

**Report to the
Joint Judiciary Interim Committee on
Drug Court Recommendations**

**Drug Court Steering Committee
Representative Keith Gingery, Co-Chairman
Senator Michael Von Flatern, Co-Chairman**

First Edition

**August 1, 2007
Enrolled Act No. 94 Section 1 (d)**

Introduction

Ten years ago Uinta County implemented Wyoming's first drug adult court. In 2001, the Wyoming Legislature passed legislation recognizing and funding Wyoming Drug Courts (W.S. 5-10-101 through 107). Since its passage, the number of drug courts receiving state funding has grown to 23 adult, juvenile and family drug courts. The courts exist at the municipal, circuit, district, juvenile and tribal court levels. (There are some drug courts that are funded at the local level and do not apply for state dollars.) Each court determines their eligibility criteria for participation but in general, they serve clients who have been charged and convicted of misdemeanor and felony drug and alcohol related offenses, including driving while under the influence of substances. For those that exist at the juvenile court level, the youth has been adjudicated a delinquent and uses substances, or parents have been found to have abused or neglected their child because of substance abuse.

The Wyoming Department of Health, Mental Health and Substance Abuse Services Division administers the Wyoming Drug Court program. The current budget for drug courts is nine million dollars per biennium which is a combination of state general fund and tobacco settlement dollars. W.S. 5-10-103 creates a Drug Court Panel which is tasked with funding determinations based on the recommendations of the Department of Health. The Panel is made up of representatives from the Attorney General's office, the Department of Health, the Department of Family Services, the Department of Corrections, the chairperson of the Governor's Substance Abuse and Violent Crime Advisory Board, the Board of Judicial Policy and Administration, and the Wyoming Public Defender.

Enrolled Act No. 94 of the Fifty-ninth Legislature of the State of Wyoming established a Drug Court Steering Committee to create a more uniform administration of drug courts. The Act specifies the membership to include representatives of the legislative and judicial branches, county attorneys association, the University of Wyoming, the public defenders office and members of the Drug Court Panel (see Attachment A for complete listing). The Act directs the Steering Committee to report to the Joint Judiciary Interim Committee by August 1, 2007 and August 1, 2008 regarding recommendations on the designated topic areas. The Steering Committee met in Casper on April 18, May 24 and June 26, 2007. The Committee heard presentations by Dr. Cary Heck, criminal justice professor and the Committee's UW appointee, on the efficacy of drug courts, the different types of administrative models, proposed standards, and a funding formula. The Committee entertained public comment and input from drug court coordinators, judges and other stakeholders.

The opinion and perception of the role of drug courts varied widely among Committee members. Some members argue that drug courts should not be recognized as courts but as court mandated treatment programs. Those same members argue that these types of programs violate the separation of powers clause in the Wyoming State Constitution and compromise the role of the judge. Discussion on judicial rule making and the role of the

judge was inherently difficult as the Committee could not agree if the judicial branch has a place in the administration of drug courts.

In contrast, some Committee members believe that the Constitutional issues have been resolved at the national level and propose that the researched and documented success of drug courts validates their use in cases involving drug and alcohol abuse. Adult drug courts have been found to reduce recidivism and treatment retention rates for drug courts are estimated to be better compared to community-based treatment programs.¹ They argue that the research indicates they are a worthwhile investment by the state.

Based on public testimony, Committee discussion and presentations by Dr. Heck, the Drug Court Steering Committee puts forth the following recommendations on the administration of drug courts for consideration by the Joint Judiciary Interim Committee of the Wyoming Legislature.

¹ Hall, D. Wyoming Drug Court Performance Measures Project. National Center for State Courts. June 2007. Page 7.

Committee Recommendations

1. State level structural models for drug courts and the most appropriate model for Wyoming

✓ The Committee recommends that only joint powers boards, municipal or county governments be allowed to apply for and receive funding for a drug court. The joint powers board, municipal or county government would be the employer of any drug court administrative staff. All contractual relationships concerning the drug court will be with the local entity that applied for funding. The only joint powers boards that could apply would be comprised of counties and/or municipalities, or a combination of a county and municipality.

Discussion

Members of the committee shared concerns about variety in drug court organizational and administrative structure. Specific questions include determining the legal authority for drug courts to sign contracts, employ staff, and assume liability. Some local government entities act as the fiduciary agent and employer of drug court staff while other courts have elected to become non-profit organizations. There was long discussion on the merit of consistent programming across all courts. The Committee entertained discussion about a state level program but worried that would deny communities the opportunity to develop programs to meet their needs. The Committee then considered whether it should dictate which governmental entity could apply for the local drug court funding. The Committee decided the best option was to allow for any local government entity, including joint powers boards; comprised only from municipalities and or Counties or any combination of, to apply thereby allowing more options to the local program.

2. Alternative adjudication procedures for drug courts, including the use of court commissioners, magistrates, administrative law judges and hearing officers

✓ The Committee recommends that District Court Commissioners who act as the drug court judge have the same ability as Circuit Court Magistrates to sanction (within parameters) without asking a supervising judge. The Committee also supports that magistrates act as drug court judges and that circuit court judges can preside over district court cases that appear in drug court.

✓ The Committee recommends striking from Section 1(c) (ii) of Enrolled Act No. 94 the words “Alternative adjudication procedures” and replace with “Use of alternative court officers...”

✓ The Committee recommends requiring alternative court officers to be trained in drug court process and principals if they will be presiding over any drug court hearings.

Discussion

The Committee's discussion revolved around the limitations of alternative court officers presiding over drug courts. Current programs use court commissioners and magistrates in different capacities. Some preside over all drug court hearings while others rotate with other judges. Committee members discussed the differentiation between the authority of magistrates and court commissioners. The proposed recommendation is an attempt to balance the authority so that all programs can consider using alternative court officers.

The Committee asserts that the current title of this sub-section is mis-leading and does not accurately reflect the issue and therefore, proposes to modify it.

Committee members also expressed concern with magistrates and court commissioners with no formal drug court training who may preside over hearings. The Committee proposes that if a drug court program uses an alternative court officer, that officer must be trained in drug court principals and ethics.

3. The progress and value of the department of health's substance abuse division's case management system and means for improvement

✓ The Committee provided no recommendations on this item but asked for the Division's plan for improving the case management system.

Discussion

Development on the current system began three years ago when the Wyoming Survey and Analysis Center (WySAC) received a federal grant to create a drug court case management system. The intent of the system is to act as a case management tool first and as a state data collection tool second. Dr. Cary Heck created a user group to review the system and make suggestions. The current system is operational as a data collection tool but lacks some reporting functions that would make case management easier for the drug courts. The Mental Health and Substance Abuse Services Division is working with the coordinators on consistent data definitions and developing plans for the next generation of the system that will include requested reporting mechanisms and improvements. By the time this report is submitted, the Division will have hosted a training on data definitions and provided user support documentation. The Division will also adopt and develop an action plan based on the recommendations put forward in the Wyoming Drug Court Performance Measure Project by the National Center for State Courts.

4. The state's funding model and its current and most appropriate connection to results in drug courts

✓ The Committee recommends that WDH shall establish by rule and regulation a funding formula that includes a base amount in addition to an amount per client, and discontinue the current grant program. WDH has requested an Attorney General opinion on whether current statute allows the Department of Health to promulgate rules for a funding formula. If the Attorney General determines that the statute does not provide the

authority, the Committee recommends an amendment to current statute authorizing and directing WDH to promulgate rules for a funding formula.

- ✓ The Committee recommends repealing the funding cap of \$200,000 as set forth in W.S. 5-10-102 (b).

Discussion

Drug Court Panel members discussed their frustration with the current funding structure and lack of guidance in rule and statute on funding decision making. Up until the FY2008 funding cycle, the courts received their requested amount. In FY2008, requests for funding exceeded the budget by almost a million dollars. In the absence of any funding formula or guidance, the Panel funded the courts at last year's level minus eight percent so as to stay within the Division's budget. Further complicating the funding issue, a budget footnote lifting the \$200,000 maximum allocation to a drug court prompted programs to ask for additional funding for expansion or to cover other funding shortfalls. Dr. Heck gave a presentation and offered a summary of a funding formula. The Committee endorsed his proposal and recommended legislation if current rule does not provide for the promulgation of a new rule on funding. The Committee also discussed the statutory limit of \$200,000 on drug courts and how it would limit the funding formula if left in statute.

5. Collaboration between agencies and branches of government in the operation of drug courts

- ✓ The Committee recommends allowing the Drug Court Steering Committee expire in 2008 and allow the Drug Court Panel to continue in its current form. The Committee stated that a high level of agency cooperation already exists.

Discussion

The Committee also deliberated the state level structural models for drug courts including an executive branch model, a judicial branch model and a collaborative model as discussed in a paper titled "Intergovernmental Relations and Drug Courts: Finding a Home for State Management of Local Judicially Driven Programs" by Dr. Cary Heck and Aaron Roussell. Wyoming's current model resembles the paper's description of the executive branch model. The Committee considered the possibility of creating a collaborative model that includes administration of the program by the judicial and executive branches. However, some Committee members were concerned about the separation of powers issue that the collaborative model may raise. Chief Justice Voigt also expressed discomfort with judicial participation on the Drug Court Panel and has since resigned (Attachment B). After long deliberation and consideration of multiple options with varying levels of judicial participation, the Committee agreed that the current system will suffice.

6. Drug court participation by county and the best means to increase drug court participation by counties not participating due to revenue issues;

- ✓ The Committee recommends not increasing the number of drug courts until funding is stabilized with a funding formula.

Discussion

Committee members discussed the barriers to participation including funding limitations. Discussion pointed out that the required cash match can be barrier as some courts have generous in-kind support but little extra revenue to meet the cash match requirements. Members of the Drug Court Panel expressed concerns with the match requirements. Current statute and rule gives little guidance on what courts are allowed to use for in-kind match. The Committee agreed that a funding formula could address match issues while also giving the Panel more guidance when making award decisions. Ultimately the Committee endorsed the idea of a funding formula that provides for a base amount plus a per client rate. However, it also agreed that until the funding formula could be established and a more accurate budget projection could be made, the number of drug courts should remain the same.

Committee members also remarked that part of the reason some counties may not have drug courts is related to choice. The Drug Court Panel has never received applications from some counties.

7. Performance measures, as developed by the committee, for evaluation on a statewide basis.

- ✓ The Committee recommends deleting the five goals listed in W.S. 5-10-101(a) and replacing them with the national outcome measures. The national outcome measures are:
 1. Participant retention and graduation
 2. Participant recidivism
 3. Participant sobriety
 4. Units of service provided to participants

Discussion

Dr. Heck reported that national outcome measures were established at the national level as a way to consistently determine performance across all drug courts. These outcome measures have already been adopted by the Division and were analyzed in the Wyoming Drug Court Performance Measures Project. The Project establishes a base line which will help in determining future performance. The Committee supports the adoption of the measures and proposes a statute change to reflect their importance.

Other recommendations

In addition to recommendations on the items listed in the Enrolled Act, the Committee suggests action on several other issues.

- ✓ The Committee requests that the Joint Judiciary Interim Committee consider updating W.S. 5-10-101 through 107 through the legislative process to provide for drug court procedure and structure. The Committee maintains that the legislative process would be

the most appropriate forum to gather comment from numerous stakeholders and therefore develop a procedure and structure that reflects input from a broader constituency.

✓ The Committee also recommends that the Joint Judiciary Interim Committee commission a study that researches the performance of Wyoming drug courts in relation to other sentencing options such as probation, boot camps, etc. The Committee recognizes that drug court research indicates a level of success within the drug court program but there is little research comparing it to other options. In an effort to invest dollars in programs that demonstrate positive outcomes, the Committee encourages the Joint Judiciary Committee to sponsor legislation funding a longitudinal project studying the efficacy of numerous sentencing options and the types of offenders they best serve, including drug courts.

✓ The Committee suggests that the Joint Judiciary Interim Committee entertain legislation appropriating funding to the Department of Corrections to provide for one probation officer per every 20 drug court clients.

Last, the Committee recommends a series of legislation to address legal gaps in current drug court statutes:

- ✓ Allow judges to require completion of a drug court as a term of probation.
- ✓ Provide judges with the ability to impose sanctions in a drug court for violations of the conditions of that drug court.
- ✓ Provide for a hearing prior to termination of drug court.
- ✓ Require that the legal status of all drug court client cases shall be post-adjudication, W.S. 7-13-301 deferral or consent decree.
- ✓ Modify current statutes to allow for an extension of probation for up to three years for participants in a drug court and parallel language added to consent decrees.
- ✓ Modify current statute to allow probation for misdemeanor crimes and consent decrees to be greater than one year not more than three if participating in a drug court.

Attachment A
Drug Court Steering Committee Report to Joint Judiciary Interim Committee

Membership List as of May 3, 2007

Sen. Michael Von Flatern, Co-Chairman 1318 Columbine Drive Gillette, WY 82718 (307) 686-2946 mvonflatern@wyoming.com	Rep. Keith Gingery, Co-Chairman 115 Brangus Drive Jackson WY 83001 (307) 734-5624 kgingery@wyoming.com
Sen. Kathryn Sessions 930 Centennial Drive Cheyenne, WY 82001 (307) 634-8314 ksessions@senate.wyoming.com	Rep. Liz Gentile P.O. Box 424 Evansville, WY 82636 (307) 473-9062 lgentile@wyoming.com
Nicky Anderson (Drug Court Panel) Department of Family Services 2300 Capitol, 3 rd Floor Cheyenne WY 82002 (307) 777-8539 nander@state.wy.us	Sue Chatfield (Drug Court Panel) Attorney General's Office 123 State Capitol Cheyenne, WY 82002 (307) 777-7865 schatf@state.wy.us
Steve Lindly (Drug Court Panel) Department of Corrections 700 West 21 st Street Cheyenne, WY 82002-3427 (307) 777-7208 slindl@state.wy.us	Bob Lampert (Drug Court Panel) Gov. Advisory Council on Substance Abuse & Violent Crime 700 West 21 st Street Cheyenne, WY 82002-3427 (307) 777-7208 blampe@state.wy.us
Diane Lozano (Drug Court Panel) Wyoming Public Defender 2020 Carey Avenue, 3rd Floor Cheyenne WY 82002 (307) 777-7137 dlozan@state.wy.us	Rodger McDaniel (Drug Court Panel) WDH-Mental Health & Substance Abuse Services 6101 Yellowstone Rd, Suite 220 Cheyenne, WY 82002 (307) 777-6494 rmcdan@state.wy.us
Chief Justice Barton R. Voigt (Drug Court Panel) Wyoming Supreme Court 2301 Capitol Avenue Cheyenne, WY 82002 (307) 777-7573	The Honorable Michael Huber Seventh Judicial District, Natrona County 201 North David, 5 th Floor Casper, WY 82601 (307) 235-9266 meh@courts.state.wy.us
The Honorable Keith Kautz Eighth Judicial District 2125 East A Street, Suite 214 Torrington, WY 82240 (307) 532-3004 kgk@courts.state.wy.us	The Honorable Richard Lavery Evanston Municipal Court P.O. Box 890 Evanston, Wyoming 82931 (307) 444-4200 rlavery@evanstonlaw.com
Richard Bohling Albany County & Prosecuting Attorney County Courthouse, Room 100 Laramie, WY 82070 (307) 721-2552 rbohling@co.albany.wy.us	Ross McKelvey Assistant Public Defender 2020 Carey Avenue-3rd floor Cheyenne WY 82002 (307) 777-7137 rmckel@state.wy.us
Cary Heck, Ph.D. University of Wyoming, Criminal Justice Department Dept. 3197-1000 East University Ave. Laramie, WY 82071 (307) 766-2614 check@uwyo.edu	

Attachment B
Drug Court Steering Committee report to Joint Judiciary Interim Committee

Supreme Court of Wyoming
Cheyenne, Wyoming 82002

BARTON R. VOIGT
CHIEF JUSTICE

2301 CAPITOL AVENUE
CHEYENNE, WY 82002
307-777-7573



July 12, 2007

Mr. Steve Lindly, Chairman
Drug Court Panel
Department of Corrections
700 West 21st Street
Cheyenne, Wyoming 82002-3427

Re: Drug Court Panel

Dear Steve:

As you will remember, I raised a concern at the last Drug Court Steering Committee meeting about the presence of a judge on the Drug Court Panel because of the constitutional precept of separation of powers. Article 2, § 1 reads: "The powers of the government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted." Having since reviewed the Drug Court Panel statutes (Wyo. Stat. Ann. §§ 5-10-102, 103) and the Panel's functions, I am even more convinced that I must resign from the Panel.

Both the drug court rulemaking and funding processes are placed in the Department of Health, an executive branch agency. The purpose and function of the Panel is to make the final funding decisions based upon the Department's recommendations and the Department's criteria. This is all clearly an executive branch process, and the constitution forbids the judicial branch from participating in it, despite the legislature's inclusion on the Panel of the Chief Justice, as chairman of the Board of Judicial Policy and Administration. This, of course, is similar to the concern that many in the judiciary share in regard to judicial participation in the local drug court management committee under Wyo. Stat. Ann. § 5-10-104, not to mention the problems occasioned by the judge's participation in the staffing of individual cases.

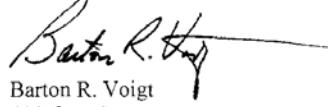
I do not have the same concern about my participation on the Drug Court Steering Committee, inasmuch as it is a legitimate inter-branch committee formed to determine the best way to give proper form and substance to court-based drug treatment programs. Unfortunately, the legislation that formed the Drug Court Steering Committee (SF 0054) did not place a member of this Court on the Committee. Consequently, with this resignation from the Drug Court Panel, I will lose my position on the Committee. By copy of this letter, I will so inform Senator Von Flatern and Representative Gingery.

Mr. Steve Lindly, Chairman
July 12, 2007
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Finally, I will note that the mandate in Section 1(b)(iv) that some judges not currently participating in court-based drug treatment programs be appointed to the Committee suggests that the Committee was to be open-minded about such programs. I have been very pleased to see that the Committee chairmen have gone to great pains in that regard, despite the presence on the Committee of only a couple members who are not whole-hearted supporters of court-based drug treatment programs in their current form. As I mentioned at the last meeting, I fear that Judge Kautz now will not even be able to find someone to second any motion he may make.

At any rate, please accept this letter as my formal resignation from the Drug Court Panel.

Sincerely,

A handwritten signature in black ink, appearing to read "Barton R. Voigt", with a long horizontal flourish extending to the right.

Barton R. Voigt
Chief Justice

BRV/dh

xc: Senator John C. Schiffer
Senator Michael Von Flatern
Representative Keith Gingery
District Judge Keith G. Kautz
Justices Michael Golden, William U. Hill, Marilyn S. Kite, and E. James Burke
Ms. Holly Hansen
Ms. Korin Schmidt