

Drug Court Steering Committee Meeting

June 26, 2007

U.W. Outreach Center

Casper, WY

Committee Members Present

Representative Keith Gingery, Co-Chairman

Senator Michael Von Flatern, Co-Chairman

Senator Kathryn Sessions

Nicky Anderson

Sue Chatfield

Hon. Richard Lavery

Steve Lindly

Rodger McDaniel

Hon. Michael Huber

Richard Bohling

Ross McKelvey

Dr. Cary Heck

Hon. Keith Kautz

Diane Lozano

Chief Justice Barton Voigt

Committee Members Absent

Representative Liz Gentile

Bob Lampert

Wyoming Department of Health, Mental Health and Substance Abuse Services Division Staff

Korin Schmidt, Administrator for Policy & Planning

Amber Gonzales, Children's Mental Health Waiver Specialist

Others Present at Meeting

Hon. Gary Hartman

Michelle Prather

Anne Comeaux

Neal Madsen

Debby Lynch

Suzan Pauling

Lee Kempert

Shannon Miller

Dan Wilde

Morty Daubin

Hon. Rob Denhardt

Kathy Williams

Kurt Zunker

Sandi Henderson

Cezanne Brennan

Hon. E. Victoria Schofield

Susan Cahill

Clara Orr

Lora Davidson

Marty Hutkins

Call to Order:

Co-Chairman Gingery called the meeting to order at 8:07 a.m. The following sections summarize the Committee proceedings by agenda item. Please refer to the agenda from the June 26, 2007 meeting.

Opening remarks, introductions and review of minutes:

Co-Chairman Gingery mentioned that at the last joint judiciary meeting, the discussion of drug courts came up in the context of the joint judiciary taking on juvenile courts, and local control vs. cookie cutter. Co-Chairman Gingery stated that the legal structure needs to be consistent, and does not think judges should be using different ideas of what the law should be in their courts, based on local custom. However, he does not want to change the local control of the program.

Co-Chairman Gingery stated that Chairmen Ross and Buchanan asked him to point out to the committee that we do not have to hurry on working on a resolution and we have all of next spring to work out these issues if they are not resolved by the end of the meeting. He acknowledged that we have a very good funding formula, thanks to Dr. Heck. We have some good ideas as to who employs the drug court and who signs contracts. We will meet again next spring, and work on some of these issues. The Joint Judiciary Committee will meet in August in Rawlins and again in October.

Rodger McDaniel stated that he appreciates the recognition of the distinction between local control and statewide standardization. He mentioned that the evaluation from the University of Wyoming (UW) has some helpful information about the effectiveness of drug courts and questioned if they work in comparison with other alternatives. He thinks Wyoming needs to study this sentencing option as compared to other sentencing options.

Mr. Steve Lindly stated that the discussion around statewide standards and local control is a good one. He commented that he felt a little hurried from the recommendations made from the last meeting, and is looking forward to public comment.

Rep. Gingery asked Mr. Lindly if it is a concern that the Department of Corrections (DOC) needs more probation officers for drug courts. Mr. Lindly responded that it is being taken care of in the current budget. He noted that the Department of Corrections has a need for a number of agents, but that it is in a broader context.

Ms. Nicky Anderson commented that she appreciates slowing down the discussion of the drug court steering committee.

Dr. Cary Heck expanded on Mr. McDaniel's comments and stated that we ought to do a study for what works for whom, not just on drug court. He also pointed out that we would have a better ability to deal with offenders and match up programming. He seconded Mr. McDaniel's request to have the study.

Judge Michael Huber expressed concern about cutting the pie too small and not having any effective programs. He stated that funding is a limited thing and it can be cut into tiny pieces, but no one would get a taste of it. He stated that he agrees on the distinction between structure and programming and structural issues need to be worked out. He commented on the high caseloads for Casper probation officers (55-100 cases per officer) and commented that someone from outside DOC needs to make the request for more positions.

Senator Sessions stated that the funding formula needs to be worked out, and the court structure needs to be decided. She pointed out that we need the data from the courts and that the committee needs to define

the kind of data requested. She stated that the committee does not need to put road blocks in place; it needs to try to help them, but with the standards, accountability and structure in place.

Senator Michael Von Flatern commented on how the committee needs to figure out the value of drug courts and whether they work. He supports a funding formula.

Honorable Keith Kautz stated that when the report is written, the recommendation has to include improving the enabling statutes. There are significant gaps that lead to disparity on how these operate.

Mr. Richard Bohling stated that he wants to see drug courts succeed without having members jeopardize losing their licenses because he thinks that drug court processes can contradict rules of the bar.

Mr. Ross McKelvey expressed that there needs to be some legal standards that are applied across the board.

Ms. Diane Lozano expressed that there is a need to have good sentencing alternatives and drug courts are viable alternatives.

Honorable Richard Lavery discussed the distinction between treatment and process, and stated that throughout the state, process is not the same between communities. Each community develops equilibrium.

Chief Justice Voigt stated that even though there is not much vertical structure in the judicial branch, one of his concerns is the protection of the role of the judge and all of the other things that they do. He does not want personnel, PO's, counselors, etc., in the judicial branch. He commented on how we need to honor separation of powers from the Constitution, and does not think that the judge should come off of the bench.

Co-Chairman Gingery introduced Senator Schiffer to the committee and public audience.

Senator Schiffer stated that he is attending the meeting to learn more about drug courts. He stated that drug courts are an alternative and a very expensive treatment, and questioned how effective they are. He addressed the enabling statute that requires judicial rules and recommended revising the statute to eliminate them if they are not going to be written. Substance abuse is still out there and this is one tool to address it. The state has to approach it very carefully when talking about a citizen's right to a fair hearing and his ability to understand what is happening to him/her.

Approval of Minutes

Rep. Gingery asked that everyone review the minutes. Senator Von Flatern moved to approve the minutes from the May 24, 2007 meeting. Senator Sessions seconded the movement. The motion passed.

Review of proposed recommendations from previous Drug Court Steering Committee Meetings (see attached document titled "Drug Court Steering Committee Proposed Statutory and Policy Recommendations):

(1) State level structural models for drug courts and the most appropriate model for Wyoming: The Committee recommends that only municipal or county governments be allowed to apply for and receive funding for a drug court. The municipal or county government would be the employer of any drug court administrative staff. (May 24)

Co-Chairman Gingery asked if anyone wanted to add a sentence requiring contractual relationships must be with a governmental entity. Co-Chairman Von Flatern stated that other contracts outside of WDH should be signed by a governmental entity.

Co-Chairman Gingery reminded the committee there was a discussion that the drug court treatment providers would contract with the Wyoming Department of Health (WDH) as they already contract with the Wyoming Association of Mental Health and Substance Abuse Centers (WAMHSAC) providers. He asked Mr. McDaniel if he had any thoughts to how that might work. Mr. McDaniel expressed that he is willing to take on the role, but would like to hear from the programs about how they feel that might impact their ability to acquire appropriate treatment for their court. Co-Chairman Gingery asked Mr. McDaniel if he can set better rates than local drug courts. Mr. McDaniel responded that he is unsure whether WDH would have a better price rate. Co-Chairman Gingery asked Mr. McDaniel if it would be possible to add WAMHSAC contracts as an additional item of the grant, and Mr. McDaniel replied that it is possible, but not all courts choose to contract with WAMHSAC providers. Judge Huber urged that the contracts be with the local entity. Mr. McDaniel believes that the opportunity for the impact on costs would come from the funding formula.

Senator Sessions asked Co-Chairman Gingery if the committee envision that both the city and the county apply. Chairman Gingery responded that he would guess they both apply, and does not see a problem with it.

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

The Committee supported the recommendation that commissioners who act as the drug court judge have the same ability as 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. (April 18)

Co-Chairman Gingery addressed his concern that magistrates under circuit court should not have the power that they have now, and finds it odd that the magistrate does not have to ask the circuit court judge permission to sanction. He stated that the concept was to use a magistrate to take the load off of the actual judge. Senator Sessions commented that there are some people who need to know the difference between the two and how they fit into the system. Co-Chairman Gingery stated that we will come back to further discussion on this topic.

(3) The progress and value of the Department of Health, Substance Abuse Division's case management system and means for improvement;

The Committee did not provide recommendations to forward to the Joint Judiciary on this topic. (April 18)

Co-Chairman. Gingery stated that this recommendation was discussed at the first meeting, and that it seems to work well. He asked Mr. McDaniel if he would like to make any comments. Mr. McDaniel deferred the question to Mrs. Korin Schmidt.

Mrs. Schmidt informed the committee that the last iterations of the drug court case management system (DCCMS) are finished and WDH is exploring a new contract with Wyoming Survey and Analysis Center (WySAC) to further enhance the system. The system is up and running and does gather the information that it needs to gather, and the next step would be to make it more user friendly. Co-Chairman Gingery asked Mrs. Schmidt what data is being collected. Mrs. Schmidt asked Dr. Heck to respond as he was involved in its development.

Dr. Heck stated that the data is collecting substance abuse, medical and mental health, demographics, and criminal history data. It is useful as a data collection tool, but is not very useful as a case management tool. Senator Sessions asked Dr. Heck if the data would show recidivism. Dr. Heck responded that it was designed with performance measures that drug courts have been talking about for the last few years and is slowly getting there. Chairman Gingery asked Mrs. Schmidt if she would be willing to include how the system is working and what she is doing to improve they system in the report that she is writing; Mrs. Schmidt agreed to include the information in her report.

Co-Chairman Gingery asked for public comment on the system. Campbell County Adult Drug Court Coordinator, Kathy Williams, commented that the DCCMS has been giving them nothing but headaches. She expressed that if the committee “trashed” the whole thing, they would be better off.

Teton County DUI Drug Court Coordinator, Anne Comeaux, stated that the database does collect and store information, and the programs need to work with the state to develop consistent definitions.

Susan Cahill stated that in Campbell County they have actually implemented a fast database system. She added that the augmentations that are being discussed are looking largely at the juvenile and family treatment courts. One of the issues that they have with the case management system is collecting data that is relevant to juvenile issues. She is not opposed to a funding formula, as long as they are collecting the correct data.

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

The Committee recommends an amendment to the current statute to require that WDH shall establish by rule and regulation a funding formula based on an amount per client. (May 24)

The Committee supported this recommendation and suggested moving to a cost/client that can be used to support budget requests.

(5) Collaboration between agencies and branches of government in the operation of drug courts;

The Committee supports the idea of expanding the Steering Committee to a permanent body and ensuring the judiciary is involved, perhaps by encouraging the development of judicial rules. The Committee stated that a high level of agency cooperation already exists. (April 18)

Committee members discussed procedural rules and that the concept is broader than what judges can do; the committee may need judicial rule from the Supreme Court. Judge Lavery stated that he is cognizant of the rules and commented on ex parte communication issues and ethical considerations for judges and defense attorneys. Mr. McDaniel stated that the rules are in place and that additional training is required to ensure compliance with the rules, which can be done ethically. Judge Huber agreed with Mr. McDaniel and stated that the procedural rules can help define and clarify how judges and attorneys participate.

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

The issue is increasing county participation and the recommendation is to not increase the number of drug courts until funding is stabilized. The Committee will consider the concept of funding a given amount on a cost reimbursement basis with a base amount built into the formula. The topic of funding will be furthered discussed at the next meeting. (April 18)

Committee members discussed the need for funding to be stabilized, and decided not to expand until the funding formula is implemented.

(7) Performance measures, as developed by the committee, for evaluation on a statewide basis. The Committee recommended deleting the five goals listed in statute and replacing them with national outcome measures. The national outcome measures include:

- Participant retention and graduation
- Participant Recidivism
- Participant Sobriety
- Units of service provided to participants (April 18)

The committee supported the above recommendation.

(8) Other recommendations to the Joint Judiciary to sponsor legislation that would:

- 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 from drug court.
- Detail what sanctions are available to a drug court.
- Require that the legal status of all drug court client cases shall be post-adjudication, 301 deferral or consent decree.
- Move the drug court statutes from Title 5 to Titles 7 and 14.
- Prohibit a judge who has participated in treatment team discussions on the specifics of the individual's progress or lack thereof in the drug court from participating in any further adjudication proceedings in the underlying case.
- 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.

Co-Chairman Gingery recognized the Honorable Gary Hartman and asked him to comment on the recommendations. Judge Hartman stated that he attended training in Washington D.C. and encouraged everyone to attend the next training. He addressed the question on how do we in Wyoming make sure drug courts are available to all participants. He commented that training is an issue and the National Drug Court Institute operates training programs for judges, prosecutors, public defenders, and coordinators. He stated that when people attend trainings, they understand and deal with those issues of conflict of interest, confidentiality, and understand their limitations. Drug courts have been established in 49 other states and are called drug courts because they are presided over by judges. Judge Hartman expressed the need to look at the individual defendants and why they continue to reoffend. When trying to change behaviors, the court system has the ability to impose those sanctions requiring a partnership with the judicial branch and other branches of government. He believes there is the ability to operate a drug court regardless of the level of judge.

Co-Chairman Gingery asked Judge Hartman who presently employs his staff. Judge Hartman responded that they are researching becoming a 501(c) 3. Chairman Gingery asked Judge Hartman how he deals with the issue of state funds going into private corporations. Judge Hartman stated they have not had any problems. Chairman Gingery also asked Judge Hartman if he is concerned that there is not buy in from the local elected officials. Judge Hartman responded that it was not a matter of buy in, but the county did not want the responsibility of running the budget and the cost to do it.

General discussion on the following topics:

- 1. Discussion about the problem solving courts that are scheduled to come on line.**
- 2. One drug court per county.**

3. Discussion on juvenile drug courts and whether juvenile courts already allow for the same processes as juvenile drug courts. Consideration of allowing only adult drug courts.

4. Decision by committee on program model (Judiciary, Executive, or Collaborative).

Co-Chairman Gingery asked if family treatment courts should have a different pot of money and whether the state begins to expand the idea to problem solving courts, not just drug courts. Suzan Pauling stated that she would like to distinguish between domestic violence courts and drug courts. Co-Chairman Gingery asked Judge Hartman if he sees any benefit from separating the money source into different pots. Judge Hartman responded that the state will have to make a decision on how we decide to address these issues. He suggested pulling all of the money together and submitting a proposal to the state. He also commented that he will be requesting funding through his regular budget to pay for a problem solving court. Co-Chairman Gingery asked Judge Hartman if he sees any conflict between Title 14 and the manner in which he operates the family treatment court. Judge Hartman responded no because Title 14 gives the judge authority over the family.

Rep. Gingery asked if there were any thoughts of renaming the statutes as problem-solving courts. Mr. McDaniel supports the idea to change the name, but also expressed that the program should not expand until there are answers to these fundamental questions.

Senator Sessions stated that Judge Guthrie's court can use drug court money for most of the cases, but there are those cases that did not qualify. She would like to see some money set aside for those courts to access for cases not involving substance abuse.

Co-Chairman Gingery asked Senator Sessions if it would make any sense to put the responsibilities [of family treatment courts] in the Department of Family Services (DFS). Nicky Anderson responded that it makes sense to leave it with WDH because there is a risk of having two different standards. Mr. McDaniel stated that it would create disconnection and fragmentation. The panel already demonstrates collaboration and shares the knowledge of the agencies. Co-Chairman Gingery stated that he does not think that we are going to resolve these issues and supports not expanding the program until they are addressed.

One drug court per county

Co-Chairman Gingery stated his concern that there are multiple courts within a county and that the state is spending money on multiple drug court coordinators and contracts. Chief Justice Voigt stated that he did not want to repeat the layers for the potential six courts. Chairman Gingery recommended having one type of court, and placing it where it makes sense, i.e., adult drug court at circuit court level and family treatment court at the juvenile court level. Judge Kautz stated that it sounds like a good idea because it solves some issues. Co-Chairman Gingery commented on placing a drug court in the circuit court and having the judges follow their respective cases. Judge Huber stated there has to be one judge as the main judge to maintain continuity. Co-Chairman Gingery asked the committee if they had any thoughts on a recommendation that all adult drug courts be housed in circuit court level. There was no comment.

Juvenile Drug Courts

Judge Hartman explained the difference between Juvenile Court and Juvenile Drug or Family Treatment Courts. Mr. McDaniel stated that it has been a goal to encourage family centered practices. Susan Cahill commented that without the buy-in of the parents, it is very hard for the juveniles to be successful. Lora Davidson stated that in Fremont County, the parents must agree to provide a healthy environment for their children. Neal Madson stated that the Sheridan Juvenile Drug Court tries to encourage families to be involved as much as possible. If parents refuse to come in, they do not have authority over them as their court is in the circuit court.

Decision by committee on program model

Dr. Heck stated that Wyoming's drug court program is currently an executive model with touches of collaboration. Funding mechanisms define the various models. In his research, the judicial branch does not generally have a model for managing large programs. There are strengths and weaknesses to each of the branches. The Executive branch has the capacity to manage, but then there is not the participation of the judicial branch. He stated that there are two options to consider, which include the following:

1. Continue with the steering committee; or
2. Keep the panel, but with additional members as more collaborative and larger involvement of the judiciary is necessary.

Chairman Von Flatern asked Dr. Heck if he is in favor of there being legislators on the panel and Dr. Heck replied that he is. Senator Sessions stated that she does not think that there should be two panels. Co-Chairman Gingery stated that he would prefer to let this committee expire next year and expand the drug court panel if necessary. Judge Kautz and Chief Justice Voigt expressed concerns with judges participating on the panel without review of the sharing powers language in the state constitution.

Sen. Von Flatern stated that the funding formula removes a lot of the funding decisions. The panel may not have the responsibility of funding which alleviates the separation of powers issue. He also stated that he does agree that the legislature should not be on it. Chief Justice Voigt had a question on the need for the panel after the funding formula is in place. Mr. Lindly commented that problems come up outside funding decisions and that it seems logical that the panel be the ones to answer them. The panel membership reflects collaboration and serves a useful and needed role.

Co-Chairman Gingery agreed that there may not be a need for either committee, and stated that it makes sense to put it on the WDH to accept input from other agencies. Sen. Sessions asked Rep. Gingery who is going to do the oversight. Chairman Gingery responded that he was suggesting WDH do the oversight. He asked the committee about removing the judicial branch from the panel and replacing it with a member of the Prosecutors Association. Mr. Lindly responded that the intent was to have some judicial participation. Judge Huber expressed that he does not think it is a separation of powers issues because the legislation does not delineate that the drug courts are an executive branch function.

Further discussion on proposed recommendations

Chief Justice Voigt stated that Circuit Court Magistrates are statutorily created to sit as the Circuit Court Judge and has much of the same authority. The main difference between a magistrate and district court commissioners is that the commissioners cannot make decisions on behalf of the judge without seeking permission of the district court judge. Judge Kautz suggested that a district or circuit court judge may assign responsibility for the operation of a drug court to a circuit court magistrate or a district court commissioner. He commented on amending the statute in Title 5 that would allow for the commissioner to have that function, and change the title to "Alternative Court Officers." Judge Huber expressed that he does not like that idea, and feels that there needs to be a real judge.

General Discussion

Representative Gingery introduced Judge Denhardt and invited him to comment.

Judge Denhardt stated that he started with the drug court concept in the fall of 1999. Drug court provided him with an immediate response to a violation. He does not like the term drug court, but stated that he does not know a better term. He has a wraparound service with probation officers, case managers and treatment people to address the needs of an individual. Each judge has their own view of what a drug court should be. He expressed that as a judge, he needs to find solutions for the problems that come before him.

Public Comment

Laramie County Drug Court Coordinator, Kurt Zunker, invited the committee to attend one of Judge Nau or Coates' court sessions. He expressed concern that the committee never once talked about the impact some of the recommendations could have on the current programs and participants. He stated that the judges are concerned that the committee is going to make recommendations for the sake of making recommendations. He suggested that this committee continue on so that we do not have to keep having the same conversations and can move forward.

Co-Chairman Von Flatern asked Mr. Zunker if he has a 501(c) 3. Mr. Zunker responded that they do have a 501(c) 3 that is used as an entity to apply for foundation grants. The program itself is not a 501(c) 3, but that they use it to apply for grants. Co-Chairman Gingery told Mr. Zunker that he is concerned about governmental liability and asked Mr. Zunker if he thinks that Laramie County would have problems if this committee decided to not allow 501(c)3's. Mr. Zunker stated that he does not necessarily have an issue with it as the reason for developing it was to offset costs when state funding is not available. The county commissioners are very supportive.

Chairman Gingery asked Mr. Zunker if he can explain which judge does which drug court and asked him to explain the structure. Mr. Zunker stated that Judge Nau runs an adult felony only drug court program and receives cases that are transferred to her from one of the three district court judges. Judge Coates runs a DUI only court; she hears almost exclusively all DUI cases.

Chief Justice Voigt asked Mr. Zunker who hired Mr. Zunker. Mr. Zunker responded that the program hired him as the drug court coordinator.

Circuit Court Judge Victoria Schofield stated that they are a 501(c)3 for education and fundraising purposes. The employees are drug court employees. She believes that when the legislature created the drug court, they provided the court with the authority to operate. She stated that drug courts are just coerced treatment and behavior modification with the difference being that there is an immediate intervention. Judge Schofield commented that they all struggle with the legal questions but do not do anything that is unethical or illegal. She stated there are some basic constitutional guarantees and they work them into the program. She agrees that a legal structure is needed but encouraged the committee to not reinvent the wheel. She believes it's a court and the judge should run it.

Chairman Von Flatern asked who the employer of the coordinator is. Judge Schofield responded that she is the employee of an unincorporated association called the treatment court. She stated that while some programs are expensive, a lot of them are at the point where they can take advantage of the economy of scale. She stated that there is no county representation on the [drug court steering] committee and that the committee is potentially going to give the counties a lot of responsibility without their input.

Ms. Shannon Miller, coordinator of the Park Co. Drug Court, described an AG opinion solicited by her county. In her county, she and her staff are employees of the drug court board. The board makes policy decisions and they contract with the county to purchase their benefits. Sen. Von Flatern asked about auditing and accountability responsibilities. Ms. Miller replied that they undergo an independent audit every year.

Ms. Anne Comeaux, Teton County Adult Drug and DUI Court coordinator, stated that she is happy with courts having the individualized ability to purchase treatment. In terms of the funding formula, she asked that the committee clarify certain things, and asked how they define a per client basis.

Morty Daubin, Casper City Council member, stated his council has always supported the court and recently added an additional officer. He expressed that the reason they support the drug court model is

because they believe in the lower recidivism rates and the savings to the tax payer. He believes that there has to be a unique blending of the carrot and stick. He stated it is his understanding that the balance of having another authority (magistrate, commissioner) would not provide the impact that the court should have.

Neal Madsen, administrator for the Sheridan Co. Justice Office, explained that they are governed by a Joint Power Board since 1998. They use a magistrate for their drug court and he believes they would not have been as successful if they had not been allowed to use a magistrate. He does not feel there was a lot of guidance when drug courts were initiated resulting in differences in courts across the state. Mr. McDaniel asked Mr. Madsen about the authority the magistrate has to sanction. Mr. Madsen responded that the magistrate exercises all of the options that everyone else does such as the sanction of jail or house arrest.

Susan Cahill asked that everyone take a look at the comments that were provided in a letter that explains the difference between a drug court at the circuit court level and juvenile drug court at the district court level. Chairman Gingery asked that all letters be incorporated as part of the record.

Lora Davidson from Fremont County supports the idea that these recommendations be run by the judges. She stated that her bosses are the county commissioners, but the statutorily appointed team is the management body and the chair is also her boss. She pointed out that because they are partnering, they are able to provide more services and build on resources. She mentioned that their drug court clients sign a seven page contract that says they agree to follow through with services. Co-Chairman Gingery asked Ms. Davidson if the two commissioners do a finding of facts of law when making a decision. Ms. Davidson responded that the contract that the clients sign allows for the commissioner to sanction the clients, including detention. Chairman Gingery voiced his concern with the court commissioner acting in the capacity of a drug court judge. Judge Kautz asked Ms. Davidson who pays the court commissioners. Ms. Davidson responded that Judge Roberts volunteers and Judge McKee is paid a small stipend.

Marty Hutkins from Gillette stated that he is an advocate for drug court and has never seen greater success. He mentioned that he has been interviewing people who went through drug court treatment and the people that he has talked with are doing well and have made progress.

Revision of recommendations based on public comment

Co-Chairman Gingery asked Mrs. Schmidt to type up a report on the recommendations with elaboration on some issues and some of the testimony. The report will be submitted to Joint Judiciary prior to August 1st. The Joint Judiciary will take up the issue of drug courts in September. Senator Schiffer suggested making the recommendation that the joint judiciary rewrite the drug court statutes to include process and procedure.

Co-Chairman Gingery referenced Senator Schiffer's suggestion that the committee recommend that the Joint Judiciary Committee re-write the drug court statutes to provide procedure and structure.

Co-Chairman Gingery brought up how Mr. McDaniel and Dr. Heck are both advocating for a study to be conducted, so that may be another recommendation. Co-Chairman Gingery asked if it was a general consent to have a study conducted. No one opposed. Study will be added to the recommendations.

Chairman Gingery stated that he would like to see a recommendation to increase DOC's budget, which would allow for one probation officer per adult drug court. He asked for comment on the proposed recommendation. Judge Huber expressed support for the recommendation. Mr. Lindly stated that a few issues are involved and the committee needs to address the caseload issue through other means. Chairman Gingery asked Dr. Heck if he would rather the committee recommend that the budget allow for

one DOC probation officer for every 20 clients in an adult drug court. No one objected to the idea, and it will be a recommendation.

On Senator Schiffer's request, Rep. Gingery asked if the committee wants to take the judicial rulemaking authority out of the statute. No recommendation was made.

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

The Committee recommends that only municipal or county governments be allowed to apply for and receive funding for a drug court. The municipal or county government would be the employer of any drug court administrative staff. (May 24)

Representative Gingery asked if there was any objection to adding any joint power boards. Senator Sessions stated that the committee needs to know if they are a legal entity within themselves. It was recommended by the committee that joint powers board be added as a potential applicant for drug court funding, and that all contractual relationships be with the local government entity that applied. There were no objections and the recommendation was adopted.

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

The Committee supported the recommendation that commissioners who act as the drug court judge have the same ability as 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. (April 18)

Chairman Gingery discussed changing the title from "Alternative adjudication" to "Use of alternative court officer" and asked there were any objections to changing the title.

Chief Justice Voigt asked if a constitutional amendment is being considered. Sen. Von Flatern asked that if it is not a court, why is a constitutional amendment required. Chief Justice Voigt stated that the judge is acting as a judge when he/she is doing this. Judge Huber agrees with Justice Voigt as it demonstrates the problem of having court commissioners acting in this capacity. He recommended striking the first sentence. Mr. McDaniel supports the recommendation. He recommended that the committee write the recommendation and allow the joint judiciary to determine whether or not to implement and how. Judge Huber moved to strike the first sentence. There was no second. Judge Huber stated that he does not want to see the program's effect diminished by the fact that the offender is not appearing before a judge.

Mr. Bohling moved that anyone who is going to be running a drug court should receive training. Mr. McDaniel seconded the motion. Amendment passed.

The progress and value of the Department of Health, Substance Abuse Division's case management system and means for improvement:

The Committee did not provide recommendations to forward to the Joint Judiciary on this topic. (April 18)

The committee members discussed providing history and documentation on CMS and provide a road map for the future. There were no comments.

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

The Committee recommends an amendment to current statute to require that WDH shall establish by rule and regulation a funding formula based on an amount per client. (May 24)

WDH will request an opinion of the AG to see if current statute allows the agency to promulgate rules on funding. If this is the recommendation, WDH will work with Dr. Heck.

Chairman Gingery wanted to clarify that the funding formula would include a base amount, x number of clients and x amount per client. Judge Huber asked if there were any thoughts on courts conducting fundraising. Mr. McDaniel stated that \$200,000 remains in the statute and he moved to recommend that the joint judiciary repeal the \$200,000 limit in section 5-10-102. Motion was passed.

Collaboration between agencies and branches of government in the operation of drug courts:
The Committee supports the idea of expanding the Steering Committee to a permanent body and ensuring the judiciary is involved, perhaps by encouraging the development of judicial rules. The Committee stated that a high level of agency cooperation already exists. (April 18)

Committee members discussed leaving the panel and allowing the steering committee to expire in December, 2008 as mandated. Chairman Gingery asked if anyone had any objection to allow the committee to expire in 2008 and to leave everything as is. No objection. The recommendation will be changed to reflect the vote.

Drug court participation by county and the best means to increase drug court participation by counties not participating due to revenue issues; and
The issue is increasing county participation and the recommendation is to not increase the number of drug courts until funding is stabilized. The Committee will consider the concept of funding a given amount on a cost reimbursement basis with a base amount built into the formula. The topic on funding will be furthered discussed at the next meeting. (April 18)

Committee members discussed the recommendation to not increase the number of drug courts until funding is stabilized. No objection.

Performance measures, as developed by the committee, for evaluation on a statewide basis.
The Committee recommended deleting the five goals listed in statute and replacing them with national outcome measures. The national outcome measures include:

- *Participant retention and graduation*
- *Participant Recidivism*
- *Participant Sobriety*
- *Units of service provided to participants (April 18)*

No further comments were made by the committee.

Representative Gingery discussed the recommendation of having the drug court statute be re-written to provide procedure and structure leaving it broader, and asked if there was any objection. There was no objection and the group agreed for it to be added to the current recommendations.

Other recommendations to the Joint Judiciary to sponsor legislation that would:

Allow judges to require completion of a drug court as a term of probation-No objection.

Provide judges with the ability to impose sanctions in a drug court for violations of the conditions of that drug court-No objection.

Provide for a hearing prior to termination of drug court-No objection.

Detail what sanctions are available to a drug court- Dr. Heck thinks that should be left to local courts. Science suggests that being able to individualize has a stronger impact on behavior. Dr. Heck stated that he is okay with the list if it includes a caveat that the court has the ability to add to the list. Chief Justice Voigt thinks listing it is a good idea and limiting the list to a certain group for certain violations. Judge Huber thinks that the law already lists the sanctions by indirect reference. Mr. Bohling stated that he is troubled by the fact that each court is very individualized in how they treat their clients and does not think that we can go from county to county and town to town to come up with a list. He does not want to get to the level of micro-managing, and expressed that judges need to have clear authority to put folks in jail, but fears that if we create a list of authorized sanctions, then we might limit the judges. Senator Sessions moved that the committee remove the recommendation. Judge Huber seconded the motion. Recommendation was removed.

Require that the legal status of all drug court client cases shall be post-adjudication, 301 deferral or consent decree- Senator Sessions wants to know what this will do to juvenile diversion and if the youth can participate in the program so they do not have a record. Judge Huber does not think that this would impact the type of program, for example Casper's program. Mr. Bohling started a diversion program and did not see any programs that would be impacted. No objection to the recommendation.

Move the drug court statutes from Title 5 to Titles 7 and 14- Senator Sessions moved that the committee does not do this at this time. She stated that the committee needs to look at it a little more carefully. Co-Chairman Von Flatern seconded the motion. Justice Voigt asked what the purpose of moving it was. He stated that if it is an executive branch function, then it does not belong in Title 5. Senator Sessions argued that if it is a judge acting as a judge, then it should stay in Title 5. Justice Voigt pointed out that 7 is Criminal Procedure and Title 14 is Children. Co-Chairman Gingery pointed out that Title 7 also has AOAA, and that it makes sense, structurally, to have them in Titles 7 and 14. Ms. Lozano argued that Title 5 outlines the authority the courts have to make decisions while Title 7 outlines how to carry out those decisions. Mr. McDaniel suggested that it may be a year premature to suggest that the joint judiciary take on a task that when the committee is not sure how to proceed on this issue. Chairman Gingery argued that he believes it is semantics and that it might go a long way to those who have issue with the term "drug court". A motion to remove the recommendation was made, it was seconded and the recommendation was removed.

Prohibit a judge who has participated in treatment team discussions on the specifics of the individual's progress or lack thereof in the drug court from participating in any further adjudication proceedings in the underlying case- Rep. Gingery also wanted to add something about the individual consents. Judge Lavery is concerned that he is insinuating that the judge is biased and doesn't understand how a waiver could address the issue. Voigt argued that the judge's conduct is ruled by the code of judicial conduct. Judge Schofield asked if this is a question of whether or not the client completed probation. Judge Huber pointed out that there are huge ethical issues here. Mr. McDaniel pointed out that these issues are already addressed in existing judicial rules and have already been under comment. Mr. McDaniel moved to delete this provision. It was seconded by Judge Lavery. Co-Chairman Gingery pointed out that it sounds like the ethics aren't being followed. Huber stated that the difference is the whole team comes into the information at the same time. Huber thinks there should be more guidance around this than what the current ethical rules address. Mr. McDaniel cautioned the group not to conclude that the ethics are not being followed. Co-Chairman Gingery was concerned that the prosecutor might not want the judge to sit on the case because of the judge's intimate knowledge of the client. Motion passed. Recommendation removed.

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 decree- No objection.

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-No objection.

Further comments:

Kathy Williams apologized to Mrs. Schmidt for directing the comment on DCCMS to her.

Clara Orr commented that the staffings with the judge entail discussion about whether or not clients are following drug court rules and what barriers exist for them to follow the rules.

Mr. Bohling requested that the LSO or AG's office look at federal HIPAA law and recommend if there are state statutes that can be passed to make it easier to conduct drug court business. Sue Chatfield stated that enabling legislation already allows for the courts to have access to the confidential information.

Justice Voigt believes that he may be violating the separation of powers by sitting on the panel and if so, he will not be participating in the future.

Meeting adjourned at 4:30 pm.