- An individual who has successfully completed a juvenile drug treatment court program.
- An individual who is an advocate for the rights of crime victims.
- An individual representing the Michigan Association of Drug Court Professionals.
- An individual who is a probation officer and has worked for at least 2 years for a drug or alcohol treatment court.
- An individual representing a substance abuse coordinating agency.
- An individual representing domestic violence service provider programs that receive funding from the state domestic violence prevention and treatment board.

The SDTCAC members serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Members of the advisory committee serve for terms of 4 years each, except that the members first appointed shall serve terms as follows:



- (a) *The members appointed under MCL 600.1082 subsection (1)(b)(i) to (v) shall serve terms of 4 years each.*
- (b) *The members appointed under MCL 600.1082 subsection (1)(b)(vi) to (x) shall serve terms of 3 years each.*
- (c) *The members appointed under MCL 600.1082 subsection (1)(b)(xi) to (xvi) shall serve terms of 2 years each.*

The SDTCAC is charged with the responsibility of monitoring the effectiveness of drug treatment courts and the availability of funding for them. The Committee is required to present to the Michigan Legislature and the Michigan Supreme Court annual recommendations of proposed statutory changes regarding drug treatment courts. In addition, statute requires that the Committee meet at least quarterly, or more frequently at the call of the chairperson or if requested by 9 or more members. The business that the advisory committee performs is conducted at a public meeting held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275, and any writing prepared, owned, used, in the possession of, or retained by the advisory committee in the performance of an official function is subject to the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

2010 COMMITTEE MEMBERS:

Mr. Richard Woods - The state court administrator or his or her designee.

Members appointed jointly by the Speaker and the Senate Majority Leader:

Judge Patrick C. Bowler, ret. (Chair) - An individual representing the Michigan Association of Drug Court Professionals. Judge Bowler was reappointed to a second term that expires on June 13, 2011.

Judge William Schma, ret. (Vice Chair) - A circuit court judge who has presided for at least 2 years over a drug treatment court. He was reappointed to a second term that expires on June 13, 2013. Judge Schma resigned from the Committee on April 27, 2010. The position is currently vacant.

Judge William Rush (Vice Chair as of July 23, 2010) - A district court judge who has presided for at least 2 years over a drug treatment court. Judge Rush was reappointed to a second term that expires on June 13, 2013. Judge Rush was elected Vice Chair of the Committee at the July 23, 2010 meeting.

Ms. Kathleen Brickley - An individual representing defense attorneys, who has worked for at least 2 years with drug or alcohol treatment courts. Ms. Brickley was reappointed to a second term that expires on June 13, 2012.

Ms. Sophia Burr - An individual who has successfully completed a juvenile drug treatment court program. Ms. Burr was appointed to the Committee on March 11, 2009 to a term that expires on June 13, 2011.

Ms. Charita Coleman-Gladdis - An individual who has successfully completed an adult drug treatment court program. Ms. Coleman-Gladdis was reappointed to a second term that expires on June 13, 2012. Ms. Coleman-Gladdis resigned from the Committee on April 27, 2010. The position is currently vacant.

Ms. Pamela Davis - A court administrator who has worked for at least 2 years with a drug or alcohol treatment court. Ms. Davis was reappointed to a second term that expires on June 13, 2013.

Judge William T. Ervin - A judge of the family division of circuit court who has presided for at least 2 years over a juvenile drug treatment court program. He was reappointed to a second term which expires on June 13, 2013.



Mr. Kevin Jones - An individual who is a probation officer and has worked for at least 2 years for a drug or alcohol treatment court. His term expires on August 4, 2011.

Mr. Andrew Konwiak - An individual representing drug treatment providers who has worked at least 2 years with a drug or alcohol treatment court. He was reappointed to a second term which expires June 13, 2012.

Mr. Christopher Luty - An individual representing law enforcement in a jurisdiction that has had a drug or alcohol treatment court for at least 2 years. Mr. Luty was appointed on March 11, 2009 with a term that expires June 13, 2012.

Judge Brian MacKenzie - A circuit or district court judge who has presided for at least 2 years over an alcohol treatment court. Judge MacKenzie was reappointed to a second term that expires on June 13, 2013.

Mr. Dennis Priess - An individual representing a substance abuse coordinating agency. Mr. Priess was appointed to replace Dr. Spence on January 21, 2009. His term expires on June 13, 2011.

Mr. Jeffrey Sauter - A prosecuting attorney who has worked for at least 2 years with a drug or alcohol treatment court. Mr. Sauter was reappointed to a second term that expires on June 13, 2012.

Mr. Homer Smith - An individual who is an advocate for the rights of crime victims. Mr. Smith was reappointed to a second term that expires on June 13, 2011. Mr. Smith resigned from the Committee on May 24, 2010. The position is currently vacant.

Vacant - An individual representing domestic violence service provider programs that receive funding from the state domestic violence prevention and treatment board. Ms. Beth Morrison resigned from the Committee on November 16, 2009. This position is currently vacant.

2010 COMMITTEE MEETINGS:

The State Drug Treatment Court Advisory Committee held four (4) full committee meetings in 2010 on the following dates:

February 23, 2010	July 23, 2010
April 27, 2010	October 26, 2010

In addition, a strategic planning session was held at the conclusion of the July 23, 2010 meeting.

2010 STUDY SUBCOMMITTEES:

In 2010, nine subcommittees examined various subjects under review by the State Drug Treatment Court Advisory Committee.

Certification Subcommittee

Members: Judge William Rush (Chair), Kevin Jones, Richard Woods

Created at the January 24, 2006 meeting, this subcommittee continued to examine the need for legislative change to require certification of drug treatment courts. The subcommittee's 2006 recommendation that the definition of a drug treatment court be changed to require compliance with the 10 Key Components was included in Public Act 620 of 2006 and went into effect January 3, 2007.



The Michigan Supreme Court designee on the SDTCAC is also Michigan's designated State Drug Court Coordinator. As such, this person serves on the state drug court coordinators accreditation workgroup. In January of 2010, the workgroup notified the National Association of Drug Court Professionals (NADCP) of its support of having NADCP gather a broad group of stakeholders to operationalize the ten key components of drug courts. This would equip states with the technical assistance to develop state-level programs that ensure drug courts maintain fidelity to the drug court model and comply with individual state regulations, requirements and/or legislation. NADCP is securing funding to support this initiative. The Michigan Association of Drug Court Professionals (MADCP) certification subcommittee is a key Michigan stakeholder involved in the initiative.

Confidentiality Issues Subcommittee

Members: Jeffrey Sauter (Chair), Judge Brian MacKenzie, Judge William Schma, Dennis Priess, Richard Woods

Created in 2006, this subcommittee continued its review of confidentiality issues between Michigan statutes and federal regulations.

Cross-Assignment Subcommittee

Members: Judge Patrick Bowler (Chair), Judge William Schma, Jeffrey Sauter

This subcommittee was created at the March 28, 2006 meeting to determine whether a recommendation should be made for the Legislature to encourage the cross-assignment of drug treatment court cases across jurisdictions to maximize court funding resources. The subcommittee's 2006 recommendation to allow cross assignment of drug court cases was included in Public Act 620 of 2006 and went into effect January 3, 2007.

Defense Attorney Participation Subcommittee

Members: Kathleen Brickley (Chair), Judge Brian MacKenzie, Mike Hills

This subcommittee was created at the January 23, 2007 meeting to examine the defense attorney's role in the drug court process and funding for defense counsel involvement. At the February 23, 2010 meeting, the delayed sentencing statute and clarification of the conviction on record were issues added to the subcommittee's review.

Funding Alternatives Subcommittee

Members: Judge Harvey Hoffman (Chair), Judge William Schma, Dawn Monk

This subcommittee continued to review funding alternatives for drug treatment courts in Michigan.

Juvenile Issues Subcommittee

Members: Pamela Davis (Chair), Judge William Ervin, Jim Inloes, Robert Nida, Dr. Jessica Parks, Jennifer Warner

Created at the September 26, 2006 meeting, this subcommittee continued to examine the differences inherent in juvenile and family courts.

Legislative Subcommittee

Members: Judge Harvey Hoffman (Chair)

This subcommittee was created at the July 23, 2010 Strategic Planning Session.

Prosecutor Gatekeeper Subcommittee

Members: Jeffrey Sauter (Chair), Pamela Davis, Judge Harvey Hoffman, Judge Brian MacKenzie,

This subcommittee was created at the July 28, 2009 meeting to review the issue of requiring the participation of the county prosecuting attorney in a memorandum of understanding.



Vision and Evidence-Based Sentencing Subcommittee

Members: Judge Patrick Bowler (Chair), Judge Harvey Hoffman, Judge Brian MacKenzie, Jeffrey Sauter, Judge William Schma, Richard Woods

This subcommittee continues to monitor the long range goals of the State Drug Treatment Court Advisory Committee (SDTCAC). Maintaining the effectiveness and increasing the availability of drug courts in Michigan, and increasing the use of evidence-based sentencing practices are some the main goals of the subcommittee.

ISSUES REVIEWED AND RECOMMENDATIONS

MENTAL HEALTH COURTS

A total of twelve mental health courts were operational in fiscal year 2010. The eight pilot mental health courts are funded with American Reinvestment and Recovery Act (ARRA) dollars awarded to the State Court Administrative Office (SCAO) and the Michigan Department of Community Health (MDCH). The vast majority of participants are diagnosed with co-occurring disorders, with the second diagnosis usually being a substance use disorder. Consequently, the State Drug Treatment Court Advisory Committee discussed the appropriateness of expanding its oversight responsibility to include mental health courts.

DRUG TREATMENT COURT PARTICIPANT TRANSFER PROCEDURES

Michigan Compiled Laws 600.1062 authorizes the transfer of a drug treatment court participant. The Committee vetted issues that are both uniform and indigenous to drug treatment court programs. Those issues were communicated to the State Court Administrative Office (SCAO) to consider in the development of a SCAO approved form designed for courts to use when transferring a drug treatment court participant. The proposed form was submitted to the SCAO Forms Committee.

The Committee vetted transfer procedures that could be used for drug treatment court participants. Consequently, the Committee collaborated with stakeholders to begin drafting a model order for transferring drug court participants, which will be submitted to the Michigan Court Forms Committee chaired by staff at the State Court Administrative Office.

IGNITION INTERLOCKS FOR SOBRIETY COURT PARTICIPANTS

Public Acts 154 and 155 of 2010, which went into effect on September 2, 2010 and January 2, 2011 respectively, created a three year pilot project wherein repeat alcohol related driving offenders can receive a restricted driver's license after a forty five day hard suspension, if they have ignition interlock devices placed upon their motor vehicles and they are participating in one of Michigan's Sobriety Courts. The State Court Administrative Office continues work with the Secretary of the State to help prepare for the implementation of the new changes.

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. In 2010, the subcommittee continued to review possible amendments to the Michigan Drug Treatment Court statute which would enhance participant confidentiality without impeding the operation of the court.



JUVENILE ISSUES

In keeping with the charge of providing leadership in the development of best practice knowledge and distinguishing Juvenile Drug Courts from other specialty court types, the Juvenile Drug Court committee has worked diligently over the past year to address issues and foster open discussion among Juvenile Drug Courts across Michigan.

In June 2010, the committee conducted its first S.W.O.T.T. Analysis, designed to identify strengths, weaknesses, opportunities, threats and trends, both internal and external. In addition to the committee's ongoing charge, the goals of 1) Evaluating outcomes specific to JDC's; 2) Adopting and utilizing current and future technology with the JDC population; and 3) Sharing information about differences, outcomes, best practices, etc. with JDC programs throughout Michigan were added.



The JDC committee was also responsive to its membership. Juvenile Drug Court teams across the state have expressed a need for more opportunities to come together and discuss issues specifically pertaining to our court type. The committee responded on November 19, 2010 by holding its first Juvenile Drug Court Forum. The response was tremendous. Held in Lansing at the Michigan Hall of Justice and sponsored by MADCP, the Michigan Judicial Institute and the State Court Administrative Office, 68 attendees representing 9 jurisdictions were afforded the opportunity to discuss topics of interest. Because of its success, SCAO has committed to holding it annually, and expanding forums to all other drug

court disciplines.

In addition to hosting annual forums, next steps for the JDC committee include generating a quarterly newsletter and creating an eForum built specifically for information sharing. The Juvenile Drug Court committee of the MADCP has truly set the standard for other drug court types!

DEFENSE ATTORNEY PARTICIPATION

Created in 2007, this Subcommittee continued to examine the defense attorney's role in the drug court process and due process issues for drug court participants. The Subcommittee is focusing as well on education issues for defense attorneys. The Subcommittee intends to better educate the criminal defense bar about Drug Treatment Courts and the most effective role for the defense attorney in them.

STRATEGIC PLANNING SESSION

In July of 2010, the SDTCAC conducted its second Strategic Planning session and adopted the Committee's mission statement as follows:

The mission of the State Drug Treatment Court Advisory Committee is to monitor and advocate for the effectiveness of drug treatment courts in Michigan.

The adopted goals are as follows:

1. Monitor the effectiveness of the State Drug Treatment Court Advisory Committee
2. Monitor the Qualitative Effectiveness of Michigan's Drug Treatment Courts
3. Advocate for Drug Treatment Courts in Michigan
4. Improve the Michigan Drug Treatment Court Statute



Reviews of the strategic plan will be conducted annually to ensure that the goals and objectives of the committee are being met.

DELAY OF SENTENCING STATUTE

Most Drug Treatment Courts require a guilty plea as a prerequisite for admission into the program. Some place their participants 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 2nd. While time in the program varies with each participant, it is reasonable to expect 15 to 18 months or longer to graduate.

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.

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."

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."

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 (2 yr for misdemeanors and 5yr for felonies)...."

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?

Given these questions, the Committee recommends that the Legislature 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.

EDUCATION AND TRAINING OF NEW SOBRIETY COURTS

Another area the Committee focused on this year was the education and training of new sobriety courts in Michigan. The Michigan Association of Drug Court Professionals is taking a hard look at how to set up and meet the education requirements of these new courts and efforts to duplicate the training that the National Drug Court Institute puts on now nationally are being made so that the training could be put together here in Michigan. The Committee will continue to monitor these efforts in 2011.

