

Final Minutes

State Drug Treatment Court Advisory Committee Meeting

9:30 a.m. • Tuesday, March 27, 2007

Legislative Council Conference Room • Boji Tower Building

Members Present:

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

Beth Morrison
Judge William Rush
Jeffrey Sauter
Dr. Chuck Spence
Phyllis Zold-Kilbourn

Members Excused:

Andrew Konwiak
Judge Brian MacKenzie
Judge William Schma, Vice Chair
Homer Smith

Others Present:

State Representative Andy Meisner
Susan Cavanagh, Office of the Legislative Council Administrator
Judge Harvey Hoffman
Dawn Monk, State Court Administrative Office
John Strand, Legislative Council Administrator
Others were present, but did not identify themselves.

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. **Judge Rush moved, seconded by Mr. Aud, to excuse all absent members. There was no further discussion. All absent members were excused.**

II. Approval of Minutes

The Chair asked members to review the minutes of the January 23, 2007 meeting and inquired if Ms. Brickley knew the status of adding a prosecutor to the Defense Attorney Involvement subcommittee. She responded that Judge MacKenzie had someone in mind, but she has not been contacted with further information. The Chair will follow up with Judge MacKenzie. The Chair asked for a motion to adopt the minutes. **Judge Rush moved, seconded by Mr. Aud, to approve the minutes of the January 23, 2007 State Drug Treatment Court Advisory Committee meeting. There was no further discussion. The minutes were unanimously adopted.**

III. Confidentiality Issue

The Chair noted that the confidentiality issue tabled at the January meeting was added to today's agenda to give subcommittee members an opportunity to report on any progress. Mr. Sauter announced that the subcommittee did meet and may be close to a solution. Dawn Monk provided an update on the discussions and noted that Judge Schma is in the process of drafting a proposed order that judges will be able to use to satisfy some of the concerns of 42 CFR. No legislative changes are needed to address this particular solution; however, Mr. Sauter pointed out that legislative changes would be needed for the other recommendations made in his earlier memo. In response to the Chair's request for feedback, Dr. Spence indicated he is comfortable sending the Sauter recommendations onto the Legislature, but he is concerned there will be varying opinions regarding this issue. Mr. Sauter maintained the proposed changes will improve the position of the Michigan statute by designating that the initial decision of the drug court judge is non-public and the report and record of the criminal history in LEIN is a non-public record only available to law enforcement or the courts. Specifically, the recommendations would encourage the Legislature to:

- 1) Amend the statute to clarify that the diversionary disposition is non-public at the time that the judge grants the status, instead of later when the diversionary terms are successfully met.
- 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.
- 3) Amend the statute to provide for anonymous evaluation of the success of drug courts.

Mr. Sauter moved, seconded by Dr. Zold-Kilbourn, to present the recommendations to the Legislature. There was no further discussion. The motion was unanimously adopted. The Chair noted that the exact language will be pulled from Mr. Sauter's memo which is included at the end of these minutes.

IV. Committee Appointments

The Chair called on Ms. Laine for an update. She indicated that she has not received a response to an email she sent to Judge Ervin seeking his interest as a possible candidate for the vacant Juvenile Court Judge position on the Committee. She also noted the correct spelling of the judge's name should a recommendation be sent to the Senate Majority Leader and Speaker of the House. Ms. Laine continued with news that the other candidate she contacted, Ms. Charita Coleman-Gladdis, is interested in serving on the committee. Her name will be included in the recommendation to the House and Senate leadership and Judge Bowler will follow up with Judge Ervin.

The Chair indicated that a candidate for the juvenile graduate position on the committee is still needed. The need to find someone from a local drug court to avoid any possible transportation issue was discussed. Ms. Laine and Mr. Sauter will look for a potential candidate from their local drug court. The Chair noted the issue will be added to the next meeting agenda.

V. Drug Court Loan Program

The Chair called on Judge Harvey Hoffman to provide an update on the progress made by the Funding Alternative Subcommittee. Judge Hoffman reported he has submitted some basic ideas to John Lazet and has put together a proposed amendment that would create a new alternate funding subsection in the drug court statute. (A copy of the proposed amendment is attached to the minutes.) He pointed out that he has since learned from SCAO that there is a constitutional provision that prohibits using state credit to guarantee the payment of a loan; therefore, the section that deals with the loan guarantee in the proposed language will not be pursued. He added that other alternatives are also being discussed, including the possibility of a \$10 court fee to cover the loan guarantee. Dawn Monk remarked that although the State Court Administrative Office generally does not support the idea of increasing fees, SCAO is willing to look at other alternatives.

Judge Hoffman continued with an explanation of the other alternative funding ideas they have been exploring including the establishment of a pilot project that sets up a program that targets the funding for treatment of straddle cell individuals and another that is centered on helping the circuit court/felony drug court by using a regional approach and deal with addicted probation violators. A discussion followed and Judge Hoffman proposed that the Chair appoint a group to look into these other issues further. The Chair felt that the current subcommittee could handle reviewing these other alternatives if additional members were appointed and asked that a proposal be brought back to the full Committee in May. Mr. Aud volunteered to serve and was added to the committee. Judge Hoffman clarified for Dr. Zold Kilbourn that the issue of whether the funding is intended to fund existing activity or to expand the capacity could be part of the subcommittee's discussion. Judge Hoffman then briefly presented an idea Judge Schma had which uses a split sentencing approach and suggested this is another idea that could be explored further when Judge Schma returns.

Judge Bowler raised the issue of the Committee insuring there is some equalization of drug treatment courts across the state and suggested an analysis of the location of drug courts in relation to those counties that are overpopulating the prison system be completed. Dawn Monk shared that SCAO could assist in this type of evaluation process especially as to where the courts are located. Mr. Sauter cautioned that the news article regarding counties over-utilizing prisons came out of the Department of Corrections and may have taken a political spin on the issue. He suggested that the Committee be careful not to jump to any conclusions when discussing the issue. The Chair agreed and assured him that the Committee's interest is from the perspective that everyone should be able to benefit from drug treatment courts equally. The discussion continued and Ms. Brickley added her support to anything that will reawaken the notion that drug courts are a wonderful prison alternative for those who are ready for that opportunity.

Judge Hoffman reported that a committee was set up at the last NADCP board meeting to host a hill event similar to what was done in Washington D.C, but on a local level. The date is set for the second Wednesday in May and the idea is to have as many drug court judges participate. Representative Andy Meisner mentioned that he thought this type of activity would be helpful. In response to the Chair's comments, Dr. Spence volunteered to serve on the subcommittee and Dawn Monk and Dr. Zold Kilbourn will follow up on where the drug treatment courts are in relation to the straddle cell population in prisons.

The Chair then recapped the efforts of the Congress of State Drug Treatment Courts when they visited Capitol Hill last week. He suggested that the Committee write a letter of support to encourage the restoration of the drug treatment court funding and keep it as its own line item in the budget. There was no objection. **Mr. Sauter moved, seconded by Ms. Laine, that a letter from the Chair be sent to members of Congress urging the appropriation to fund Drug Treatment Courts be kept as a separate line item and be restored to \$40 million. There was no further discussion. The motion was unanimously adopted.**

VI. Draft Annual Report

The Chair acknowledged the efforts of Susan Cavanagh in assisting with the preparation of the draft annual report and asked members for any additional changes. There were none. **Mr. Aud moved, seconded by Ms. Brickley, to adopt the Annual Report as presented and have it transmitted to the members of the Michigan Legislature and the justices of the Michigan Supreme Court. There was no further discussion. The motion was unanimously adopted.**

Mr. Strand will set up a SDTCAC committee web page on the Legislative Council website and have the annual report posted. Ms. Laine will also have it posted on the MADCP website.

VII. Public Comment

The Chair asked for public comment. There was none.

VIII. Adjournment

Having no further business, Ms. Laine moved, supported by Ms. Morrison, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 10:35 a.m.

NEXT MEETING DATE

The next full Committee meeting is scheduled for **Tuesday, May 22, 2007**. A proposed agenda and the location of the next meeting will be sent to members.

(Approved at the May 22, 2007 SDTCAC meeting.)

Memorandum

To: State Drug Court Advisory Committee
From: Jeff Sauter

Subject: Revisions to Michigan's statute to reduce conflict with federal regulations

Summary

Michigan's drug court statute has several provisions that enhance privacy protections for drug court participants. Participants who successfully obtain a diversion and dismissal have non-public records maintained by the court and the State Police. Access to those records is essentially limited to courts and law enforcement. In addition, information gained in assessments or treatment is afforded a privacy protection under Michigan's FOIA statute.

But, Michigan's statute lacks an expiration date for the implied consent of a participant to provide and allow sharing of confidential information.

And, Michigan's statute currently requires classification of participants in court records and reports by drug courts to the State Police about successful or unsuccessful completion of a program that could plainly expose a participant to being "branded as a substance abuser". Importantly, those provisions appear unnecessary to the operation of a drug treatment court or evaluation of drug treatment courts and I have proposed revisions to the statute to make that information and those reports confidential and only accessible by courts and law enforcement.

Discussion

My sense after the conference call at our May 23rd meeting was that complete harmony between Michigan's drug court statute and 42 CFR Part 2 was not possible but that some revisions to our statute should be considered to enhance privacy protections for drug court participants. At the meeting, I proposed three general concepts:

- 4) Amend the statute to clarify that the diversionary disposition is non-public at the time that the judge grants the status, instead of later when the diversionary terms are successfully met.
- 5) 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.
- 6) Amend the statute to provide for anonymous evaluation of the success of drug courts.

1) Non-public diversionary disposition

After reviewing the statute, I decided to recommend a different approach. First, a diversion is already non-public, whether it is obtained under the provisions of established diversion statutes, such as Holmes Youthful Trainee or Section 333.7411, or under the drug court diversion provision in section 1076:

600.1076 Completion or termination of drug treatment program; discharge and dismissal of proceedings; effect of termination.

(6) A discharge and dismissal under subsection (4) shall be without adjudication of guilt or, for a juvenile, without adjudication of responsibility and are not a conviction or a finding of responsibility for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or, for a juvenile, a finding of responsibility. There may only be 1 discharge and dismissal under subsection (4) for an individual. The court shall send a record of the discharge and dismissal to the criminal justice information center of the department of state police and the department of state police shall enter that information into the law enforcement information network with an indication of participation by the individual in a drug treatment court. ***All records of the proceedings regarding the participation of the individual in the drug treatment court pursuant to subsection (4) are closed to public inspection, and are 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.
(emphasis added)

Consequently, it is plain that the statute protects the status of the drug court participant who successfully obtains a diversion and dismissal. The problem, as Dr. Zold-Kilbourn noted, is in the following sections that require a report to the State Police about successful or unsuccessful participation in the drug court:

600.1076 Completion or termination of drug treatment program; discharge and dismissal of proceedings; effect of termination.

(7) Except as provided in subsection (3), (4), or (5), if an individual has successfully completed probation or other court supervision, the court shall do the following:

(c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police. The department of state police shall enter that information into the law enforcement information network ***with an indication of successful participation by the individual in a drug treatment court.*** (emphasis added)

(8) For a participant whose participation is terminated or who fails to successfully complete the drug treatment court program, the court shall enter an adjudication of guilt, or, in the case of a juvenile, a finding of responsibility, if the entering of guilt or adjudication of responsibility was deferred pursuant to section 1070, and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty or, if a juvenile, to which the juvenile admitted responsibility prior to admission to the drug treatment court. Upon sentencing or disposition of the individual, the court shall send a record of that sentence or disposition and the individual's unsuccessful participation in the drug treatment court to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network, ***with an indication that the individual unsuccessfully participated in a drug treatment court.*** (emphasis added)

It is evident that the legislature wanted a record of the outcome of the drug court experience either for evaluation of the effectiveness of drug courts or to avoid an offender having multiple admissions into a drug court without the court being aware of that previous involvement, or both.

Some have suggested that the legislature delete those provisions and rely on the offender to reveal previous participation in a drug court. I believe that the legislature would reject that suggestion because it would impair the ability of the legislature to assess the effectiveness of drug treatment courts and because drug court teams may repeatedly commit the limited resources of drug courts blindly without the history of that person's participation.

My suggestion is that we make the report to the state police non-public in the same fashion that the diversion and dismissal is non-public. The conviction would remain public information. The report of successful or failed participation information would be available in LEIN for future consideration by courts and other authorized users for the purposes intended by the legislature, but the participant would be protected from general public scrutiny of their status as a substance abuser.

To that end, the following language could simply be added to those sub-paragraphs:

THE REPORT OF PARTICIPATION 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.

Another similar concern was raised about the statute's provision in Section 1066 which requires the court make a finding on the record or place a statement in the court file that the offender qualifies to participate in the drug court:

600.1066 Placement of findings or statement in court file.

Before an individual is admitted into a drug treatment court, the court shall find on the record, or place a statement in the court file pertaining to, all of the following:

(a) The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug treatment court.

I would propose a similar fix; keep the finding, but limit the public access to the finding, by adding a sub-paragraph (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.

Section 1064 governs the requirements for admission to a drug court and requires that the participant agree to the necessary assessment. I have included the pertinent parts:

600.1064 Admission to drug treatment court; confidentiality of information obtained from preadmission screening and evaluation assessment; criminal history contained in L.E.I.N.

(3) To be admitted to a drug treatment court, an individual must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future evaluation assessment as directed by the drug treatment court. A preadmission screening and evaluation assessment shall include all of the following: [...]

(4) Except as otherwise permitted in this act, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

Section 1072 governs monitoring, testing and assessments after admission to the drug court program. That section includes a similar confidentiality provision in 1072 (2):

600.1072 Monitoring, testing, and assessments to be provided to participants.

2) Any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a drug treatment court is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

Given those confidentiality provisions, I'm not certain that any additional authorization or consent is necessary to facilitate the transfer of record information between treatment providers and court staff.

However, we may want to recommend that the participant's consent to provide and allow sharing and reporting of confidential information has a specific time limitation. As a practical matter, I believe that the consent must not expire before the court's jurisdiction over the person ends.

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

Section 1078 concerns the collection and maintenance of information. My intent had been to revise the language to provide for anonymous evaluation of drug courts. But, a review of this section revealed an apparent intent to make drug courts collect and keep very detailed information about each individual applicant and participant. Moreover, subsection (7) is a privacy exemption from FOIA.

Extensive re-drafting of this section may not be necessary if subsection (7), read in conjunction with the other privacy protections in the act and the proposals outlined above, are considered adequate to address both the legislative demands for accountability and the privacy protections intended by 42 CFR Part 2. In other words, as long as the information is protected from broad disclosure and only used by the state court administrator for

evaluation of drug court operation, then the privacy concerns of the federal regulations may be satisfied, even though the drug courts are collecting and maintaining detailed information on each applicant and participant.

I've included the entire section:

600.1078 Collection and maintenance of information.

Sec. 1078.

(1) Each drug treatment court shall collect and provide data on each individual applicant and participant and the entire program as required by the state court administrative office.

(2) Each drug treatment court shall maintain files or databases on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission evaluation and assessment, and other demographic information as required by the state court administrative office.

(3) Each drug treatment court shall maintain files or databases on each individual participant in the program for review and evaluation as well as treatment, as directed by the state court administrative office. The information collected for evaluation purposes must include a minimum standard data set developed and specified by the state court administrative office. This information should be maintained in the court files or otherwise accessible by the courts and the state court administrative office and, as much as practicable, should include all of the following:

(a) Location and contact information for each individual participant, both upon admission and termination or completion of the program for follow-up reviews, and third party contact information.

(b) Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism.

(c) The individual's precipitating offenses and significant factual information, source of referral, and all drug treatment court evaluations and assessments.

(d) Treatments provided, including intensity of care or dosage, and their outcomes.

(e) Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and the participation of and outcome for that individual.

(f) Reasons for discharge, completion, or termination of the program.

(4) As directed by the state court administrative office, after an individual is discharged either upon completion or termination of the program, the drug treatment court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment, as frequently and for a period of time determined by the state court administrative office based upon the nature of the drug treatment court and the nature of the participant. These follow-up contacts and reviews of former participants are not extensions of the court's jurisdiction over the individuals.

(5) Each drug treatment court shall provide to the state court administrative office all information requested by the state court administrative office.

(6) With the approval and at the discretion of the supreme court, the state court administrative office shall be responsible for evaluating and collecting data on the performance of drug treatment courts in this state as follows:

(a) The state court administrative office shall provide an annual review of the performance of drug treatment courts in this state to the minority and majority party leaders in the senate and house of representatives, the state drug treatment court advisory board created under section 1082, the governor, and the supreme court.

(b) The state court administrative office shall provide standards for drug treatment courts in this state including, but not limited to, developing a list of approved measurement instruments and indicators for data collection and evaluation. These standards must provide comparability between programs and their outcomes.

(c) The state court administrative office's evaluation plans should include appropriate and scientifically valid research designs, which, as soon as practicable, should include the use of comparison and control groups.

(7) The information collected under this section regarding individual applicants to drug treatment court programs for the purpose of application to that program and participants who have successfully completed drug treatment courts shall be exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Draft Of Proposed Amendment Of
Michigan Drug Treatment Court Statute Regarding
Drug Court Loan Program

The Michigan Drug Treatment Court Statute would be amended to create a new subsection of that act to deal with alternate drug court funding measures. The first subsection would deal with the Drug Court Loan Program.

- (1) All drug treatment courts are authorized to enter into agreements with banks, credit unions or other lending institutions in the State of Michigan so as to create and implement a Drug Court Loan Program, subject to the following terms and conditions:
 - a) Drug Court Loans can be secured to cover the costs related to drug, alcohol and other counseling and treatment, drug and alcohol testing and monitoring, court oversight, training and case administration.
 - b) Drug Court Loans under this section can be granted to participants in drug treatment courts as defined by this statute as applied by the State Court Administrator's Office, or to said drug court participant's immediate family members or guardians.
 - c) All monies distributed as a Drug Court Loan by a bank, credit union or other lending institution shall be made payable solely to the drug treatment court itself, or to such other entity as the court shall designate, and said monies shall be delivered solely to said court or such other entity as the court shall designate. Monies payable under the Drug Court Loan Program shall not be paid over to the participant, the participant's family or guardian.
 - d) The drug treatment court, or such other entity as it shall designate shall maintain a separate accounting for each participant in the Drug Court Loan Program and shall monthly make all payment for the costs cited in subsection a) above.
 - e) Any unused monies from a Drug Court Loan shall be returned to the bank, credit union or other lending institution at the end of the probationary period, to be credited against any unpaid balance of said loan.
 - f) Should any participant, the participant's immediate family or guardian fall three months behind in payments on a Drug Court Loan, the loan shall be declared to be in default and the funds remaining in the participant's account shall be returned to the bank, credit union or other lending institution to be credited against the unpaid balance of said loan.
 - g) By participating in the Drug Court Loan Program, the drug treatment court shall not be deemed to be liable for any sums owing due to a default or non payment of Drug Court Loan payments by any participant in the Drug Court Loan Program.
 - h) As part of the process of entering into a Drug Court Loan Agreement, the individual or party assuming ultimate responsibility for the repayment of the Drug Court Loan shall execute a Consent To Judgment which would summarily enter for the unpaid balance plus accumulated interest upon the default of the loan as set forth in subsection f) above. The court that has been the beneficiary of the Drug Court Loan shall have jurisdiction as to any collection matters arising herein and shall further waive court costs and filing fees involved in said case. The court shall set a summary proceeding on the alleged default and

shall serve notice of hearing to the party that assumed ultimate responsibility for the Drug Court Loan by mailing notice to said individual's last known address.

i) Judgments on debts having been entered following summary proceedings on Drug Court Loans, as set forth in subsection h) above, shall have a priority status in garnishment of State Of Michigan Income Tax Refunds, second only to orders of child support arrearages and above all other secured and unsecured creditors.

j) The Michigan Department of Treasury shall establish through the offices of State Court Administrator's Office a source of last resort for the collection of judgments on debts having been entered following summary proceedings on Drug Court Loans as set forth in subsection h) above. The Drug Court Loan Guarantee Fund shall be in the amount of \$1,000,000 per fiscal year, starting October 1, 2008, and shall come from funds not otherwise appropriated for Drug Treatment Courts. Banks, credit unions and other lending institutions holding Drug Court Loan judgments as cited above shall have exhausted all reasonable efforts to collect upon these judgments by other means before applying for funding through the Drug Court Loan Guarantee Fund. Monies in the Drug Court Loan Guarantee Fund shall be held within the treasury unless authorized for expenditure by the State Court Administrator's Office. Should Drug Court Loan Judgments presented for payment with the Drug Court Loan Guarantee Fund for any fiscal year exceed \$1,000,000, the monies in the Drug Court Loan Guarantee Fund will be appropriated on a proportional share.