

JUDICIAL COUNCIL MEETING

AGENDA

August 23, 2019

Large Conference Room (W19)

Matheson Courthouse

450 South State Street

Salt Lake City, Utah 84111

Chief Justice Matthew B. Durrant Presiding

1. 1:45 p.m. Welcome & Approval of Minutes..... Chief Justice Matthew B. Durrant
(Tab 1 – Action)
2. 1:50 p.m. Chair’s Report..... Chief Justice Matthew B. Durrant
3. 1:55 p.m. Administrator’s Report Judge Mary T. Noonan
4. 2:05 p.m. Reports: Management Committee Chief Justice Matthew B. Durrant
Liaison Committee.....Justice Thomas Lee
Policy & Planning Committee Judge Derek Pullan
Bar Commission..... Rob Rice, esq.
(Tab 2 – Information)
5. 2:15 p.m. Recertification of Problem-Solving Courts Judge Dennis Fuchs
(Tab 3 – Action)
6. 2:45 p.m. Standing Committee on Children and Family Law Report
(Information) Judge Elizabeth Hruby-Mills
Judge Sherene Dillon
Cathy Dupont
7. 2:55 p.m. CJA Rules 1-204, 3-402, 4-202.03, and 4-903 for Final Approval
(Tab 4 – Action) Michael Drechsel
- 3:05 p.m. Break
8. 3:15 p.m. Senior Judge Certifications Nancy Sylvester
(Tab 5 – Action)
9. 3:25 p.m. Probate Code Subcommittee Revision Proposal.....Judge Laura Scott
(Tab 6 – Action) Nancy Sylvester
10. 3:40 p.m. Indigent Defense Commission Report Joanna Landau
(Information) Jojo Liu

11. 3:55 p.m. Old Business/New Business All
(Discussion)
12. 4:15 p.m. Executive Session – There will be an executive session
13. 4:30 p.m. Adjourn

Consent Calendar

The consent calendar items in this section are approved without discussion if no objection has been raised with the Administrative Office of the Courts or with a Judicial Council member by the scheduled Judicial Council meeting or with the Chair of the Judicial Council during the scheduled Judicial Council meeting.

1. Probation Policy 5.1 and 5.3
(Tab 7) Neira Siaperas
2. Committee Appointments MUJI – Criminal Michael Drechsel
(Tab 8) Resources for Self-Represented Parties Nancy Sylvester
Uniform Fine & Bail Committee Shane Bahr
3. CJA Rule 4-410 for Public Comment Michael Drechsel
(Tab 9)

Tab 1

JUDICIAL COUNCIL MEETING**Minutes****July 18, 2019**

**Grand Summit Hotel
4000 Canyons Resort Drive
Room – Cabin I and II
Park City, Utah 84098
9:00 a.m. – 12:00 p.m.**

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Brian Cannell
Hon. Augustus Chin
Hon. Ryan Evershed
Justice Thomas Lee
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Excused:

Hon. Paul Farr
Neira Siaperas

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Jim Peters
Jeni Wood

Guests:

John Baldwin, Utah State Bar
Dickson Burton, Utah State Bar
Jacqueline Carlton, Office of Legislative Research
Jeremy Christensen, DHS
Glenn Ercanbrack, AP&P
Heather Farnsworth, Utah State Bar
Mike Hadden, AP&P
James Hudspeth, AP&P
Commissioner Gil Miller, JPEC
Herm Olsen, Utah State Bar
Laura Thompson, DOC
Joseph Wade, Office of Legislative Research
Dr. Jennifer Yim, JPEC

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed Joseph Wade and Jacqueline Carlton from the Office of Legislative Research and General Counsel.

Judge Derek Pullan recommended a change to the June 24, 2019 minutes in the Judicial Council Retreat section: change to: Judge Pullan moved to amend the motion to include the

creation of a committee to assist both bodies in the evaluation of the performance of the State Court Administrator and other high-level managers and other related duties.

Motion: Judge Kate Appleby moved to approve the Judicial Council minutes from the June 24, 2019 meeting, as amended. Judge Augustus Chin seconded the motion, and it passed unanimously.

2. CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant said he and Justice Thomas Lee attended the Bars Past Presidents' Reception. The Utah State Bar will have more than 500 attendees at the Summer Convention.

3. ADMINISTRATOR'S REPORT: (Judge Mary T. Noonan)

Judge Mary Noonan mentioned Judge Douglas Thomas, Seventh District, announced his retirement, effective January 1, 2020, after serving more than 17 years on the bench. Michael Drechsel has been appointed as the Assistant State Court Administrator and Clayson Quigley is the new Court Services Director, both positions were effective July 15.

Judge Diana Hagen has been appointed to the Sentencing Commission to represent the courts, replacing Judge Michele Christiansen Forster, whose term ended.

Judge Noonan reviewed current and recent State Audits:

- The "Performance Audit of Child Welfare During Divorce Proceeding" audit is complete.
- The Performance Audit on Evidence Storage and Management began in February. This audit relates to evidence retained in the courthouse. A response group will be formed to address the audit findings.
- The Legislative Audit on JRI recently began. The audit will be conducted on multiple entities; the courts will offer support and information as required.
- The auditors have begun conversations regarding the Seventh District Drug Court audit.

Judge Noonan recommended having the following individuals attend the Budget Committee meetings: Judge Mary T. Noonan, Cathy Dupont, Michael Drechsel, one rural and one urban TCE, a court level administrator, and the HR Director, with John Bell as staff. The following Council members were selected as members of the Budget Committee: Management Committee representative – Judge Mark May, Liaison Committee representative – Judge Kara Pettit and Policy & Planning Committee will provide a representative later.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Liaison Committee Report:

Justice Thomas Lee said the committee held a conference call to address 1) approval of a Judicial Council Update document related to the PSA; and 2) responding to concerns raised by Representative Lowrey Snow related to the recommendations of the Evidence Advisory Committee which recommended some changes to the rule of evidence for the victim

communication privilege that Representative Snow passed during the 2019 Legislative Session. Justice Lee informed the Council that the Legislature enacted a joint resolution adopting a rule of evidence, but delayed the effective date of the rule of evidence until July 31, with the recognition that the courts might revise the rule before it took effect. The Evidence Advisory Committee presented a proposed rule amendment to the Supreme Court Justices. Justice Lee informed the Council that the Supreme Court Justices considered the recommendations of the Evidence Advisory Committee and decided to let the victim advocacy communication Rule of Evidence take effect, under the terms of the joint resolution, on July 31, 2019. The Evidence Advisory Committee may continue its analysis of the new rule. . Michael Drechsel noted Representative Snow has been grateful for the courts ongoing involvement. Cathy Dupont and Mr. Drechsel met with President Adams to speak about any questions or concerns regarding the courts and PSA issues and the meeting went well. Michael and Cathy will try to set up a similar meeting with House leadership.

Policy and Planning Committee Report:

Judge Derek Pullan said they have not formally met since the June Council meeting. The Committee may create a subcommittee to draft rule proposals as recommended at the retreat.

Bar Commission Report:

Rob Rice said Herm Olsen will replace Dickson Burton as the Bar President. Mr. Rice thanked the Judiciary for their support with the Summer Convention.

**5. JUDICIAL PERFORMANCE EVALUATION COMMISSION (JPEC) REPORT:
(Dr. Jennifer Yim and Commissioner Gil Miller)**

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Gil Miller. Dr. Yim introduced Commissioner Miller, who is serving his second term on JPEC. Dr. Yim reminded the Council they will begin the evaluation process in September and they will conduct surveys of attorneys in October. The Commission received ongoing funding to purchase a customer relations management system that has the capability to track a judge's performance long-term and will help with the preparation of reports and blind-reviews. Commissioners no longer know the identity of judges they are reviewing. Dr. Yim thanked the judges who will participate in JPECs "Role of Attorneys Completing Surveys on Experiences with the Utah Judiciary" breakout session at the Summer Convention, including the moderator – (former) Chief Justice and JPEC Commissioner Christine Durham.

**6. PROPOSED AMENDMENT TO CODE OF JUDICIAL ADMINISTRATION
RULE 4-401.02: (Dr. Jennifer Yim, Commissioner Gil Miller, and Michael Drechsel)**

Michael Drechsel stated Policy and Planning was approached by JPEC to explore possible changes to Code of Judicial Administration Rule 4-401.02 that would permit JPEC to use electronic audio and video recordings as part of a pilot project for basic evaluations for certain justice court judges. Currently, a basic evaluation is described on JPEC's website, as follows:

A judge is scheduled to receive a basic level evaluation if they carry less than a .2 weighted caseload in each of the locations they serve.

Judges who are scheduled to receive the basic level evaluation are not in court frequently or regularly and do not have enough attorneys sitting before them to take a quantitative survey. Because these individuals also do not have enough court participants for JPEC to conduct intercept surveys, no survey is completed. No courtroom observation is done.

JPEC is hopeful that, with audio and video recordings, courtroom observation can be accomplished in rural areas in which in person observations are hard to complete, even for those judges who are subject only to basic evaluation. JPEC has presented the concepts behind this pilot project to the Board of Justice Court Judges, and reports receiving unanimous support from that group. The pilot will be conducted only for midterm judges so that the effect of the pilot can be evaluated independent of any concern with actual retention elections for those judges. The basic premise of the pilot project is to create a system for courtroom observation that mimics the in-person courtroom evaluation to which all other judges are subject.

One challenge to the pilot program is that the current language in CJA 4-401.02 prohibits audio and video recording in courtrooms (see CJA 4-401.02(3)(B)(ii)). In order to permit JPEC's pilot project, the rule must be revised. Policy and Planning has spent significant time reviewing and discussing the proposed revisions to 4-401.02. Ultimately, after significant discussion, Policy and Planning voted to recommend that these proposed revisions be published for public comment. The Policy and Planning Committee vote was not unanimous, especially concerning the third sentence of proposed CJA 4-401.02(2)(D) regarding retention of the recordings. Policy and Planning members intend to discuss this in detail with the full Judicial Council either before publication for public comment is authorized or before seeking final approval of the revisions.

Dr. Yim noted the goal is to have recordings created through the internet, only for JPEC use. GRAMA rules consider records public unless identified as private under court rule or court order. Mr. Drechsel will research this further and address it with the Council after the comment period closes.

Chief Justice Durrant thanked Dr. Yim, Commissioner Miller, and Mr. Drechsel for the careful and professional manner in which they conduct their work.

Motion: Judge Shaughnessy moved to approve the proposed amendments to rule 4-401.02, as amended, removing the third sentence and with a citation to the classification, and to distribute the proposed amendments for 45-day comment period. Judge Appleby seconded the motion, and it passed unanimously.

7. EXPUNGEMENT BILL FOLLOW-UP AND RECOMMENDATIONS: (Michael Drechsel and Heidi Anderson)

Chief Justice Durrant welcomed Michael Drechsel and Heidi Anderson. Mr. Drechsel noted the purpose of H.B. 431 Clean Slate Expungement Implementation Bill (sponsors – Senator Thatcher and Representative Hutchings) is to create automatic expungements for certain convictions that meet the eligibility criteria. The legislature granted funding in the amount of \$200K one-time and \$200K ongoing, which was significantly less than what the Court asked for in the fiscal note attached to the bill. Currently, there is insufficient funding for the courts to be

prepared for the implemented May 1, 2020 date, with the exception of acquittals and dismissals. Mr. Drechsel is seeking additional grant money from CCJJ.

The Bill requires the courts to

- automatically expunge “clean slate eligible” cases (without petition or request),
- expunge cases full acquittal (after 60 days) or dismissal with prejudice (after 180 days),
- delete traffic cases,
- notify prosecution and DPS of expungements, and
- have the Judicial Council create rules to implement procedures.

A clean slate conviction is either a class A misdemeanor possession of a controlled substance (≥ 7 years), a class B misdemeanor (≥ 6 years), a class C misdemeanor (≥ 5 years), or an infraction (≥ 5 years), and the person must not have any pending criminal cases. It is anticipated that historically there are approximately 207,000 district court cases, 470,000 justice court cases, and millions of traffic cases that would be eligible for automatic expungement. It is expected that on an ongoing basis, there will be approximately 5,800 district court cases, 24,000 justice court cases, and 330,000 traffic ongoing cases.

Convictions that do not meet the clean slate criteria are:

- Where conviction or plea in abeyance for:
 - Any offense that is ineligible for typical expungement
 - Any offense against person under Title 76, Chapter 5
 - Any weapon offense under Title 76, Chapter 10, Part 5
 - Sexual battery
 - Lewdness
 - Any DUI / Driving offense under Title 41, Chapter 6a, Part 5
 - Damage to or interruption of a communication device
 - Domestic violence
 - Any felony or other class A misdemeanor
- Where prosecutor objects because: 1) eligibility criteria not met; 2) ongoing criminal activity; or 3) unpaid restitution to victim
- Where there is a “criminal judgment account receivable” that has been either converted to a civil judgment and sent to OSDC or has not been satisfied according to court records
- Where not guilty by reason of insanity

The Bill requires “reasonable efforts within available funding shall be made to expunge or delete a case as quickly as is practicable . . .” beginning May 1, 2020, and beginning one-year from identification to process the backlog of historical cases. Once implemented, the system, through the IT Department, will continually search for cases that meet criteria. Once eligible cases are identified, a notice is sent to the prosecutor’s office. The prosecutor will have 45-days to e-file an objection. Cases with objections filed will be flagged in CORIS and removed from the eligible list.

The goal of this process is to:

- develop foundational technology for all automatic expungements, including the data pipeline between the courts and the Department of Public Safety (DPS),
- create automatic expungement orders,
- develop a process for acquittals and dismissals,
- develop and test logic for identifying cases,
- develop a process for notifying prosecutors and objection workflow, and
- develop routines for automatic deletion of traffic cases.

Mr. Drechsel sought approval for the following:

- Authorization from Judicial Council to pursue implementation that leverages standing orders from judges to automate the expungement orders.
- Prioritization of the development path to be responsive to political consideration while balancing fiscal limitations.
- Implementation team (including a project sponsor).
- Rules to govern processes (via Policy & Planning).

Chief Justice Durrant thanked Mr. Drechsel and Ms. Anderson.

Motion: Judge Pullan moved to approve, as it relates to implementation of H.B. 431, that the Judicial Council 1) approve pursuing an implementation that leverages standing orders from judges to automate the creation and signing of expungement orders; and 2) prioritize the development path as outlined in the meeting materials (1st - foundational technology; 2nd - acquittals / dismissals with prejudice; 3rd - logic for identifying and processing clean slate eligible cases; 4th - prosecutor notification and objection; and 5th - deletion of traffic cases). Judge Pullan also included in his motion, direction for staff to contact the bill sponsor about the implementation strategy and to provide the Council with any sponsor feedback. Judge Pettit seconded the motion, and it passed unanimously.

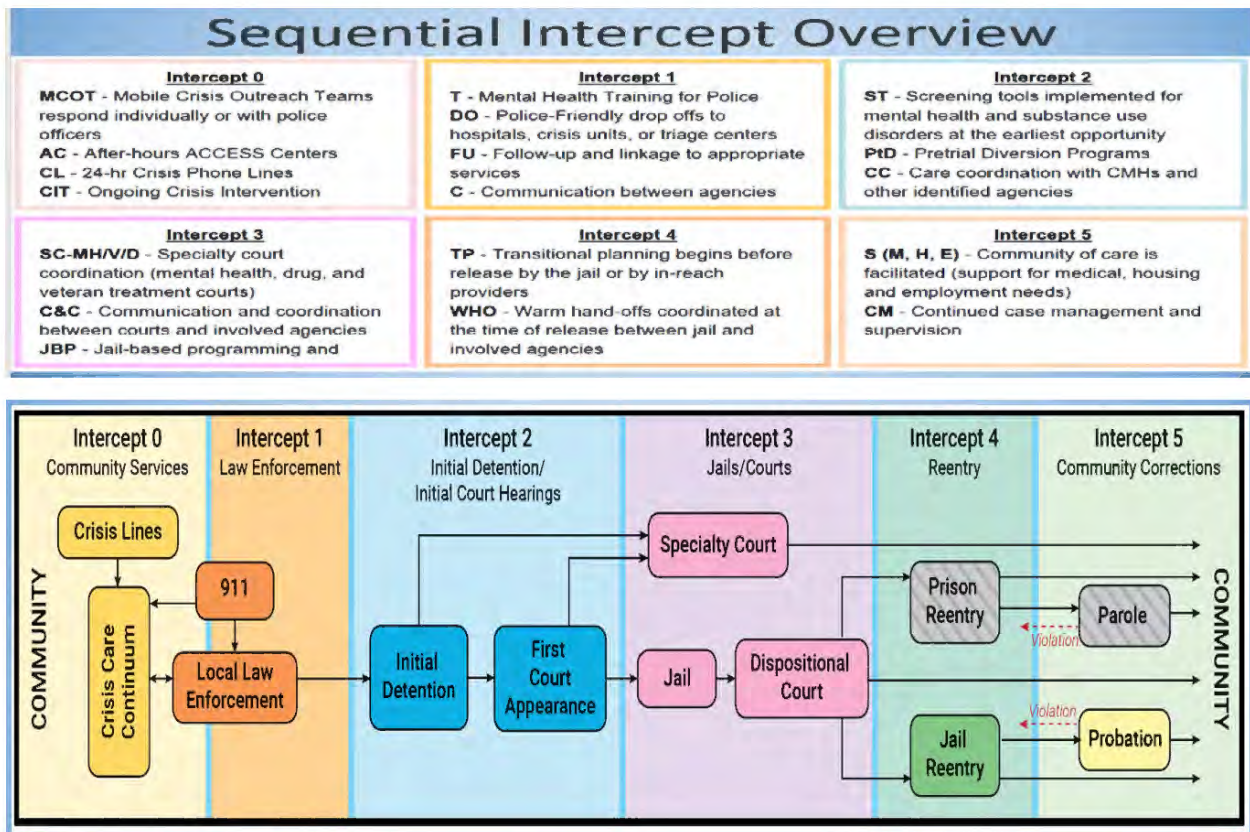
8. CCJ/COSCA SUMMIT: IMPROVING THE COURT AND COMMUNITY RESPONSE TO THOSE WITH MENTAL ILLNESS REPORT: (Judge Kara Pettit, Laura Thompson, and Jeremy Christensen)

Chief Justice Durrant welcomed Laura Thompson and Jeremy Christensen. Ms. Thompson explained the strategy for improving court and community responses to those with mental illness, as focused on at the May CCJ/COSCA Summit.

Proposed strategy dates

- Establish a Judicial Council steering committee and present to the judicial Boards
 - Summer 2019
- Conduct a statewide summit to introduce Sequential Intercept Model (SIM) framework, concepts, and to energize stakeholders
 - Fall 2019
- Train individuals to conduct local summits in all judicial districts
 - 2020
- SIM mapping at the local level

- 2020-21



Ms. Thompson requested the Council create a committee to educate the courts and other entities involved with mental health. Chief Justice Durrant recommended Judge Pettit lead the committee.

Chief Justice Durrant thanked Judge Pettit, Ms. Thompson, and Mr. Christensen.

Motion: Judge Appleby moved to approve a task force with Judge Kara Pettit as Chair. Judge Shaughnessy seconded the motion, and it passed unanimously.

9. FY20 JUSTICE COURT TECHNOLOGY, SECURITY, AND TRAINING ACCOUNT EXPENDITURES: (Jim Peters)

Judge Appleby welcomed Jim Peters. Mr. Peters reviewed funding recommendations of the Board of Justice Court Judges. Mr. Peters apologized for Judge Rick Romney's absence. The Justice Courts' budget is allocated money from the Court Security Surcharge (\$3.20 from each \$50 collected). Each year, the Board of Justice Court Judges approves grants from the allocated money to others. Jim Peters presented the Board's recommendations for the allocation of the grants and sought Judicial Council approval of the grants. The Judicial Council discussed the impact of reducing IT infrastructure funding from last year's grant money. Item number 3 – CORIS infrastructure for justice courts request was originally \$165,215, but was decreased in the Board's original grant proposal. After discussion, the Board approved \$123,079. The projection

for Surcharge collections is higher than anticipated; therefore, the Board approved [CJD1] increasing the infrastructure request by an additional \$28,000.

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
1	AOC/Information Technology	Programming and Help Desk Support for Justice Courts	\$235,551		\$226,806	Personnel costs attributable to Justice Courts for IT support
2	AOC/Information Technology	Google Accounts for Justice Court Judges and Clerks	\$22,500		\$22,500	500 licenses @ \$45 each
3	AOC/Information Technology	CORIS Infrastructure for Justice Courts	\$165,215		\$123,078	CORIS Infrastructure for Justice Courts
4	AOC/Judicial Institute (Education)	Management and Leadership Academy for Supervisory Clerks	\$10,426		\$0	Day-long training for current justice court clerks in management positions or clerks who want to move to management positions.
5	AOC/Judicial Institute (Education)	Clerk Certification Program	\$5,000		\$5,000	Funding to develop and pilot a program to certify justice court clerks to perform the duties needed to perform their jobs.
6	AOC/Judicial Institute (Education)	Presiding Judge Training	\$6,240		\$0	Funding for a one-day training for newly elected Presiding Judges
7	AOC/Judicial Institute (Education)	Judicial Decision Making (Re Law and Literature)	\$7,400		\$7,400	Funding for a 1.5 day program for 17 judges
8	AOC/Judicial Institute (Education)	New Clerk Orientation	\$10,750		\$10,750	Day-long skills workshop held twice a year on the day preceding the justice court clerks' conference
9	Board of Justice Court Judges	Trust and Confidence Committee	\$2,000		\$2,000	Travel for outreach/CLE presentations to build trust and confidence in Justice Courts
10	Board of Justice Court Judges	Computer Equipment for Judges	\$25,000		\$25,000	Funding for the cost of computer equipment for the judges
11	Board of Justice Court Judges	Online Learning System	\$18,000		\$0	Annual licenses for 100 judges and 400 clerks plus training
12	Board of Justice Court Judges	Out-of-State Training Fund	\$50,000		\$50,000	Funding for out-of-state training and educational opportunities
13	Board of Justice Court Judges	Financial Assistance for Active Senior Judges to Attend the Annual Conference	\$5,000		\$5,000	10 active senior judges @ \$500 each

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
14	Box Elder Justice Court	LiveScan Fingerprint Equipment	\$5,449		\$5,449	Funding to purchase and install a Livescan a fingerprint device
15	Daggett County Justice Court	Window Tinting	\$630		\$630	Funding to install window tinting on the glass for judge's office and jury room
16	East Carbon Justice Court	Computer, Printer and Scanner for the Courtroom	\$1,179		\$0	Funding to purchase a printer, computer, and scanner for the courtroom
17	Emery County Justice Court	TV, Stand and DVD Player	\$196		\$196	Funding to purchase a TV and DVD to show the Rights Videos to defendants
18	Holladay Justice Court	Fireproof Safe	\$435		\$0	Funding to purchase a safe to secure funds and receipt books as recommended by the AOC
19	Manitua Justice Court	Handheld Metal Detector	\$400		\$164	Funding to purchase a handheld metal detector and to train staff
20	North Salt Lake Justice Court	Laptop	\$1,060		\$0	Funding to purchase a laptop and security cameras for the bailiff to be able to see outside the courtroom
21	Ogden Justice Court	Security Film for Windows Located at Court Security Station	\$3,440		\$3,440	Funding to purchase and install security film for court building windows
22	Parowan Justice Court	Security Cameras	\$3,220		\$1,500	Funding to purchase and install a security system for the court
23	Payson Justice Court	Security Upgrades	\$9,640		\$0	Funding to purchase swipe card for one restricted door and replace a keypad on another restricted door
24	Plain City Justice Court	Security Cameras	\$6,804		\$0	Purchase and install four security cameras for the courtroom
25	Riverdale Justice Court	Security Upgrades	\$4,451		\$2,500	Funding to purchase and upgrade court building stairs, create a separate judge entrance, and apply
26	Roy/Weber Justice Court	Printer/Scanner for the Courtroom Lockers	\$1,460		\$0	Funding for purchase of a wireless printer and scanner to print defendants orders and to purchase
27	Salt Lake City Justice Court	X-Ray Machine	\$20,000		\$0	Funding for the purchase and installation of a XIS 8040 X-ray machine
28	Salt Lake City Justice Court	Surface Tablets for Paperless Jury Process	\$5,694		\$0	Funding for purchase of six Surface Pro Tablets and hard cases
29	Salt Lake City Justice Court	Affirming Artwork	\$3,750		\$0	Funding for purchase and installation of new diverse artwork for the courthouse

#	Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
30	Saratoga Springs Justice Court	Printer/Copier and Safe	\$10,248		\$0	Funding to purchase an updated printer/copier for the court
31	Saratoga Springs Justice Court	Bullet Resistant Materials for New Courthouse	\$19,740		\$0	Funding to purchase and install bulletproof glass for the courtroom
32	Saratoga Springs Justice Court	Security System for New Courthouse	\$29,884		\$0	Funding to purchase and install security upgrades for the courthouse
33	South Ogden Justice Court	Court Recording Software Upgrade	\$4,189		\$1,000	Funding to replace sound system so it is compatible with the FTR system
34	South Weber Justice Court	Court Security Upgrades	\$1,500		\$1,500	Funding for security upgrades, alarms, window tinting and barriers
35	Sunset Justice Court	Handheld Metal Detector	\$184		\$184	Funding to purchase a handheld metal detector
36	Tremonton Justice Court	Bullet Resistant Materials for Courtroom	\$2,527		\$0	Funding to purchase and install bulletproof panels for the courtroom
37	Utah County Justice Court	Safe, Locking Cabinets, Tripods	\$1,124		\$0	Funding to purchase a safe, gun vault, and tripod
38	Washington County Justice Court	AED, Whiteboards and Projectors	\$1,965		\$0	Funding to purchase several items to enhance safety in the courtroom, see request
39	Wellington Justice Court	Computer, Printer and Scanner for the Courtroom	\$1,179		\$0	Funding to purchase printer, computer and scanner for the courtroom
40	West Jordan Justice Court	Dedicated Microsoft Tablet for the Courtroom	\$3,218		\$0	Funding to purchase a dedicated Microsoft tablet for the courtroom (priority 1)
41	West Jordan Justice Court	Court Computer Upgrades	\$4,000		\$0	Funding to upgrade computers for compatibility of the new court FTR system

Requesting Entity	Description	Original Grant Request	Recommend Ongoing Grant Funds	Recommend One-Time Grant Funds	Notes
Board of Justice Court Judges (Unit 2711)	Online Legal Research for Justice Court Judges (ongoing from 2005 grant cycle)		\$20,000		Westlaw subscriptions
Information Technology (Unit 2712)	Vidyo Support and Inventory Management (ongoing from 2008 grant cycle)		\$20,200		
Judicial Institute (Unit 2713)	New Judge Orientation (ongoing from 2005 grant cycle)		\$3,500		
Judicial Institute (Unit 2713)	Justice Court Clerks' Conference (ongoing from 2005 grant cycle)		\$16,075		
Judicial Institute (Unit 2713)	Justice Court Judges' Conference (ongoing from 2005 grant cycle) and \$15,000 (ongoing from 2018 grant cycle) for Justice Court Educational programs		\$30,005		
Judicial Institute (Unit 2713)	Continuation of Utah Judicial Institute Staffing at Current Level (ongoing from FY2009 grant cycle)		\$104,200		Partial cost of Education Coordinators and Conference Coordinator
Judicial Institute (Unit 2713)	Clerks Conferences	\$55,000	\$0		New request
Judicial Institute (Unit 2713)	District Trainings	\$3,500	\$0		New request
AOC/Audit Department (Unit 2420)	Internal Audit Position Dedicated to the Justice Courts (ongoing from FY2012 grant cycle)		\$84,900		

Totals

Total Ongoing Grant Funds	\$278,880	
Total One-Time Grant Funds Recommended for FY20		\$496,120
Projected Revenue from FY19	\$775,000	
Total Grant Awards	\$775,000	
Difference Between Available Funding and Recommended Grant Awards	\$0	

Judge Appleby thanked Mr. Peters.

Motion: Judge Chin moved to approve funding, as amended to increase the IT infrastructure request by \$28,000. Judge Shaughnessy seconded the motion, and it passed unanimously.

10. UTAH STATE BAR WELCOME AND REPORT: (Dickson Burton, John Baldwin, Heather Farnsworth, and Herm Olsen)

Chief Justice Durrant welcomed Dickson Burton, John Baldwin, Heather Farnsworth, and Herm Olsen. Mr. Burton introduced Herm Olsen, who will be sworn in as the Bar President tomorrow and Heather Farnsworth, who will be sworn in as the Bar President, Elect. Mr. Burton thanked the Council for holding the meeting in Park City in conjunction with the Bar's Summer

Convention. The joint Lawyer and Judge Wellness Committee now has an Executive Director position. The Bar is funding a study, created by experts at the University of Utah, to provide a baseline of law students and attorneys' wellbeing.

The Bar created a task force, Chaired by Justice Deno Himonas and John Lund, to evaluate the regulation of legal services, in an effort to improve access to justice. The Bar will conduct a survey of attorney member's demographics and economics. This survey was last conducted in 2011. The Bar informed the Council that the Office of Professional Conduct made the decision to quit offering an ethics hotline. The Bar did not receive much advance notice of OPC's decision to end the ethics hotline, so it was not operational for a few weeks. Going forward, the Bar will run the ethics hot line services. . The legislative proposal that would impose sales taxes on legal services has been discussed at many town halls across the state. The Bar has been speaking at the town halls in opposition to imposing a sales tax on legal services.

Chief Justice Durrant thanked Mr. Burton, Mr. Baldwin, Ms. Farnsworth, and Mr. Olsen.

11. COMMISSIONER RECERTIFICATIONS: (Cathy Dupont)

Ms. Dupont reviewed commissioner evaluation (CJA Rule 3-111) and recertification retention requests (CJA Rule 3-201) for the following:

- Commissioner Catherine S. Conklin – Second District
- Commissioner Thomas R. Morgan – Second District
- Commissioner Joanna B. Sagers – Third District
- Commissioner Christina Wilson – Second District

Ms. Dupont noted terms of office for all commissioners listed above will expire on December 31, 2019. None of the commissioners has a complaint pending before the Commissioner Conduct Commission.

Motion: Judge Shaughnessy moved to approve recertifications of Commissioner Catherine S. Conklin, Commissioner Thomas R. Morgan, Commissioner Joanna B. Sagers, and Commissioner Christina Wilson. Judge Brook Sessions seconded the motion, and it passed, with Judge Evershed abstaining from Commissioner Joanna B. Sagers.

12. AP&P PRESENTATION OF NEW PSI REPORT FORMS: (Shane Bahr, Glenn Ercanbrack, Mike Hadden, and James Hudspeth)

Judge Appleby welcomed Shane Bahr, Glenn Ercanbrack, Mike Hadden, and James Hudspeth. Shane Bahr noted the Department of Corrections (Department) made changes involving the supervision of low risk offenders, agents covering calendars in individual courtrooms, and Pre-Sentence Investigation Reports (PSIs).

Pursuant to U.C.A. § 77-18-1(3) the department will not provide pre-sentence investigations or supervision to low risk individuals:

The department shall establish supervision and presentence investigation standards for all individuals referred to the department based on:

- (i) the type of offense;

(ii) the results of a risk and needs assessment;
(iii) the demand for services;
(iv) the availability of agency resources;
(v) public safety; and
(vi) other criteria establish by the department to determine what level of services shall be provided.

The LS/RNR is a validated actuarial risk and need assessment to assist in determining a level of service and factors to address in case plans. It is based on statistical probabilities and is not intended to establish a just penalty in criminal sentencing, nor to predict specific risk to the community. Individuals identified as low risk are generally not appropriate for supervised probation, either by AP&P or by another supervising agency (2017 Adult Sentencing & Release Guidelines, p. 12). The Department respectfully is requesting the courts not order supervision of low risk offenders, unless they have an active sex offense. Additionally, the Department is requesting the courts terminate probationers who have met their Earned Compliance Credit (ECC) date.

Starting July 1, 2019 AP&P staff members will no longer regularly spend time in individual courtrooms to cover general calendars. Staff will continue to attend specialty court calendars where they are providing supervision. If the Court desires an AP&P staff member to attend a bearing, the Department asks that they be subpoenaed. In doing so, the courts will be able to hear from the actual agent who is currently working with the offender. Several years ago, this change was implemented in the Fourth Judicial District and the process has been successful.

The Department is changing the way it conducts the pre-sentence investigation process, as well as the content of the PSIs. In making these changes, the Department seeks to provide specific, evidence-based information that will enable the Courts to make even more-informed sentencing decisions. This change is in response to Utah Code § 64-13-20(1), which directs the Department to establish standards for providing investigative services based on available resources, giving priority to felony cases. Further Utah Code § 77-18-1(3)(a) requires the Department to establish supervision and presentence investigation standards for all individuals referred to the Department. Per Utah Code § 77-18-1(3)(b), the Department is required to submit such investigation standards to the Judicial Council on an annual basis for review and comment.

These changes involve plans to provide distinct versions of the PSI. The type of PSI provided in each case will depend upon factors such as the level of the offense and the risk level of the offender. For certain low-risk offenders, a sentencing memorandum may be the only report submitted by the Department. These new PSIs and sentencing memoranda should be more useful to the Court, to prosecutors, and to defense counsel.

It was noted that many times parties request PSI reports unnecessarily. A recommendation was made to have AP&P provide this report to both the Statewide Association of Prosecutors and Utah Association of Criminal Defense Lawyers as an education tool.

Judge Appleby thanked Mr. Bahr, Mr. Ercanbrack, Mr. Hadden, and Mr. Hudspeth.

13. OLD BUSINESS / NEW BUSINESS

Judge Noonan will speak to Geoff Fattah at possibility enlisting the assistance of intern/externs to create a history of the Council.

14. EXECUTIVE SESSION

Motion: Judge Appleby moved to go into an executive session to discuss a personnel matter. Judge Shaughnessy seconded the motion, and it passed unanimously.

15. CONSENT CALENDAR ITEMS

a) Committee Appointments. 1) Commissioner Lorene Kamalu from the Utah Association of Counties and justice court Judge Jeanne Robison was appointed to the Pretrial Release and Supervision Committee. Megan Haney was appointed to the Education Committee. Approved without comment.

b) Grants. 1) National CASA Awareness Grant; 2) Child Access Visitation Grant. Approved without comment.

c) Probation Policies 5.1 and 5.3. Judge May moved to remove these items until he has time to speak with Neira Siaperas, and add them to the August consent calendar. Judge Evershed seconded the motion, and it passed unanimously.

d) Rule for Public Comment. Code of Judicial Administration Rule 4-103. Approved without comment.

e) Forms Committee Forms. 1) Income Verification and Compliance with Child Support Guidelines; Certification of Readiness for Trial; Trial Issues - Domestic Cases; Trial Issues – Non-Domestic Cases; Motion for Leave to Amend; Declaration of Jurisdiction and Grounds for Divorce; and Motion for Orders Regarding Relocation (revised). Approved without comment.

16. ADJOURN

The meeting adjourned.

Tab 2

JUDICIAL COUNCIL MANAGEMENT COMMITTEE

Minutes
August 13, 2019
Council Room
Matheson Courthouse
450 South State Street
Salt Lake City, Utah 84111
12:00 p.m. – 2:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Paul Farr
Hon. Mark May
Hon. Todd Shaughnessy

Excused:

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Shane Bahr
Geoff Fattah
Brent Johnson
Heather Marshall
Jim Peters
Clayson Quigley
Neira Siaperas
Nancy Sylvester
Jeni Wood

Guests:

1. WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew Durrant welcomed everyone to the meeting.

After reviewing the minutes, the following motion was made:

Motion: Judge Kate Appleby moved to approve the July 9, 2019 Management Committee meeting minutes, as presented. Judge Todd Shaughnessy seconded the motion, and it passed unanimously.

2. ADMINISTRATORS REPORT: (Judge Mary T. Noonan)

Judge Mary T. Noonan reviewed the System Review Committee membership which is all members of the Management Committee, except Chief Justice Durrant, Judge Noonan, Cathy Dupont, and Neira Siaperas. Jeni Wood will send out a poll to select a date for a meeting.

Updates on current audits:

- The IT Audit is still in process.
- The Evidence Storage and Management Audit is complete. Courts are taking initiatives to become compliant with the findings.

Chelsey Koch, has been nominated by Governor Herbert as Judge Bernards-Goodman's successor. The Law Library may begin new operating hours. Jessica Van Buren, Law Library Director, will submit a proposal. The General Counsel's office was not able to find any statutory requirements for the Library's hours of operation. Judge Noonan will follow up with Ms. Van Buren to ensure access to the public seeking protective orders.

3. ELECTED OFFICIAL AND JUDICIAL COMPENSATION COMMISSION (EJCC): RECOMMENDATION FOR JUDICIAL SALARY INCREASE: (Michael Drechsel)

Michael Drechsel stated the EJCC is an entity that, in alternating years, reviews judicial compensation. In 2018, the EJCC recommended to the Executive Appropriations Committee a 1.5% judicial increase, which did not pass. The EJCC would consider recommending a judicial compensation increase this year with data received by the courts to justify the increase. The courts seek judicial compensation based on the need to narrow the gap between large law firms' salaries and judicial salaries. Nationally, Utah is ranked 11th for judicial compensation, without a cost of living and 19th with a cost of living. This item will be addressed at the August 23rd Annual Budget meeting.

Chief Justice Durrant thanked Mr. Drechsel for his excellent work.

4. JUDICIAL WEIGHTED CASELOAD REPORT: (Judge Mary T. Noonan, Clayson Quigley, and Heather Marshall)

Judge Noonan said the Third District is requesting two new district court judges and staff and the Fifth District is requesting one new district court judge and staff for FY21.

The Board of Juvenile Court Judges prepared a response to the juvenile weighted caseload report, which showed the juvenile courts were overstaffed with judges. The juvenile weighted caseload formula has not been updated for about 10 years. Juvenile Court Judges offer assistance to the District Courts. At the end of each calendar year, Brent Johnson prepares orders for First, Fifth, Sixth, Seventh, and Eighth Districts that allow juvenile and district court judges to work in both court levels.

Brent Johnson noted in approximately 2001, legislation was passed to move overstaffed district court judges to fill the deficit of juvenile courts. The Seventh District is researching the possibility of assisting other judges with cases through electronic filing and video hearings. The Boards of Juvenile Judges and District Court Judges will make recommendations to the Judicial Council regarding the judicial weighted caseloads.

5. COMMITTEE APPOINTMENT: (Shane Bahr, Michael Drechsel, and Nancy Sylvester)

Uniform Fine and Bail Committee

Shane Bahr addressed the committee vacancy for two justice court judge representatives, as Judge Brook Sessions is now on the Judicial Council and Judge Reuben Renstrom was appointed as a district court judge. The committee recommended the appointments of Judge Jon Carpenter (Wellington City and Carbon County Justice Courts) and Judge Brian Brower (Clearfield, Sunset, and Morgan County Justice Courts).

Motion: Judge Shaughnessy moved to approve the appointment of Judge Jon Carpenter and Judge Brian Brower to the Uniform Fine and Bail Committee, and to place this item on the Judicial Council consent calendar. Judge Paul Farr seconded the motion, and it passed unanimously.

MUJI - Criminal Committee

Mr. Drechsel addressed the renewal of Judge Brendan McCullagh (member since 2006) and Karen Klucznik (member since 2010) to the committee. The committee recommended both members be renewed for another term.

Motion: Judge Appleby moved to approve the renewal of Judge Brendan McCullagh and Karen Klucznik to the MUJI - Criminal Committee, and to place this item on the Judicial Council consent calendar. Judge Farr seconded the motion, and it passed unanimously.

Self-Represented Parties Committee

Nancy Sylvester addressed the committee vacancy for a justice court judge representative, as Judge Brook Sessions is now on the Judicial Council. The committee recommended the appointment of Judge Katherine Peters.

Motion: Judge Appleby moved to approve the appointment of Judge Katherine Peters to the Self-Represented Parties Committee, and to place this item on the Judicial Council consent calendar. Judge Mark May seconded the motion, and it passed unanimously.

6. PREPARATIONS OF JUDICIAL COUNCIL HISTORY: (Geoff Fattah)

This item was not addressed.

7. APPROVAL OF ANNUAL BUDGET & PLANNING AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant addressed the proposed agenda for the August 23, 2019 Annual Budget & Planning meeting.

Motion: Judge Appleby moved to approve the Annual Budget & Planning agenda, as presented. Judge Farr seconded the motion, and it passed unanimously.

8. APPROVAL OF JUDICIAL COUNCIL AGENDA: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant addressed the proposed agenda for the August 23, 2019 Judicial Council meeting.

Motion: Judge Appleby moved to approve the Judicial Council agenda, as presented. Judge Farr seconded the motion, and it passed unanimously.

9. OLD BUSINESS/NEW BUSINESS: (All)

Judge Appleby and Judge Shaughnessy volunteered to host the hospitality suite at the Annual Judicial Conference.

10. EXECUTIVE SESSION

An executive session was held.

11. ADJOURN

The meeting adjourned.

**UTAH JUDICIAL COUNCIL
POLICY AND PLANNING COMMITTEE
MEETING MINUTES**

Judicial Council Room (N301), Matheson Courthouse
450 South State Street, Salt Lake City, Utah 84114
August 2, 2019 – 12:00 p.m. to 2:00 p.m.

DRAFT

MEMBERS:

PRESENT EXCUSED

Judge Derek Pullan, <i>Chair</i>	•	
Judge Brian Cannell		•
Judge Augustus Chin	•	
Judge Ryan Evershed	•	
Judge John Walton (<i>via phone</i>)	•	
Mr. Rob Rice	•	

GUESTS:

Judge Barry Lawrence
Nancy Sylvester

STAFF:

Michael Drechsel
Minhvan Brimhall (recording secretary)

(1) WELCOME AND APPROVAL OF MINUTES:

Judge Pullan welcomed the committee to the meeting. The committee considered the minutes from the June 7, 2019 meeting. With no changes, Mr. Rice moved to approve the draft minutes. Judge Evershed seconded the motion. The committee voted and the motion was unanimously passed.

(2) OPEN ACCESS – DRESS CODE POLICY:

Judge Barry Lawrence is the chair for the Committee on Resources for Self-represented Parties. The committee has been discussing a concern that was brought to their attention by the Board of District Court Judges, of which Judge Lawrence is also a member. The Board was informed that patrons of the courts were being turned away from courthouses and courtrooms due to their lack of “appropriate” clothing. Many of the patrons are self-represented litigants and may not have the means to afford clothing that would be deemed “appropriate” for a courtroom setting. The Board learned that often times law enforcement is either making the decision without any judicial oversight or are being directed by judges to prevent people from entering. These practices vary from courthouse to courthouse, and even from courtroom to courtroom.

Judge Lawrence noted that in the view of his committee this is not acceptable practice and violates an individual’s constitutional rights of open access to the courts. Judge Lawrence has spoken with the court security director, Chris Palmer, who has indicated that the practice is inappropriate and courthouse law enforcement personnel have been instructed that they are not permitted to inhibit any person from entering the courthouse based on their manner of dress. It is the firm belief of the Board that no patron should be denied access to any courthouse or courtroom based on their appearance or clothing. Judge Lawrence asks this committee to review the current standard of practice and make necessary recommendations for all patrons to feel they can freely enter a courthouse.

The committee discussed the concerns of Judge Lawrence, the Self-represented Parties Committee, and the Board of District Court Judges. The committee noted that the new Provo courthouse has a clothing standard posted in several areas of the courthouse. The standard provides a general guideline of what is acceptable in a courthouse. The committee discussed that certain types of clothing may detract or disrupt from the purpose of

the hearing (gang related apparel, inappropriate graphics or language), and that orders for courtroom decorum and safety should be permissible.

The committee determined that a rule would need to be drafted to address clothing and appearance standards for courthouse and courtroom attendance. The committee directed Mr. Drechsel and Ms. Sylvester to prepare a draft of such a policy, including language that specifically addresses no denial of access to courthouses and courtrooms based on appearance, as well as an exception for clothing that would promote unsafe or inappropriate behavior in the courthouse and courtroom. Mr. Drechsel and Ms. Sylvester will draft a propose rule and present it to this committee for review at a future meeting.

(3) PROPOSED NEW RULE – CJA 4-410 COURTHOUSE CLOSURES:

Ms. Sylvester discussed with the committee a concern that was raised following a significant snowstorm this past winter. On the day of the storm, the executive branch sent out a message that State offices would be closed until 11:00 a.m. to allow State personnel to safely get to their place of employment. The message caused confusion for court personnel, judges, and the public as to when courthouses might be open for business. Many court personnel reached out to court security director, Chris Palmer, who directed them to report to their respective locations as soon and as safely as they could. Ms. Sylvester and Mr. Palmer met with the courts communication director, Geoff Fattah, to discuss the concerns. They drafted a proposed new rule that outlines who would make the decision to close a courthouse (or portion of a courthouse), the means in which communication would be disseminated between judges, commissioners and court employees, and instruction and information for court process for public notification. The proposed rule has been reviewed and input has been provided by the Board of District Court Judges and the TCEs.

The committee discussed and reviewed the proposed language as presented by Ms. Sylvester, Mr. Palmer and Mr. Fattah. The committee made several minor language changes to the proposed rule and then focused its attention on the final paragraph which addressed how decisions will be made in courthouses with more than one level of court and where there is potential disagreement between presiding judges about the need to close the courthouse. The committee agreed that if a decision to close is by consensus, then all presiding judges will sign the order. In the event there is not consensus, the Chief Justice would make the decision and sign the order if appropriate.

With no further discussion or review, Judge Evershed moved to approve the proposed new rule with the changes as recommended by this committee, and to recommend the rule to the Judicial Council for public comment. Judge Chin seconded the motion. The motion was unanimously approved.

(4) RULES BACK FROM PUBLIC COMMENT:

On May 22, 2019, four rules were published for public comment: CJA 1-204, CJA 3-402, CJA 4-202.03, and CJA 4-903. The public comment period closed on July 25, 2019. Two of the rules received public comment.

CJA 1-204/3-402 (Policy and Planning/HR Review Committee):

Mr. Drechsel noted that three public comments were provided regarding CJA 1-204 and CJA 3-402. All of the comments recommended that a Chief Probation Officer be included on this HR Review Committee established in CJA 3-402(5). The chief probation officer would take the place of the “probation supervisor” member currently listed in the rule. The committee discussed this and agreed that it was a worthy change. Mr. Drechsel proposed that he check with Juvenile Court Administrator, Neira Siaperas, to ensure she didn’t have any additional insight into the wisdom of making this change.

Judge Evershed made a motion to advance the rule to the Judicial Council for final approval, with the post-comment amendment of changing “probation supervisor” (selected by the probation supervisors) to a “chief probation officer” (selected by the chief probation officers). Judge Chin seconded the motion. The motion was

unanimously approved by the committee. Mr. Drechsel will check with Ms. Siaperas and, if no concerns are identified, have CJA 1-201 and CJA 3-402 on the Judicial Council's August agenda.

CJA 4-202.03 (Records classification):

No comments were received on CJA 4-202.03. With no further discussions or recommendations, Judge Chin moved to advance CJA 4-202.03 to the Judicial Council for final approval. Judge Evershed seconded the motion. The committee unanimously voted to approve the motion.

CJA 4-903 (Custody evaluators):

The comment period garnered 33 comments for CJA 4-903. The comments unanimously supported adding "Licensed Clinical Mental Health Counselor" to the list of professions approved to conduct custody evaluations. The comments also unanimously opposed removing the list of custody evaluation factors that must be addressed in the evaluation. The committee discussed the matter and determined listing the factors creates a situation where the rule and the Legislature's direction in statute will soon and often be out of sync with each other. The Legislature has worked carefully and diligently to define custody factors and even this last session worked to consolidate custody factors into a single primary statute (Utah Code § 30-3-10). The committee did not believe that it was an inappropriate burden for custody evaluators to be responsible for reviewing the statutes when conducting an evaluation. To assist evaluators, the committee agreed that the primary statutory references should be included in the rule. Mr. Drechsel was directed to prepare a final version of the rule with the relevant statutory reference(s) included. The committee also agreed to move forward with removing the actual list of factors from the rule.

With no further discussions, Judge Chin motioned to move CJA 4-903 forward to the Judicial Council for final approval, with the inclusion of the statute(s) in the rule. Mr. Rice seconded the motion. The motion was unanimously approved.

(5) UPDATE RE: SANDOVAL V. STATE:

Mr. Drechsel provided the committee an update on CJA 4-206 in light of Sandoval v. State, 2019 UT 13. This was originally addressed by the committee at the May 2019 meeting. In Sandoval, the Supreme Court highlighted a potential conflict between the Utah Post-Conviction Remedies Act, Utah Code § 78B-9-101 et seq. (PCRA) and CJA 4-206(4), which outlines the process for disposal of exhibits. The three-month period of time listed in the rule may conflict with the PCRA's one-year statute of limitations.

Since the May meeting, Mr. Drechsel has begun research regarding how other states have approached disposal of exhibits in light of their own post-conviction remedies. Preliminary research suggests that Utah's model is unique enough that attempts to gather meaningful information from other states may not be the best course of action. Mr. Drechsel noted that additional research is needed to better understand processes of other states, and determine if those practices could be implemented in Utah.

The committee discussed the matter and recommended that Mr. Drechsel should cease further research and instead focus his efforts on drafting proposed amendments to the rule to address the potential concern raised in Sandoval. In the opinion of some members of the committee, the proposed language should capture at least the time period for filing a PCRA claim. At a minimum, the language should include a mechanism for attempting to notify the defendant when disposal of evidence is to occur.

The committee did not make a motion to vote on this action. Mr. Drechsel will draft an amendment to the CJA 4-206 and will present to the committee for review at a future meeting.

(6) JUDICIAL COUNCIL RETREAT ASSIGNMENTS:

Judge Pullan discussed two rule-making assignments that the Judicial Council made to Policy and Planning at the June retreat. The first rule would help clarify the responsibilities and coordination between the Supreme

Court and the Judicial Council by potentially creating a concurrent responsibilities committee to help address overlapping responsibilities. The second rule is to adopt a policy to address performance reviews and termination of the State Court Administrator (and possibly also address other complaints against high-level managers). Judge Pullan has invited Judge Walton and Judge Cannell to be members of a working group with him for these assignments. The working group will report to the full committee once initial drafting is completed.

(7) FINAL NOTE RE: HARRASSMENT HR POLICY:

Mr. Rice reported that he and Mr. Brent Johnson have collaborated on a draft HR policy regarding harassment (HR550). The draft policy will be discussed by the HR Review committee at its upcoming meeting. Mr. Rice reported that he understood it was hoped that this policy could be completed by September for the Fall Conference. Mr. Rice inquired about the process for that policy moving forward. Once the HR Review committee review is complete, the draft will come to Policy and Planning for consideration. Mr. Drechsel will be meeting with the HR committee next week to discuss Mr. Rice's proposals. Mr. Drechsel suggested after that review he could email any feedback received from that meeting to this committee for review, solicit feedback and votes from the committee, and then quickly send the results of all of that to the Judicial Council for review. This would all be in an attempt to expedite the process so the rule could be ready for the Fall Conference, rather than wait on normal meeting cycles. The committee discussed this approach and decided rushing this type of policy is not wise. Judge Pullan suggested that at the Fall Conference the training could focus on general principles, with a final policy to follow afterward. If additional training is needed, that could happen at the various bench level meetings in the future. The committee agreed with this approach.

(8) ADJOURNMENT

With no further items for discussion, Judge Chin moved to adjourn the meeting. Judge Evershed seconded the motion. The meeting adjourned at 1:35 p.m. The next meeting will be held on September 6, 2019, at 12:00 p.m.

Tab 3

JUDICIAL COUNCIL MEETING AUGUST 2019

The following courts meet all REQUIRED AND PRESUMPTIVE PRACTICES for certification:

Second District Adult Drug Court	Farmington	Judge Morris
Second District Adult Drug Court	Ogden	Judge Bean
Third District Adult Drug Court	Tooele	Judge Bates
Fifth District Adult Drug Court	Cedar City	Judge Barnes
Second District Adult Mental Health Court	Farmington	Judge Kay
Fifth District Adult Mental Health Court	Cedar City	Judge Little
Fifth District Adult Mental Health Court	St George	Judge Leavitt

The following Courts meet all REQUIRED PRACTICES but do not meet all PRESUMPTIVE PRACTICES:

Third District Dependency Court	West Jordan	Judge Renteria
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The court does not meet the PRESUMPTIVE PRACTICE of having more than 15 participants but less than 125. Judge Renteria's Dependency Court was changed from a Juvenile Drug Court to a Dependency Drug Court, with the authorization of the Judicial Council, a few months ago. He is increasing his participant numbers as they are screened eligible for the court.

All of the following courts meet all REQUIRED PRACTICES but they all fail to meet the PRESUMPTIVE PRACTICE of MONITORING HISTORICALLY DISADVANTAGED GROUPS:

Fourth District Adult Drug Court	Nephi	Judge Howell
Fourth District Adult Drug Court	Fillmore	Judge Howell
Fifth District Adult Drug Court	St George	Judge Wilcox
Fifth District Adult Mental Health Court	St George	Judge Westfall

As I have mentioned before "IT" is working on a program that will allow us to track this information. The program is not yet complete. Until such time it would be my recommendation that this particular PRESUMPTIVE PRACTICE, (P) be changed to a SIMPLE BEST PRACTICE, (B).

I RECOMMEND THAT ALL OF THE ABOVE COURTS BE CERTIFIED

Court: Davis County, Farmington
 Judge: Morris
 Date: March, 2019

000030

UTAH JUDICIAL COUNCIL
ADULT DRUG COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED JANUARY 28, 2019

Many of the criteria enumerated in this certification checklist are restatements of the Adult Drug Court Best Practice Standards, Volume I and Volume II, published by the National Association of Drug Court Professionals (NADCP). Those are indicated by a citation in the BPS column following the standard. An asterisk indicates a modification of the NADCP standard.

YES NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/> £	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input checked="" type="checkbox"/> £	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input checked="" type="checkbox"/> £	3	The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool.	I.B.*
<input checked="" type="checkbox"/> £	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/> £	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
<input checked="" type="checkbox"/> £	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
<input checked="" type="checkbox"/> £	7	Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court.	I.D.
<input checked="" type="checkbox"/> £	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.	I.D.
<input checked="" type="checkbox"/> £	9	If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
<input checked="" type="checkbox"/> £	10	The program has a written policy addressing medically assisted treatment.	
<input checked="" type="checkbox"/> £	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
<input checked="" type="checkbox"/> £	12	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.	III.D.
<input checked="" type="checkbox"/> £	13	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.
<input checked="" type="checkbox"/> £	14	Status hearings are scheduled no less frequently than every four weeks until participants graduate. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	15	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III.G.
<input type="checkbox"/>	£	16	If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV.B.
<input type="checkbox"/>	£	17	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III.H. VIII.D.
<input type="checkbox"/>	£	18	The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
<input checked="" type="checkbox"/>	£	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV.A.
<input type="checkbox"/>	£	21	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	IV.A.
<input checked="" type="checkbox"/>	£	22	The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
<input type="checkbox"/>	£	23	For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.	IV.E.
<input type="checkbox"/>	£	24	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited to alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV.F.
<input type="checkbox"/>	£	25	Drug testing is performed at least twice per week.	VII.A.*
<input type="checkbox"/>	£	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
<input type="checkbox"/>	£	27	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII.E* VII.F.*
<input type="checkbox"/>	£	28	Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
<input type="checkbox"/>	£	29	Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification</i>	BPS
<input checked="" type="checkbox"/>	£	30	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
<input checked="" type="checkbox"/>	£	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
<input checked="" type="checkbox"/>	£	32	The minimum length of the program is twelve months.	
<input checked="" type="checkbox"/>	£	33	Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV.J.
<input checked="" type="checkbox"/>	£	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
<input checked="" type="checkbox"/>	£	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
<input checked="" type="checkbox"/>	£	36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
<input checked="" type="checkbox"/>	£	37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
<input checked="" type="checkbox"/>	£	38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
<input checked="" type="checkbox"/>	£	39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
<input checked="" type="checkbox"/>	£	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
<input checked="" type="checkbox"/>	£	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
<input checked="" type="checkbox"/>	£	42	There is a secular alternative to 12-step peer support groups.	
<input checked="" type="checkbox"/>	£	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
<input checked="" type="checkbox"/>	£	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
<input checked="" type="checkbox"/>	£	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
<input checked="" type="checkbox"/>	£	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
<input checked="" type="checkbox"/>	£	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each Drug Court session.	VIII.A.*
<input checked="" type="checkbox"/>	£	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII.B.
<input checked="" type="checkbox"/>	£	50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
<input checked="" type="checkbox"/>	£	51	Court fees are disclosed to each participant, are reasonable, and are based on each participant's ability to pay. Any fees assessed by the Drug Court must be reasonably related to the costs of testing or other services.	
<input checked="" type="checkbox"/>	£	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
<input checked="" type="checkbox"/>	£	53	The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X.D.*
<input checked="" type="checkbox"/>	£	54	The Drug Court has written policies and procedures that ensure confidentiality and security of participant information, which conform to all applicable state and federal laws, including, but not limited to, Utah's Governmental Records Access and Management Act (GRAMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 42 C.F.R. 2 (Confidentiality of Substance Abuse Disorder Patient Records).	VIII.C.*

YES	NO	#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
<input checked="" type="checkbox"/>	£	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
<input checked="" type="checkbox"/>	£	2	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.
X	£	3	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
<input checked="" type="checkbox"/>	£	4	Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups.	II.F.
<input checked="" type="checkbox"/>	£	5	The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
<input checked="" type="checkbox"/>	£	6	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
		7	The Judge spends an average of at least three minutes with each participant.	III.F.*
X		8	The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available.	IV.F.

YES NO

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X

X

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9	Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time.	IV.I.
10	Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use.	IV.I.
11	Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day.	VII.B.*
12	Drug test results are available within 48 hours.	VII.H.
13	Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled.	VII.B.
14	Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population.	VII.D.
15	If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC/MS).	VII.G.
16	Standardized patient placement criteria govern the level of care that is provided.	V.A.
17	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure.	V.A.
18	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
19	Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program.	V.E.
20	Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms.	V.E.
21	Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.	V.F. VI.G
22	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
23	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
24	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
25	Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court.	V.J.
26	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program.	VI.D.

YES NO

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X

X

X

PRESUMED CERTIFICATION CRITERIA		BPS
#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
27	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
28	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
29	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
30	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
31	Clients are placed in the program within 50 days of arrest.	
32	Team members are assigned to Drug Court for no less than two years.	
33	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
34	Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts.	VIII.F.
35	New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
36	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
37	The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions.	X.A.
38	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court.	X.C.
39	A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
40	Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.	X.G.
41	The program conducts an exit interview for self-improvement.	

YES NO

X

NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS			BPS
#	These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.		
1	The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.		V.A.

YES	NO	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
X	£	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
✓	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X		4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
✓	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
✓	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
✓	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
✓	£	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
✓	£	9	Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment.	VI.J.
✓	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
✓	£	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
✓	£	12	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services.	IX.C.
X		13	The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals.	X.B.*
X		14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
X		15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

Court: Weber County, Ogden

000037

Judge: BeanDate: January, 2019

**UTAH JUDICIAL
COUNCIL**

ADULT DRUG COURT CERTIFICATION CHECKLIST

REVISED AND ADOPTED JANUARY 28, 2019

Many of the criteria enumerated in this certification checklist are restatements of the Adult Drug Court Best Practice Standards, Volume I and Volume II, published by the National Association of Drug Court Professionals (NADCP). Those are indicated by a citation in the BPS column following the standard. An asterisk indicates a modification of the NADCP standard.

YES NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/> £	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input checked="" type="checkbox"/> £	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input checked="" type="checkbox"/> £	3	The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool.	I.B.*
<input checked="" type="checkbox"/> £	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/> £	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
<input checked="" type="checkbox"/> £	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
<input checked="" type="checkbox"/> £	7	Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court.	I.D.
<input checked="" type="checkbox"/> £	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.	I.D.
<input checked="" type="checkbox"/> £	9	If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
<input checked="" type="checkbox"/> £	10	The program has a written policy addressing medically assisted treatment.	
<input checked="" type="checkbox"/> £	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
<input checked="" type="checkbox"/> £	12	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.	III.D.
<input checked="" type="checkbox"/> £	13	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.
<input checked="" type="checkbox"/> £	14	Status hearings are scheduled no less frequently than every four weeks until participants graduate. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	15	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III.G.
<input checked="" type="checkbox"/>	£	16	If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV.B.
<input checked="" type="checkbox"/>	£	17	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	18	The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
<input checked="" type="checkbox"/>	£	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV.A.
<input checked="" type="checkbox"/>	£	21	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	IV.A.
<input checked="" type="checkbox"/>	£	22	The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
<input checked="" type="checkbox"/>	£	23	For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.	IV.E.
<input checked="" type="checkbox"/>	£	24	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited to alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV.F.
<input checked="" type="checkbox"/>	£	25	Drug testing is performed at least twice per week.	VII.A.*
<input checked="" type="checkbox"/>	£	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
<input checked="" type="checkbox"/>	£	27	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII.E* VII.F.*
<input checked="" type="checkbox"/>	£	28	Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
<input checked="" type="checkbox"/>	£	29	Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	30	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
<input checked="" type="checkbox"/>	£	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
<input checked="" type="checkbox"/>	£	32	The minimum length of the program is twelve months.	
<input checked="" type="checkbox"/>	£	33	Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV.J.
<input checked="" type="checkbox"/>	£	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
<input checked="" type="checkbox"/>	£	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
<input checked="" type="checkbox"/>	£	36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
<input checked="" type="checkbox"/>	£	37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
<input checked="" type="checkbox"/>	£	38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
<input checked="" type="checkbox"/>	£	39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
<input checked="" type="checkbox"/>	£	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
<input checked="" type="checkbox"/>	£	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
<input checked="" type="checkbox"/>	£	42	There is a secular alternative to 12-step peer support groups.	
<input checked="" type="checkbox"/>	£	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
<input checked="" type="checkbox"/>	£	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
<input checked="" type="checkbox"/>	£	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
<input checked="" type="checkbox"/>	£	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
<input checked="" type="checkbox"/>	£	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

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<input checked="" type="checkbox"/>	£	50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
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YES	NO	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
<input type="checkbox"/>	£	1	The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.

YES	NO	#	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	BPS
<input type="checkbox"/>	£✓	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
<input checked="" type="checkbox"/>	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	£✓	4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
<input checked="" type="checkbox"/>	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
<input checked="" type="checkbox"/>	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
<input checked="" type="checkbox"/>	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
<input type="checkbox"/>	£✓	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	9	Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment.	VI.J.
<input checked="" type="checkbox"/>	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
<input type="checkbox"/>	£✓	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
<input checked="" type="checkbox"/>	£	12	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services.	IX.C.
<input checked="" type="checkbox"/>	£	13	The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals.	X.B.*
<input checked="" type="checkbox"/>	£	14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
<input type="checkbox"/>	£✓	15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

✓

Court: Toole county, Tooele

000044

Judge: BatesDate: February, 2019

**UTAH JUDICIAL
COUNCIL**

ADULT DRUG COURT CERTIFICATION CHECKLIST

REVISED AND ADOPTED JANUARY 28, 2019

Many of the criteria enumerated in this certification checklist are restatements of the Adult Drug Court Best Practice Standards, Volume I and Volume II, published by the National Association of Drug Court Professionals (NADCP). Those are indicated by a citation in the BPS column following the standard. An asterisk indicates a modification of the NADCP standard.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input checked="" type="checkbox"/>	£	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input checked="" type="checkbox"/>	£	3	The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool.	I.B.*
<input checked="" type="checkbox"/>	£	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/>	£	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
<input checked="" type="checkbox"/>	£	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
<input checked="" type="checkbox"/>	£	7	Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court.	I.D.
<input checked="" type="checkbox"/>	£	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.	I.D.
<input checked="" type="checkbox"/>	£	9	If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
<input checked="" type="checkbox"/>	£	10	The program has a written policy addressing medically assisted treatment.	
<input checked="" type="checkbox"/>	£	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
<input checked="" type="checkbox"/>	£	12	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.	III.D.
<input checked="" type="checkbox"/>	£	13	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.
<input checked="" type="checkbox"/>	£	14	Status hearings are scheduled no less frequently than every four weeks until participants graduate. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	15	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III.G.
<input checked="" type="checkbox"/>	£	16	If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV.B.
<input checked="" type="checkbox"/>	£	17	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	18	The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
<input checked="" type="checkbox"/>	£	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV.A.
<input checked="" type="checkbox"/>	£	21	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	IV.A.
<input checked="" type="checkbox"/>	£	22	The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
<input checked="" type="checkbox"/>	£	23	For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.	IV.E.
<input checked="" type="checkbox"/>	£	24	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited to alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV.F.
<input checked="" type="checkbox"/>	£	25	Drug testing is performed at least twice per week.	VII.A.*
<input checked="" type="checkbox"/>	£	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
<input checked="" type="checkbox"/>	£	27	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII.E* VII.F.*
<input checked="" type="checkbox"/>	£	28	Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
<input checked="" type="checkbox"/>	£	29	Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	30	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
<input checked="" type="checkbox"/>	£	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
<input checked="" type="checkbox"/>	£	32	The minimum length of the program is twelve months.	
<input checked="" type="checkbox"/>	£	33	Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV.J.
<input checked="" type="checkbox"/>	£	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
<input checked="" type="checkbox"/>	£	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
<input checked="" type="checkbox"/>	£	36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
<input checked="" type="checkbox"/>	£	37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
<input checked="" type="checkbox"/>	£	38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
<input checked="" type="checkbox"/>	£	39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
<input checked="" type="checkbox"/>	£	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
<input checked="" type="checkbox"/>	£	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
<input checked="" type="checkbox"/>	£	42	There is a secular alternative to 12-step peer support groups.	
<input checked="" type="checkbox"/>	£	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
<input checked="" type="checkbox"/>	£	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
<input checked="" type="checkbox"/>	£	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
<input checked="" type="checkbox"/>	£	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
<input checked="" type="checkbox"/>	£	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

YES NO

☒ £☒ £☒ £☒ £☒ £☒ £☒ £

#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each Drug Court session.	VIII.A.*
49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII.B.
50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
51	Court fees are disclosed to each participant, are reasonable, and are based on each participant's ability to pay. Any fees assessed by the Drug Court must be reasonably related to the costs of testing or other services.	
52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
53	The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X.D.*
54	The Drug Court has written policies and procedures that ensure confidentiality and security of participant information, which conform to all applicable state and federal laws, including, but not limited to, Utah's Governmental Records Access and Management Act (GRAMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 42 C.F.R. 2 (Confidentiality of Substance Abuse Disorder Patient Records).	VIII.C.*

YES NO

☒ £☒ £

X

☒ £☒ £☒ £☒ £

X

#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
2	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.
3	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
4	Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups.	II.F.
5	The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
6	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
7	The Judge spends an average of at least three minutes with each participant.	III.F.*
8	The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available.	IV.F.

YES	NO	PRESUMED CERTIFICATION CRITERIA	
		#	BPS
		<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
<input checked="" type="checkbox"/>	£	9	IV.I.
<input checked="" type="checkbox"/>	£	10	IV.I.
<input checked="" type="checkbox"/>	£	11	VII.B.*
<input checked="" type="checkbox"/>		12	VII.H.
<input checked="" type="checkbox"/>	£	13	VII.B.
<input checked="" type="checkbox"/>	£	14	VII.D.
<input checked="" type="checkbox"/>	£	15	VII.G.
<input checked="" type="checkbox"/>	£	16	V.A.
<input checked="" type="checkbox"/>	£	17	V.A.
<input checked="" type="checkbox"/>	£	18	V.D.
<input checked="" type="checkbox"/>		19	V.E.
<input checked="" type="checkbox"/>	£	20	V.E.
<input checked="" type="checkbox"/>	£	21	V.F. VI.G
<input checked="" type="checkbox"/>	£	22	V.F.
<input checked="" type="checkbox"/>	£	23	V.H.
<input checked="" type="checkbox"/>	£	24	V.I.
<input checked="" type="checkbox"/>	£	25	V.J.
		26	VI.D.

YES NO

		PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
<input checked="" type="checkbox"/>	£	27	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
<input checked="" type="checkbox"/>	£	28	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
<input checked="" type="checkbox"/>	£	29	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	30	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
<input checked="" type="checkbox"/>	£	31	Clients are placed in the program within 50 days of arrest.	
<input checked="" type="checkbox"/>	£	32	Team members are assigned to Drug Court for no less than two years.	
<input checked="" type="checkbox"/>	£	33	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
<input checked="" type="checkbox"/>	£	34	Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts.	VIII.F.
<input checked="" type="checkbox"/>	£	35	New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
<input checked="" type="checkbox"/>	£	36	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
<input checked="" type="checkbox"/>	£	37	The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions.	X.A.
<input checked="" type="checkbox"/>	£	38	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court.	X.C.
<input checked="" type="checkbox"/>	£	39	A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X		40	Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.	X.G.
X		41	The program conducts an exit interview for self-improvement.	

YES NO

		NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
<input type="checkbox"/>	£	1	The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.

YES	NO	#	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	BPS
<input type="checkbox"/>	£✓	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
<input checked="" type="checkbox"/>	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	£✓	4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
<input checked="" type="checkbox"/>	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
<input checked="" type="checkbox"/>	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
<input checked="" type="checkbox"/>	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
<input type="checkbox"/>	£✓	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
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<input checked="" type="checkbox"/>	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
<input type="checkbox"/>	£✓	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
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<input checked="" type="checkbox"/>	£	14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
<input type="checkbox"/>	£✓	15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

✓

Court: Iron County, Cedar City

000051

Judge: BarnesDate: January, 2019

**UTAH JUDICIAL
COUNCIL**

ADULT DRUG COURT CERTIFICATION CHECKLIST

REVISED AND ADOPTED JANUARY 28, 2019

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<input checked="" type="checkbox"/> £	2	Eligibility and exclusion criteria are specified in writing.	I.A.
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<input checked="" type="checkbox"/> £	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/> £	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
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<input checked="" type="checkbox"/>	£	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
<input checked="" type="checkbox"/>	£	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
<input checked="" type="checkbox"/>	£	36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
<input checked="" type="checkbox"/>	£	37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
<input checked="" type="checkbox"/>	£	38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
<input checked="" type="checkbox"/>	£	39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
<input checked="" type="checkbox"/>	£	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
<input checked="" type="checkbox"/>	£	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
<input checked="" type="checkbox"/>	£	42	There is a secular alternative to 12-step peer support groups.	
<input checked="" type="checkbox"/>	£	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
<input checked="" type="checkbox"/>	£	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
<input checked="" type="checkbox"/>	£	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
<input checked="" type="checkbox"/>	£	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
<input checked="" type="checkbox"/>	£	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

YES NO

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#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each Drug Court session.	VIII.A.*
49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII.B.
50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
51	Court fees are disclosed to each participant, are reasonable, and are based on each participant's ability to pay. Any fees assessed by the Drug Court must be reasonably related to the costs of testing or other services.	
52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
53	The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X.D.*
54	The Drug Court has written policies and procedures that ensure confidentiality and security of participant information, which conform to all applicable state and federal laws, including, but not limited to, Utah's Governmental Records Access and Management Act (GRAMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 42 C.F.R. 2 (Confidentiality of Substance Abuse Disorder Patient Records).	VIII.C.*

YES NO

☒ £☒ £

X

☒ £☒ £☒ £☒ £

X

#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
2	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.
3	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
4	Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups.	II.F.
5	The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
6	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
7	The Judge spends an average of at least three minutes with each participant.	III.F.*
8	The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available.	IV.F.

YES	NO	PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
<input checked="" type="checkbox"/>	£	9	Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time.	IV.I.
<input checked="" type="checkbox"/>	£	10	Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use.	IV.I.
<input checked="" type="checkbox"/>	£	11	Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day.	VII.B.*
<input checked="" type="checkbox"/>		12	Drug test results are available within 48 hours.	VII.H.
<input checked="" type="checkbox"/>	£	13	Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled.	VII.B.
<input checked="" type="checkbox"/>	£	14	Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population.	VII.D.
<input checked="" type="checkbox"/>	£	15	If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC/MS).	VII.G.
<input checked="" type="checkbox"/>	£	16	Standardized patient placement criteria govern the level of care that is provided.	V.A.
<input checked="" type="checkbox"/>	£	17	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure.	V.A.
<input checked="" type="checkbox"/>	£	18	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
<input checked="" type="checkbox"/>	£	19	Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program.	V.E.
<input checked="" type="checkbox"/>	£	20	Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms.	V.E.
<input checked="" type="checkbox"/>	£	21	Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.	V.F. VI.G
<input checked="" type="checkbox"/>	£	22	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
<input checked="" type="checkbox"/>	£	23	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
<input checked="" type="checkbox"/>	£	24	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
<input checked="" type="checkbox"/>	£	25	Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court.	V.J.
		26	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program.	VI.D.

YES NO

		PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
<input checked="" type="checkbox"/>	£	27	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
<input checked="" type="checkbox"/>	£	28	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
<input checked="" type="checkbox"/>	£	29	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	30	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
<input checked="" type="checkbox"/>	£	31	Clients are placed in the program within 50 days of arrest.	
<input checked="" type="checkbox"/>	£	32	Team members are assigned to Drug Court for no less than two years.	
		33	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
<input checked="" type="checkbox"/>	£	34	Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts.	VIII.F.
<input checked="" type="checkbox"/>	£	35	New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
<input checked="" type="checkbox"/>	£	36	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
<input checked="" type="checkbox"/>	£	37	The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions.	X.A.
<input checked="" type="checkbox"/>	£	38	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court.	X.C.
<input checked="" type="checkbox"/>	£	39	A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X		40	Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.	X.G.
X		41	The program conducts an exit interview for self-improvement.	

YES NO

		NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
<input type="checkbox"/>	£	1	The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.

YES	NO	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>		BPS
<input type="checkbox"/>	£✓	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
<input checked="" type="checkbox"/>	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	£✓	4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
<input checked="" type="checkbox"/>	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
<input checked="" type="checkbox"/>	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
<input checked="" type="checkbox"/>	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
<input type="checkbox"/>	£✓	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	9	Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment.	VI.J.
<input checked="" type="checkbox"/>	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
<input type="checkbox"/>	£✓	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
<input checked="" type="checkbox"/>	£	12	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services.	IX.C.
<input checked="" type="checkbox"/>	£	13	The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals.	X.B.*
<input checked="" type="checkbox"/>	£	14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
<input type="checkbox"/>	£✓	15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

✓

Court: Davis County, Farmington

Judge: Kay

Date: July, 2019

Utah Mental Health Court Certification Checklist 2018

*Standards followed by an **R** are required features of a mental health court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, and Volume II, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

YES NO

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1. Eligibility and exclusion criteria are defined and applied objectively. **R**
BPS I A

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2. Eligibility and exclusion criteria are specified in writing. **R** BPS I A

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3. Eligibility and exclusion criteria are communicated to potential referral sources.
P BPS I A

YES NO

- ☒ ☐ 4. Candidates for the Mental Health Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. **R BPS I C**
- ☒ ☐ 5. Candidates for the Mental Health Court are assessed for eligibility using a validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction and a validated clinical assessment tool that produces a mental health diagnosis. **R BPS* I C**
- ☒ ☐ 6. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**
- ☒ ☐ 7. Current or prior offenses may disqualify candidates from participation in the Mental Health Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental Health Court. **R BPS I D**
- ☒ ☐ 8. The Mental Health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **P BPS II B, BPS X E**
- ☒ ☐ 9. The Mental Health Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **P BPS II D**
- ☒ ☐ 10. Each member of the Mental Health Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
- ☒ ☐ 11. The Mental Health Court judge attends current training events on legal and constitutional issues in Mental Health Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
- ☒ ☐ 12. The judge presides over the Mental Health Court for no less than two consecutive years. **P BPS III B**
- ☒ ☐ 13. Participants ordinarily appear before the same judge throughout their enrollment in the Mental Health Court. **R BPS III C**

YES NO

- ☒ ☐ 14. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Mental Health Court team. **R BPS III D**
- ☒ ☐ 15. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
- ☒ ☐ 16. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
- ☒ ☐ 17. The Judge spends an average of at least three minutes with each participant. **P BPS* III F**
- ☒ ☐ 18. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
- ☒ ☐ 19. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**
- ☒ ☐ 20. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
- ☒ ☐ 21. The judge makes these decisions after taking into consideration the input of other Mental Health Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
- ☒ ☐ 22. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
- ☒ ☐ 23. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Mental Health Court participants and team members. **R BPS IV A**
- ☒ ☐ 24. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**

YES NO

- ☒ ☐ 25. The Mental Health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
- ☒ ☐ 26. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**
- ☒ ☐ 27. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives. **P BPS IV I**
- ☒ ☐ 28. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***
- ☒ ☐ 29. Drug test results are available within 48 hours. **P BPS VII H**
- ☒ ☐ 30. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **P BPS VII B**
- ☒ ☐ 31. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Mental Health Court population. **P BPS VII D***
- ☒ ☐ 32. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. **R BPS VII E*, F***
- ☒ ☐ 33. Drug testing utilized by the Mental Health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. **R BPS VII G**
- ☒ ☐ 34. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**
- ☒ ☐ 35. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. **R BPS VII G***

YES NO

- ☒ ☐ 36. Upon entering the Mental Health Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. **R BPS VII I**
- ☒ ☐ 37. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. **R BPS IV J**
- ☒ ☐ 38. Jail sanctions are definite in duration and typically last no more than three to five days. **R BPS IV J**
- ☒ ☐ 39. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. **R BPS IV J**
- ☒ ☐ 40. If a participant is terminated from the Mental Health Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program. **R BPS IV K**
- ☒ ☐ 41. The Mental Health Court offers a continuum of care for mental health treatment, and substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services. **B BPS V A**
- ☒ ☐ 42. Standardized patient placement criteria govern the level of care that is provided. **P BPS V A**
- ☒ ☐ 43. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Mental Health Court's programmatic phase structure. **P BPS V A**
- ☒ ☐ 44. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to mental health services, detoxification services or sober living quarters. **R BPS V B***
- ☒ ☐ 45. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **B BPS V E**
- ☒ ☐ 46. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and psychiatric symptoms. **P BPS V E***
- ☒ ☐ 47. Participants with co-occurring substance abuse issues regularly attend self-help or peer support groups in addition to professional counseling. **R BPS V I**

YES NO

- ☒ ☐ 48. For at least the first ninety days after discharge from the Mental Health Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
- ☒ ☐ 49. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Mental Health Court and continuing as necessary throughout their enrollment in the program. **P BPS VI D**
- ☒ ☐ 50. Participants are not excluded from participation in Mental Health Court because they lack a stable place of residence. **R BPS VI D**
- ☒ ☐ 51. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). **P BPS VI F**
- ☒ ☐ 52. Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. **B BPS VI F**
- ☒ ☐ 53. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**
- ☒ ☐ 54. All Mental Health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. **P BPS VI F**
- ☐ ☒ 55. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. **B BPS VI J**
- ☒ ☐ 56. Clients are placed in the program within 50 days of arrest. **P**
- ☒ ☐ 57. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each staffing meeting. **R BPS VIII B***
- ☒ ☐ 58. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each Mental Health Court session. **R BPS VIII A***
- ☒ ☐ 59. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. **R BPS VIII B**

YES NO

- ☒ ☐ 60. Team members are assigned to Mental Health Court for no less than two years. **P**
- ☒ ☐ 61. All team members use electronic communication to contemporaneously communicate about Mental Health Court issues. **P**
- ☒ ☐ 62. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. **R BPS VIII C**
- ☐ ☒ 63. Before starting a Mental Health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. **B BPS VIII F**
- ☒ ☐ 64. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Mental Health Courts. **P BPS VIII F**
- ☒ ☐ 65. New staff hires receive a formal orientation training on the Mental Health Court model and best practices in Mental Health Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. **P BPS VIII F**
- ☒ ☐ 66. Court fees are reasonable and based on each participant's ability to pay. **R**
- ☒ ☐ 67. Treatment fees are based on a sliding fee schedule. **R**
- ☒ ☐ 68. The Mental Health Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 69. The Mental Health Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B BPS X B***

YES NO

- ☒ ☐ 70. New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental Health Court. **P**
BPS X C
- ☒ ☐ 71. A skilled and independent evaluator examines the Mental Health Court's adherence to best practices and participant outcomes no less frequently than every five years. **P** BPS X D
- ☒ ☐ 72. The Mental Health Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R** BPS X D
- ☒ ☐ 73. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Mental Health Court's adherence to best practices and in-program outcomes. **B** BPS X F
- ☒ ☐ 74. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P** BPS X G
- ☒ ☐ 75. Outcomes are examined for all eligible participants who entered the Mental Health Court regardless of whether they graduated, withdrew, or were terminated from the program. **B** BPS X H
- ☒ ☐ 76. The program conducts an exit interview for self improvement. **P**

Court: Iron County, Cedar City

Judge: Little

Date: February, 2019

Utah Mental Health Court Certification Checklist 2018

*Standards followed by an **R** are required features of a mental health court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

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YES NO

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1. Eligibility and exclusion criteria are defined and applied objectively. **R**
BPS I A

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2. Eligibility and exclusion criteria are specified in writing. **R** BPS I A

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3. Eligibility and exclusion criteria are communicated to potential referral sources.
P BPS I A

YES NO

- ☒ ☐ 4. Candidates for the Mental Health Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. **R BPS I C**
- ☒ ☐ 5. Candidates for the Mental Health Court are assessed for eligibility using a validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction and a validated clinical assessment tool that produces a mental health diagnosis. **R BPS* I C**
- ☒ ☐ 6. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**
- ☒ ☐ 7. Current or prior offenses may disqualify candidates from participation in the Mental Health Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental Health Court. **R BPS I D**
- ☒ ☐ 8. The Mental Health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **P BPS II B, BPS X E**
- ☒ ☐ 9. The Mental Health Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **P BPS II D**
- ☒ ☐ 10. Each member of the Mental Health Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
- ☒ ☐ 11. The Mental Health Court judge attends current training events on legal and constitutional issues in Mental Health Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
- ☒ ☐ 12. The judge presides over the Mental Health Court for no less than two consecutive years. **P BPS III B**
- ☒ ☐ 13. Participants ordinarily appear before the same judge throughout their enrollment in the Mental Health Court. **R BPS III C**

YES NO

- ☒ ☐ 14. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Mental Health Court team. **R BPS III D**
- ☒ ☐ 15. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
- ☒ ☐ 16. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
- ☒ ☐ 17. The Judge spends an average of at least three minutes with each participant. **P BPS* III F**
- ☒ ☐ 18. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
- ☒ ☐ 19. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**
- ☒ ☐ 20. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
- ☒ ☐ 21. The judge makes these decisions after taking into consideration the input of other Mental Health Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
- ☒ ☐ 22. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
- ☒ ☐ 23. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Mental Health Court participants and team members. **R BPS IV A**
- ☒ ☐ 24. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**

YES NO

☒ ☐

25. The Mental Health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**

☒ ☐

26. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**

☒ ☐

27. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives. **P BPS IV I**

☒ ☐

28. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***

☒ ☐

29. Drug test results are available within 48 hours. **P BPS VII H**

☒ ☐

30. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **P BPS VII B**

☒ ☐

31. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Mental Health Court population. **P BPS VII D***

☒ ☐

32. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. **R BPS VII E*, F***

☒ ☐

33. Drug testing utilized by the Mental Health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. **R BPS VII G**

☒ ☐

34. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**

☒ ☐

35. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. **R BPS VII G***

YES NO

- ☒ ☐ 36. Upon entering the Mental Health Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. **R BPS VII I**
- ☒ ☐ 37. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. **R BPS IV J**
- ☒ ☐ 38. Jail sanctions are definite in duration and typically last no more than three to five days. **R BPS IV J**
- ☒ ☐ 39. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. **R BPS IV J**
- ☒ ☐ 40. If a participant is terminated from the Mental Health Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program. **R BPS IV K**
- ☒ ☐ 41. The Mental Health Court offers a continuum of care for mental health treatment, and substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services. **B BPS V A**
- ☒ ☐ 42. Standardized patient placement criteria govern the level of care that is provided. **P BPS V A**
- ☒ ☐ 43. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Mental Health Court's programmatic phase structure. **P BPS V A**
- ☒ ☐ 44. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to mental health services, detoxification services or sober living quarters. **R BPS V B***
- ☒ ☐ 45. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **B BPS V E**
- ☒ ☐ 46. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and psychiatric symptoms. **P BPS V E***
- ☒ ☐ 47. Participants with co-occurring substance abuse issues regularly attend self-help or peer support groups in addition to professional counseling. **R BPS V I**

YES NO

- ☒ ☐ 48. For at least the first ninety days after discharge from the Mental Health Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
- ☒ ☐ 49. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Mental Health Court and continuing as necessary throughout their enrollment in the program. **P BPS VI D**
- ☒ ☐ 50. Participants are not excluded from participation in Mental Health Court because they lack a stable place of residence. **R BPS VI D**
- ☒ ☐ 51. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). **P BPS VI F**
- ☒ ☐ 52. Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. **B BPS VI F**
- ☒ ☐ 53. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**
- ☒ ☐ 54. All Mental Health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. **P BPS VI F**
- ☒ ☐ 55. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. **B BPS VI J**
- ☒ ☐ 56. Clients are placed in the program within 50 days of arrest. **P**
- ☒ ☐ 57. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each staffing meeting. **R BPS VIII B***
- ☒ ☐ 58. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each Mental Health Court session. **R BPS VIII A***
- ☒ ☐ 59. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. **R BPS VIII B**

YES NO

- ☒ ☐ 60. Team members are assigned to Mental Health Court for no less than two years. **P**
- ☒ ☐ 61. All team members use electronic communication to contemporaneously communicate about Mental Health Court issues. **P**
- ☒ ☐ 62. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. **R BPS VIII C**
- ☒ ☐ 63. Before starting a Mental Health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. **B BPS VIII F**
- ☒ ☐ 64. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Mental Health Courts. **P BPS VIII F**
- ☒ ☐ 65. New staff hires receive a formal orientation training on the Mental Health Court model and best practices in Mental Health Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. **P BPS VIII F**
- ☒ ☐ 66. Court fees are reasonable and based on each participant's ability to pay. **R**
- ☒ ☐ 67. Treatment fees are based on a sliding fee schedule. **R**
- ☒ ☐ 68. The Mental Health Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 69. The Mental Health Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B BPS X B***

YES NO

- ☒ ☐ 70. New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental Health Court. **P**
BPS X C
- ☒ ☐ 71. A skilled and independent evaluator examines the Mental Health Court's adherence to best practices and participant outcomes no less frequently than every five years. **P** BPS X D
- ☒ ☐ 72. The Mental Health Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R** BPS X D
- ☐ ☒ 73. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Mental Health Court's adherence to best practices and in-program outcomes. **B** BPS X F
- ☒ ☐ 74. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P** BPS X G
- ☒ ☐ 75. Outcomes are examined for all eligible participants who entered the Mental Health Court regardless of whether they graduated, withdrew, or were terminated from the program. **B** BPS X H
- ☒ ☐ 76. The program conducts an exit interview for self improvement. **P**

Court: Washington County, St George

Judge: Leavitt

Date: January, 2019

Utah Dependency Drug Court Certification Checklist 2018

*Standards followed by an **R** are required features of a drug court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

*Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, and Volume II, National Association of Drug Court Professionals. Those are indicated by a **BPS** following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.*

YES NO

- | | |
|--|--|
| <input checked="" type="checkbox"/> <input type="checkbox"/> | <p>1. Eligibility and exclusion criteria are defined and applied objectively. R BPS I A</p> |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | <p>2. Eligibility and exclusion criteria are specified in writing. R BPS I A</p> |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | <p>3. Eligibility and exclusion criteria are communicated to potential referral sources. P BPS I A</p> |

YES NO

- ☒ ☐ 5. The program admits only participants who are high risk high need as measured by the RANT or some other approved and validated assessment tool, or participants who are at high risk for re-abusing the children and they are addicted to or dependent on a substance.
R BPS* I B
- ☒ ☐ 6. Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.
R BPS I C
- ☒ ☐ 7. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**
- ☒ ☐ 8. Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court. **R BPS I D**
- ☒ ☐ 9. Offenders with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court. **R BPS I D**
- ☒ ☐ 10. If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.
R BPS I D
- ☒ ☐ 11. The program has a written policy addressing medically assisted treatment. **R**
- ☒ ☐ 12. The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **P BPS II B, BPS X E**
- ☒ ☐ 13. The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants
P BPS II D

YES NO

- ☒ ☐ 14. Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
- ☒ ☐ 15. The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
- ☒ ☐ 16. The judge presides over the Drug Court for no less than two consecutive years. **P BPS III B**
- ☒ ☐ 17. Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court. **R BPS III C**
- ☒ ☐ 18. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team. **R BPS III D**
- ☒ ☐ 19. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
- ☒ ☐ 20. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
- ☒ ☐ 21. The Judge spends an average of at least three minutes with each participant. **P BPS* III F**
- ☒ ☐ 22. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
- ☒ ☐ 23. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**

YES NO

- ☒ ☐ 24. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
- ☒ ☐ 25. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
- ☒ ☐ 26. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
- ☒ ☐ 27. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members. **R BPS IV A**
- ☒ ☐ 28. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**
- ☒ ☐ 29. The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
- ☒ ☐ 30. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**
- ☒ ☐ 31. Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance. **R BPS IV F**

YES NO

- ☒ ☐ 32. The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available. P BPS IV F
- ☒ ☐ 33. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. P BPS IV I
- ☒ ☐ 34. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. P BPS IV I
- ☒ ☐ 35. Drug testing is performed at least twice per week. R BPS VII A*
- ☒ ☐ 36. Drug testing is random, and is available on weekends and holidays. R BPS VII B*
- ☒ ☐ 37. Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day. P BPS VII B
- ☒ ☐ 38. Drug test results are available within 48 hours. P BPS VII H
- ☒ ☐ 39. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. P BPS VII B
- ☒ ☐ 40. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population. P BPS VII D*
- ☒ ☐ 41. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. R BPS VII E*, F*
- ☒ ☐ 42. Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. R BPS VII G

YES NO

- ☒ ☐ 43. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**
- ☒ ☐ 44. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. **R BPS VII G***
- ☒ ☐ 45. Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. **R BPS VII I**
- ☒ ☐ 46. The program requires at least 90 days clean to graduate. **B**
- ☒ ☐ 47. The minimum length of the program is twelve months. **B**
- ☒ ☐ 48. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. **R BPS IV J**
- ☒ ☐ 49. Jail sanctions are definite in duration and typically last no more than three to five days. **R BPS IV J**
- ☒ ☐ 50. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. **R BPS IV J**
- ☒ ☐ 51. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community. **R BPS IV K**
- ☒ ☐ 52. If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented disposition for failing to complete the program. **P BPS IV K***

- | YES | NO | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 53. The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.
B BPS V A |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 54. Standardized patient placement criteria govern the level of care that is provided. P BPS V A |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 55. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure. P BPS V A |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 56. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters. R BPS V B |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 57. Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction. P BPS V D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 58. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. P BPS V E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 59. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms. P BPS V E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 60. Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators. B BPS V E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 61. Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system. B BPS V F, BPS VI G |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 62. Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models. P BPS V F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 63. Treatment providers are licensed or certified to deliver substance abuse treatment. R BPS V H |

YES NO

- ☒ ☐ 64. Treatment providers have substantial experience working with criminal justice populations. **B BPS V H**
- ☒ ☐ 65. Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices. **P BPS V H**
- ☒ ☐ 66. Participants regularly attend self-help or peer support groups in addition to professional counseling. **P BPS V I**
- ☒ ☐ 67. The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models. **R BPS V I**
- ☒ ☐ 68. There is a secular alternative to 12-step peer support groups. **R**
- ☒ ☐ 69. Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy. **P BPS V I**
- ☒ ☐ 70. Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care. **R BPS V J**
- ☒ ☐ 71. Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court. **P BPS V J**
- ☒ ☐ 72. For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
- ☒ ☐ 73. Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services. **B BPS IX C**

- | YES | NO | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 74. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program. P BPS VI D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 75. Participants are not excluded from participation in Drug Court because they lack a stable place of residence. R BPS VI D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 76. Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders. B BPS VI E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 77. Participants diagnosed with mental illness receive mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program. R BPS VI E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 78. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). P BPS VI F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 79. Female participants receive trauma-related services in gender-specific groups. B BPS VI F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 80. All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. P BPS VI F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 81. Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court. R BPS VI I* |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 82. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court. P BPS VI I |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 83. Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court. B BPS VI I |

YES NO

- ☒ ☐ 84. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. **B BPS VI J**
- ☒ ☐ 85. Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose. **P BPS VI**
- ☒ ☐ 86. Clients are placed in the program within 50 days of shelter hearing. **P**
- ☒ ☐ 87. At a minimum, the attorney general, defense counsel, treatment representative, DCFS case worker, GAL and the judge attend each staffing meeting. **R BPS VIII B***
- ☒ ☐ 88. At a minimum, the attorney general, defense counsel, treatment representative, DCFS caseworker, GAL and the judge attend each Drug Court session. **R BPS VIII A***
- ☒ ☐ 89. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. **R BPS VIII B**
- ☒ ☐ 90. Team members are assigned to Drug Court for no less than two years. **P**
- ☒ ☐ 91. All team members use electronic communication to contemporaneously communicate about Drug Court issues. **P**
- ☒ ☐ 92. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. **R BPS VIII C**
- ☒ ☐ 93. Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. **B BPS VIII F**

YES NO

- ☒ ☐ 94. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts. **P BPS VIII F**
- ☒ ☐ 95. New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. **P BPS VIII F**
- ☒ ☐ 96. Court fees are reasonable and based on each participant's ability to pay. **R**
- ☒ ☐ 97. Treatment fees are based on a sliding fee schedule. **R**
- ☒ ☐ 98. The Drug Court has more than 15 but less than 125 active participants. **P BPS IX A***
- ☒ ☐ 99. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 100. The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B BPS X B***
- ☒ ☐ 101. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 102. A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years **P BPS X D**
- ☒ ☐

103. The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R BPS X D**

YES NO

- ☒ ☐ 104. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes. **B BPS X F**
- ☒ ☐ 105. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P BPS X G**
- ☒ ☐ 106. Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program. **B BPS X H**
- ☒ ☐ 107. The program conducts an exit interview for self improvement.
P

Court: Salt Lake County, West Jordan

Judge: Renteria

Date: February, 2019

Utah Dependency Drug Court Certification Checklist 2018

*Standards followed by an **R** are required features of a drug court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, and Volume II, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

YES NO

- | | | |
|--|----|--|
| <input checked="" type="checkbox"/> <input type="checkbox"/> | 1. | Eligibility and exclusion criteria are defined and applied objectively. R BPS I A |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | 2. | Eligibility and exclusion criteria are specified in writing. R BPS I A |
| <input checked="" type="checkbox"/> <input type="checkbox"/> | 3. | Eligibility and exclusion criteria are communicated to potential referral sources. P BPS I A |

YES NO

- | | | | |
|-------------------------------------|--------------------------|-----|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. | The program admits only participants who are high risk high need as measured by the RANT or some other approved and validated assessment tool, or participants who are at high risk for re-abusing the children and they are addicted to or dependent on a substance.
R BPS* I B |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 6. | Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.
R BPS I C |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 7. | Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. R BPS I C |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 8. | Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court. R BPS I D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 9. | Offenders with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court. R BPS I D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 10 | If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.
R BPS I D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 11. | The program has a written policy addressing medically assisted treatment. R |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 12. | The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. P BPS II B, BPS X |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 13. | The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. - P BPS II D |

YES NO

- ☒ ☐ 14. Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
- ☒ ☐ 15. The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
- ☒ ☐ 16. The judge presides over the Drug Court for no less than two consecutive years. **P BPS III B**
- ☒ ☐ 17. Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court. **R BPS III C**
- ☒ ☐ 18. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team. **R BPS III D**
- ☒ ☐ 19. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. **R BPS III E**
- ☒ ☐ 20. Status hearings are scheduled no less frequently than every four weeks until participants graduate. **R BPS* III E**
- ☒ ☐ 21. The Judge spends an average of at least three minutes with each participant. **P BPS* III F**
- ☒ ☐ 22. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. **R BPS III G**
- ☒ ☐ 23. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. **R BPS IV B**

YES NO

- ☒ ☐ 24. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. **R BPS III H, BPS VIII D**
- ☒ ☐ 25. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative. **R BPS III H, BPS VIII D**
- ☒ ☐ 26. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. **R BPS III H**
- ☒ ☐ 27. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members. **R BPS IV A**
- ☒ ☐ 28. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. **R BPS IV A**
- ☒ ☐ 29. The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
- ☒ ☐ 30. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**
- ☒ ☐ 31. Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance. **R BPS IV F**

YES NO

- ☒ ☐ 32. The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available. P BPS IV F
- ☒ ☐ 33. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. P BPS IV I
- ☒ ☐ 34. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. P BPS IV I
- ☒ ☐ 35. Drug testing is performed at least twice per week. R BPS VII A*
- ☒ ☐ 36. Drug testing is random, and is available on weekends and holidays. R BPS VII B*
- ☒ ☐ 37. Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day. P BPS VII B
- ☒ ☐ 38. Drug test results are available within 48 hours. P BPS VII H
- ☒ ☐ 39. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. P BPS VII B
- ☒ ☐ 40. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population. P BPS VII D*
- ☒ ☐ 41. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. R BPS VII E*, F*
- ☒ ☐ 42. Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. R BPS VII G

YES NO

- ☒ ☐ 43. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**
- ☒ ☐ 44. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. **R BPS VII G***
- ☒ ☐ 45. Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. **R BPS VII I**
- ☒ ☐ 46. The program requires at least 90 days clean to graduate. **B**
- ☒ ☐ 47. The minimum length of the program is twelve months. **B**
- ☒ ☐ 48. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. **R BPS IV J**
- ☒ ☐ 49. Jail sanctions are definite in duration and typically last no more than three to five days. **R BPS IV J**
- ☒ ☐ 50. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. **R BPS IV J**
- ☒ ☐ 51. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community. **R BPS IV K**
- ☒ ☐ 52. If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented disposition for failing to complete the program. **P BPS IV K***

- | YES | NO | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 53. The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.
B BPS V A |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 54. Standardized patient placement criteria govern the level of care that is provided. P BPS V A |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 55. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure. P BPS V A |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 56. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters. R BPS V B |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 57. Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction. P BPS V D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 58. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. P BPS V E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 59. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms. P BPS V E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 60. Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators. B BPS V E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 61. Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system. B BPS V F, BPS VI G |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 62. Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models. P BPS V F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 63. Treatment providers are licensed or certified to deliver substance abuse treatment. R BPS V H |

YES NO

- ☒ ☐ 64. Treatment providers have substantial experience working with criminal justice populations. **B BPS V H**
- ☒ ☐ 65. Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices. **P BPS V H**
- ☒ ☐ 66. Participants regularly attend self-help or peer support groups in addition to professional counseling. **P BPS V I**
- ☒ ☐ 67. The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models. **R BPS V I**
- ☒ ☐ 68. There is a secular alternative to 12-step peer support groups. **R**
- ☒ ☐ 69. Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy. **P BPS V I**
- ☒ ☐ 70. Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care. **R BPS V J**
- ☒ ☐ 71. Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court. **P BPS V J**
- ☒ ☐ 72. For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
- ☒ ☐ 73. Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services. **B BPS IX C**

- | YES | NO | |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 74. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program. P BPS VI D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 75. Participants are not excluded from participation in Drug Court because they lack a stable place of residence. R BPS VI D |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 76. Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders. B BPS VI E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 77. Participants diagnosed with mental illness receive mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program. R BPS VI E |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 78. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). P BPS VI F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 79. Female participants receive trauma-related services in gender-specific groups. B BPS VI F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 80. All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. P BPS VI F |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 81. Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court. R BPS VII* |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 82. Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court. P BPS VII |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 83. Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court. B BPS VII |

YES NO

- ☒ ☐ 84. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. **B BPS VI J**
- ☒ ☐ 85. Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose. **P BPS VI**
- ☒ ☐ 86. Clients are placed in the program within 50 days of shelter hearing. ~~**P**~~
- ☒ ☐ 87. At a minimum, the attorney general, defense counsel, treatment representative, DCFS case worker, GAL and the judge attend each staffing meeting. **R BPS VIII B***
- ☒ ☐ 88. At a minimum, the attorney general, defense counsel, treatment representative, DCFS caseworker, GAL and the judge attend each Drug Court session. **R BPS VIII A***
- ☒ ☐ 89. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. **R BPS VIII B**
- ☒ ☐ 90. Team members are assigned to Drug Court for no less than two years. **P**
- ☒ ☐ 91. All team members use electronic communication to contemporaneously communicate about Drug Court issues. **P**
- ☒ ☐ 92. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. **R BPS VIII C**
- ☒ ☐ 93. Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. **B BPS VIII F**

YES NO

- ☒ ☐ 94. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts. **P BPS VIII F**
- ☒ ☐ 95. New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. **P BPS VIII F**
- ☒ ☐ 96. Court fees are reasonable and based on each participant's ability to pay. **R**
- ☒ ☐ 97. Treatment fees are based on a sliding fee schedule. **R**
- ☐ ☒ 98. The Drug Court has more than 15 but less than 125 active participants. **P BPS IX A* NEWLY ESTABLISHED COURT**
- ☒ ☐ 99. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 100. The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B BPS X B***
- ☒ ☐ 101. The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 102. A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years. **P BPS X D**

- ☒ ☐ 103. The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R BPS X D**

YES NO

- ☒ ☐ 104. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes. **B BPS X F**
- ☒ ☐ 105. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P BPS X G**
- ☒ ☐ 106. Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program. **B BPS X H**
- ☒ ☐ 107. The program conducts an exit interview for self improvement. **P**

Court: Juan County, Nephi
 Judge: Howell
 Date: August, 2019

000098

UTAH JUDICIAL COUNCIL
ADULT DRUG COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED JANUARY 28, 2019

Many of the criteria enumerated in this certification checklist are restatements of the Adult Drug Court Best Practice Standards, Volume I and Volume II, published by the National Association of Drug Court Professionals (NADCP). Those are indicated by a citation in the BPS column following the standard. An asterisk indicates a modification of the NADCP standard.

YES NO		#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input checked="" type="checkbox"/>	£	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input checked="" type="checkbox"/>	£	3	The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool.	I.B.*
<input checked="" type="checkbox"/>	£	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/>	£	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
<input checked="" type="checkbox"/>	£	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
<input checked="" type="checkbox"/>	£	7	Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court.	I.D.
<input checked="" type="checkbox"/>	£	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.	I.D.
<input checked="" type="checkbox"/>	£	9	If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
<input checked="" type="checkbox"/>	£	10	The program has a written policy addressing medically assisted treatment.	
<input checked="" type="checkbox"/>	£	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
<input checked="" type="checkbox"/>	£	12	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.	III.D.
<input checked="" type="checkbox"/>	£	13	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.
<input checked="" type="checkbox"/>	£	14	Status hearings are scheduled no less frequently than every four weeks until participants graduate. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification</i>	BPS
<input checked="" type="checkbox"/>	£	15	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III.G.
<input type="checkbox"/>	£	16	If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV.B.
<input type="checkbox"/>	£	17	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III.H. VIII.D.
<input type="checkbox"/>	£	18	The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
<input checked="" type="checkbox"/>	£	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV.A.
<input type="checkbox"/>	£	21	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	IV.A.
<input checked="" type="checkbox"/>	£	22	The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
<input type="checkbox"/>	£	23	For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.	IV.E.
<input type="checkbox"/>	£	24	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited to alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV.F.
<input type="checkbox"/>	£	25	Drug testing is performed at least twice per week.	VII.A.*
<input type="checkbox"/>	£	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
<input type="checkbox"/>	£	27	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII.E* VII.F.*
<input type="checkbox"/>	£	28	Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
<input type="checkbox"/>	£	29	Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII.G.*

YES NO

☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £☒ £

#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
30	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
32	The minimum length of the program is twelve months.	
33	Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV.J.
34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
42	There is a secular alternative to 12-step peer support groups.	
43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

YES NO

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#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each Drug Court session.	VIII.A.*
49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII.B.
50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
51	Court fees are disclosed to each participant, are reasonable, and are based on each participant's ability to pay. Any fees assessed by the Drug Court must be reasonably related to the costs of testing or other services.	
52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
53	The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X.D.*
54	The Drug Court has written policies and procedures that ensure confidentiality and security of participant information, which conform to all applicable state and federal laws, including, but not limited to, Utah's Governmental Records Access and Management Act (GRAMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 42 C.F.R. 2 (Confidentiality of Substance Abuse Disorder Patient Records).	VIII.C.*

YES NO

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#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
2	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.
3	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
4	Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups.	II.F.
5	The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
6	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
7	The Judge spends an average of at least three minutes with each participant.	III.F.*
8	The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available.	IV.F.

YES NO

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PRESUMED CERTIFICATION CRITERIA		BPS
#	There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.	
9	Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time.	IV.I.
10	Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use.	IV.I.
11	Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day.	VII.B.*
12	Drug test results are available within 48 hours.	VII.H.
13	Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled.	VII.B.
14	Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population.	VII.D.
15	If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC/MS).	VII.G.
16	Standardized patient placement criteria govern the level of care that is provided.	V.A.
17	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure.	V.A.
18	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
19	Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program.	V.E.
20	Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms.	V.E.
21	Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.	V.F. VI.G
22	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
23	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
24	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
25	Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court.	V.J.
26	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program.	VI.D.

YES	NO	PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
<input checked="" type="checkbox"/>	£	27	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
<input checked="" type="checkbox"/>	£	28	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
<input checked="" type="checkbox"/>	£	29	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	30	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
<input checked="" type="checkbox"/>	£	31	Clients are placed in the program within 50 days of arrest.	
<input checked="" type="checkbox"/>	£	32	Team members are assigned to Drug Court for no less than two years.	
<input checked="" type="checkbox"/>	£	33	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
<input checked="" type="checkbox"/>	£	34	Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts.	VIII.F.
<input checked="" type="checkbox"/>	£	35	New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
<input checked="" type="checkbox"/>	£	36	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
<input checked="" type="checkbox"/>	£	37	The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions.	X.A.
<input checked="" type="checkbox"/>	£	38	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court.	X.C.
<input checked="" type="checkbox"/>	£	39	A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X		40	Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.	X.G.
		41	The program conducts an exit interview for self-improvement.	

YES	NO	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
<input checked="" type="checkbox"/>	£	1	The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.

YES	NO	#	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	BPS
<input type="checkbox"/>	£✓	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
<input checked="" type="checkbox"/>	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	£✓	4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
<input checked="" type="checkbox"/>	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
<input checked="" type="checkbox"/>	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
<input checked="" type="checkbox"/>	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
<input type="checkbox"/>	£✓	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	9	Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment.	VI.J.
<input checked="" type="checkbox"/>	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
<input checked="" type="checkbox"/>	£	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
<input checked="" type="checkbox"/>	£	12	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services.	IX.C.
<input checked="" type="checkbox"/>	£	13	The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals.	X.B.*
X		14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
		15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

✓

UTAH JUDICIAL COUNCIL
ADULT DRUG COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED JANUARY 28, 2019

Many of the criteria enumerated in this certification checklist are restatements of the Adult Drug Court Best Practice Standards, Volume I and Volume II, published by the National Association of Drug Court Professionals (NADCP). Those are indicated by a citation in the **BPS** column following the standard. An asterisk indicates a modification of the NADCP standard.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input checked="" type="checkbox"/>	£	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input checked="" type="checkbox"/>	£	3	The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool.	I.B.*
<input checked="" type="checkbox"/>	£	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/>	£	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
<input checked="" type="checkbox"/>	£	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
<input checked="" type="checkbox"/>	£	7	Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court.	I.D.
<input checked="" type="checkbox"/>	£	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.	I.D.
<input checked="" type="checkbox"/>	£	9	If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
<input checked="" type="checkbox"/>	£	10	The program has a written policy addressing medically assisted treatment.	
<input checked="" type="checkbox"/>	£	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
<input checked="" type="checkbox"/>	£	12	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.	III.D.
<input checked="" type="checkbox"/>	£	13	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.
<input checked="" type="checkbox"/>	£	14	Status hearings are scheduled no less frequently than every four weeks until participants graduate. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	15	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III.G.
<input type="checkbox"/>	£	16	If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV.B.
<input type="checkbox"/>	£	17	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III.H. VIII.D.
<input type="checkbox"/>	£	18	The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
<input checked="" type="checkbox"/>	£	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV.A.
<input type="checkbox"/>	£	21	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	IV.A.
<input checked="" type="checkbox"/>	£	22	The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
<input type="checkbox"/>	£	23	For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.	IV.E.
<input type="checkbox"/>	£	24	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited to alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV.F.
<input type="checkbox"/>	£	25	Drug testing is performed at least twice per week.	VII.A.*
<input type="checkbox"/>	£	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
<input type="checkbox"/>	£	27	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII.E* VII.F.*
<input type="checkbox"/>	£	28	Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
<input type="checkbox"/>	£	29	Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII.G.*

YES NO

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#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification</i>	BPS
30	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
32	The minimum length of the program is twelve months.	
33	Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV.J.
34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
42	There is a secular alternative to 12-step peer support groups.	
43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

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<input checked="" type="checkbox"/>	£	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII.B.
<input checked="" type="checkbox"/>	£	50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
<input checked="" type="checkbox"/>	£	51	Court fees are disclosed to each participant, are reasonable, and are based on each participant's ability to pay. Any fees assessed by the Drug Court must be reasonably related to the costs of testing or other services.	
<input checked="" type="checkbox"/>	£	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
<input checked="" type="checkbox"/>	£	53	The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X.D.*
<input checked="" type="checkbox"/>	£	54	The Drug Court has written policies and procedures that ensure confidentiality and security of participant information, which conform to all applicable state and federal laws, including, but not limited to, Utah's Governmental Records Access and Management Act (GRAMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 42 C.F.R. 2 (Confidentiality of Substance Abuse Disorder Patient Records).	VIII.C.*

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<input checked="" type="checkbox"/>	£	5	The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
<input checked="" type="checkbox"/>	£	6	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
<input checked="" type="checkbox"/>	£	7	The Judge spends an average of at least three minutes with each participant.	III.F.*
<input checked="" type="checkbox"/>	£	8	The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available.	IV.F.

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29	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
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NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS

These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.

BPS

1 The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.

V.A.

YES	NO	#	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS <i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	BPS
<input type="checkbox"/>	£✓	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
<input checked="" type="checkbox"/>	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	£✓	4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
<input checked="" type="checkbox"/>	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
<input checked="" type="checkbox"/>	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
<input checked="" type="checkbox"/>	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
<input type="checkbox"/>	£✓	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
<input checked="" type="checkbox"/>	£	9	Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment.	VI.J.
<input checked="" type="checkbox"/>	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
<input checked="" type="checkbox"/>	£	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
<input checked="" type="checkbox"/>	£	12	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services.	IX.C.
<input checked="" type="checkbox"/>	£	13	The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals.	X.B.*
X		14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
X		15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

✓

Court: Washington County, St
 Judge: George
 Date: Wilcox
 January, 2019

000112

UTAH JUDICIAL COUNCIL

ADULT DRUG COURT CERTIFICATION CHECKLIST

REVISED AND ADOPTED JANUARY 28, 2019

Many of the criteria enumerated in this certification checklist are restatements of the Adult Drug Court Best Practice Standards, Volume I and Volume II, published by the National Association of Drug Court Professionals (NADCP). Those are indicated by a citation in the BPS column following the standard. An asterisk indicates a modification of the NADCP standard.

YES NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/> £	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
<input checked="" type="checkbox"/> £	2	Eligibility and exclusion criteria are specified in writing.	I.A.
<input checked="" type="checkbox"/> £	3	The program admits only participants who are high-risk high-need as measured by the RANT or some other approved and validated assessment tool.	I.B.*
<input checked="" type="checkbox"/> £	4	Candidates for the Drug Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population.	I.C.
<input checked="" type="checkbox"/> £	5	Candidates for the Drug Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
<input checked="" type="checkbox"/> £	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
<input checked="" type="checkbox"/> £	7	Current or prior offenses may not disqualify candidates from participation in the Drug Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Drug Court.	I.D.
<input checked="" type="checkbox"/> £	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.	I.D.
<input checked="" type="checkbox"/> £	9	If adequate treatment is available, candidates are not disqualified from participation in the Drug Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
<input checked="" type="checkbox"/> £	10	The program has a written policy addressing medically assisted treatment.	
<input checked="" type="checkbox"/> £	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
<input checked="" type="checkbox"/> £	12	The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.	III.D.
<input checked="" type="checkbox"/> £	13	Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.
<input checked="" type="checkbox"/> £	14	Status hearings are scheduled no less frequently than every four weeks until participants graduate. In rural areas, some allowance may be made for other appearances or administrative reviews when the judge is unavailable.	III.E.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	15	The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments.	III.G.
<input checked="" type="checkbox"/>	£	16	If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations.	IV.B.
<input checked="" type="checkbox"/>	£	17	The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	18	The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
<input checked="" type="checkbox"/>	£	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
<input checked="" type="checkbox"/>	£	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members.	IV.A.
<input checked="" type="checkbox"/>	£	21	The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination.	IV.A.
<input checked="" type="checkbox"/>	£	22	The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
<input checked="" type="checkbox"/>	£	23	For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.	IV.E.
<input checked="" type="checkbox"/>	£	24	Consequences are imposed for the non-medically indicated use of intoxicating or addictive substances, including but not limited to alcohol, cannabis (marijuana) and prescription medications, regardless of the licit or illicit status of the substance.	IV.F.
<input checked="" type="checkbox"/>	£	25	Drug testing is performed at least twice per week.	VII.A.*
<input checked="" type="checkbox"/>	£	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
<input checked="" type="checkbox"/>	£	27	Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration.	VII.E* VII.F.*
<input checked="" type="checkbox"/>	£	28	Drug testing utilized by the Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
<input checked="" type="checkbox"/>	£	29	Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
<input checked="" type="checkbox"/>	£	30	Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
<input checked="" type="checkbox"/>	£	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
<input checked="" type="checkbox"/>	£	32	The minimum length of the program is twelve months.	
<input checked="" type="checkbox"/>	£	33	Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions.	IV.J.
<input checked="" type="checkbox"/>	£	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
<input checked="" type="checkbox"/>	£	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
<input checked="" type="checkbox"/>	£	36	Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are non-amenable to the treatments that are reasonably available in their community.	IV.K.
<input checked="" type="checkbox"/>	£	37	If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.	IV.K.
<input checked="" type="checkbox"/>	£	38	Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters.	V.B.
<input checked="" type="checkbox"/>	£	39	Treatment providers are licensed or certified to deliver substance abuse treatment, as required by the Department of Human Services or other relevant licensure or certification entity.	V.H.*
<input checked="" type="checkbox"/>	£	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
<input checked="" type="checkbox"/>	£	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
<input checked="" type="checkbox"/>	£	42	There is a secular alternative to 12-step peer support groups.	
<input checked="" type="checkbox"/>	£	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
<input checked="" type="checkbox"/>	£	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
<input checked="" type="checkbox"/>	£	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Drug Court and continuing as needed throughout their enrollment in the program.	VI.E.*
<input checked="" type="checkbox"/>	£	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of drug court.	VI.I.*
<input checked="" type="checkbox"/>	£	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each staffing meeting.	VIII.B.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
✓	£	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem (in dependency courts), and the judge attend each Drug Court session.	VIII.A.*
✓	£	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case.	VIII.B.
✓	£	50	Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements.	VIII.C.
✓	£	51	Court fees are disclosed to each participant, are reasonable, and are based on each participant's ability to pay. Any fees assessed by the Drug Court must be reasonably related to the costs of testing or other services.	
✓	£	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
✓	£	53	The Drug Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices.	X.D.*
✓	£	54	The Drug Court has written policies and procedures that ensure confidentiality and security of participant information, which conform to all applicable state and federal laws, including, but not limited to, Utah's Governmental Records Access and Management Act (GRAMA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and 42 C.F.R. 2 (Confidentiality of Substance Abuse Disorder Patient Records).	VIII.C.*

YES	NO	#	PRESUMED CERTIFICATION CRITERIA <i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	BPS
✓	£	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
	X	2	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.
X	£	3	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
✓	£	4	Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups.	II.F.
✓	£	5	The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
✓	£	6	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
		7	The Judge spends an average of at least three minutes with each participant.	III.F.*
X		8	The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available.	IV.F.

YES	NO	PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
<input checked="" type="checkbox"/>	£	9	Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time.	IV.I.
<input checked="" type="checkbox"/>	£	10	Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use.	IV.I.
<input checked="" type="checkbox"/>	£	11	Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day.	VII.B.*
<input checked="" type="checkbox"/>	£	12	Drug test results are available within 48 hours.	VII.H.
<input checked="" type="checkbox"/>	£	13	Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled.	VII.B.
<input checked="" type="checkbox"/>	£	14	Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Drug Court population.	VII.D.
<input checked="" type="checkbox"/>	£	15	If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC/MS).	VII.G.
<input checked="" type="checkbox"/>	£	16	Standardized patient placement criteria govern the level of care that is provided.	V.A.
<input checked="" type="checkbox"/>	£	17	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Drug Court's programmatic phase structure.	V.A.
<input checked="" type="checkbox"/>	£	18	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
<input checked="" type="checkbox"/>	£	19	Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program.	V.E.
<input checked="" type="checkbox"/>	£	20	Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and co-occurring psychiatric symptoms.	V.E.
<input checked="" type="checkbox"/>	£	21	Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.	V.F. VI.G
<input checked="" type="checkbox"/>	£	22	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
<input checked="" type="checkbox"/>	£	23	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
<input checked="" type="checkbox"/>	£	24	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
<input checked="" type="checkbox"/>	£	25	Participants prepare a continuing-care plan together with their counselor to ensure they continue to engage in pro-social activities and remain connected with a peer support group after their discharge from the Drug Court.	V.J.
X		26	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Drug Court and continuing as necessary throughout their enrollment in the program.	VI.D.

YES	NO	PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
✓	£	27	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
✓	£	28	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
✓	£	29	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
✓	£	30	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
✓	£	31	Clients are placed in the program within 50 days of arrest.	
✓	£	32	Team members are assigned to Drug Court for no less than two years.	
		33	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
✓	£	34	Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Drug Courts.	VIII.F.
✓	£	35	New staff hires receive a formal orientation training on the Drug Court model and best practices in Drug Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
✓	£	36	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
		37	The Drug Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions.	X.A.
✓	£	38	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Drug Court.	X.C.
✓	£	39	A skilled and independent evaluator examines the Drug Court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X		40	Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.	X.G.
X		41	The program conducts an exit interview for self-improvement.	

YES	NO	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
X		1	The Drug Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.

YES	NO	NON-CERTIFICATION-RELATED BEST PRACTICE STANDARDS		BPS
		#	<i>These are best practice standards that research has shown will produce better outcomes. Failure to meet these standards will not result in decertification.</i>	
	X	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
✓	£	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
	X	4	For at least the first ninety days after discharge from the Drug Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated.	V.J.
✓	£	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Drug Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
✓	£	6	Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety.	VI.F.
✓	£	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
✓	£	8	Participants are required to have a stable job, be enrolled in a vocational or educational program, or be engaged in comparable pro-social activity as a condition of graduating from Drug Court.	VI.I.
✓	£	9	Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment.	VI.J.
✓	£	10	Before starting a Drug Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program.	VIII.F.
✓	£	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
✓	£	12	Caseloads for clinicians must permit sufficient opportunities to assess participant needs and deliver adequate and effective dosages of substance abuse treatment and indicated complementary services.	IX.C.
X		13	The Drug Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals.	X.B.*
X		14	Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Drug Court's adherence to best practices and in-program outcomes.	X.F.
X		15	Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.

✓

Court: Washington County, St George

Judge: Westfall

Date: February, 2019

Utah Mental Health Court Certification Checklist 2018

*Standards followed by an **R** are required features of a mental health court, and adherence to these standards is required for certification. Standards followed by a **P** indicates a standard where there is a presumption that it must be met, but if the program can show sufficient compensating measures or a structural inability to meet the standard, it may be waived. Standards followed by a **B** are best practice standards that represent practices that research has shown to produce better outcomes, but failure to meet these standards will not result in decertification.*

Many of these standards are direct restatements of the Adult Drug Court Best Practice Standards, Volume I, and Volume II, National Association of Drug Court Professionals. Those are indicated by a BPS following the standard, and the citation to the section of the document in which the standard is found. An asterisk indicates a modification of the NADCP standard.

YES NO


☐

1. Eligibility and exclusion criteria are defined and applied objectively.
BPS I A

R


☐

2. Eligibility and exclusion criteria are specified in writing.

R BPS I A


☐

3. Eligibility and exclusion criteria are communicated to potential referral sources.
P BPS I A

YES NO

- ☒ ☐ 4. Candidates for the Mental Health Court are assessed for eligibility using validated risk-assessment tool that has been demonstrated empirically to predict criminal recidivism or failure on community supervision and is equivalently predictive for women and racial or ethnic minority groups that are represented in the local arrestee population. **R BPS I C**
- ☒ ☐ 5. Candidates for the Mental Health Court are assessed for eligibility using a validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction and a validated clinical assessment tool that produces a mental health diagnosis. **R BPS* I C**
- ☒ ☐ 6. Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results. **R BPS I C**
- ☒ ☐ 7. Current or prior offenses may disqualify candidates from participation in the Mental Health Court if empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental Health Court. **R BPS I D**
- ☐ ☒ 8. The Mental Health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants. **P BPS II B, BPS X E**
- ☒ ☐ 9. The Mental Health Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. **P BPS II D**
- ☒ ☐ 10. Each member of the Mental Health Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups. **P BPS II F**
- ☒ ☐ 11. The Mental Health Court judge attends current training events on legal and constitutional issues in Mental Health Courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. **P BPS III A**
- ☒ ☐ 12. The judge presides over the Mental Health Court for no less than two consecutive years. **P BPS III B**
- ☒ ☐ 13. Participants ordinarily appear before the same judge throughout their enrollment in the Mental Health Court. **R BPS III C**

YES NO

- ☒ ☐ 14. The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Mental Health Court team. R BPS III D
- ☒ ☐ 15. Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. R BPS III E
- ☒ ☐ 16. Status hearings are scheduled no less frequently than every four weeks until participants graduate. R BPS* III E
- ☒ ☐ 17. The Judge spends an average of at least three minutes with each participant. P BPS* III F
- ☒ ☐ 18. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments. R BPS III G
- ☒ ☐ 19. If a participant has difficulty expressing him or herself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. R BPS IV B
- ☒ ☐ 20. The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. R BPS III H, BPS VIII D
- ☒ ☐ 21. The judge makes these decisions after taking into consideration the input of other Mental Health Court team members and discussing the matter in court with the participant or the participant's legal representative. R BPS III H, BPS VIII D
- ☒ ☐ 22. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions. R BPS III H
- ☒ ☐ 23. Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Mental Health Court participants and team members. R BPS IV A
- ☒ ☐ 24. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. R BPS IV A

YES NO

- ☒ ☐ 25. The Mental Health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. **R BPS IV A**
- ☒ ☐ 26. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions. **R BPS IV A**
- ☒ ☐ 27. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives. **P BPS IV I**
- ☒ ☐ 28. Drug testing is random, and is available on weekends and holidays. **R BPS VII B***
- ☒ ☐ 29. Drug test results are available within 48 hours. **P BPS VII H**
- ☒ ☐ 30. Participants are required to deliver a test specimen within 8 hours of being notified that a drug or alcohol test has been scheduled. **P BPS VII B**
- ☒ ☐ 31. Randomly selected specimens are tested periodically for a broader range of substances to detect any new drugs of abuse that might be emerging in the Mental Health Court population. **P BPS VII D***
- ☒ ☐ 32. Collection of test specimens is witnessed and specimens are examined routinely for evidence of dilution, tampering and adulteration. **R BPS VII E*, F***
- ☒ ☐ 33. Drug testing utilized by the Mental Health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. **R BPS VII G**
- ☒ ☐ 34. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC-MS). **P BPS VII G**
- ☒ ☐ 35. Metabolite levels falling below industry- or manufacturer-recommended cutoff scores are not interpreted as evidence of new substance use or changes in substance use patterns, unless such conclusions are reached by an expert trained in toxicology, pharmacology or a related field. **R BPS VII G***

YES NO

- ☒ ☐ 36. Upon entering the Mental Health Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing. **R BPS VII I**
- ☒ ☐ 37. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. **R BPS IV J**
- ☒ ☐ 38. Jail sanctions are definite in duration and typically last no more than three to five days. **R BPS IV J**
- ☒ ☐ 39. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed. **R BPS IV J**
- ☒ ☐ 40. If a participant is terminated from the Mental Health Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program. **R BPS IV K**
- ☒ ☐ 41. The Mental Health Court offers a continuum of care for mental health treatment, and substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services. **B BPS V A**
- ☒ ☐ 42. Standardized patient placement criteria govern the level of care that is provided. **P BPS V A**
- ☒ ☐ 43. Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Mental Health Court's programmatic phase structure. **P BPS V A**
- ☒ ☐ 44. Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to mental health services, detoxification services or sober living quarters. **R BPS V B***
- ☒ ☐ 45. Participants meet with a treatment provider or clinical case manager for at least one individual session per week during the first phase of the program. **B BPS V E**
- ☒ ☐ 46. Participants are screened for their suitability for group interventions, and group membership is guided by evidence-based selection criteria including participants' gender, trauma histories and psychiatric symptoms. **P BPS V E***
- ☒ ☐ 47. Participants with co-occurring substance abuse issues regularly attend self-help or peer support groups in addition to professional counseling. **R BPS V I**

YES NO

- ☒ ☐ 48. For at least the first ninety days after discharge from the Mental Health Court, treatment providers or clinical case managers attempt to contact previous participants periodically by telephone, mail, e-mail, or similar means to check on their progress, offer brief advice and encouragement, and provide referrals for additional treatment when indicated. **B BPS V J**
- ☒ ☐ 49. Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Mental Health Court and continuing as necessary throughout their enrollment in the program. **P BPS VI D**
- ☒ ☐ 50. Participants are not excluded from participation in Mental Health Court because they lack a stable place of residence. **R BPS VI D**
- ☒ ☐ 51. Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD). **P BPS VI F**
- ☒ ☐ 52. Participants with PTSD or severe trauma-related symptoms are evaluated for their suitability for group interventions and are treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. **B BPS VI F**
- ☒ ☐ 53. Female participants receive trauma-related services in gender-specific groups. **B BPS VI F**
- ☒ ☐ 54. All Mental Health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services. **P BPS VI F**
- ☒ ☐ 55. Participants receive immediate medical or dental treatment for conditions that are life-threatening, cause serious pain or discomfort, or may lead to long-term disability or impairment. **B BPS VI J**
- ☒ ☐ 56. Clients are placed in the program within 50 days of arrest. **P**
- ☒ ☐ 57. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each staffing meeting. **R BPS VIII B***
- ☒ ☐ 58. At a minimum, the prosecutor, defense counsel, treatment representative, law enforcement and the judge attend each Mental Health Court session. **R BPS VIII A***
- ☒ ☐ 59. Pre-court staff meetings are presumptively closed to participants and the public unless the court has a good reason for a participant to attend discussions related to that participant's case. **R BPS VIII B**

YES NO

- ☒ ☐ 60. Team members are assigned to Mental Health Court for no less than two years. **P**
- ☒ ☐ 61. All team members use electronic communication to contemporaneously communicate about Mental Health Court issues. **P**
- ☒ ☐ 62. Participants provide voluntary and informed consent permitting team members to share specified data elements relating to participants' progress in treatment and compliance with program requirements. **R BPS VIII C**
- ☒ ☐ 63. Before starting a Mental Health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Drug Courts and develop fair and effective policies and procedures for the program. **B BPS VIII F**
- ☒ ☐ 64. Subsequently, team members attend continuing education workshops on at least an annual basis to gain up-to-date knowledge about best practices on topics including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision making, and constitutional and legal issues in Mental Health Courts. **P BPS VIII F**
- ☒ ☐ 65. New staff hires receive a formal orientation training on the Mental Health Court model and best practices in Mental Health Courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter. **P BPS VIII F**
- ☒ ☐ 66. Court fees are reasonable and based on each participant's ability to pay. **R**
- ☒ ☐ 67. Treatment fees are based on a sliding fee schedule. **R**
- ☒ ☐ 68. The Mental Health Court monitors its adherence to best practice standards on at least an annual basis, develops a remedial action plan and timetable to rectify deficiencies, and examines the success of the remedial actions. **P BPS X A**
- ☒ ☐ 69. The Mental Health Court continually monitors participant outcomes during enrollment in the program, including attendance at scheduled appointments, drug and alcohol test results, graduation rates, lengths of stay, and in-program technical violations and new arrests or referrals. **B BPS X B***

YES NO

- ☒ ☐ 70. New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental Health Court. **P**
BPS X C
- ☒ ☐ 71. A skilled and independent evaluator examines the Mental Health Court's adherence to best practices and participant outcomes no less frequently than every five years. **P** BPS X D
- ☒ ☐ 72. The Mental Health Court develops a remedial action plan and timetable to implement recommendations from the evaluator to improve the program's adherence to best practices. **R** BPS X D
- ☒ ☐ 73. Information relating to the services provided and participants' in-program performance is entered into an electronic database. Statistical summaries from the database provide staff with real-time information concerning the Mental Health Court's adherence to best practices and in-program outcomes. **B** BPS X F
- ☒ ☐ 74. Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events. **P** BPS X G
- ☒ ☐ 75. Outcomes are examined for all eligible participants who entered the Mental Health Court regardless of whether they graduated, withdrew, or were terminated from the program. **B** BPS X H
- ☒ ☐ 76. The program conducts an exit interview for self improvement. **P**

Tab 4



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council Members
FROM: Michael C. Drechsel, Associate General Counsel – AOC
DATE: Wednesday, August 14, 2019
RE: CJA 1-204 – Executive committees – For Final Approval
CJA 3-402 – Human resources administration – For Final Approval

On May 20, 2019, the Judicial Council approved these two rules to be published for public comment. No comments were received in relation to CJA 1-204. Three comments were received in relation to CJA 3-402. Each of those three comments recommended that the Human Resources Policy and Procedure Review Committee (HR Review Committee) membership be modified to include a "Chief Probation Officer." Policy and Planning considered these public comments and agreed that it is advisable that the committee membership include a Chief Probation Officer instead of a Probation Supervisor. Chief Probation Officers deal with HR issues more frequently than Probation Supervisors. In addition, the position of Chief Probation Officer equates better with other members of the committee (TCEs, Clerks of Court, etc.). Policy and Planning consulted with the Juvenile Court Administrator on this matter, who agreed that this is a positive change to the rule.

A redline version of the rules and the public comments are attached to this memorandum.

Policy and Planning recommends that the revised versions of both CJA 3-402 and CJA 1-204 be adopted with September 1, 2019 effective dates.¹

¹ The September 1, 2019 effective date is necessary so that the HR Review Committee can immediately and officially begin its work to assist Policy and Planning in review of, and proposed revisions to, the Courts' HR policies.

Rule 1-204. Executive committees.**Intent:**

- To establish executive committees of the Council.
- To identify the responsibility and authority of the executive committees.
- To identify the membership and composition of the executive committees.
- To establish procedures for executive committee meetings.

Applicability:

- This rule shall apply to the judiciary.

Statement of the Rule:

- (1) The following executive committees of the Council are hereby established: (a) the Management Committee; (b) the Policy and Planning Committee; and (c) the Liaison Committee.
- (2) The Management Committee shall be comprised of at least four Council members, one of whom shall be the Presiding Officer of the Council. Three Committee members constitute a quorum. The Presiding Officer of the Council or Presiding Officer's designee shall serve as the Chair. When at least three members concur, the Management Committee is authorized to act on behalf of the entire Council when the Council is not in session and to act on any matter specifically delegated to the Management Committee by the Council. The Management Committee is responsible for managing the agenda of the Council consistently with Rule 2-102 of this Code. The Management Committee is responsible for deciding procurement protest appeals.
- (3) The Policy and Planning Committee shall recommend to the Council new and amended rules for the Code of Judicial Administration. The committee shall recommend to the Council new and amended policies, or repeals, and for the Human Resource Policies and Procedures Manual, pursuant to Rule 3-402. The committee shall recommend to the Council periodic and long term planning efforts as necessary for the efficient administration of justice. The committee shall research and make recommendations regarding any matter referred by the Council.
- (4) The Liaison Committee shall recommend to the Council legislation to be sponsored by the Council. The committee shall review legislation affecting the authority, jurisdiction, organization or administration of the judiciary. When the exigencies of the legislative

- 32 process preclude full discussion of the issues by the Council, the Committee may endorse
33 or oppose the legislation, take no position or offer amendments on behalf of the Council.
- 34 (5) Members of the executive committees must be members of the Council. Each executive
35 committee shall consist of at least three members appointed by the Council to serve at its
36 pleasure. The members of the Policy and Planning Committee and the Liaison Committee
37 shall elect their respective chairs annually and select a new chair at least once every two
38 years.
- 39 (6) Each committee shall meet as often as necessary to perform its responsibilities, but a
40 minimum of four times per year. Each committee shall report to the Council as necessary.
- 41 (7) The Administrative Office shall serve as the secretariat to the executive committees.

42 *Effective May/November 1, 20____*

Rule 3-402. Human resources administration.**Intent:**

To establish guidelines for the administration of a human resources system for the judiciary.

Applicability:

This rule shall apply to all state employees in the judicial branch.

Statement of the Rule:

(1) A department of human resources is established within the Administrative Office to direct and coordinate the human resources activities of the judiciary.

(2) The department of human resources shall provide the necessary human resources services to the judiciary in compliance with the state constitution, state statute, and this Code. The department of human resources shall keep all state employees in the judicial branch informed of benefits, compensation, retirement, and other human resources related matters.

(3) The human resources policies and procedures for non-judicial employees:

(3)(A) shall include classification of exempt and non-exempt positions, guidelines governing recruitment, selection, classification, compensation, working conditions, grievances and other areas deemed necessary; and

(3)(B) shall be based upon the following merit principles:

(3)(B)(i) The recruitment, selection and promotion of employees ~~is~~-based upon relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment.

(3)(B)(ii) A salary schedule which provides for equitable and adequate compensation based upon studies conducted every three years of the salary levels of comparable positions in both the public and private sector and available funds.

(3)(B)(iii) Employee retention on the basis of adequate performance. Where appropriate, provision will be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.

(3)(B)(iv) Fair treatment in all aspects of human resources administration without regard to race, color, religion, sex, national origin, age, creed,

disability, political affiliation or other non-merit factors and proper regard for employees' constitutional and statutory rights as citizens.

(3)(B)(v) Notification to employees and an explanation of their political rights and prohibited employment practices.

(4) The state court level administrator shall be responsible for the day-to-day administration of the human resources system within that court level. A director of human resources, appointed by the State Court Administrator, shall be responsible for directing and coordinating the human resources activities of the human resources system and will assist the state level administrators and court executives with human resources related matters.

(5) Human resources policies and procedures and a Code of Ethics for non-judicial employees shall be adopted by the Council in accordance with the rulemaking provisions of this Code and shall be reviewed every three years.

(5)(A) There is established a human resources policy and procedure review committee responsible for making and reviewing proposals for repealing human resources policies and procedures and promulgating new and amended human resources policies and procedures. The committee shall consist of the following voting members, which, where indicated, must be selected by majority vote of the entire body of the specified group:

(5)(A)(i) the director of human resources;

(5)(A)(ii) two trial court executives, selected by the trial court executives;

~~(5)(A)(iii) a district court clerk of court;~~

~~(5)(A)(iv)~~ (5)(A)(iii) a juvenile court clerk of court; three clerks of court (one juvenile, one district, and one appellate), selected by the clerks of court;

~~(5)(A)(v)~~ (5)(A)(iv) a probation supervisor/chief probation officer from the juvenile court, selected by the chief probation officers; and

~~(5)(A)(vi)~~ (5)(A)(v) an assistant clerk of court from the district court or circuit court a case manager, selected by the clerks of court.

(5)(B) The chair of the committee shall be designated by the ~~director in consultation with the~~ state court administrator. Other members of the committee shall be appointed in a manner consistent with Rule 1-205. The department of human resources shall provide necessary support to the committee. Other non-voting members may be assigned by the Policy and Planning Committee, as necessary to assist the committee.

- (5)(C) Pursuant to Rule 1-204, New and amended policies and procedures, or repeals,
recommended by the committee shall be reviewed ~~by the court executives~~by the
Policy and Planning Committee prior to being submitted by the Policy and
Planning Committee to the Judicial Council. ~~The Court Executives may endorse~~
~~or amend the draft policies and procedures or return the draft policies and~~
~~procedures to the committee for further consideration.~~
- (6) A grievance review panel is established within the grievance process to sit as a quasi-judicial body and review any action taken under the authority of the judiciary's human resources procedures and which pertains to employee promotions, dismissals, demotions, wages, salary, violations of human resources rules, benefits, reductions in force and disciplinary actions.
- (7) An official human resources file for each employee shall be maintained in the Administrative Office and shall include the following records: leave records, education records, biographical information, performance plans and appraisals, records of official human resources action, records of official disciplinary action and supporting documentation, letters of commendation, job applications and payroll and benefits information.

Effective May/November 1, 20____

PUBLIC COMMENTS:

I would recommend that a chief of probation be added to the committee roster. That individual could be chosen by the chiefs' group.

Virginia Highfield, Chief Probation Officer (2nd District Juvenile Court) - May 22, 2019 at 11:53 am

I would suggest that a Chief Probation Officer should be in the place of the probation supervisor. Chief Probation Officers communicate more often with Human Resources on personnel matters and many Chief Probation Officers act not only as Chiefs, but as the role of a supervisor in many districts. Chief Probation Officers work with HR on job announcements and work closely with Trial Court Executives on personnel matters.

Ron Shepherd, Chief Probation Officer (3rd District Juvenile Court) - May 22, 2019 at 12:12 pm

I would recommend under the section about committee voting members to add an additional voting member of a Chief Probation Officer (to be selected by the Chiefs)

Shelly Waite, Trial Court Executive (4th District Juvenile Court) - May 22, 2019 at 1:12 pm



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council Members
FROM: Michael C. Drechsel, Assistant State Court Administrator
DATE: Wednesday, August 14, 2019
RE: CJA 4-202.03 – Records Access – For Final Approval

On May 20, 2019, the Judicial Council authorized this rule to be published for public comment. No comments were received. Policy and Planning recommends that this amendment be adopted by the Judicial Council with a November 1, 2019 effective date.

CJA 4-202.03 outlines the categories of individuals who can access various court records. Currently, CJA 4-202.03(6)(E) permits a victim to access the disposition order. The "disposition order" is the juvenile court equivalent of a sentencing order in an adult criminal case. The contents of a disposition order are outlined in Utah Code §78A-6-117(2).

Although victims can currently access these disposition orders, some victims are still minors themselves. This amendment would permit the parent or guardian of a minor victim to access the disposition order in the same way that any victim (including a minor victim) already can.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

Rule 4-202.03. Records Access.**Intent:**

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

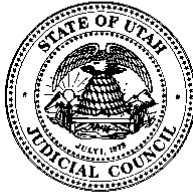
Statement of the Rule:

- (1) **Public Court Records.** Any person may access a public court record.
- (2) **Sealed Court Records.** An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. Otherwise, no one may access a sealed court record except by order of the court. A judge may review a sealed record when the circumstances warrant.
- (3) **Private Court Records.** The following may access a private court record:
 - (3)(A) the subject of the record;
 - (3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;
 - (3)(C) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;
 - (3)(D) an interested person to an action under the Uniform Probate Code;
 - (3)(E) the person who submitted the record;
 - (3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;
 - (3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;
 - (3)(H) anyone by court order;
 - (3)(I) court personnel, but only to achieve the purpose for which the record was submitted;
 - (3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and
 - (3)(K) a governmental entity with which the record is shared under Rule 4-202.10.
- (4) **Protected Court Records.** The following may access a protected court record:
 - (4)(A) the person or governmental entity whose interests are protected by closure;

- (4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;
 - (4)(C) the person who submitted the record;
 - (4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;
 - (4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;
 - (4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;
 - (4)(G) anyone by court order;
 - (4)(H) court personnel, but only to achieve the purpose for which the record was submitted;
 - (4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and
 - (4)(J) a governmental entity with which the record is shared under Rule 4-202.10.
- (5) **Juvenile Court Social Records.** The following may access a juvenile court social record:
- (5)(A) the subject of the record, if 18 years of age or over;
 - (5)(B) a parent or guardian of the subject of the record if the subject is an unemancipated minor;
 - (5)(C) an attorney or person with power of attorney for the subject of the record;
 - (5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;
 - (5)(E) the subject of the record's therapists and evaluators;
 - (5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

- (5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;
- (5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;
- (5)(I) court personnel, but only to achieve the purpose for which the record was submitted;
- (5)(J) a governmental entity with which the record is shared under Rule 4-202.10;
- (5)(K) the person who submitted the record;
- (5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and
- (5)(M) anyone by court order.
- (5)(N) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:
 - (5)(N)(i) the subject of the record, if age 18 or over;
 - (5)(N)(ii) an attorney or person with power of attorney for the subject of the record;
 - (5)(N)(iii) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;
 - (5)(N)(iv) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;
 - (5)(N)(v) court personnel, but only to achieve the purpose for which the record was submitted;
 - (5)(N)(vi) anyone by court order.
- (5)(O) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

- (6) **Juvenile Court Legal Records.** The following may access a juvenile court legal record:
- (6)(A) all who may access the juvenile court social record;
 - (6)(B) a law enforcement agency;
 - (6)(C) a children's justice center;
 - (6)(D) public or private individuals or agencies providing services to the subject of the record or to the subject's family; ~~and~~
 - (6)(E) the victim of a delinquent act may access the disposition order entered against the ~~defendant-minor~~; and
 - (6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.
- (7) **Safeguarded Court Records.** The following may access a safeguarded record:
- (7)(A) the subject of the record;
 - (7)(B) the person who submitted the record;
 - (7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;
 - (7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;
 - (7)(E) anyone by court order;
 - (7)(F) court personnel, but only to achieve the purpose for which the record was submitted;
 - (7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;
 - (7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and
 - (7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.
- (8) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.
- (9) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Cathy Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council Members
FROM: Michael C. Drechsel, Assistant State Court Administrator
DATE: Wednesday, August 14, 2019
RE: CJA 4-903 – Uniform custody evaluations – For Final Approval

On May 20, 2019, the Judicial Council approved this rule for public comment. The proposed rule received 33 public comments during the comment period. Policy and Planning recommends that the Judicial Council adopt the amended version of CJA 4-903 (which version has been modified as a result of public comments received) with a November 1, 2019 effective date.

On the issue of **adding “Licensed Clinical Mental Health Counselor” to the list of professionals** who are qualified to conduct custody evaluations, the comments were unanimously in support (26 comments). Policy and Planning discussed these comments. No changes were made to the version of the rule published for public comment as a result of these comments.

On the issue of **removing the list of factors required to be considered by the custody evaluator**, the comments were unanimously opposed (seven comments). Policy and Planning discussed these public comments. Policy and Planning weighed the benefits of having the factors in the rule against the drawback of having to constantly amend the rule each time the legislature added a new custody factor to the Utah Code. As a compromise position, Policy and Planning prepared a version of the rule that contains a citation to relevant statutes as a reference for custody evaluators. The legislature went to great efforts to consolidate many of the relevant factors into a single statute last session (see [HB0035 “Custody and Parent-time Revisions”](#)). This approach provides direction to custody evaluators regarding all factors that have historically existed in Rule 4-903, but also avoids having to amend the rule each time the Legislature adds an additional custody factor to the statute.

A redline version of the rule and all public comments are attached to this memorandum.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

Rule 4-903. Uniform custody evaluations.**Intent:**

To establish uniform guidelines for the performance of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

(1) Custody evaluations shall be performed by professionals who have specific training in child development, and who are licensed by the Utah Department of Occupational and Professional Licensing as either a ~~(a) Licensed Clinical Social Worker, (b) Licensed Psychologist, (c) Licensed Physician who is board certified in psychiatry, or (d) Licensed Marriage and Family Therapist.~~

(1)(A) Licensed Clinical Social Worker;

(1)(B) Licensed Psychologist;

(1)(C) Licensed Physician who is board certified in psychiatry;

(1)(D) Licensed Marriage and Family Therapist; or

(1)(E) Licensed Clinical Mental Health Counselor.

(2) Every motion or stipulation for the performance of a custody evaluation shall include:

(2)(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(2)(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(2)(C) specific factors, if any, to be addressed in the evaluation.

(3) Every order requiring the performance of a custody evaluation shall:

(3)(A) require the parties to cooperate as requested by the evaluator;

(3)(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(3)(C) assign responsibility for payment from the beginning of the evaluation through the custody evaluation conference, as well as the costs of the written report if requested;

(3)(D) specify dates for commencement and completion of the evaluation;

- 32 (3)(E) specify any additional factors to be addressed in the evaluation;
- 33 (3)(F) require the evaluator to provide written notice to the court, counsel and parties
- 34 within five business days of completion (of information-gathering) or termination
- 35 of the evaluation and, if terminated, the reason;
- 36 (3)(G) require counsel and parties to complete a custody evaluation conference with the
- 37 court and the evaluator within 45 days of notice of completion (of information
- 38 gathering) or termination unless otherwise directed by the court so that evaluator
- 39 may issue a verbal report; and
- 40 (3)(H) require that any party wanting a written custody evaluation report give written
- 41 notice to the evaluator within 45 days after the custody evaluation conference.
- 42 (4) The purpose of the custody evaluation will be to provide the court with information it can
- 43 use to make decisions regarding custody and parenting time arrangements that are in the
- 44 child's best interest. Unless otherwise specified in the order, evaluators must consider and
- 45 respond to ~~each of the following custody factors set forth in Utah Code sections 30-3-10~~
- 46 ~~and 30-3-10.2.:~~
- 47 ~~(4)(A) — the developmental needs of the child (including, but not limited to, physical,~~
- 48 ~~emotional, educational, medical and any special needs), and the parents'~~
- 49 ~~demonstrated understanding of, responsiveness to, and ability to meet, those~~
- 50 ~~needs.~~
- 51 ~~(4)(B) — the stated wishes and concerns of each child, taking into consideration the child's~~
- 52 ~~cognitive ability and emotional maturity.~~
- 53 ~~(4)(C) — the relative benefit of keeping siblings together;~~
- 54 ~~(4)(D) — the relative strength of the child's bond with the prospective custodians, meaning~~
- 55 ~~the depth, quality and nature of the relationship between a prospective custodian~~
- 56 ~~and child;~~
- 57 ~~(4)(E) — previous parenting arrangements where the child has been happy and well~~
- 58 ~~adjusted;~~
- 59 ~~(4)(F) — factors relating to the prospective custodians' character and their capacity and~~
- 60 ~~willingness to function as parents, including:~~
- 61 ~~(4)(F)(i) — parenting skills~~
- 62 ~~(4)(F)(ii) — co-parenting skills (including, but not limited to, the ability to facilitate~~
- 63 ~~the child's relationship with the other parent, and to appropriately~~
- 64 ~~communicate with the other parent);~~
- 65 ~~(4)(F)(iii) — moral character;~~

~~(4)(F)(iv) — emotional stability;~~
~~(4)(F)(v) — duration and depth of desire for custody and parent time;~~
~~(4)(F)(vi) — ability to provide personal rather than surrogate care;~~
~~(4)(F)(vii) — significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;~~
~~(4)(F)(viii) — reasons for having relinquished custody or parent time in the past;~~
~~(4)(F)(ix) — religious compatibility with the child;~~
~~(4)(F)(x) — the child's interaction and relationship with the child's step-parent(s), extended family members, and/or any other person who may significantly affect the child's best interest;~~
~~(4)(F)(xi) — financial responsibility;~~
~~(4)(F)(xii) — evidence of abuse of the subject child, another child, or spouse;~~
~~(4)(G) — factors affecting a determination for joint legal and/or physical custody as set forth in Utah Code 30-3-10.2; and~~
~~any other factors deemed important by the evaluator, the parties, or the court.~~

- (5) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).
- (6) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.

Effective May/November 1, 20__

1) COMMENTS RE: ADDING LICENSED CLINICAL MENTAL HEALTH COUNSELOR

"The bigger the pool of qualified custody evaluators the better. CMCHs (Clinical Mental Health Counselors) are just as qualified as the others the current version of the rule permits to conduct evaluations (i.e., clinical social workers, psychologists, psychiatrists, and marriage and family therapists). We need more choices, more competition, more points of view in the custody evaluation sphere. We need better performance and lower prices. Expanding the pool is a step in this (right) direction."

Eric K. Johnson - May 25, 2019 at 2:19 pm

- > I agree. **Jonathan G. Winn** - May 29, 2019 at 9:10 am
- > I agree. There is a shortage of qualified individuals needed to complete the custody assessments and CMHCs are qualified by licensure and as long as they have additional forensic training they will be a valued addition to the pool. **Paul Carver, CMHC, CFMHE** - June 3, 2019 at 10:37 am
- > The requirements for such a skill require specialized training. All those who are licensed and meet the requirements should be taken into consideration. **Jack Kettering** - June 10, 2019 at 8:23 am
- > I agree with everything you've said here. In terms of training, CMHCs are on par with LCSWs and LMFTs and should have the same legal opportunities. All should have specific training to perform accurate evaluations in addition to their basic licensure requirements, but CMHCs should certainly not be disregarded. **Amy Bowen, student in CMHC** - June 10, 2019 at 2:15 pm
- > I agree with this as well. **Cindy Hernandez** - June 10, 2019 at 8:04 pm
- > I also agree with this. **William Rozum** - June 11, 2019 at 9:28 am
- > I totally agree. CMHCs are definitely qualified to provide custody evaluations. Please correct the oversight! **Christine Keyser** - June 11, 2019 at 2:18 pm
- > I also agree with all previous comments regarding CMHCs and their qualifications for performing custody evaluations with any additional training needed. **Caitlin Rollins, ACMHC** - June 11, 2019 at 7:11 pm
- > I agree with this adjustment of CJA04-0903. Uniform custody evaluations. LCMHC are equally qualified as other licensed mental health professionals. **Kwint Kemp** - June 14, 2019 at 2:11 pm
- > We need a larger pool of qualified custody evaluators. By leaving CMCH's out of the ability to make recommendations we lose qualified professionals. The state is hurting for qualified professionals as it is. **Stacy Hawks, ACMHC** - June 17, 2019 at 2:55 pm
- > Hear! Hear! Let the law be amended and allow these sufferers to be loosened to do the work they are licensed to do. **Dennis Tucker** - July 3, 2019 at 7:50 am

"Licensed Clinical Mental Health Counselors have the equivalent and prerequisite training to conduct Child Custody evaluations; in terms of education, supervised practice, licensure examination, etc. they are equal to a LCSW and/or LMFT. There would be no logical reason to exclude them from performing this much needed service."

Amy Folger - June 10, 2019 at 8:14 am

"I definitely feel that CMHC's should be able to perform custody evaluations. The clinical training at a masters level is more than suited for the evaluation. A policy that prevents capable and well trained professionals only hinders the work that needs to be done to improve a child's safety."

Jacilyn Gray - June 10, 2019 at 9:15 am

"CMHC's (Clinical Mental Health Counselors) should be considered equal to LCSW's in terms of clinical capability and professional legitimacy. The CJA04-0903 amendment is a step in the right direction to ensure accurate perception – and inclusion – of CMHCs."

Adriane Andersen - June 10, 2019 at 9:16 am

"The education that I was given to become a Clinical Mental Health Counselor, prepared me to absolutely be qualified to conduct custody evaluations. My understanding is that our specific education was geared towards more interventions and understandings of theories as opposed to systems of care and social work type activities such as Case Management, she's not less important, but definitely different in its very nature."

Jackie Coahran - June 10, 2019 at 9:18 am

"In regards to CJA04-0903 I agree that CMHC's should be added to conduct custody evaluations. They have just as much training and knowledge as a LMFT and LCSW. The more providers available to do custody evaluations the more we can serve our community."

Jessica Black, ACMHC - June 10, 2019 at 11:21 am

"CMHC's are highly trained Master's Degree level professionals. So long as they participate in any additional training necessary for evaluations they should have the same eligibility for custody evaluations and any other service provided by an LCSW."

Michelle Randall - June 10, 2019 at 1:43 pm

"I support the proposal to amend CJA04-0903 to "Licensed Clinical Mental Health Counselor" (LCMHC) to list of professionals who may perform custody evaluations for the following reasons:

1. *Currently, an LCSW can conduct custody evaluations; however the words "diagnose/diagnosis", "assessment", "forensic" are not even used once in their Code of Ethics (see <https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English>) In contrast, LCMHCs have an entire section*

dedicated to Assessment and Diagnosis and Forensic Activity (See Section D, page 18 in

<http://connections.amhca.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=d4e10fcb-2f3c-c701-aa1d-5d0f53b8bc14>).

2. *LCMHCs are required to pass two national board examinations, one of which is The National Clinical Mental Health Counseling Examination (NCMHCE), which consists of 10 clinical simulations designed to sample a broad area of competencies including problem-solving ability, including identifying, analyzing, diagnosing and treating clinical issues (see <https://www.nbcc.org/Assets/Exam/Handbooks/NCMHCE.pdf>).*
3. *The national accreditation body (CACREP) for LCMHCs requires master's level coursework to include intake interview, mental status evaluation, biopsychosocial history, mental health history, and psychological assessment for treatment planning and strategies for interfacing with the legal system regarding court-referred clients (see <https://www.cacrep.org/section-5-entry-level-specialty-areas-clinical-mental-health-counseling/>). This is in addition to core/foundational coursework in clinical-focused Assessment and psychometric-based Testing that covers procedures for identifying trauma and abuse and for reporting abuse, use of environmental assessments and systematic behavioral observations, use of symptom checklists, and personality and psychological testing, and use of assessment results to diagnose developmental, behavioral, and mental disorders.*
4. *The Utah Mental Health Professional Practice Act defines the scope of practice for LCSWs and LCMHCs as including 100% of the same duties for the "Practice of mental health therapy" (see 58-60-102 Definitions.7 at https://le.utah.gov/xcode/Title58/Chapter60/C58-60_1800010118000101.pdf) and only limits this scope by "the licensee's education, training, and competence" (see 58-60-207 Scope of practice & 58-60-407 Scope of practice).*
5. *The current LCMHC rule, R156-60c-302a. Qualifications for Licensure – Education Requirements, requires the following independent master's level coursework that aligns with Rule 4-903.(4)(5)&(6):*
 - a. *(D) a minimum of two semester or three quarter hours in human growth and development;*
 - b. *(G) a minimum of two semester or three quarter hours in substance-related and addictive disorders;*
 - c. *(H) a minimum of two semester or three quarter hours in assessment and testing;*

- d. (l) a minimum of four semester or six quarter hours in mental status examination and the appraisal of DSM maladaptive and psychopathological behavior;

None of these master's-level educational courses are required for LCSWs in Subsections 58-60-205(1)(d) and (g). Thus, the current Rule 4-903 is a double standard that erroneously excludes LCMHCs (who by education, accreditation, ethical codes, licensing act rule, and examination are more qualified than any LCSW)."

Jason H. King, PhD - June 10, 2019 at 1:57 pm

"CMHC is as qualified to perform child custody evaluations for family court. CMHC go through rigorous educational and practical training to qualify for tasks such as this."

Cindy Hernandez - June 10, 2019 at 8:03 pm

"I agree with this statement."

Gina Zupan - June 11, 2019 at 8:57 am

"I support the proposal to amend CJA04-0903 to "Licensed Clinical Mental Health Counselor" (LCMHC) to list of professionals who may perform custody evaluations, as the CMHC license demands a strong foundation of education and training which is on a par with the professional mental health licenses currently acknowledged. Expanding the array of participating licenses will benefit the children/families that are part of this process. CMHC professionals with extensive training and strong experience and are ready to help! Thank you!"

Margaret Sherrill Luther, PhD, CMHC, LMFT - June 12, 2019 at 3:29 pm

"I, Joshua Emmett an intern CMHC, support the proposal to amend CJA04-0903 to 'Licensed Clinical Mental Health Counselor' (LCMHC) to list of professionals who may perform custody evaluations."

Joshua Emmett - June 16, 2019 at 6:49 am

"I have lived in Texas and did many custody evaluations. As a clinical mental health counselor we work closely with children, and their parents. I have also a Phd in psychology and have been published in child development books. Usually requires a minimum of a Master's degree in Counseling along with post graduate supervised experience. LPC's and LMHC's work in a collaborative approach with the patient to determine the best way for the counseling sessions to provide preferred outcomes."

LPC's and LMHC's require advanced degrees and training to achieve licensure to operate.

Refers only to those licensed by a state board to provide professional counseling based mental therapy.

Must adhere to high standards regarding ethics and confidentiality as provided by the state board. Usually involves signing an ethics pledge or oath.

Can be involved in direct therapy with patients in private practice.

LPC's and LMHC's have access to a much broader field of potential models and methods for mental health therapies.

LPC's and LMHC's provide an approach that is highly attuned to the individual and especially their decision making process to achieve client goals and objectives.

Certified Social Worker (CSW)

To become a Certified Social Worker (CSW) in Utah, you must first get your Master of Social Work degree from a Council on Social Work Education (CSWE) accredited university or college.

No field experience is required to apply for this license.

Then you will need to receive a passing score on an Association of Social Workers ASWB Master Level Exam or the Clinical Social Workers Examination of the State of California.

There are no continuing education requirements to renew this license you simply need to pay the renewal fee.

Utah has the following educational requirements for licensure.

You will first need to acquire your Bachelor's degree in Counseling or a highly related Social or Behavioral Science field such as Psychology, Social Work or Human Services. Counseling degrees are preferred.

The next step is to enroll in a master's or doctorate program in counseling accredited by CACREP, or one offered through a school accredited by an agency recognized by CHEA.

You will also need to complete a practicum that is at least three full semester hours.

You will need to have a six semester hour internship that includes at least 900 hours of supervised clinical experience with 360 hours of direct client service in the form of therapy sessions.

PLUS You must complete 40 hours per year of continuing education.

That is a big difference and yet social workers may perform.

There are many other differences where we are counseling and not case managers."

Dr. G. Anne Vanderlaan LCMHC - June 20, 2019 at 6:29 am

"As a Licensed Clinical Mental Health Counselor in Utah, I believe it is vital to amend CJA04-0903 to include "Licensed Clinical Mental Health Counselors" (LCMHC) to list of professionals who may perform forensic evaluations for the following reasons:

Utah state license requirements for LCMHCs in their master's level coursework includes intake interview, mental status evaluation, biopsychosocial history, mental health history, and psychological assessment for treatment planning and strategies for interfacing with the legal system regarding court-referred clients (see <https://www.cacrep.org/section-5-entry-level-specialty-areas-clinical-mental-health-counseling/>).

This is in addition to coursework in clinical-focused and psychometric-based assessment that covers procedures for identifying trauma and abuse and for reporting abuse, use of environmental assessments and systematic behavioral observations, use of symptom checklists, and personality and psychological testing, and use of assessment results to diagnose developmental, behavioral, and mental disorders.

The current LCMHC rule, R156-60c-302a. Qualifications for Licensure – Education Requirements, requires the following independent master's level coursework that aligns with Rule 4-903.(4)(5)&(6) includes:

- a. two or more semester or three quarter hours in human growth and development*
- b. two or more semester or three quarter hours in substance-related and addictive disorders*
- c. two or more semester or three quarter hours in assessment and testing*
- d. four or more semester or six quarter hours in mental status examination and the appraisal of DSM maladaptive and psychopathological behavior*

The Utah Mental Health Professional Practice Act is inclusive of parity in the scope of practice for LCSWs, LMFTs, and LCMHCs in the "Practice of mental health therapy" (see 58-60-102 Definitions.7 at

https://le.utah.gov/xcode/Title58/Chapter60/C58-60_1800010118000101.pdf) and only limits this scope by "the licensee's education, training, and competence" (see 58-60-207 Scope of practice & 58-60-407 Scope of practice). LCMHCs are by education, accreditation, ethical codes, licensing act rule, and examination as qualified as other state defined mental health therapists to perform a range of evaluations authorized by CJA04-0903.

Utah citizens need all qualified mental health therapists, including LCMHCs, to be accessible as appropriate. There is no valid justification under the law to not include LCMHCs."

Gray Otis, PhD - June 20, 2019 at 1:24 pm

"I support the proposal to amend CJA04-0903 to "Licensed Clinical Mental Health Counselor" (LCMHC) to list of professionals who may perform custody evaluations. I am an associate clinical mental health counselor with certification from National Board for Certified Counselors. (NBCC). I was quite surprised to learn early in my graduate program that as a counselor I might be prevented from performing services for which I am more than adequately educated, experienced, licensed (CMHC) and fully qualified to carry out. We are all aware of the deep limitations to service delivery. It is incumbent upon all mental health professions to help ensure that CMHC's are fully recognized as equally qualified counterparts in the mental health field so that we may aid the consumers who most need our services."

Terri Elise Goldstein, ACMHC, NCC - July 6, 2019 at 7:01 pm

"Please allow CMHCs to conduct custody evaluations. Thank you!"

Kristal James - July 6, 2019 at 9:18 pm

2) COMMENTS RE: LEAVING STATUTORY FACTORS IN RULE

The public comment were unanimously opposed to removing from the rule the list of factors to be addressed in the evaluation, as follows:

"I support . . . that the factors to be considered remain in the body of the rule itself."

Terri Elise Goldstein, ACMHC, NCC - July 6, 2019 at 7:01 pm

"Regarding proposed Rule 4-903(4), my preference would be to leave the factors to be considered in the body of the rule itself and not simply provide that evaluators 'must consider and respond to each of custody factors set forth in statute.' If they're going to require referencing factors 'set forth in statute' they should state, specifically what the code sections are they're referring to and not make such a vague and ambiguous reference which will only open it up to interpretation of what the 'statutory' factors are."

Cory Wall - May 29, 2019 at 2:08 pm

> Your request sounds reasonable, orderly, and clear. I support your statement and would also like your proposed clarity. **Dennis Tucker, LCSW** - July 3, 2019 at 7:54 am

"The factors to be considered in Rule 4-903 should remain. These were gathered from different sources and various statutes into one place. It is wrong to leave

the evaluator to sift through the state code, which they won't do, to find what factors they should consider. The prior change was an improvement. This proposed change goes in the wrong direction. You also have nothing about being AFCC informed as a requirement. We also don't want a bachelor degree social worker performing custody evaluations without something more in the way of training."

Gregory B Wall - May 29, 2019 at 4:01 pm

- > If you're referring to CMHC's as being bachelor level then you have false and incorrect information. The CMHC license has a master's in mental health counseling. They are actually better educated when it comes to clinical diagnosing and therapy modalities. Perhaps you should acquire more accurate information before making a stance. Furthermore, the standards outlined by the AFCC are not enforced in this state for any other credentialed evaluator and therefore has no relevance to this particular amendment. If this change is made, it will have zero bearing on whether or not the AFCC standards are followed. Attorneys, judges and commissioners should choose evaluators based on whether or not those evaluators follow the AFCC guidelines, but again, that has no bearing on this amendment. Your comment, therefore, provides both false information and a straw man argument and is therefore useless. **Scott Carter** - June 4, 2019 at 2:41 pm

- > > I agree, please look into education levels before making comments on public health. A major shortage of qualified professionals exist. Rather than excluding professionals willing to do this difficult work, embrace the chance to get more family's help. We should have never been excluded with regards to this in the first place. please vote to allow us into the pool of professionals. **Jenn Zeuschner** - June 10, 2019 at 8:04 am

- > I agree that the factors considered in the 4-903 should remain for very similar reasons. We need clear reference to the state codes in one place rather than having to find them. However, I would avoid using state code to rally commercial support to one business or site. There are other highly qualified forensic bodies in addition to (and perhaps better than) the AFCC, such as the National Board of Forensic Evaluators (NBFE) of which I am a member. Let's not get too political in our use of the law. Lastly, I am very confused by your reference to 'bachelor level social workers performing custody evaluations'. Perhaps it is allegorical rather than factual. You may be referring to the CMHC's who are master level mental health professionals. I know from personal experience that their training and education is superior to master level social work education. Master's level social work requires one year of advocacy and administrative training leaving only one year for clinical focus whereas mental health counselors have a full two years. Don't hate them for their superior training. That would be wrong. **Dennis Tucker, LCSW** - July 3, 2019 at 8:04 am

Tab 5



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

To: Judicial Council
From: Nancy Sylvester *Nancy D. Sylvester*
Date: August 12, 2019
Re: Certification of Senior Judges

The senior judge evaluation and appointment processes are governed by the following Utah Code of Judicial Administration rules:

- [Rule 3-111](#): governs senior judge evaluations;
- [Rule 11-201](#): governs the appointment of senior judges of courts of record.

The following senior judges have terms of office that will expire on December 31, 2019.

Active Senior Judges

Last_Name	First_Name	Salute	Court	Geographic_Division
Bachman	L. Kent	Judge	Juvenile Court	Active
Billings	Judith M.	Judge	Court of Appeals	Active
Dever	L.A.	Judge	District Court	Active
Eyre, Jr.	Donald J.	Judge	District Court	Active
Fuchs	Dennis M.	Judge	District Court	Active
Hadfield	Ben H.	Judge	District Court	Active
Hadley	Scott M.	Judge	District Court	Active
Lyman	Paul D.	Judge	Juvenile Court	Active
Lyon	Michael D.	Judge	District Court	Active
Oddone	Frederic M.	Judge	Juvenile Court	Active
Peuler	Sandra N.	Judge	District Court	Active
Reese	Robin W.	Judge	District Court	Active

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

Last_Name	First_Name	Salute	Court	Geographic Division
Stott	Gary D.	Judge	District Court	Active
West	W. Brent	Judge	District Court	Active

Inactive Senior Judges

Last_Name	First_Name	Salute	Court	Geographic Division
Brown	Leslie D.	Judge	Juvenile Court	Inactive
Chamberlain	Hans Q.	Judge	Juvenile Court	Inactive
Cornaby	Douglas L.	Judge	District Court	Inactive
Iwasaki	Paul F.	Judge	Juvenile Court	Inactive
Lindberg	Denise Posse-Blanco	Judge	District Court	Inactive
Medley	Tyrone E.	Judge	District Court	Inactive
Valdez	Andrew A.	Judge	Juvenile Court	Inactive
Wilkins	Diane W.	Judge	Juvenile Court	Inactive

A. CERTIFICATION PROCESS

You may consider the information regarding each judge in an executive session, but your decision of whether to certify must be made at a public hearing.

If a judge meets all of the certification standards, it is presumed that the Council will certify the individual for senior judge status. If the judge fails to meet all of the standards, it is presumed you will not certify the individual. However, the Council has the discretion to overcome a presumption against certification upon a showing of good cause. Before declining to certify a senior judge, you must invite him or her to meet with you to present evidence and arguments of good cause. If you decline to certify a senior judge, the person will not be retained after the end of his or her term of office.

Any senior judge you certify will be sent to the Supreme Court for its consideration in the reappointment process.

B. PERFORMANCE STANDARDS FOR SENIOR JUDGES

i. Attorney Surveys of Senior Judges

A satisfactory score for an attorney survey question is achieved when the ratio of favorable responses is 70% or greater. The Judicial Council shall determine whether the senior judge's survey scores are satisfactory.

ii. Cases Under Advisement

A case is considered to be under advisement when the entire case or any issue in the case has been submitted to the senior judge for final determination. The Council shall measure satisfactory performance by the self-declaration of the senior judge or by reviewing the records of the court.

A senior judge in a trial court demonstrates satisfactory performance by holding:

- no more than three cases per calendar year under advisement more than 60 days after submission; and
- no case under advisement more than 180 days after submission.

A senior judge in the court of appeals demonstrates satisfactory performance by:

- circulating no more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year; and
- achieving a final average time to circulation of a principal opinion of no more than 120 days after submission.

iii. Education

Active senior judges must comply annually with judicial education standards, which is at least 30 hours of continuing education per year.

iv. Substantial Compliance with the Code of Judicial Conduct

A senior judge's performance is satisfactory if their responses in their application or self-declaration form demonstrate substantial compliance with the Code of Judicial Conduct, and if the Council's review of formal and informal sanctions leads you to conclude they are in substantial compliance with the Code of Judicial Conduct.

Under Rules 11-201 and 11-203, any sanction of a senior judge disqualifies the senior judge from reappointment.

v. Physical and Mental Competence

If the response of the senior judge demonstrates physical and mental competence to serve in office and if the Council finds the responsive information to be complete and correct, the senior judge's performance is satisfactory.

vi. Survey of Presiding Judges and Court Staff.

The Council also measures the performance of active senior judges by a survey of all presiding judges and trial court executives of districts in which the senior judge has been assigned.

C. SENIOR JUDGE REAPPOINTMENTS

The senior judges listed above have terms that will expire on December 31, 2019. None has complaints pending before the Utah Supreme Court or the Judicial Conduct Commission. Their applications are attached and certification appears to be appropriate.

ACTIVE SENIOR JUDGES



Senior Judge Application Active Status

Qualifications for Office

I, L. Kent Bachman, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 8/1/2010.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been no orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:
PRIVATE PRIVATE
 My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
38.5	41	

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

I have 25 hours presently from, Spring Utah State Bar Convention, Judicial legislative update, Spring Juvenile Court Conference. I intend to attend Annual Judicial Conference.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

July 26, 2019

Date

L. Kent Bachman

L. Kent Bachman

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov

Utah Judicial Council's

Senior Judge Performance Evaluation Program TCE Evaluation

Report for L. Kent Bachman

June 2019

Report prepared by the National Center for State Courts



This Report offers a one-page overview of results from your 2019 Utah Judicial Council Senior Judge Performance Evaluation. This overview consists of two sections. First, the *Survey Participants* table displays the number of eligible trial court executives and presiding judges that were selected to evaluate you and the number of evaluations completed by trial court executives and presiding judges and the response rate. Second, the *Evaluation Summary* section displays the survey results for each of the 15 items on which you were rated. The first column in the table displays the mathematical average score you received on each item (shown in blue). The second column presents the average score for all senior judges evaluated this year. The last two columns on the right side of the *Evaluation Summary* display the range of scores you received (also in blue), indicating your lowest and highest score for each question, by performance area, and in total. Following the evaluation summary are written responses to one optional question posed to attorney evaluators. These responses were taken directly from the survey responses, and were only edited for spelling. For more information about survey process, please refer to the Appendix.

Survey Participants

Number of fully completed evaluations	1
Number of surveys not completed for lack of experience with this senior judge	1
Response Rate	50%

Evaluation Summary

Behavior/Attribute Rated	Average Rating		Range of Ratings this Senior Judge Received	
	Individual Mean Score	Average Score for all Senior Judges	Lowest	Highest
Behavior is free from impropriety and the appearance of impropriety	3.50	4.25	3	4
Behavior is free from bias and favoritism	3.50	4.50	3	4
Avoids ex parte communications (contact with one party without the other parties present)	3.50	4.50	3	4
Understands and correctly applies the rules of procedure and evidence	3.50	4.25	3	4
Understands and correctly applies the substantive law	3.50	4.25	3	4
Is attentive to presentations	3.50	4.33	3	4
Is prepared for hearings and trials	3.00	4.40	N/A	3
Explains the purpose of the hearing or trial	3.50	4.50	3	4
Demonstrates appropriate demeanor	3.50	4.50	3	4
Maintains order in the courtroom	3.50	4.60	3	4
Gives parties a fair opportunity to present the case	3.00	4.25	N/A	3
Oral and written decisions and orders are clear and well reasoned	3.50	4.25	3	4
Issues orders and opinions without unnecessary delay	3.50	4.50	3	4
Effectively uses pretrial procedures to narrow and define the issues	N/A	4.00	N/A	N/A
Overall, the performance of this senior judge is	3.50	4.50	3	4
Overall average score	3.43	4.43	3	4

Responses to the question: *"How can this senior judge improve his or her performance?"* (Note: these responses have been edited to correct spelling errors.)

Appendix: Technical Notes

EVALUATION FORMS

Eligible participants for the evaluation included attorneys who have appeared before the senior judge. Respondents who opened the survey but did not complete it because they did not feel they had sufficient experience with this senior judge were removed from the data analysis; but they *were* included in the "Number of Eligible Participants."

CALCULATION OF INDIVIDUAL ITEM SCORES

Individual item scores were derived using the following procedure. First, all individual respondent's ratings of the evaluated senior judge were averaged across each of the eight items on which senior judges were evaluated. These scores were calculated as an arithmetic mean: the sum of all relevant ratings provided by the respondent was divided by the number of respondents and these appear in the first column labeled "*individual mean score*." The same process was used to generate a comparison score of all senior judges evaluated during this period. This score was computed as the arithmetic mean across all respondents on all senior judge evaluations; these scores appear in the second column labeled "average score for all senior judges." Finally, an overall average score for each individual judge and all judges evaluated were computed by averaging the scores on the 15 individual scored items.



Senior Judge Application Active Status

Qualifications for Office

I, Judith M. Billings, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments within the limits established by rule 11-201.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 1/1/2009.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☐ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:
PRIVATE
PRIVATE
 My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have circulated not more than an average of three principal opinions per calendar year more than six months after submission with no more than half of the maximum exceptional cases in any one calendar year.
- 24) I have achieved a final average time to circulation of a principal opinion of not more than 120 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
40	43	40

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

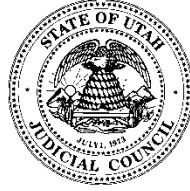
I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

7/15/19
Date

Judith M. Billings
Judith M. Billings

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov



Senior Judge Application Active Status

Qualifications for Office

I, L.A. Dever, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 11/1/2014.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

My email address and phone number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
39.25	32	

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

I will have accrued 30 hours after attending the Annual Judicial Conference.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

July 23, 2019

/s/ Nancy J. Sylvester at the direction of L.A. Dever

Date

L.A. Dever

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester

P.O. Box 140241

Salt Lake City, Utah 84114-0241

Fax: 801-578-3843

Email: nancyjs@utcourts.gov

Utah Judicial Council's

Senior Judge Performance Evaluation Program TCE Evaluation

Report for L.A. Dever

June 2019

Report prepared by the National Center for State Courts



This Report offers a one-page overview of results from your 2019 Utah Judicial Council Senior Judge Performance Evaluation. This overview consists of two sections. First, the *Survey Participants* table displays the number of eligible trial court executives and presiding judges that were selected to evaluate you and the number of evaluations completed by trial court executives and presiding judges and the response rate. Second, the *Evaluation Summary* section displays the survey results for each of the 15 items on which you were rated. The first column in the table displays the mathematical average score you received on each item (shown in blue). The second column presents the average score for all senior judges evaluated this year. The last two columns on the right side of the *Evaluation Summary* display the range of scores you received (also in blue), indicating your lowest and highest score for each question, by performance area, and in total. Following the evaluation summary are written responses to one optional question posed to attorney evaluators. These responses were taken directly from the survey responses, and were only edited for spelling. For more information about survey process, please refer to the Appendix.

Survey Participants

Number of fully completed evaluations	1
Number of surveys not completed for lack of experience with this senior judge	1
Response Rate	50%

Evaluation Summary

Behavior/Attribute Rated	Average Rating		Range of Ratings this Senior Judge Received	
	Individual Mean Score	Average Score for all Senior Judges	Lowest	Highest
Behavior is free from impropriety and the appearance of impropriety	5.00	3.88	N/A	5
Behavior is free from bias and favoritism	5.00	4.13	N/A	5
Avoids ex parte communications (contact with one party without the other parties present)	N/A	4.30	N/A	5
Understands and correctly applies the rules of procedure and evidence	5.00	3.88	N/A	5
Understands and correctly applies the substantive law	5.00	3.88	N/A	5
Is attentive to presentations	N/A	4.13	N/A	N/A
Is prepared for hearings and trials	5.00	4.00	N/A	5
Explains the purpose of the hearing or trial	5.00	4.13	N/A	5
Demonstrates appropriate demeanor	5.00	4.13	N/A	5
Maintains order in the courtroom	5.00	4.30	N/A	5
Gives parties a fair opportunity to present the case	5.00	3.75	N/A	5
Oral and written decisions and orders are clear and well reasoned	5.00	3.88	N/A	5
Issues orders and opinions without unnecessary delay	N/A	4.13	N/A	N/A
Effectively uses pretrial procedures to narrow and define the issues	5.00	4.00	N/A	5
Overall, the performance of this senior judge is	5.00	4.13	N/A	5
Overall average score	5.00	4.17	N/A	5

Responses to the question: *"How can this senior judge improve his or her performance?"* (Note: these responses have been edited to correct spelling errors.)

Appendix: Technical Notes

EVALUATION FORMS

Eligible participants for the evaluation included attorneys who have appeared before the senior judge. Respondents who opened the survey but did not complete it because they did not feel they had sufficient experience with this senior judge were removed from the data analysis; but they *were* included in the "Number of Eligible Participants."

CALCULATION OF INDIVIDUAL ITEM SCORES

Individual item scores were derived using the following procedure. First, all individual respondent's ratings of the evaluated senior judge were averaged across each of the eight items on which senior judges were evaluated. These scores were calculated as an arithmetic mean: the sum of all relevant ratings provided by the respondent was divided by the number of respondents and these appear in the first column labeled "*individual mean score*." The same process was used to generate a comparison score of all senior judges evaluated during this period. This score was computed as the arithmetic mean across all respondents on all senior judge evaluations; these scores appear in the second column labeled "average score for all senior judges." Finally, an overall average score for each individual judge and all judges evaluated were computed by averaging the scores on the 15 individual scored items.



Senior Judge Application Active Status

Qualifications for Office

I, Donald J. Eyre, Jr., hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 1/1/2015.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
0	35	20.75

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

I am registered for the annual judicial conference to take place Sept. 11-13, 2019

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Date

7-16-19

Donald J. Byre, Jr.

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov



Senior Judge Application Active Status

Qualifications for Office

I, Dennis M. Fuchs, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 1/1/2007.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:
PRIVATE
PRIVATE
 My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

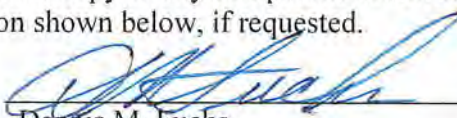
2017	2018	2019
47.5	43	30+

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

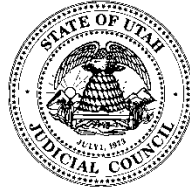
I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Date 7/19/19


Dennis M. Fuchs

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov



Senior Judge Application Active Status

Qualifications for Office

I, Ben H. Hadfield, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 8/15/2014.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
33.75	34	30+

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

Annual Judicial Conference 12

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

7/18/19

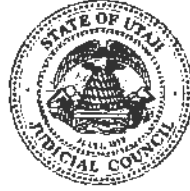
Date

Ben H. Hadfield

Ben H. Hadfield

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov



Senior Judge Application Active Status

Qualifications for Office

I, Scott M. Hadley, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 8/1/2017.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been NO orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
68	30	43

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

Court's Basic Mediation Training 40 hours

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements. *I have done this and will be on inactive status for the period July 31, 2019 + through October 25, 2019.*

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

7-21-19
Date

Scott M. Hadley
Scott M. Hadley

Please complete and return by July 29, 2019 to

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov



**Senior Judge Application
Active Status**

Qualifications for Office

I, Paul D. Lyman, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 12/31/2017.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been No orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
40.5	40	

I will exceed 30 hours after the September Judicial Conference,

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

I will exceed 30 hours after I attend
the September Judicial Conference

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

July 25, 2019
Date

Paul D. Lyman
Paul D. Lyman

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov

Senior Judge Paul Lyman

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	100.00%	3	0	0	0	0	0	5.00	4.67
Behavior is free from bias and favoritism	93.33%	2	1	0	0	0	0	4.67	4.64
Avoids ex parte communications (contact with one party without the other parties present)	100.00%	3	0	0	0	0	0	5.00	4.66
Understands and correctly applies the rules of procedure and evidence	100.00%	3	0	0	0	0	0	5.00	4.36
Understands and correctly applies the substantive law	100.00%	3	0	0	0	0	0	5.00	4.34
Is attentive to presentations	93.33%	2	1	0	0	0	0	4.67	4.58
Is prepared for hearings and trials	100.00%	3	0	0	0	0	0	5.00	4.50
Explains the purpose of the hearing	93.33%	2	1	0	0	0	0	4.67	4.56
Demonstrates appropriate demeanor	93.33%	2	1	0	0	0	0	4.67	4.60
Maintains order in the courtroom	100.00%	3	0	0	0	0	0	5.00	4.57
Provides a fair and adequate opportunity to present evidence or proffers of evidence	100.00%	3	0	0	0	0	0	5.00	4.43
Oral and written decisions and orders are clear and well reasoned	100.00%	3	0	0	0	0	0	5.00	3.80
Issues recommendations without unnecessary delay	100.00%	3	0	0	0	0	0	5.00	3.97
Effectively uses pretrial procedures to narrow and define the issues	100.00%	3	0	0	0	0	0	5.00	4.46
Overall, the performance of this court commissioner is	100.00%	3	0	0	0	0	0	5.00	4.46
Overall Average Score:	98.22%	41	4	0	0	0	0	4.91	4.44

Comments:

Judge Lyman is smart and dedicated to reaching an appropriate resolution to the conflict in a timely manner. It is a pleasure to appear before Judge Lyman.

Judge Lyman is an excellent judge who is knowledgeable of the law and procedures in both district and juvenile court. He maintains appropriate courtroom control and is very efficient!

It is unfortunate that age caught up with Judge Lyman. He was an excellent full time judge and still is an asset as a senior judge. He is welcome in my cases anytime.

Utah Judicial Council's

Senior Judge Performance Evaluation Program TCE Evaluation

Report for Paul Lyman

June 2019

Report prepared by the National Center for State Courts



This Report offers a one-page overview of results from your 2019 Utah Judicial Council Senior Judge Performance Evaluation. This overview consists of two sections. First, the *Survey Participants* table displays the number of eligible trial court executives and presiding judges that were selected to evaluate you and the number of evaluations completed by trial court executives and presiding judges and the response rate. Second, the *Evaluation Summary* section displays the survey results for each of the 15 items on which you were rated. The first column in the table displays the mathematical average score you received on each item (shown in blue). The second column presents the average score for all senior judges evaluated this year. The last two columns on the right side of the *Evaluation Summary* display the range of scores you received (also in blue), indicating your lowest and highest score for each question, by performance area, and in total. Following the evaluation summary are written responses to one optional question posed to attorney evaluators. These responses were taken directly from the survey responses, and were only edited for spelling. For more information about survey process, please refer to the Appendix.

Survey Participants

Number of fully completed evaluations	1
Number of surveys not completed for lack of experience with this senior judge	1
Response Rate	50%

Evaluation Summary

Behavior/Attribute Rated	Average Rating		Range of Ratings this Senior Judge Received	
	Individual Mean Score	Average Score for all Senior Judges	Lowest	Highest
Behavior is free from impropriety and the appearance of impropriety	5.00	3.88	N/A	5
Behavior is free from bias and favoritism	5.00	4.13	N/A	5
Avoids ex parte communications (contact with one party without the other parties present)	5.00	4.13	N/A	5
Understands and correctly applies the rules of procedure and evidence	5.00	3.88	N/A	5
Understands and correctly applies the substantive law	5.00	3.88	N/A	5
Is attentive to presentations	5.00	3.83	N/A	5
Is prepared for hearings and trials	5.00	4.00	N/A	5
Explains the purpose of the hearing or trial	5.00	4.13	N/A	5
Demonstrates appropriate demeanor	5.00	4.13	N/A	5
Maintains order in the courtroom	5.00	4.30	N/A	5
Gives parties a fair opportunity to present the case	4.00	4.00	N/A	4
Oral and written decisions and orders are clear and well reasoned	5.00	3.88	N/A	5
Issues orders and opinions without unnecessary delay	5.00	4.13	N/A	5
Effectively uses pretrial procedures to narrow and define the issues	5.00	3.50	N/A	5
Overall, the performance of this senior judge is	5.00	4.13	N/A	5
Overall average score	4.93	4.18	4	5

Responses to the question: *"How can this senior judge improve his or her performance?"* (Note: these responses have been edited to correct spelling errors.)

Appendix: Technical Notes

EVALUATION FORMS

Eligible participants for the evaluation included attorneys who have appeared before the senior judge. Respondents who opened the survey but did not complete it because they did not feel they had sufficient experience with this senior judge were removed from the data analysis; but they *were* included in the "Number of Eligible Participants."

CALCULATION OF INDIVIDUAL ITEM SCORES

Individual item scores were derived using the following procedure. First, all individual respondent's ratings of the evaluated senior judge were averaged across each of the eight items on which senior judges were evaluated. These scores were calculated as an arithmetic mean: the sum of all relevant ratings provided by the respondent was divided by the number of respondents and these appear in the first column labeled "*individual mean score*." The same process was used to generate a comparison score of all senior judges evaluated during this period. This score was computed as the arithmetic mean across all respondents on all senior judge evaluations; these scores appear in the second column labeled "average score for all senior judges." Finally, an overall average score for each individual judge and all judges evaluated were computed by averaging the scores on the 15 individual scored items.



Senior Judge Application Active Status

Qualifications for Office

I, Michael D. Lyon, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 9/1/2013.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
32.5	32	<u>30</u>

** I will have at least 30 hours by 12/31/2019.*

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Date

July 19, 2019

Michael D. Lyon
Michael D. Lyon

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov

Senior Judge Michael Lyon

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	100.00%	4	0	0	0	0	0	5.00	4.67
Behavior is free from bias and favoritism	95.00%	3	1	0	0	0	0	4.75	4.63
Avoids ex parte communications (contact with one party without the other parties present)	100.00%	3	0	0	0	0	1	5.00	4.66
Understands and correctly applies the rules of procedure and evidence	90.00%	2	2	0	0	0	0	4.50	4.41
Understands and correctly applies the substantive law	85.00%	2	1	1	0	0	0	4.25	4.42
Is attentive to presentations	100.00%	4	0	0	0	0	0	5.00	4.54
Is prepared for hearings and trials	95.00%	3	1	0	0	0	0	4.75	4.53
Explains the purpose of the hearing	90.00%	2	2	0	0	0	0	4.50	4.58
Demonstrates appropriate demeanor	100.00%	4	0	0	0	0	0	5.00	4.56
Maintains order in the courtroom	100.00%	4	0	0	0	0	0	5.00	4.57
Provides a fair and adequate opportunity to present evidence or proffers of evidence	100.00%	4	0	0	0	0	0	5.00	4.43
Oral and written decisions and orders are clear and well reasoned	95.00%	3	1	0	0	0	0	4.75	3.83
Issues recommendations without unnecessary delay	90.00%	2	2	0	0	0	0	4.50	4.02
Effectively uses pretrial procedures to narrow and define the issues	93.33%	2	1	0	0	0	1	4.67	4.50
Overall, the performance of this court commissioner is	100.00%	4	0	0	0	0	0	5.00	4.46
Overall Average Score:	95.56%	46	11	1	0	0	2	4.78	4.45

Comments:

Nothing, he has ruled with me and against me and I have never had any doubt that he listened, he considered and then made the appropriate decision.

That would be difficult, because he's been a great judge. He still has a reputation for being pro-prosecution when it comes to ruling on legal issues, but perhaps that could be characterized simply as "conservative."

He is the most outstanding judge in our district. I cannot see where he could provide his performance.



Senior Judge Application Active Status

Qualifications for Office

I, Frederic M. Oddone, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 4/16/2013.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone
number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
31	30	30

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

2019 Judicial Conference 8

Utah State Bar Fall Forum 8

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

July 15, 2019

Date


Frederic M. Oddone

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester

P.O. Box 140241

Salt Lake City, Utah 84114-0241

Fax: 801-578-3843

Email: nancyjs@utcourts.gov



Senior Judge Application Active Status

Qualifications for Office

I, Sandra N. Peuler, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 1/1/2012.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

PRIVATE

PRIVATE

My email address and phone
number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
31.5	33	

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

July 16, 2019
Date

Sandra N. Peuler
Sandra N. Peuler

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov

Senior Judge Sandra Peuler

Question	Certification Score	Excellent	More than Adequate	Adequate	Less than Adequate	Inadequate	No Personal Knowledge	Average	Average All SJ
Behavior is free from impropriety and the appearance of impropriety	91.93%	43	7	6	0	1	0	4.60	4.72
Behavior is free from bias and favoritism	90.18%	40	9	6	1	1	0	4.51	4.66
Avoids ex parte communications (contact with one party without the other parties present)	94.55%	42	11	2	0	0	2	4.73	4.69
Understands and correctly applies the rules of procedure and evidence	88.07%	36	13	4	3	1	0	4.40	4.42
Understands and correctly applies the substantive law	87.50%	39	8	3	3	3	1	4.38	4.41
Is attentive to presentations	89.12%	41	7	4	4	1	0	4.46	4.60
Is prepared for hearings and trials	87.02%	37	11	4	2	3	0	4.35	4.57
Explains the purpose of the hearing	88.52%	34	12	6	1	1	3	4.43	4.59
Demonstrates appropriate demeanor	91.93%	42	9	5	0	1	0	4.60	4.61
Maintains order in the courtroom	93.21%	41	11	4	0	0	1	4.66	4.61
Provides a fair and adequate opportunity to present evidence or proffers of evidence	90.53%	41	8	6	1	1	0	4.53	4.49
Oral and written decisions and orders are clear and well reasoned	85.45%	36	7	6	3	3	2	4.27	3.88
Issues recommendations without unnecessary delay	89.26%	34	13	6	0	1	3	4.46	4.03
Effectively uses pretrial procedures to narrow and define the issues	87.35%	29	12	6	1	1	8	4.37	4.53
Overall, the performance of this court commissioner is	86.67%	39	7	5	3	3	0	4.33	4.53
Overall Average Score:	89.42%	574	145	73	22	21	20	4.47	4.49

Comments:

SHE HAS ALWAYS BEEN GOOD TO APPEAR IN FRONT OF.

I do not know how the Judge could improve her performance she was very proficient in all my appearances before her

I am a highly experienced attorney having practiced for 32 years in 4 states. She does not need to improve her performance. She is an excellent judge

She can take on more cases so I can have more hearings in front of her. She was fabulous; prepared, professional, thoughtful, knowledgeable and courteous. Her performance was great, so there's not much to say here. She does a fantastic job....hard to improve that

If we could clone Judge Peuler our society would be the better for it. She is smart, thorough, decisive and courteous. The epitome of what a judge should be. Should explain the legal standard in a review of a commissioner's recommendations. Should be more clear on the reasoning, rationale, and authority regarding conclusions of law.

I'm not aware of any improvements I would suggest. She is an excellent judge.

No suggestions.

None that I am aware of. She is a splendid judge

Judge Peuler could have given more attention to previous rulings she had made and the time of a new motion or statement of discovery issues.

I really can't think of any. Judge Peuler is one of those rare judges that can make everyone feel welcome in her courtroom yet is very knowledgeable and proficient at the bench. This in my opinion, is a rare and precious quality in a judge.

I really don't have any comments about how she could improve her performance. I thought she was well prepared, listened to both sides, helped frame the issues, and issued a reasoned decision. I can't really ask for much more than that -- win or lose.

She appears to favor the state during argument and allows the government to have the last word. She does not present as being neutral to the parties. She also has a gruff demeanor and appears uninterested in fairness to the parties. She should act more neutral and listen to both sides.

Being prepared and reading all of the materials. Judge Peuler limited the hearing to 30 minutes which did not provide for adequate time to present oral arguments on the motion to dismiss. Her ruling also ignored controlling case law and was the lazy easy way out to avoid having to issue a written decision. She ruled that she could not consider a document actually attached to the complaint as part of the Rule 12(b)(6) motion. This is fundamentally wrong and conflicts with controlling Utah supreme court and court of appeals decisions. One word describes her performance -- "Lazy".

I think she was incredibly fair. I don't have constructive criticism. I guess just keep up the good work.

She was excellent in the matter over which she presided. I wish all judges were as prepared as she is and issued written rulings as quickly.

Judge Peuler has always been one of the best judges I have drawn--until this most recent hearing. It appears something has changed. While she seemed to grasp the facts and law during the hearing, her ruling completely failed to address the relevant facts and law. It seemed from her ruling that she had not read the memoranda or participated in the hearing. It would have been very helpful had Judge Peuler addressed the facts and law directly in her ruling.

She does a great job.

Utah Judicial Council's

Senior Judge Performance Evaluation Program TCE Evaluation

Report for Sandra Pueler

June 2019

Report prepared by the National Center for State Courts



This Report offers a one-page overview of results from your 2019 Utah Judicial Council Senior Judge Performance Evaluation. This overview consists of two sections. First, the *Survey Participants* table displays the number of eligible trial court executives and presiding judges that were selected to evaluate you and the number of evaluations completed by trial court executives and presiding judges and the response rate. Second, the *Evaluation Summary* section displays the survey results for each of the 15 items on which you were rated. The first column in the table displays the mathematical average score you received on each item (shown in blue). The second column presents the average score for all senior judges evaluated this year. The last two columns on the right side of the *Evaluation Summary* display the range of scores you received (also in blue), indicating your lowest and highest score for each question, by performance area, and in total. Following the evaluation summary are written responses to one optional question posed to attorney evaluators. These responses were taken directly from the survey responses, and were only edited for spelling. For more information about survey process, please refer to the Appendix.

Survey Participants

Number of fully completed evaluations	1
Number of surveys not completed for lack of experience with this senior judge	1
Response Rate	50%

Evaluation Summary

Behavior/Attribute Rated	Average Rating		Range of Ratings this Senior Judge Received	
	Individual Mean Score	Average Score for all Senior Judges	Lowest	Highest
Behavior is free from impropriety and the appearance of impropriety	N/A	4.10	N/A	N/A
Behavior is free from bias and favoritism	N/A	4.30	N/A	N/A
Avoids ex parte communications (contact with one party without the other parties present)	5.00	4.13	N/A	5
Understands and correctly applies the rules of procedure and evidence	N/A	4.10	N/A	N/A
Understands and correctly applies the substantive law	N/A	4.10	N/A	N/A
Is attentive to presentations	N/A	4.13	N/A	N/A
Is prepared for hearings and trials	N/A	4.17	N/A	N/A
Explains the purpose of the hearing or trial	N/A	4.30	N/A	N/A
Demonstrates appropriate demeanor	N/A	4.30	N/A	N/A
Maintains order in the courtroom	5.00	4.30	N/A	5
Gives parties a fair opportunity to present the case	N/A	4.00	N/A	N/A
Oral and written decisions and orders are clear and well reasoned	N/A	4.10	N/A	N/A
Issues orders and opinions without unnecessary delay	N/A	4.30	N/A	N/A
Effectively uses pretrial procedures to narrow and define the issues	N/A	4.00	N/A	N/A
Overall, the performance of this senior judge is	N/A	4.30	N/A	N/A
Overall average score	5.00	4.17	N/A	5

Responses to the question: *"How can this senior judge improve his or her performance?"* (Note: these responses have been edited to correct spelling errors.)

Appendix: Technical Notes

EVALUATION FORMS

Eligible participants for the evaluation included attorneys who have appeared before the senior judge. Respondents who opened the survey but did not complete it because they did not feel they had sufficient experience with this senior judge were removed from the data analysis; but they *were* included in the "Number of Eligible Participants."

CALCULATION OF INDIVIDUAL ITEM SCORES

Individual item scores were derived using the following procedure. First, all individual respondent's ratings of the evaluated senior judge were averaged across each of the eight items on which senior judges were evaluated. These scores were calculated as an arithmetic mean: the sum of all relevant ratings provided by the respondent was divided by the number of respondents and these appear in the first column labeled "*individual mean score*." The same process was used to generate a comparison score of all senior judges evaluated during this period. This score was computed as the arithmetic mean across all respondents on all senior judge evaluations; these scores appear in the second column labeled "average score for all senior judges." Finally, an overall average score for each individual judge and all judges evaluated were computed by averaging the scores on the 15 individual scored items.



**Senior Judge Application
Active Status**

Qualifications for Office

I, Robin W. Reese, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 12/31/2014
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been ND orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
32.75	32	19.75

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

Judicial Conference - 12 hrs

Int'l Bar Fall F - 5 hrs

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

Date

July 18, 2019

Robin W. Reese

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester

P.O. Box 140241

Salt Lake City, Utah 84114-0241

Fax: 801-578-3843

Email:



Senior Judge Application Active Status

Qualifications for Office

I, Gary D. Stott, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 7/1/2009
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:
- PRIVATE PRIVATE
- PRIVATE PRIVATE
- My email address and phone number are: PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
32.5	30	

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

-
-
-
- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

July 17, 2019
Date

Gary D. Stott
Gary D. Stott

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3843
Email: nancyjs@utcourts.gov



Senior Judge Application Active Status

Qualifications for Office

I, W. Brent West, hereby apply for the office of Active Senior Judge and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) I am familiar with current statutes, rules and case law, the use of the electronic record, and judicial workspace.
- 8) I am a current resident of Utah and available to take cases.
- 9) I will satisfy the education requirements of an active judge.
- 10) I will accept assignments at least two days per calendar year, subject to being called.
- 11) I will conform to the Code of Judicial Conduct, the Code of Judicial Administration, and rules of the Supreme Court.
- 12) I obtained results on the most recent judicial performance evaluation prior to termination of service sufficient to have been certified for retention regardless of whether the evaluation was conducted for self-improvement or certification;
- 13) I continue to meet the requirements for certification for judicial performance evaluation as those requirements are established for active senior judges.
- 14) I was not removed from office or involuntarily retired on grounds other than disability.

- 15) I was not suspended during my final term of office or final six years in office, whichever is greater.
- 16) I did not resign as a result of negotiations with the Judicial Conduct Commission or while a complaint against me was pending before the Supreme Court or pending before the Judicial Conduct Commission after a finding of reasonable cause.
- 17) I will submit relevant information as requested by the Judicial Council.
- 18) My date of birth is PRIVATE and my retirement date is 12/29/2017.
- 19) I have not been subject to any order of discipline for conduct as a senior judge.
- 20) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 21) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 22) The address at which I can be contacted after retirement is:

PRIVATE

PRIVATE

My email address and phone
number are:

PRIVATE

Judicial Performance Evaluation Information

I further declare as follows:

- 23) I have held no more than three cases per calendar year under advisement more than 60 days after submission.
- 24) I have held no cases under advisement more than 180 days after submission.
- 25) I am in substantial compliance with the Code of Judicial Conduct.
- 26) I am physically and mentally fit for office.
- 27) I have obtained the following judicial education hours for the years indicated.

2017	2018	2019
47	49	37

If you have fewer than 30 hours for the current year, list any course you plan to complete before the end of the year and the estimated number of hours associated with the course.

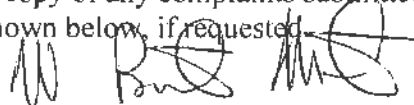
I AM SCHEDULED TO ATTEND THE ANNUAL JUDICIAL
CONFERENCE IN SEPTEMBER.

- 28) I understand that I must contact the Administrative Office of the Courts and request transfer to inactive status prior to any planned leaves of absence that could interfere with my ability to fully comply with annual education requirements.

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission be sent to the person shown below, if requested.

7-16-19

Date

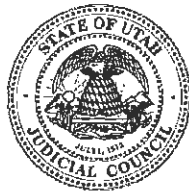


W. Brent West

Please complete and return by July 29, 2019 to:

Nancy J. Sylvester
 P.O. Box 140241
 Salt Lake City, Utah 84114-0241
 Fax: 801-578-3843
 Email: nancyjs@utcourts.gov

INACTIVE SENIOR JUDGES



Senior Judge Application

Inactive Status

I, Leslie D. Brown, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of my completed application to the Judicial Conduct Commission since 1/1/2007 (separation date) be sent to the person shown below, if requested.

July 15, 2019
Date

Leslie D. Brown
Leslie D. Brown

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



Senior Judge Application

Inactive Status

I, Hans Q. Chamberlain, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 5/1/2014 (separation date) be sent to the person shown below, if requested.

7/15/19
Date

Hans Q. Chamberlain
Hans Q. Chamberlain

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



Senior Judge Application
Inactive Status

I, Douglas L. Cornaby, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 10 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

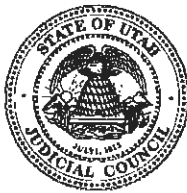
I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 7/16/1992 (separation date) be sent to the person shown below, if requested.

July 16, 2019
Date

Douglas L. Cornaby
Douglas L. Cornaby

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



Senior Judge Application

Inactive Status

I, Paul F. Iwasaki, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been NO orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 9/16/2013 (separation date) be sent to the person shown below, if requested.

July 15, 2019
Date

Paul F. Iwasaki
Paul F. Iwasaki

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



Senior Judge Application
Inactive Status

I, Denise Posse-Blanco Lindberg, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 1/1/2015 (separation date) be sent to the person shown below, if requested.

7/26/2019

/s/ Nancy J. Sylvester at the direction of Hon.
Denise Posse-Blanco Lindberg

Date

Denise Posse-Blanco Lindberg

Please complete and return no later than July 31, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



Senior Judge Application Inactive Status

I, Tyrone E. Medley, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 7/1/2012 (separation date) be sent to the person shown below, if requested.

July 29, 2019

Tyrone E. Medley

Date

Tyrone E. Medley

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



**Senior Judge Application
Inactive Status**

I, Andrew A. Valdez, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 11/1/2013 (separation date) be sent to the person shown below, if requested.

Date

7-21-2019

Andrew A. Valdez

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov



Senior Judge Application
Inactive Status

I, Diane W. Wilkins, apply for the office of senior judge, inactive status, and declare as follows:

- 1) I was retained in the last election in which I stood for election.
- 2) I voluntarily resigned from judicial office, retired upon reaching the mandatory retirement age, or, if involuntarily retired due to disability, have recovered from or have accommodated that disability.
- 3) I am physically and mentally able to perform the duties of judicial office.
- 4) I demonstrate appropriate ability and character.
- 5) I am admitted to the practice of law in Utah, but I do not practice law.
- 6) I am eligible to receive compensation under the Judges' Retirement Act, subject only to attaining the appropriate age.
- 7) There ☐ is ☒ is not a complaint against me pending before the Supreme Court or before the Judicial Conduct Commission after a finding of reasonable cause.
- 8) During my current term there have been 0 orders of discipline against me entered by the Supreme Court, and I have attached a copy of each, if applicable.
- 9) The mailing address and phone number at which I can be contacted after retirement are:

PRIVATE

PRIVATE

My email address and phone number are:

PRIVATE

I waive my claim of confidentiality and request that a copy of any complaints submitted to the Judicial Conduct Commission since 11/16/2008 (separation date) be sent to the person shown below, if requested.

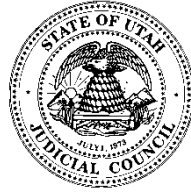
July 23, 2019
Date

Diane W. Wilkins
Diane W. Wilkins

Please complete and return no later than July 29, 2019 to:

Nancy Sylvester
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Fax: 801-578-3808
Email: nancyjs@utcourts.gov

Tab 6



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

To: Utah Judicial Council
From: Judge Laura Scott, Chair, and Nancy Sylvester, Staff, of the Probate Subcommittee
Date: August 15, 2019
Re: Probate Subcommittee Legislative Recommendations

Earlier this year, the Utah Supreme Court tasked the Probate Subcommittee with reviewing the Uniform Probate Code (Title 75) for court procedure and making recommendations for codifying that procedure in rule and amending the Code. This task would accomplish at least two purposes: 1) making our courts more accessible to the public by clarifying how a probate case will proceed in the district court; and 2) affirming that court procedure is the constitutional prerogative of the Utah Supreme Court and should be governed by court rule instead of by statute.

Due to the voluminous nature of Title 75, the Probate Subcommittee chose to focus initially on Chapter 5 of the Probate Code, which addresses guardianship and conservatorship. These areas tend to be the most confusing and also the most used by pro se litigants.

The Probate Subcommittee recommends that the Judicial Council advance to the Legislature during the 2020 Legislative Session the attached amendments to Chapter 5 of the Uniform Probate Code. Below is a sample from those recommendations:

75-5-208. Consent to service by acceptance of appointment -- Notice.

By accepting a testamentary, instrumental, or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the minor. Notice of any proceeding shall be ~~delivered~~ given to the guardian in accordance with Rule 5 of the Utah Rules of Probate Procedure. ~~to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.~~ Letters of guardianship shall indicate whether the guardian was appointed by will, written instrument, or by court order.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

Probate Rules and Code-based Court Procedures

August 15, 2019

Page 2

As the proposed new language implies, the subcommittee is also making a recommendation to the Utah Supreme Court that a separate body of probate rules be created. Rule 5 of the Utah Rules of Probate Procedure would address the giving of notice in probate proceedings in much the same way that Rule 5 of the Utah Rules of Civil Procedure does so in civil cases. The proposed rules that are cited in subcommittee's legislative recommendations are also attached for the Council's reference.

Draft Probate Legislation: Title 75, Chapter 5**Amended Code Sections**

75-5-101. Jurisdiction of subject matter -- Consolidation of proceedings.	2
75-5-207. Court appointment of guardian of minor -- Procedure.	2
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75-5-101. Jurisdiction of subject matter -- Consolidation of proceedings.

(1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated in accordance with Rule 14 of the Utah Rules of Probate Procedure.

75-5-207. Court appointment of guardian of minor -- Procedure.

(1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner ~~in the manner prescribed by Section 75-1-401~~ in accordance with Rule 5 of the Utah Rules of Probate Procedure to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition;

(c) any living parent of the minor;

(d) any guardian appointed by the will or written instrument of the parent of the minor who died last; and

(e) the school district in which the petitioner resides and a representative of the school district may participate in the hearing.

(2)

(a) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given in accordance with Rule 5 of the Utah Rules of Probate Procedure, the requirements of Sections 75-5-204 and 75-5-206 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it may make the appointment.

(b) In other cases the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interest of the minor.

(3)

(a) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor.

(b) The authority of a temporary guardian may not last longer than six months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

75-5-208. Consent to service by acceptance of appointment -- Notice.

By accepting a testamentary, instrumental, or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person or any person interested in the welfare of the minor. Notice of any proceeding shall be ~~delivered~~ given to the guardian in accordance with Rule 5 of the Utah Rules of Probate Procedure ~~to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.~~ Letters of guardianship shall indicate whether the guardian was appointed by will, written instrument, or by court order.

75-5-212. Resignation or removal proceedings.

(1) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice in accordance with Rule 5 of the Utah Rules of Probate Procedure and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney in accordance with Rule 9 of the Utah Rules of Probate Procedure to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.

75-5-303. Procedure for court appointment of a guardian of an incapacitated person.

(1) An incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.

(2)

(a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity.

(b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding in accordance with Rule

87 | 9 of the Utah Rules of Probate Procedure, the cost of which shall be paid by the person alleged to
88 | be incapacitated, unless the allegedly incapacitated person and the allegedly incapacitated
89 | person's parents are indigent.

90 | (c) If the court determines that the petition is without merit, the attorney fees and court costs
91 | shall be paid by the person filing the petition.

92 | (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the
93 | incapacitated person, regardless of whether the nominee is specified in the moving petition or
94 | nominated during the proceedings, the petitioner shall be entitled to receive from the
95 | incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting,
96 | or defending the petition.

97 | (3) The legal representation of the incapacitated person by an attorney shall terminate upon
98 | the appointment of a guardian, unless:

99 | (a) there are separate conservatorship proceedings still pending before the court subsequent
100 | to the appointment of a guardian;

101 | (b) there is a timely filed appeal of the appointment of the guardian or the determination of
102 | incapacity; or

103 | (c) upon an express finding of good cause, the court orders otherwise.

104 | (4)

105 | (a) The person alleged to be incapacitated may be examined by a physician appointed by the
106 | court. The physician who shall submit a report in writing to the court.

107 | (b) In accordance with Rule 13 of the Utah Rules of Probate Procedure, the person alleged to be
108 | incapacitated and may be interviewed by a visitor sent by the court. The court visitor also may
109 | also interview the person seeking appointment as guardian, visit the present place of abode of the
110 | person alleged to be incapacitated and the place it is proposed that the person will be detained or
111 | reside if the requested appointment is made, conduct other investigations or observations as
112 | directed by the court, and submit a report in writing to the court.

113 | (5)

114 | (a) The person alleged to be incapacitated shall be present at the hearing in person and see or
115 | hear all evidence bearing upon the person's condition. If the person seeking the guardianship
116 | requests a waiver of presence of the person alleged to be incapacitated, the court shall order an
117 | investigation by a court visitor in accordance with Rule 13 of the Utah Rules of Probate
118 | Procedure, the costs of which shall be paid by the person seeking the guardianship.

(b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician that the person alleged to be incapacitated has

(i) fourth stage Alzheimer's Disease;

(ii) extended comatosis; or

(iii)

(A) an intellectual disability; and

(B) an intelligence quotient score under 25.

(c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the court visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests.

(d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:

(i) the person is the biological or adopted child of the petitioner;

(ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;

(iii) the person appears in court with the petitioner;

(iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;

(v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);

(vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and

(vii) the court appoints a visitor ~~under Subsection (4)~~ in accordance with Rule 13 of the Utah Rules of Probate Procedure.

75-5-308. Appointment of V_{is}itor in guardianship proceeding.

~~A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal~~

~~interest in the proceedings.~~ A court visitor, as necessary, shall be appointed in accordance with this Title and Rule 13 of the Utah Rules of Probate Procedure.

75-5-309. Notices in guardianship proceedings.

(1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of an emergency guardian or temporary suspension of a guardian, notice of hearing, in accordance with Rule 5 of the Utah Rules of Probate Procedure, shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;

(b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;

(c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found;

(d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person; and

(e) Adult Protective Services if Adult Protective Services has received a referral under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, concerning the welfare of the ward or person alleged to be incapacitated or concerning the guardian or conservator or proposed guardian or conservator.

(2) The notice shall be in the form provided in Rule 8 of the Utah Rules of Probate Procedure and shall include ~~in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.~~

(3) Notice shall be served personally in accordance with Rule 4 of the Utah Rules of Probate Procedure on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given ~~as provided in Section 75-1-401~~ in accordance with Rule 5 of the Utah Rules of Probate Procedure. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the court visitor appointed pursuant to Section 75-5-303 and Rule 13 of the Utah Rules of Probate Procedure.

75-5-310. Emergency guardians.

(1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an emergency guardian for the person for a specified period not to exceed 30 days pending notice and hearing.

(2) Upon request by an interested person after the appointment of an emergency guardian, the court shall hold a hearing within ~~14 days~~ the time frame provided in Rule 8 of the Utah Rules of Probate Procedure and pursuant to Section 75-5-303.

75-5-310.5. Temporary guardians.

(1) If, after notice, in accordance with Rule 5 of the Utah Rules of Probate Procedure, and hearing as required by Section 75-5-303, the court finds good cause, the court may:

(a) appoint a temporary guardian;

(b) convert an emergency guardian to a temporary guardian if an emergency guardian has been appointed under Section 75-5-310; or

(c) appoint a different person as temporary guardian to replace an emergency guardian appointed under Section 75-5-310.

(2) Unless the allegedly incapacitated person has already obtained counsel in this proceeding or an attorney has been already appointed for the person, the court shall appoint an attorney to represent the person in the proceeding.

(3) Until a full hearing and further order of the court, the temporary guardian shall be charged with the care and custody of the ward and may not permit the ward to be removed from the state. The authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(4) A temporary guardian may be removed at any time, and shall obey all orders and make any reports required by the court.

(5) A temporary guardian has all of the powers and duties of a permanent guardian as set forth in Section 75-5-312.

75-5-312. General powers and duties of guardian -- Penalties.

(1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.

(2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.

(3) In particular, and without qualifying Subsections (1) and (2), a guardian has the following powers and duties, except as modified by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.

(e) If no conservator for the estate of the ward has been appointed, the guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;

(ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and

(iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward:

(A) except that the guardian may not use funds from the ward's estate for room and board that the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult; and

(B) the guardian shall exercise care to conserve any excess for the ward's needs.

(f)

(i) A guardian is required to report the condition of the ward and of the estate that has been subject to the guardian's possession or control, as required by the court or court rule.

- 243 (ii) A guardian is required to immediately notify all interested persons if the guardian
244 reasonably believes that the ward's death is likely to occur within the next 30 days, based on:
- 245 (A) the guardian's own observations; or
- 246 (B) information from the ward's physician or other medical care providers.
- 247 (iii) A guardian is required to immediately notify persons who request notification and are not
248 restricted in associating with the ward pursuant to Section 75-5-312.5 of:
- 249 (A) the ward's admission to a hospital for three or more days or to a hospice program;
- 250 (B) the ward's death; and
- 251 (C) the arrangements for the disposition of the ward's remains .
- 252 (iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of
253 the guardian's intent to move the ward and to ~~serve~~ give the notice in accordance with Rule 5 of
254 the Utah Rules of Probate Procedure, on to all interested persons at least 10 days before the
255 move. The guardian shall take reasonable steps to notify all interested persons and to file the
256 notice with the court as soon as practicable following the earlier of the move or the date when the
257 guardian's intention to move the ward is made known to the ward, the ward's care giver, or any
258 other third party.
- 259 (v)
- 260 (A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all
261 estates in excess of \$50,000, excluding the residence owned by the ward, ~~send~~ file a report with a
262 full accounting to the court on an annual basis.
- 263 (B) For estates less than \$50,000, excluding the residence owned by the ward, the guardian
264 shall fill out an informal annual report and ~~mail~~ file the report ~~to~~ with the court.
- 265 (C) A report under Subsection (3)(f)(v)(A) or (B) shall include a statement of assets at the
266 beginning and end of the reporting year, income received during the year, disbursements for the
267 support of the ward, and other expenses incurred by the estate. The guardian shall also report the
268 physical conditions of the ward, the place of residence, and a list of others living in the same
269 household. The court may require additional information.
- 270 (D) The forms for both the informal report for estates under \$50,000, excluding the residence
271 owned by the ward, and the full accounting report for larger estates shall be approved by the
272 Judicial Council.
- 273 (E) An annual report shall be examined and approved by the court.

- 274 (F) If the ward's income is limited to a federal or state program requiring an annual
275 accounting report, a copy of that report may be submitted to the court in lieu of the required
276 annual report.
- 277 (vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal
278 report annually to the court. The report shall be examined and approved by the court.
- 279 (vii) The guardian shall also render an annual accounting of the status of the person to the
280 court that shall be included in the petition or the informal annual report as required under this
281 Subsection (3)(f). If a fee is paid for an accounting of an estate, a fee may not be charged for an
282 accounting of the status of a person.
- 283 (viii) If a guardian:
- 284 (A) makes a substantial misstatement on filings of annual reports;
- 285 (B) is guilty of gross impropriety in handling the property of the ward; or
- 286 (C) willfully fails to file the report required by this Subsection (3)(f), after receiving written
287 notice from the court of the failure to file and after a grace period of two months has elapsed, the
288 court may impose a penalty in an amount not to exceed \$5,000.
- 289 (ix) The court may also order restitution of funds misappropriated from the estate of a ward.
290 The penalty shall be paid by the guardian and may not be paid by the estate.
- 291 (x) The provisions and penalties in this Subsection (3)(f) governing annual reports do not
292 apply if the guardian or a coguardian is the parent of the ward.
- 293 (xi) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), "interested persons" means
294 those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-
295 309.
- 296 (g) If a conservator has been appointed:
- 297 (i) all of the ward's estate received by the guardian in excess of those funds expended to
298 meet current expenses for support, care, and education of the ward shall be paid to the
299 conservator for management as provided in this code; and
- 300 (ii) the guardian shall account to the conservator for funds expended.
- 301 (4)
- 302 (a) A court may, in the order of appointment, place specific limitations on the guardian's
303 power.

(b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.

(c) A guardian is not liable to a third person for acts of the guardian's ward solely by reason of the relationship described in Subsection (2).

(5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(6) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the protected person after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

(7) A guardian shall, to the extent practicable, encourage the ward to participate in decisions, exercise self-determination, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. To the extent known, a guardian, in making decisions, shall consider the expressed desires and personal values of the ward.

75-5-312.5. Association between an adult ward and a relative of the adult ward.

(1) As used in this section:

(a) "Associate" or "association" means:

(i) visitation of an adult ward by a relative or qualified acquaintance; or

(ii) communication between an adult ward and a relative or qualified acquaintance in any form, including by telephone, mail, or electronic communication.

(b) "Qualified acquaintance" means an individual, other than a relative of the adult ward, who:

(i) has established a significant, mutual friendship with the adult ward; or

(ii) is clergy in the adult ward's religion or religious congregation.

(c) "Relative" means an adult ward's spouse, parent, step-parent, child, step-child, sibling, step-sibling, half-sibling, grandparent, grandchild, uncle, aunt, nephew, niece, or first cousin.

336 (2)

337 (a) Except as otherwise provided by court order, a guardian may not restrict or prohibit the
338 right of an adult ward to associate with a relative or qualified acquaintance of the adult ward.

339 (b) If an adult ward is unable to express consent to visitation by a relative or a qualified
340 acquaintance of the adult ward, the consent of the adult ward is presumed based on evidence of a
341 prior relationship between the adult ward and the relative or qualified acquaintance of the adult
342 ward.

343 (c) A guardian may not permit a relative or qualified acquaintance of an adult ward to
344 associate with the adult ward:

345 (i) if a court order prohibits the association;

346 (ii) in a manner prohibited by court order; or

347 (iii) if the adult ward expresses a desire to not associate with the relative or qualified
348 acquaintance.

349 (3) A guardian may, as part of the initial guardianship proceeding, petition the court to issue
350 an order:

351 (a) prohibiting or placing conditions on association between an adult ward and a relative or
352 qualified acquaintance of the adult ward; or

353 (b) granting the guardian the authority to prohibit or place conditions on association between
354 an adult ward and a relative or qualified acquaintance of the adult ward.

355 (4) A guardian may, at any time after the initial guardianship proceeding:

356 (a) petition the court to issue an order described in Subsection (3) or to rescind or modify an
357 order described in Subsection (3); or

358 (b) petition, subject to notice, the court on an emergency basis to issue a temporary order
359 until further order of the court described in Subsection (3) or to rescind or modify an order
360 described in Subsection (3).

361 (5) An adult ward, a relative of an adult ward, or a qualified acquaintance of an adult ward
362 may, at any time after the initial guardianship proceeding, petition the court to rescind or modify
363 an order described in Subsection (3).

364 (6) If a guardian violates Subsection (2), the adult ward, a relative of the adult ward, or a
365 qualified acquaintance of the adult ward may do one or more of the following, as applicable:

- 366 (a) petition the court to issue an order to show cause why the guardian should not be held in
367 contempt of court;
- 368 (b) seek an injunction to enforce compliance by the guardian with the law and any applicable
369 court order; or
- 370 (c) petition the court to have the guardian removed as guardian of the adult ward.
- 371 (7) For a hearing on a petition filed under this section, a court:
- 372 (a) may appoint a court visitor in accordance with Rule 13 of the Utah Rules of Probate
373 Procedure to meet with the adult ward to determine the wishes of the adult ward regarding
374 association;
- 375 (b) shall, in accordance with Rule 5 the Utah Rules of Probate Procedure, give notice and
376 provide an opportunity to be heard to the guardian, the adult ward, and the relative or qualified
377 acquaintance;
- 378 (c) shall preserve the right of the adult ward to be present at the hearing; and
- 379 (d) may order supervised visitation by the relative or qualified acquaintance before the
380 hearing.
- 381 (8) A court may not enter an order prohibiting or placing restrictions on association between
382 an adult ward and a relative or qualified acquaintance, unless the court finds by a preponderance
383 of the evidence that:
- 384 (a) the adult ward desires the prohibition or restriction;
- 385 (b) if the adult ward had the capacity to make a knowing and intelligent decision regarding
386 the association, the adult ward would prohibit the association or impose the restriction; or
- 387 (c) the prohibition or restriction is the least restrictive means necessary to protect the health
388 or welfare of the adult ward.
- 389 (9) In making the determination described in Subsection (8), the court may consider any
390 relevant evidence, including:
- 391 (a) the wishes of the adult ward, expressed during or before the guardianship;
- 392 (b) the history of the relationship between the adult ward and the relative or qualified
393 acquaintance;
- 394 (c) any history of criminal activity, abuse, neglect, or violence by the relative or qualified
395 acquaintance; or

(d) whether a protective order was ever issued against the relative or qualified acquaintance with respect to the adult ward.

(10) Except as provided in Subsection (11), the guardian shall have the burden of proof when:

(a) seeking an order prohibiting association or placing restrictions on association with a relative or qualified acquaintance of the adult ward;

(b) modifying an order to place additional prohibitions or restrictions on association with a relative or qualified acquaintance of the adult ward; or

(c) opposing an action described in Subsection (6)(a) or (b).

(11) The relative or qualified acquaintance shall have the burden of proof if the relative or qualified acquaintance is seeking to modify an order previously entered by a court under this section.

(12)

(a) If, in a proceeding under this section, the court finds that the petition was filed frivolously or in bad faith, the court shall award attorney fees to a party opposing the petition.

(b) If, in a proceeding under this section, the court finds that the guardian is in contempt of court or has acted frivolously or in bad faith in prohibiting or restricting association, the court:

(i) may award attorney fees to the prevailing party; and

(ii) may impose a sanction, not to exceed \$1,000, against the guardian.

(c) A court shall prohibit attorney fees awarded under this section from being paid by the adult ward or the adult ward's estate.

75-5-316. Expedited guardianship proceedings.

(1)

(a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship.

(b) For purposes of this section:

(i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan.

(ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section.

(2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section.

(3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing.

(4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition.

(5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6).

(6) If the proposed guardian is not a parent or relative of the ward, ~~personal~~ notice shall be ~~given to~~ served on the ward's spouse, parents, and any adult children of the ward in accordance with Rule 4 of the Utah Rules of Probate Procedure. ~~Personal~~ Notice shall also be ~~given served~~ on ~~to~~ other persons as the court may direct.

(7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician appointed by the court. The physician shall submit his findings to the court in writing.

(8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:

(a) the appropriate parties have been ~~given~~ properly served ~~notice~~;

(b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and

(c) it is necessary and desirable to establish the guardianship.

(9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.

(10) A petition for a limited guardianship shall include the following information:

(a) the interest of the petitioner;

(b) the name, age, residence, and address of the ward;

(c) verification that the ward is a resident of the Utah State Developmental Center;

(d) the name and address of the nearest relative of the ward; and

(e) the reason for appointment of guardianship.

(11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:

(a) that the ward is a resident of the Utah State Developmental Center;

(b) the date the ward was originally admitted to the Utah State Developmental Center;

(c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of the ward's intellectual disability, and any medical or physical conditions of the ward;

(d) that the Utah State Developmental Center is certified as an intermediate care facility for people with an intellectual disability;

(e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and

(f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.

(12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:

The court finds that:

(a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;

(b) the ward is incapacitated;

(c) (named guardian) is appointed as the limited guardian of (named ward); and

(d) the guardianship is a limited guardianship solely for the purpose of:

(i) granting permission for medical and dental care on behalf of the ward; and

(ii) participation in the development and approval of the ward's individual program plan.

(13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.

75-5-402. Protective proceedings -- Jurisdiction of affairs of protected persons.

After the service of notice, as provided in Rule 4 of the Utah Rules of Probate Procedure, in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

- (1) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;
- (2) Exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended, or distributed to or for the use of the protected person or any of his dependents;
- (3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

75-5-405. Notice.

(1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, ~~his~~ the person's parents, must be served personally with notice of the proceeding in accordance with Rule 4 of the Utah Rules of Probate Procedure. ~~at least 10 days before the date of the hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with Section 75-1-401.~~ Waiver by the person to be protected is not effective unless ~~he~~ the person attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the court visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under Section 75-5-406 and to interested persons and other persons as the court may direct in accordance with Rule 5 of the Utah Rules of Probate Procedure. ~~Except as otherwise provided in Subsection (1) above, notice shall be given in accordance with Section 75-1-401.~~

75-5-406. Protective proceedings -- Request for notice -- Interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the ~~registrar~~ clerk of court a request for notice subsequent to payment of any fee required by statute or court rule. In accordance with Rule 5 of the Utah Rules of Probate Procedure, ~~t~~The clerk shall mail give a copy of the notice of the demand request to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

75-5-407. Procedure concerning hearing and order on original petition.

(1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for the hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may, in accordance with Rule 9 the Utah Rules of Probate Procedure, appoint an attorney to represent the minor, giving consideration to the choice of the minor if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has already retained counsel, the court may appoint an attorney to represent the person to be protected who then has the powers and duties of a guardian ad litem.

(3) The legal representation of the protected person by an attorney shall terminate upon the appointment of a conservator, unless:

(a) there are separate guardianship proceedings still pending before the court subsequent to the appointment of a conservator;

(b) there is a timely filed appeal of the appointment of the conservator; or

(c) upon an express finding of good cause, the court orders otherwise.

(4) If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may ~~send~~ appoint a visitor to interview the person to be protected in accordance with Rule 13 of the Utah Rules of Probate Procedure. ~~The visitor may be a guardian ad litem or an officer or employee of the court.~~

(5) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

75-5-412. Terms and requirements of bonds.

(1) The following requirements and provisions apply to any bond required under Section 75-5-411:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(b) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of the proceeding shall be ~~delivered~~ given to the surety in accordance with Rule 5 of the Utah Rules of Probate Procedure; ~~or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;~~

(c) On petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(d) The bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation under this code.

75-5-413. Acceptance of appointment -- Consent to jurisdiction.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be ~~given~~ delivered to the conservator in accordance with Rule 5 of the Utah Rules of Probate Procedure ~~or mailed to him by registered or certified mail at his address as listed in the petition for appointment, or as thereafter reported to the court, and to his address as then known to the petitioner.~~

75-5-416. -Petitions for orders subsequent to appointment.

(1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order:

(a) requiring bond or security or additional bond or security, or reducing bond;

(b) requiring an accounting for the administration of the conservatorship estate;

(c) directing distribution;

(d) removing the conservator and appointing a temporary or successor conservator; or

(e) granting other appropriate relief, including any relief available under Title 75, Chapter 7, Utah Uniform Trust Code, if the protected person is a grantor, settlor, trustor, or beneficiary of a trust.

(2) A conservator may petition the appointing court for instructions concerning the conservator's fiduciary responsibility.

(3) Upon notice, in accordance with Rule 5 of the Utah Rules of Probate Procedure, and hearing the court may give appropriate instructions or make any appropriate order.

75-5-417. General duty of conservator.

(1) A conservator shall act as a fiduciary and shall observe the standards of care as set forth in Section 75-7-902.

(2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, ~~send-file~~ a report with a full accounting to the court on an annual basis. For estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill out an informal annual report and ~~mail-file~~ the report to the court. The report shall include the following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information. The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.

(3) Corporate fiduciaries are not required to fully petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.

(4)

(a) The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed, a conservator or corporate fiduciary:

(i) makes a substantial misstatement on filings of any required annual reports;

(ii) is guilty of gross impropriety in handling the property of the ward; or

(iii) willfully fails to file the report required by this section.

(b) The court may also order restitution of funds misappropriated from the estate of a ward.

(c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.

(5) These provisions and penalties governing annual reports do not apply if the conservator is the parent of the ward.

75-5-428. Claims against protected person -- Enforcement.

(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(b) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court.

(2) A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until 30 days after its disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator in accordance with Rule 5 of the Utah Rules of Probate Procedure if the outcome is to constitute a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

Draft Rules to Accompany Recommended Changes to Title 75, Chapter 5

Utah Rules of Probate Procedure

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Utah Rules of Probate Procedure, Rule 1

RULE 1. GENERAL PROVISIONS.

(a) **Title.** These rules may be known and cited as the Utah Rules of Probate Procedure, or abbreviated URPP.

(b) **Scope of rules.** These rules govern the procedure in the state courts of Utah in all proceedings filed under Title 75 of the Utah Code.

(c) **Purpose of rules.** The purpose of the probate rules is to provide the fair, prompt, economical, and equitable resolution of proceedings and they shall be liberally construed and applied to achieve those purposes.

(d) **Effective date.** These rules govern all petitions filed after the rules take effect and all further activity in proceedings then pending. If, in the opinion of the court, applying a rule in a pending proceeding when the rule takes effect would not be feasible or would be unjust, the Utah Rules of Civil Procedure apply.

(e) **Jurisdiction and venue unaffected.** These rules shall not be construed to extend or limit the jurisdiction of the courts of this state or the venue of actions therein.

(f) **Probate Proceeding.** A probate proceeding is a civil action.

Utah Rules of Probate Procedure, Rule 2

RULE 2. DEFINITIONS.

For purposes of these rules:

1) “Interested person,” as that term is defined in Utah Code Section 75-1-201, is a person or entity who is required to be served notice under Title 75 or, who has participated in the proceedings. The meaning of “interested person” as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

2) “Participated in the proceedings” means filing a request for notice of the proceedings or filing a written objection or written response to a petition filed under Title 75 of the Utah Code.

3) “Parties” means, in proceedings under Title 75 of the Utah Code, the petitioner, respondent, and interested persons. “Party” means any one of the parties.

4) “Respondent” means “allegedly incapacitated person,” “incapacitated person,” “person alleged to be incapacitated,” “person to be protected,” “protected person,” and “ward” as those terms are used in Title 75, Chapter 5 of the Utah Code. “Respondent” also means, in proceedings under the other chapters of Title 75, a person or entity who has the legal right to respond to an informal or formal probate petition.

Utah Rules of Probate Procedure, Rule 3

RULE 3. COMMENCEMENT OF PROBATE PROCEEDING.

(a) How commenced. A proceeding under Title 75 of the Utah Code is commenced by the filing of a petition with the court, together with the tender of the appropriate filing fee.

(b) Dishonored payment. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the petition.

Utah Rules of Probate Procedure, Rule 4

RULE 4. PROCESS.

(a) Requirement for, and signing of, summons. In proceedings where a summons is required, the summons must be signed and issued by the petitioner or the petitioner's attorney. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and petition are accepted in accordance with paragraph (d)(3), a copy of the summons and petition in a proceeding commenced under [Rule 3](#) must be served no later than 120 days after the petition is filed, unless the court orders a different period under [Rule 6](#).

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the respondent and any person required to be served in accordance with this rule or served personally under Title 75;

(c)(1)(C) state the name, address and telephone number of the petitioner's attorney, if any, and otherwise the petitioner's address and telephone number;

(c)(1)(D) state the time within which the respondent and any interested person is required to respond or object to the petition in writing;

(c)(1)(E) notify the respondent and any interested person that a failure to respond in writing to the petition, may result in action being taken that adversely affects the respondent's or interested person's rights or abilities to dispute the relief sought; and

(c)(1)(F) state that the petition is on file with the court.

(c)(2) If service is by publication, the summons must also briefly state the subject matter and the relief demanded, and that the petition is on file with the court.

(d) Methods of service. The summons and petition may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and petition must be by one of the following methods:

(d)(1) *Personal service.* The summons and petition may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and petition, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

107 (d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B),
108 (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and petition to the individual
109 personally, or by leaving them at the individual's dwelling house or usual place of abode
110 with a person of suitable age and discretion who resides there, or by delivering them to an
111 agent authorized by appointment or by law to receive process;

112 (d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and
113 petition to the minor and also to the minor's father, mother, or guardian or, if none can be
114 found within the state, then to any person having the care and control of the minor, or
115 with whom the minor resides, or by whom the minor is employed;

116 (d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound
117 mind, or incapable of conducting the individual's own affairs, by delivering a copy of the
118 summons and petition to the individual and to the guardian or conservator of the
119 individual if one has been appointed; the individual's legal representative if one has been
120 appointed, and, in the absence of a guardian, conservator, or legal representative, to the
121 person, if any, who has care, custody, or control of the individual;

122 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the
123 state or any of its political subdivisions, by delivering a copy of the summons and petition
124 to the person who has the care, custody, or control of the individual, or to that person's
125 designee or to the guardian or conservator of the individual if one has been appointed.
126 The person to whom the summons and petition are delivered must promptly deliver them
127 to the individual;

128 (d)(1)(E) Upon other persons or entities as provided in rule 4(d)(1) or Rule 4(d)(2)(B)
129 of the Utah Rules of Civil Procedure.

130 (d)(2) *Service by mail or commercial courier service.*

131 (d)(2)(A) The summons and petition may be served upon an individual other than one
132 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in
133 any state or judicial district of the United States provided the defendant signs a document
134 indicating receipt.

135 (d)(2)(B) Service by mail or commercial courier service shall be complete on the date
136 the receipt is signed as provided by this rule.

137 (d)(3) *Acceptance of service.*

138 (d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary
139 expenses of serving the summons and petition.

140 (d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor
141 under 14 years old or an individual judicially declared to be incapacitated, of unsound
142 mind, or incapable of conducting the individual's own affairs, a party may accept service
143 of a summons and petition by signing a document that acknowledges receipt of the
144 summons and petition.

(d)(3)(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and petition on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and petition.

(d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and petition retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(d)(4) *Service in a foreign country*. Service in a foreign country must be in accordance with rule 4(d)(4) of the Utah Rules of Civil Procedure.

(d)(5) *Other service*. If the identity or whereabouts of a party is unknown and cannot be ascertained through reasonable diligence, if service upon all of the parties is impracticable under the circumstances, or if there is good cause to believe that a party is avoiding service, the party seeking service may file a motion to allow service by some other means in accordance with rule 4(d)(5) of the Utah Rules of Civil Procedure.

(e) Proof of service.

(e)(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

(e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(e)(3) When service is made pursuant to paragraph (d)(2)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

Utah Rules of Probate Procedure, Rule 5

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) When service is required.

(a)(1) *Initiating petition and other notices.* Any person required under Title 75 to be given an initiating petition or other notice other than personally or in accordance with Rule 4 must be served in accordance with this rule.

(a)(2) *Papers that must be served.* Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(a)(2)(A) a petition after the initiating petition has been filed;

(a)(2)(B) an objection, response, counter-petition, or amended petition;

(a)(2)(C) a notice of hearing in accordance with Rule 8;

(a)(2)(D) a notice of mediation;

(a)(2)(E) a paper relating to disclosure or discovery;

(a)(2)(F) a motion filed with the court other than a motion that may be heard ex parte;
and

(a)(2)(G) a written notice, appearance, demand, offer of judgment, or similar paper.

(a)(3) *Serving interested persons who have not appeared or filed a request for notice.* No service is required on an interested person who has not appeared or filed a request for notice except that:

(a)(3)(A) an interested person must be served as ordered by the court; and

(a)(3)(B) an interested person who has appeared or filed a request for notice must be served as provided in paragraph (b).

(b) How service is made.

(b)(1) *Whom to serve.* If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under [Rule 75 of the Utah Rules of Civil Procedure](#) and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(b)(2) *When to serve.* If a hearing or other event is scheduled 10 days or less from the date of service, a party must serve a paper related to the hearing or other event by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(b)(3) *Methods of service.* A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(b)(3)(B) emailing it to

(b)(3)(B)(i) the most recent email address provided by the person to the court under [Rule 10\(a\)\(3\)](#) or [Rule 76 of the Utah Rules of Civil Procedure](#), or

(b)(3)(B)(ii) to the email address on file with the Utah State Bar;

(b)(3)(C) mailing it to the person's last known address;

(b)(3)(D) handing it to the person;

(b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

(b)(4) *When service is effective.* Service by mail or electronic means is complete upon sending.

(b)(5) *Who serves.* Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) every paper prepared by the court will be served by the court.

(c) Serving numerous interested persons. If a proceeding involves an unusually large number of parties, the court, upon motion or its own initiative, may make appropriate orders regarding service under this rule:

(d) Certificate of service. A paper required by this rule to be served, including electronically

filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in [Rule 7 [orders] and Rule 26 [filing of disclosures, discovery]], all papers after the initiating petition that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by [Utah Code Section 46-1-16\(7\)](#);

(f)(2) electronically file a scanned image of the affidavit or declaration;

(f)(3) electronically file the affidavit or declaration with a conformed signature; or

(f)(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

259 Utah Rules of Probate Procedure, Rule 6

260 **RULE 6. TIME.**

261 To be drafted.

262

263 Utah Rules of Probate Procedure, Rule 7

264 **RULE 7. PLEADINGS ALLOWED.**

265 To be drafted.

266

Utah Rules of Probate Procedure, Rule 8

RULE 8. HEARINGS.

(a) **Hearing upon filing of initiating petition.** Upon the filing of an initiating petition, the probate clerk shall schedule a hearing on the petition.

(a)(1) The petitioner shall give notice of the time and place of the hearing in accordance with Rule 5 of these rules.

(a)(2) The notice shall be in plain language and large type. The notice shall state the time and place of the hearing, the respondent's rights, and the possible adverse consequences of being subject to the guardianship or conservatorship or other protective proceedings. The notice shall include a copy of the petition.

(b) **Respondent's presence at hearing on initiating petition.** In guardianship, conservatorship, or other protective proceedings, the respondent and the proposed guardian or conservator shall attend the hearing on the initiating petition unless excused by the court for good cause prior to the hearing.

(b)(1) If the petitioner moves to excuse the respondent's presence at the hearing, the court shall order an investigation by a court visitor in accordance with Rule 13 unless a court visitor is not required under Utah Code Section 75-5-303(5)(b).

(b)(2) The respondent is entitled to be represented by counsel at the hearing.

(b)(3) The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(c) **Trial on respondent's alleged incapacity.** In guardianship or conservatorship proceedings, if the respondent or an interested person objects to the petition on the ground that the respondent is not incapacitated, the court shall schedule a trial on the issue in accordance with [Rule ____ [trial rule] of the Utah Rules of Probate Procedure.]

(d) **Hearings on subsequent petitions or motions.** The court may hold a hearing on any subsequent petition or motion filed in a probate proceeding.

(d)(1) *Request for hearing.* A party may request a hearing in the motion or petition, in a memorandum or objection, or in the request to submit for decision. A request for a hearing must be separately identified in the caption of the document containing the request.

(d)(2) *Notice of hearing on subsequent petitions or motions.* Notice of a hearing on any subsequent petition or motion shall be provided to the petitioner, the respondent and any

298 interested person who has filed an answer or objection to the initiating petition or requested
299 notice in accordance with Title 75 of the Utah Code.

300 (e) **Hearing on emergency guardian.** If the court, without notice, has appointed an
301 emergency guardian for the respondent pursuant to Utah Code Section 75-5-310, the court shall
302 hold a hearing on the initiating petition within 14 days or as soon as practicable, but no later than
303 30 days after the appointment.

304 (f) **Postponement of hearing.** The court may postpone a hearing for good cause upon such
305 terms as are just.

306

Utah Rules of Civil Procedure, Rule 9

**RULE 9. APPOINTMENT OF ATTORNEY FOR RESPONDENT IN GUARDIANSHIP,
CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS.**

(a) **Adult respondents.** Unless an adult respondent has counsel of his or her own choice or the court determines that counsel is not required under Utah Code Section 75-5-303(5)(d), the court shall appoint a qualified attorney to represent the respondent in guardianship proceedings, the cost of which shall be paid by the respondent unless the respondent and the respondent's parents are indigent. The court may appoint a qualified attorney to represent the respondent in conservatorship and other protective proceedings, the cost of which shall be paid by the respondent unless the respondent and the respondent's parents are indigent.

(a)(1) The attorney's representation of the respondent shall terminate upon the appointment of a guardian or conservator unless:

(a)(1)(i) there are other pending protective proceedings,

(a)(1)(ii) there is a timely appeal of the appointment of the guardian or conservator or the determination of incapacity, or

(a)(1)(iii) the court determines otherwise upon an express finding of good cause.

(a)(2) If the court determines the petition is without merit, the fees and costs of the respondent's attorney shall be paid by the petitioner.

(b) Minor respondents.

(b)(1) If, at any time during a guardianship, conservatorship, or other protective proceedings involving a minor respondent, the court determines that the respondent's interests are or may be inadequately represented, it may appoint a qualified attorney to represent the respondent, the cost of which shall be paid by the respondent unless the respondent and the respondent's parents are indigent.

(b)(2) If the minor respondent is 14 years of age or older, the court shall give consideration to the minor's choice of counsel.

(b)(3) An attorney appointed by the court to represent a minor respondent has the powers and duties of a guardian ad litem.

(b)(4) The attorney's representation of the minor respondent shall terminate upon the appointment of a guardian or conservator unless there are other pending protective proceedings, a timely appeal of the appointment of the guardian or conservator or the determination of incapacity, or the court determines otherwise upon an express finding of good cause.

340 (b)(5) If the court determines the petition is without merit, the fees and costs of the
341 respondent's attorney shall be paid by the petitioner.

342 (c) **Appointment of qualified attorneys.** If the court appoints an attorney under paragraphs
343 (a) or (b), the court shall appoint a qualified attorney, as defined in this paragraph, to represent
344 the respondent.

345 (c)(1) An attorney is qualified to represent respondents in guardianship, conservatorship,
346 and other protective proceedings if the attorney:

347 (c)(1)(A) has relevant training, knowledge, and experience in guardianship,
348 conservatorship, and protective proceedings or has other qualifications deemed
349 acceptable by the court;

350 (c)(1)(B) is disinterested; and

351 (c)(1)(C) agrees to comply with the Utah Rules of Professional Conduct,
352 generally, and with Rules 1.6, 1.7, 1.8, and 1.14 of the Utah Rules of Professional
353 Conduct specifically.

354 (c)(2) A motion seeking appointment of a specific attorney shall be supported by an
355 affidavit or declaration establishing that the proposed attorney is qualified under this rule. If
356 the respondent is indigent, the motion shall include an affidavit of impecuniosity.

357
358

359 Utah Rules of Civil Procedure, Rule 10

360 **RULE 10. FORM OF PLEADINGS AND OTHER PAPERS.**

361 To be drafted.

362

363 Utah Rules of Probate Procedure, Rule 11

364 **RULE 11. SIGNING OF PLEADINGS, MOTIONS, AFFIDAVITS, AND OTHER**
365 **PAPERS; REPRESENTATIONS TO COURT; SANCTIONS.**

366 To be drafted.

367

368

369 Utah Rules of Civil Procedure, Rule 12

370 **RULE 12. DEFENSES, OBJECTIONS, COUNTERCLAIMS, AND CROSS CLAIMS.**

371

372 To be drafted.

373

374

Utah Rules of Probate Procedure, Rule 13

RULE 13. COURT VISITOR.

(a) **Definition.** “Court visitor” means a person appointed by the court in guardianship or conservatorship proceedings who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the respondent. A court visitor may include, but is not limited to, an attorney, psychologist, social worker, developmental incapacity professional, physical and occupational therapist, educator, or rehabilitation worker.

(b) **Appointment and role of court visitor.** Upon its own initiative or motion of a party, the court may appoint a court visitor in a guardianship or conservatorship proceeding to conduct an inquiry into the following:

(b)(1) whether to excuse the respondent from attending the hearing under Section 75-5-303(5)(a);

(b)(2) to confirm a waiver of notice submitted by the respondent in a guardianship or conservatorship proceeding under Sections 75-5-309(3) or 75-5-405(1);

(b)(3) to investigate the respondent’s circumstances and well-being;

(b)(4) to review annual reports from the guardian and conservator or gather additional financial information;

(b)(5) to locate guardians, conservators, and respondents;

(b)(6) to investigate the proposed guardian’s future plans for the respondent’s residence under Section 75-5-303(4); or

(b)(7) to conduct any other investigation or observation as directed by the court.

(c) **Motion to excuse respondent or confirm waiver of hearing.** The petitioner, the respondent, or any interested person seeking to excuse the respondent or confirm a waiver of hearing, shall file an ex parte motion at least 21 days prior to the hearing.

399 (c)(1) Upon receipt of the motion, the court shall appoint a court visitor to conduct an
400 investigation in accordance with paragraph (b) unless one is not required under Utah Code
401 section 75-5-303.

402 (c)(2) Upon appointment to conduct an inquiry into whether to excuse the respondent
403 from the hearing, the court visitor will:

404 (c)(2)(i) interview the petitioner, the proposed guardian, and the respondent;

405 (c)(2)(ii) visit the respondent's present dwelling or any dwelling in which the
406 respondent will reside if the appointment is made;

407 (c)(2)(iii) interview any physician or other person who is known to have treated,
408 advised, or assessed the respondent's relevant physical or mental condition;

409 (c)(2)(iv) confirm a waiver of notice if submitted by the respondent; and

410 (c)(2)(iv) conduct any other investigation the court directs.

411 **(d) Other inquiries.** If the court appoints a visitor under paragraphs (b)(3) through (b)(7),
412 the court visitor will conduct the inquiry in accordance with the court's order or appointment.

413 **(e) Language access.** If the court visitor does not speak or understand the respondent's,
414 proposed guardian's, proposed conservator's, or petitioner's primary language, the court visitor
415 must use an interpretation service approved by the Administrative Office of the Courts to
416 communicate with the respondent, proposed guardian, proposed conservator, or petitioner.

417 **(f) Court visitor's report.**

418 (f)(1) A report made by the court visitor must be filed and served upon all parties in
419 accordance with Rule 5 of these rules.

420 (f)(2) Unless the court does not need to act on the report, the court visitor will file with
421 the report a notice of filing, which the clerk of court will treat as a request to submit for
422 decision. In cases involving a motion to excuse the respondent from the hearing, the court
423 visitor will also file with the report a court-approved proposed order.

424 (g) **Termination of court visitor appointment.** The appointment of the court visitor
425 terminates and the court visitor is discharged from the court visitor's duties upon the date
426 identified in the order of appointment. The court may extend the appointment with or without a
427 request from a party.

428 (h) **Court findings.** The court will make findings and an order based on the report of the
429 court visitor at least two days prior to any hearing related to a report or within fourteen days of
430 receiving the report if no hearing is scheduled.

431

Utah Rules of Probate Procedure, Rule 14

RULE 14. CONSOLIDATION.

(a) Consolidation. When multiple protective proceedings as to the same person are commenced or pending in the same court, the court may order a joint hearing or trial of any or all the matters in issue in the proceedings; it may order all the proceedings consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(a)(1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed. Notice of a motion to consolidate cases shall be given to all parties in each case. The order denying or granting the motion shall be filed in each case.

(a)(2) If a motion to consolidate is granted, the case number of the first case filed shall be used for all subsequent papers and the case shall be heard by the judge assigned to the first case. The presiding judge may assign the case to another judge for good cause.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross claim, counterclaim, or of any separate issue or of any number of claims, cross claims, counterclaims, or issues.

Tab 7



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

June 28, 2019

Hon. Mary T. Noonan
Interim State Court Administrator
Ray Wahl
Deputy Court Administrator

MEMORANDUM

TO: Members of the Judicial Council Management Committee

FROM: Neira Siaperas
Utah Juvenile Court Administrator

DATE: June 28, 2019

RE: Proposed Probation Policies for Review and Approval

The Board of Juvenile Court Judges has proposed revisions of the following policies which are now advanced to Management Committee for review and consideration. Additionally, I seek placement on the Judicial Council's consent agenda for July 18, 2019.

Section 5.1, Probation Searches [Recommendation to Approve]

This policy was last updated on August 1, 2001. The purpose of the policy is to provide direction to probation department staff when conducting searches. Changes in the policy were made to update the conditions under which probation staff conduct searches and include reference to Local Security Plans and the Work Crew Deputy Probation Officers' Operating Manual in regards to administrative searches.

Section 5.3, Continuum of Force [Recommendation to Approve]

This policy was last updated on November 1, 2001. The purpose of the policy is to establish guidelines for probation staff when responding to individuals who may cause physical injury to themselves or others. Changes were made to align the policy with the current Utah State Juvenile Court Probation Officer Safety Training curriculum, Natural Response Control Tactics.

I will be available to respond to questions during your meeting on July 9, 2019.

Thank you.

cc:

Honorable James R. Michie, Jr., Chair-Board of Juvenile Court Judges

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

POLICY 5.1 Probation Searches

5.1 Probation Searches

Policy:

This policy provides direction to probation department staff when conducting searches.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:

- Legal Counsel Opinion - Search & Seizure

Reference:

- [Probation Policy 5.2 Transporting a Minor in Custody](#)
- [Probation Policy 5.7 Transporting a Minor Not in Custody](#)
- [Work Crew Deputy Probation Officers Operating Manual](#)

Procedure:

1. The probation officer shall adhere to the *Local Security Plan*, *Work Crew Deputy Probation Officers Operating Manual* and probation policy when searching individuals entering probation properties and vehicles.
2. The probation officer shall only conduct searches of dwellings and property under the following conditions:
 - 2.1. when there is a court order requiring a search; or
 - 2.2. when there is a court order allowing a search and reasonable suspicion of illegal activity exists.
 - 2.2.1. Reasonable suspicion includes but is not limited to:
 - 2.2.1.1. Information reported from a reliable source that the minor may have violated the law or their court order(s).
 - 2.2.1.2. Observable physical indicators that the minor is under the influence of illegal substances.
 - 2.2.1.3. Observable environmental indicators that the minor may be in possession of illegal or restricted items.

3. The probation officer shall refer to [Probation Policy 4.16 - Confiscated Property](#) when illegal or restricted items are discovered during a search.
4. The probation officer shall not conduct a search if the individual in control of the property refuses to allow the search. The probation officer shall staff the situation with their supervisor and consult the noncompliant matrix to determine the appropriate response to the refusal.

Addendum 5.1.1 Legal Counsel Opinion - Search & Seizure

History:

Effective August 1, 2001

Update Approved for Comment by BJCJ January 11, 2019

Approved by Chiefs May 8, 2019

Approved by JTCEs June 6, 2019



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Richard H. Schwermer
State Court Administrator
Ray Wahl
Deputy Court Administrator

January 3, 2019

MEMORANDUM

TO: Juvenile Trial Court Executives and Probation Chiefs
FROM: Brent M. Johnson
RE: Search and Seizure

The following is an updated version of my memorandum issued in July 2000.

It has been suggested that I put together a memorandum clarifying the courts' policies on search and seizure by juvenile court probation officers.

Supreme Court Decision

In 2002, the Utah Supreme Court issued an opinion holding that juveniles do not have an expectation of privacy when they are on probation and the probation order states that the juvenile will be subject to random searches. See State ex. rel. A.C.C., 2002 UT 22, 44 P.3d 708. The Supreme Court decision reversed a decision by the Utah Court of Appeals. The court stated: "We conclude that a juvenile probationer who is subjected to a probation condition authorizing random searches has no reasonable expectation of privacy because such an expectation is inconsistent with the fundamental objective of Utah's juvenile probation." Random searches are thus allowed. But the courts may choose a more restrictive policy if they choose.

Search and Seizure Policy

There are generally four types of searches of interest to juvenile court probation officers: 1) random searches, 2) reasonable suspicion searches, 3) consent searches, and 4) administrative/security searches. I will discuss each of these in turn.

The mission of the Utah judiciary is to provide an open, fair,
efficient, and independent system for the advancement of justice under the law.

A. *Random searches.* As the name indicates, individuals in certain situations can be subjected to searches that occur at any time, without notice. As noted in the Supreme Court opinion, random searches of juveniles are permitted when the probation order states that a juvenile may be subject to random searches. The primary consideration for random searches is ensuring that the person or area is lawfully subject to search. A juvenile subject to random searches can be searched through reasonable means, such as a patdown or taking a urine or blood sample. The areas that can be searched are those over which the juvenile has control, such as the juvenile's bedroom. A juvenile's car can be searched if the juvenile has possession and control of that vehicle. Backpacks and purses can be searched. Again, these can be conducted without warning and at any time.

B. *Reasonable suspicion.* The juvenile courts could adopt a policy requiring reasonable suspicion searches rather than random searches. A search of a juvenile probationer, or a juvenile probationer's property may be conducted if a probation officer has "reasonable suspicion" of illegal activity. The Utah Court of Appeals has described reasonable suspicion as follows:

Reasonable suspicion requires no more than that the authority acting be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant a belief that a condition of probation has been or is being violated. However, a probation search cannot be based upon a mere hunch without factual basis, nor upon casual rumor, general reputation, or mere whim. To determine whether the facts known to the officers legitimately gave rise to a reasonable suspicion, we do not address each fact in isolation, but instead view them in their totality.

State v. Hyatt, 965 P.2d 525 (Utah App. 1988).

Reasonable suspicion is based on specific facts and not on hunches and reputation. Examples of the types of facts that would support reasonable suspicion include:

- A juvenile probationer who smells of marijuana smoke would justify a search of the person and the items that the person is carrying, such as a backpack.
- Locating drug paraphernalia in plain view in a probationer's bedroom would justify a search for drugs in other areas of the bedroom.
- Information from a reliable informant that a probationer is carrying a weapon would justify a search of the probationer for that weapon.

There are several important considerations involving reasonable suspicion searches. First, the area to be searched must have a relationship to the facts that support reasonable suspicion. For instance, information from a reliable informant that indicates a probationer has a weapon in a car would not automatically support a search of the probationer's bedroom. Second, the past history of a probationer does not in and of itself support reasonable suspicion. For instance, a probationer's history of carrying a weapon does not support subsequent searches of the probationer without additional facts that the probationer may then be carrying a weapon. Third,

nervous behavior in and of itself does not support reasonable suspicion searches. There must be other specific facts, in conjunction with the nervous behavior, that would support such a search.

C. *Consent searches.* Searches may be conducted with the consent of a person who has ownership or control over the property to be searched. In order for the consent to be valid, the consent must be given at the time of the search, the consent must be knowing and informed and cannot be coerced, and the consent must be specific to the area to be searched.

Consent searches are a very valuable tool for juvenile court probation officers because consent can often be obtained from a juvenile's parent. As long as the parent has ownership and/or access to the area to be searched, the parent can give consent, even if the juvenile has refused to give consent to the search. Parents typically have access to their kids' bedrooms and areas within the bedrooms such as closets, dresser drawers, and possibly backpacks, and can give consent for those areas to be searched. A probation officer should make certain that the area to be searched is one for which the person can give consent before commencing the search.

D. *Administrative/security searches.* In almost all of the court sites and probation offices, searches are conducted when persons enter the premises to ensure that those persons are not carrying a weapon. These searches are valid as legitimate administrative and security concerns. The most important aspect for these searches is that the person subject to the search be provided notice that these searches may be conducted. This is most often accomplished by posting written notice at the entrance of a building or office that all persons entering the building or office are subject to a search for security purposes. Because these searches are for the purpose of determining whether a person carries a weapon, these searches can be no more intrusive than is necessary to determine whether a weapon is present. If a magnetometer is available, the magnetometer should be used and additional searches of the person may not be conducted unless the magnetometer reveals items that are suspicious.

Juvenile court work crews are permitted to conduct administrative/security searches as a part of their work detail. Juveniles who are a part of these work crews should be given written notice that they will be subject to searches upon reporting for work and upon entering the van at the end of a work detail. Again, these types of searches must be no more intrusive than is necessary to determine the presence of weapons.

Conclusion

This memorandum is simply a brief description of the types of searches that are possible. In some instances, these issues can become fairly complicated and as questions arise the questions can be directed to my office. Training can also be arranged on the legal issues involved with searches as well as the proper methods and considerations for searches.

COMMENTS ON POLICY 5.1 Probation Searches

Proposed Policy Update to 5.1 Probation Searches

Comment Themes:

- Can probation officers still conduct consent searches without a court order when a youth is on formal probation? x2
- Does this policy still allow for search of a minor when getting into a work crew van as part of a work crew assignment?
- I was gratified to read that the Utah State Supreme Court decision State of Utah in the interest of A.C.C. was cited in reference to policy and procedure for probation searches.
- Is the 4th Amendment of the US Constitution and Article 1 Section 14 of the Utah State Constitution the correct authority for this policy, or should it be the State of Utah in the interest of A.C.C. and other court decisions in the body of law that pertain to probation searches and individuals under supervision?
- I would suggest that bullet point 4 should be amended to include that such a refusal should, by default, be considered a SERIOUS level of non-compliance.

Response to questions:

- When a youth is placed on formal probation, there are a few standard orders the judge could choose to order, including that the youth may be searched as a condition of their probation. If the search condition is included in the youth's order when placed on formal probation, the probation officer has the ability to conduct a search if reasonable suspicion ALSO exists. If the judge opts not to order the search condition when placing a youth on probation (intake or formal), probation may not conduct a search even if the parents or youth consent to it and reasonable suspicion exists. (This is not applicable to instances where the Local Security Plan or participation in a program (i.e. work crew) allows for searches by probation). If this standard condition is ordered when a youth is placed on formal probation, this is a court order. For more information about this please see the legal counsel opinion on search and seizure- Policy Addendum 5.1.1.

Policy Workgroup Decisions:

- Removed the 4th Amendment of the US Constitution and Article 1 Section 14 of the Utah State Constitution as authorities to the policy.
- Updated #1 to include adherence to the *Work Crew Deputy Probation Officers Operation Manual* and probation policy when searching individuals entering probation offices, and also added vehicles to the sentence.
- Added references to the policy that include the transportation policies and work crew manual so the probation officer would have a quick link if question came up while reviewing the search policy.
- Declined to change #4 to reflect that declining a search should be a serious level of non-compliance. It was determined that the reasons/circumstances surrounding a youth declining a search may not always arise to a serious level of non-compliance and probation officers should continue to be allowed the discretion to consult the matrix based on those variables to determine their response.

5.1 Probation Searches

Policy:

This policy provides direction to probation department staff when conducting searches. ~~The probation department may conduct administrative searches of individuals who enter probation offices for the detection of weapons. The probation department may conduct a search when there is reasonable suspicion that the probationer has violated the law or terms of probation.~~

Scope:

This policy applies to all ~~juvenile court personnel~~ **probation department staff** of the Utah State Juvenile Court.

Authority:

- ~~• United States Constitution — 4th Amendment~~
- ~~• Utah Constitution — Article I Section 14~~
- ~~Opinion for Court Administration Legal Counsel~~ **Opinion - Search and Seizure** dated July 10, 2000

Reference:

- [Probation Policy 5.2 Transporting a Minor in Custody](#)
- [Probation Policy 5.7 Transporting a Minor Not in Custody](#)
- [Work Crew Deputy Probation Officers Operating Manual](#)

Procedure:

1. ~~Search of Individuals Entering Probation Offices:~~ **The probation officer shall adhere to the Local Security Plan, Work Crew Deputy Probation Officers Operating Manual and probation policy when searching individuals entering probation properties.**
 - 1.1. ~~4.1 Each district office shall address the "Search of Individuals Entering the Probation Offices" through the district security plan or district policy & procedures. This shall include reporting incidents as outlined in Section~~ **5.6 — Critical Incident Reporting.**
2. ~~Search of Probationers' Dwellings and Property shall require reasonable suspicion or consent of the individual who has control of the premises.~~ **The probation officer shall only conduct searches of dwellings and property under the following conditions:**

- 2.1. Reasonable Suspicion includes but is not limited to: **when there is a court order requiring a search; or**
- 2.2. **when there is a court order allowing a search and reasonable suspicion of illegal activity exists.**
 - 2.2.1. **Reasonable suspicion includes but is not limited to:**
 - 2.2.1.1. Information reported from a reliable source that the probationer **minor** may have violated the law or **their court order(s).** the conditions of his/her probation.
 - 2.2.1.2. Observable physical indicators that the probationer **minor** is under the influence of illegal substances.
 - 2.2.1.3. Observable environmental indicators that the probationer minor may be in possession of ~~contraband, weapons, or~~ illegal substances **or restricted items.**
- 2.3. ~~Where reasonable suspicion does not clearly exist, consent of the individual who has control of the dwelling or living space must be obtained prior to a search. A consent for search form will be used stating the general area to be searched and that the individual has the right to refuse permission to search.~~
 - 2.3.1. ~~Consent will be valid if it appears that the individual has the age, education, and intelligence to understand the issues to which he/she is giving consent.~~
 - 2.3.2. ~~The probation officer should be prepared to articulate that the individual understood the concept of consent.~~
 - 2.3.3. ~~Permission must be specific to each occasion when a consent search is requested by probation.~~
 - 2.3.4. ~~If the request to search is refused, no search shall take place and the refusal shall not be construed as reasonable suspicion.~~
- 2.4. ~~Where reasonable suspicion does not clearly exist, consent from the individual who owns the vehicle must be obtained prior to a search. A consent for a search form will be used stating the general area to be searched and that the individual has the right to refuse permission to search.~~
 - 2.4.1. ~~Consent will be valid if it appears that the individual has the age, education, and intelligence to understand the issues to which he/she is giving consent.~~
 - 2.4.2. ~~The probation officer should be prepared to articulate that the individual understood the concept of consent.~~
 - 2.4.3. ~~Permission must be specific to each occasion when a consent search is requested by probation.~~
 - 2.4.4. ~~Ownership is a factor to consider, but the most important factor is who has control and access of the vehicle.~~
 - 2.4.5. ~~If the request to search is refused, no search shall take place and the refusal shall not be construed as reasonable suspicion.~~
- 2.5. ~~Where reasonable suspicion does not clearly exist, consent from the individual who owns the property or who has possession of the property~~

~~must be obtained prior to a search. A search form will be used stating the general area to be searched and that the individual has the right to refuse permission to search.~~

- ~~2.5.1. Consent will be valid if it appears that the individual has the age, education, and intelligence to understand the issues to which he/she is giving consent.~~
- ~~2.5.2. The probation officer should be prepared to articulate that the individual understood the concept of consent.~~
- ~~2.5.3. Permission must be specific to each occasion when a consent search is requested by probation.~~
- ~~2.5.4. Ownership is a factor to consider, but the most important factor is who has control and access of the property.~~
- ~~2.5.5. If the request to search is refused, no search shall take place and the refusal shall not be construed as reasonable suspicion.~~

~~3. If weapons, illegal drugs, or other contraband is discovered during a search, law enforcement shall be notified to take possession of the items, to investigate and to refer charges to the prosecutor.~~

- 3. **The probation officer shall refer to Probation Policy 4.16 - Confiscated Property when illegal or restricted items are discovered during a search.**
- 4. **The probation officer shall not conduct a search if the individual in control of the property refuses to allow the search. The probation officer shall staff the situation with their supervisor and consult the noncompliant matrix to determine the appropriate response to the refusal.**

Addendum 5.1.1 Legal Counsel Opinion Search & Seizure

History:

Effective August 1, 2001

Update Approved by BJCJ January 11, 2019

Approved by Chiefs May 8, 2019

Approved by JTCEs June 6, 2019

MEMORANDUM

To: Juvenile Trial Court Executives
 From: Brent Johnson, General Counsel
 Re: Search and Seizure
 Date: July 10, 2000

I have been receiving feedback that there still might be confusion about the impact of the recent Utah Court of Appeals' decision on searches by juvenile court probation officers. It has been suggested that I put together a memorandum clarifying the courts' policies on search and seizure by juvenile court probation officers.

Impact of Utah Court of Appeals Decision

The Court of Appeals' decision did not have, and should not have, any impact on our existing policies concerning juvenile court probation officer searches. Our policy, as will be explained below, has always been that juvenile probationers and their property can only be searched based upon consent or reasonable suspicion of illegal activity. The Court of Appeals' decision was based on a test case to determine whether searches could occur under circumstances other than reasonable suspicion or consent. The argument in the case was that juvenile probationers, because of their status as minors, should not have a reasonable expectation of privacy in their person or property and therefore could be searched at any time, for any reason. The argument was based on a theory that society has a compelling interest in rehabilitating juveniles and this compelling interest overcomes any expectation of privacy by the juveniles. The Court of Appeals rejected this test argument and stated that juvenile probationers essentially have the same rights as adult probationers. Because this was a test case, it did not have any impact on the way our juvenile court probation officers should have been doing business. In fact, a conscious decision had been made to await the Court of Appeals decision before making any changes to our search and seizure policy. Based on the decision, no changes are necessary.

Search and Seizure Policy

There are generally three types of searches of concern to juvenile court probation officers: 1) reasonable suspicion searches, 2) consent searches, and 3) administrative/security searches. I will discuss each of these in turn.

A. Reasonable suspicion. A search of a juvenile probationer, or a juvenile probationer's property may be conducted if a probation officer has "reasonable suspicion" of illegal activity. The Utah Court of Appeals has described reasonable suspicion as follows:

Reasonable suspicion requires no more than that the authority acting be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant a belief that a condition of probation has been or is being violated. However, a probation search cannot be based upon a mere hunch without factual basis, nor upon casual rumor, general reputation, or mere whim. To determine

whether the facts known to the officers legitimately gave rise to a reasonable suspicion, we do not address each fact in isolation, but instead view them in their totality.

State v. Hyatt, 965 P.2d 525 (Utah App. 1998).

Reasonable suspicion is based on specific facts and not on hunches and reputation. Examples of the types of facts that would support reasonable suspicion would include:

- A juvenile probationer who smells of marijuana smoke would justify a search of the person and the items that the person is carrying, such as a backpack.
- Locating drug paraphernalia in plain view in a probationer's bedroom would justify a search of other areas of the bedroom for drugs.
- Information from a reliable informant that a probationer is carrying a weapon would justify a search of the probationer for that weapon.

There are several important considerations involving reasonable suspicion searches. First, the area to be searched must have a relationship to the facts which support reasonable suspicion. For instance, information from a reliable informant which indicates that a probationer has a weapon in a car would not automatically support a search of the probationer's bedroom. Second, the past history of a probationer does not in and of itself support reasonable suspicion. For instance, a probationer's history of carrying a weapon does not support subsequent searches of the probationer without additional facts that the probationer may then be carrying a weapon. Third, nervous behavior in and of itself does not support reasonable suspicion searches. There must be other specific facts, in conjunction with the nervous behavior, that would support such a search.

B. Consent Searches. Searches may be conducted with the consent of a person who has ownership or control over the property to be searched. In order for the consent to be valid, the consent must be given at the time of the search, the consent must be knowing and informed and cannot be coerced, and the consent must be specific to the area to be searched. A probation agreement in which a probationer consents to be searched at any time is not valid for consent searches.

Consent searches are a very valuable tool for juvenile court probation officers because consent can often be obtained from a juvenile's parent. As long as the parent has ownership and/or access to the area to be searched, the parent can give consent, even if the juvenile has refused to give consent to the search. Parents typically have access to their kid's bedrooms and areas within the bedrooms such as closets, dresser drawers, and possibly backpacks and can give consent for those areas to be searched. A probation officer should make certain that the area to be searched is one for which the person can give consent before commencing the search.

C. Administrative/Security Searches. In almost all of the court sites and probation offices searches are conducted when persons enter the premises to ensure that those persons are not carrying a weapon. These searches are valid as legitimate administrative and security concerns. The most important aspect for these searches is that the persons subject to the search be provided notice that these searches may be

conducted. This is most often accomplished by posting written notice at the entrance of a building or office that all persons entering the building or office are subject to a search for security purposes. Because these searches are for the purpose of determining whether a person carries a weapon, these searches can be no more intrusive than is necessary to determine whether a weapon is present. If a magnetometer is available, the magnetometer should be used and additional searches of the person may not be conducted unless the magnetometer reveals items that are suspicious.

Our juvenile court work crews are subject to administrative/security searches as a part of their work detail. Juveniles who are a part of these work crews should be given written notice that they will be subject to searches upon reporting for work and upon entering the van at the end of a work detail. Again, these types of searches must be no more intrusive than is necessary to determine the presence of weapons.

Conclusion

This memorandum is simply a brief description of the types of searches that are possible. In some instances, these issues can become fairly complicated and as questions arise the questions can be directed to my office. Training can also be arranged on the legal issues involved with searches as well as the proper methods and considerations for searches.

Addendum 5.1.2 Court of Appeals of Utah, Probation Search

● Court of Appeals of Utah ♦ Probation Search — PDF

POLICY 5.3 Continuum of Force

5.3 Continuum of Force

Policy:

This policy establishes guidelines for responding to individual(s) who may cause physical injury to themselves or others.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:

- [UCA 76-2-402 \(1\)](#)
- [UCA 78A-6-112](#)
- [Utah State Juvenile Probation Officer Natural Response Control Tactics Training Curriculum](#)

Procedure:

1. Probation officers shall employ the lowest level of force necessary to contain the situation and ensure the safety of themselves or others (see Addendum 5.3.1 Use of Force Continuum).
2. Probation officers shall disengage, when possible, from situations that have the potential to escalate to a level where physical force is imminent.

Addendum 5.3.1 Use of Force Continuum

History:

Effective November 1, 2001

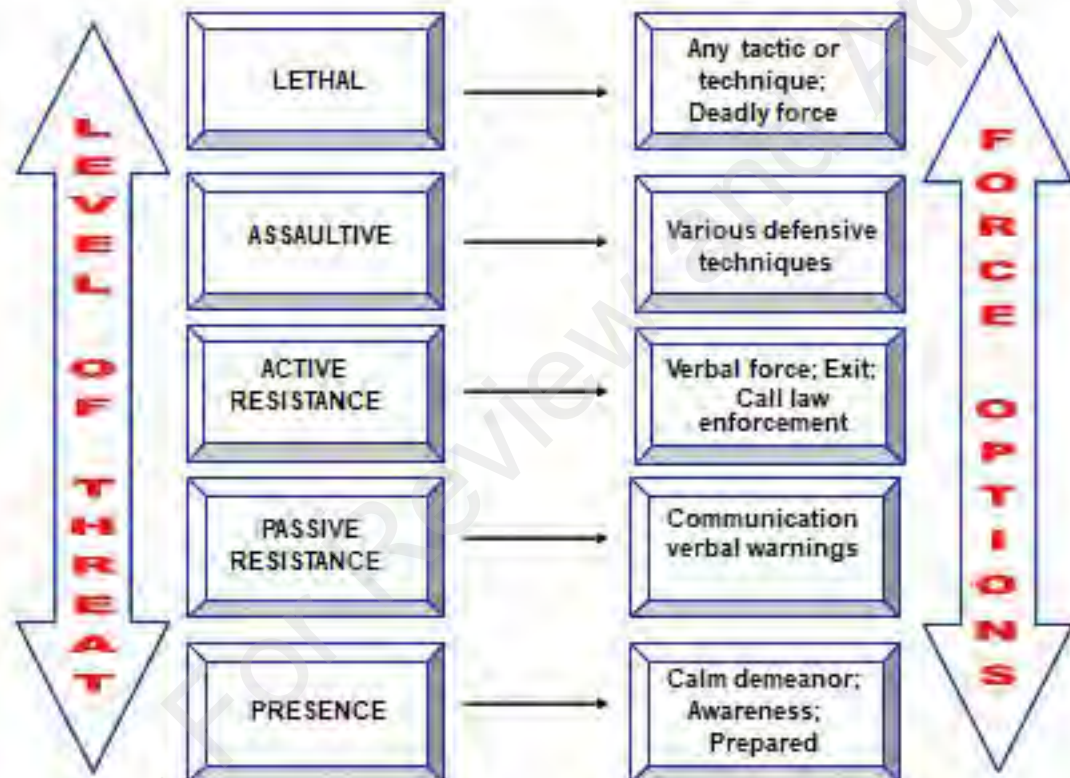
Update Approved for Comment by BJCJ January 11, 2019

Approved by Chiefs May 8, 2019

Approved by JTCEs June 6, 2019

USE OF FORCE CONTINUUM

000302



Remember: at each level of threat, all force options for lesser levels of threat are still options, if viable

COMMENTS ON POLICY 5.3 Continuum of Force

Proposed Policy Update to 5.3 Continuum of Force

Comment Themes:

- Is the Natural response Control Tactics Training Curriculum readily accessible to the districts so that a probation staff member can access this if they have questions?

Response to questions:

- Yes, it has been added to the Probation Resources page under the PO Safety section, and will also be linked in the policy.

Policy Workgroup Decisions:

NA

5.3 Continuum of Force

Policy:

This policy ~~is to establish~~^{es} guidelines for response ~~responding~~ to a client or other individual(s) ~~that are creating a situation that~~ who may cause physical injury to themselves or the court worker, client or others.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:

- UCA 76-2-402 (1)
- UCA 78A-6-112
- ~~Utah Rules of Juvenile Procedure~~ Rule 7
- Utah State Juvenile Probation Officer Natural Response Control Tactics Training Curriculum

Procedure:

1. Probation officers ~~will always use~~ shall employ the lowest level of force ~~deemed necessary to control~~ contain a the situation and ensure the safety of themselves or others (see Addendum 5.3.1 Use of Force Continuum).
2. Probation officers shall ~~will withdraw~~ disengage, when possible, from situations that have the potential to escalate to a level where physical force is imminent.
3. ~~When the use of force is necessary, the lowest level of force should be used to contain the situation and insure the safety of staff or others~~
4. ~~The Use of Force Continuum levels from least to most severe is are as follows:~~
 - ~~4.1 Presence of worker This level should be used when the subject is cooperative with minimal to no direction. The worker's stance and body language should be used to convey the need for compliance by the aggressor.~~
 - ~~4.2 Verbal Persuasion This level should be used when the subject's compliance is responsive to verbal direction. The worker's should use the skills of:~~
 - ~~persuasion~~

- ~~questioning~~
 - ~~advise with light control~~
 - ~~verbal warning with heavy control and~~
 - ~~Instruction.~~
- ~~4.3 Soft hand control(Handcuffing) This level should be used when the subject is resistive to verbal persuasion and the subject's behavior appears to be escalating.~~
- ~~4.4 O.C. Spray This level should be used when a staff member or other individual(s) is threatened with imminent danger. If possible, the worker should give verbal warning to gain compliance prior to use of the O.C. spray. (Section 5.5 O.C. Spray).~~
- ~~4.5 Hard (Empty) hand control This level should be use when the subject's actions are openly aggressive and may cause physical injury. The worker's should use the skills and training of:~~
- ~~self defense,~~
 - ~~arrest and control techniques.~~
5. ~~An employee may use necessary force to protect themselves from serious injury or death.~~

Addendum 5.3.1 Use of Force Continuum

History:

Effective November 1, 2001

Update Approved for Comment by BJCJ January 11, 2019

Approved by Chiefs May 8, 2019

Approved by JTCEs June 6, 2019

Tab 8



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council
FROM: Michael Drechsel, Assistant State Court Administrator
DATE: Monday, August 5, 2019
RE: Committee on Model Utah Criminal Jury Instructions Membership Renewals

The Committee on Model Utah Criminal Jury Instructions has two membership positions that are in need of renewal. Judge Brendan McCullagh's and Ms. Karen Klucznik's membership term expire on September 1, 2019. The committee recommends that their respective terms be renewed.

The current membership of the committee is as follows (with current renewals marked with *):

Hon. James Blanch	District Court Judge [Chair]
Hon. Michael Westfall	District Court Judge
* Hon. Brendan McCullagh	Justice Court Judge
Hon. Linda Jones	District Court Judge [non-voting emeritus]
Mark Field	Prosecutor
Sandi Johnson	Prosecutor
* Karen Klucznik	Prosecutor
Stephen Nelson	Prosecutor
Nathan Phelps	Defense Attorney
Scott Young	Defense Attorney
Jessica Jacobs	Defense Attorney
Elise Lockwood	Defense Attorney
Melinda Bowen	Criminal Law Professor
Jennifer Andrus	Linguist / Communications
Michael C. Drechsel	Staff

Both Judge McCullagh and Ms. Klucznik have expressed a sincere interest in having their membership on the committee renewed. Judge Blanch, as chair of the committee, gives his absolute recommendation to keep these two individuals on the committee. Judge McCullagh has been a member of the committee since 2006. Ms. Klucznik has been a member of the committee since 2010. Each of them have attended the committee regularly and made significant contributions to the work. For instance, most recently the committee spent

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efficient, and independent system for the advancement of justice under the law.

significant time grappling with instructions for imperfect self-defense. Ms. Klucznik's extensive appellate experience assisted the committee in understanding important issues. In addition, the committee is now embarking on a review of DUI and related traffic instructions where Judge McCullagh's years of handling these types of cases will well-serve the committee, the Council, practitioners, and courts around the state.

Judge McCullagh also serves on the Judicial Council's Committee on Pretrial Release and Supervision. Ms. Klucznik serves on no other committees.

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Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

July 30, 2019

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee and Judicial Council
FROM: Nancy Sylvester
RE: Self-represented Parties Committee Appointment

Name of Committee: The Standing Committee on Resources for Self-represented Parties

Reason for Vacancy: Justice Court Judge Brook Sessions was appointed to the Judicial Council.

Eligibility requirements: The position requires a justice court judge. See UCJA Rule 1-205(1)(B)(viii).

Current committee member list:

Last Name	First Name	Representing	Original Appointment	Current Appointment	Term Ends	Term Number	Term Years
Bazzelle	Suchada	Juvenile court judge	17-Aug-18	17-Aug-18	17-Aug-21	1	3
Crismon	Sue	Salt Lake Legal Defenders	28-Apr-14	28-Apr-17	28-Apr-20	2	3
Fjeldsted	Monica	Urban clerk of court (designee)	11-Sep-17	11-Sep-17	11-Sep-20	1	3
Francis	Leslie	S J Quinney College of Law	20-Nov-17	20-Nov-17	20-Nov-20	1	3
Gray	Nicole	Appellate clerk of court	28-Jan-19	28-Jan-19	28-Jan-22	1	3
Griffith	Susan	Public	24-Feb-14	27-Feb-17	27-Feb-20	2	3
Hernandez	Carl	J Reuben Clark Law School	28-Apr-14	28-Apr-17	28-Apr-20	2	3
Hoskins	Catherine	Juvenile court judge	01-May-18	01-May-18	01-May-21	1	3

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Kent	Jacob	OCAP (ULS)	27-Feb-17	27-Feb-17	27-Feb-20	1	3
Lawrence	Barry	CHAIR-District court judge	23-Nov-15	10-Dec-16	10-Dec-19	1	3
Newell	Shawn	Public	18-Sep-18	18-Sep-19	18-Sep-21	1	3
Player	Nathanael	SHC	11-Sep-17	-	-	-	3
Sessions	Brook	Justice court judge	20-Nov-17	20-Nov-17	20-Nov-20	1	1
Stormont	Charles	Bar	18-Sep-18	18-Sep-18	18-Sep-21	1	3
Strand	Peter	Legal Service Org Serving Low Income (veterans)	17-Dec-18	17-Dec-18	17-Dec-21	1	3
Sudbury	Virginia	Private Attorney servicing low income	28-Feb-11	27-Feb-17	27-Feb-20	3	3
Thomas	Doug	District court judge	16-Mar-11	28-Apr-17	28-Apr-20	3	3
Thorpe	Janet	Rural Clerk of Court	25-Feb-19	2-25-19	2-25-22	1	3
Van Buren	Jessica	State Law Library	28-Feb-05	-	-	-	3
Hernandez	Amy	Ex Officio/ Domestic Violence Program Coordinator	1-Dec-18				
Mann	Kara	Ex Officio/Language Access	22-Sep-17	-	-	-	3
Sylvester	Nancy	Staff	2014	2014	Present		

Description of recruitment process:

The Board of Justice Court Judges sent out a request for volunteers to all justice court judges. The Board did not receive any volunteers but spoke with Judge Landau about the possibility of his volunteering. He observed that he was already over-committed but recommended new Judge Katherine Peters, who was a prosecutor for many years.

List of names for consideration:

Judge Katherine Peters

Statement of interest:

N/A

List of other current and past committee assignments:

N/A

Recommendation:

The Board of Justice Court Judges and the committee recommend Judge Katherine Peters for the vacant justice court judge position.



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

August 5, 2019

Judge Mary T. Noonan
State Court Administrator
Cathy Dupont
Deputy Court Administrator

MEMORANDUM

TO: Management Committee/Utah Judicial Council

FROM: Shane Bahr, District Court Administrator

RE: Committee Chair Appointment – Uniform Fine and Bail Committee

Reason for Vacancy(s): **Judge Brook Sessions** was appointed to the Judicial Council and can no longer serve on a standing committee.

Judge Reuben Renstrom was recently appointed to the District Court Bench and can no longer serve as a Justice Court representative.

Eligibility requirements: Rule 1-205 states the Uniform Fine and Bail Schedule Committee shall consist of one district court judge with felony docket experience, three district court judges with misdemeanor docket experience, one juvenile court judge and three justice court judges.

Current committee member list:

Judge David Hamilton, Chair – Second District Court
Judge James Blanch – Third District Court
Judge Linda Jones – Third District Court
Judge Paul Parker – Third District Court
Judge Keith Eddington – Eighth District Juvenile Court
Judge Michael Junk – Ogden City Justice Court
Vacant – Justice Court Representative
Vacant – Justice Court Representative

Description of recruitment process: Mr. Jim Peters, Justice Court Administrator, emailed the Justice Court Judges with a request for interested judges to fill the two vacant Justice Court Judge positions. Judge Brian Brower and Judge Jon Carpenter put their names forward to be considered for the committee vacancy at the June, 2019 meeting of the Board of Justice Court Judges.

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efficient, and independent system for the advancement of justice under the law.

Judge Jon Carpenter serves in the Seventh District at the Wellington City and Carbon County Justice Courts. He is the Presiding Judges of the Seventh District Justice Courts, and serves on the Board of Justice Court Judges.

Judge Brian Brower serves in the Second District at the Clearfield City, Sunset City and Morgan County Justice Courts. Judge Carpenter currently serves on the Board of Justice Court Judges, and the Court Facility Planning Committee.

Thank you for your consideration,



Shane Bahr
District Court Administrator

Tab 9



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Hon. Mary T. Noonan
State Court Administrator

Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Judicial Council
FROM: Michael C. Drechsel, Associate General Counsel - AOC
DATE: Monday, August 5, 2019
RE: NEW RULE - CJA 4-410 - Courthouse closure.

Policy & Planning recommends that the Judicial Council authorize the attached rule to be published for public comment. Because this is a new rule, there are no redline changes indicated in the attached draft. The attached rule is the result of two courthouse closure-related situations over the last year.

- During the last winter, a large snowstorm caused employees, judges, and court patrons to be delayed or prevented entirely from safely arriving to their respective courthouses. Other branches of government disseminated messages that inadvertently caused the public to believe our courthouses were closed that day. Lack of guidance in the courts' Code of Judicial Administration caused internal confusion about who within the courts was responsible for making decisions regarding courthouse closure and how the decision would be communicated to judges, staff, and the public.
- In June, the Tooele County Courthouse was closed while Tooele City repaired two water mains.

Motivated by these two situations, Geoff Fattah, Chris Palmer, and Nancy Sylvester drafted the attached rule. The purpose of the rule is to establish protocols to which presiding judges, court staff, and other affected stakeholders may turn in the event that a courthouse needs to be closed or its opening delayed. The Trial Court Executives, Presiding Judges, and Board of Justice Court Judges reviewed this rule and offered suggested edits, which were incorporated.

On August 2, 2019, Policy & Planning reviewed the proposed rule and, after making some additional changes, unanimously voted in favor of recommending the rule to the Judicial Council for public comment.

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efficient, and independent system for the advancement of justice under the law.**

Rule 4-410. Courthouse closure.**Intent:**

To establish protocols surrounding the closure of a court's physical building in the event that extreme weather or other emergency situation prevents the safe arrival to, or the ability to safely conduct business in, the courthouse.

Applicability:

This rule applies to courts of record and not of record.

Statement of the Rule:**(1) Definitions.****(1)(A) In courts of record:**

(1)(A)(i) "Presiding judge" refers to the judge who presides over the district or court level.

(1)(A)(ii) "Court executive" refers to the trial court executive in the district and juvenile courts and the Appellate Court Administrator in the appellate courts.

(1)(B) In courts not of record:

(1)(B)(i) "Presiding judge" refers to the local justice court presiding judge, not the district level presiding judge.

(1)(B)(ii) "Court executive" refers to the local justice court administrator.

(2) In the event the presiding judge determines that a courthouse is not safe or is not capable of supporting the core mission of the court due to extreme weather conditions or other emergency situation, the presiding judge has the discretion to determine, in consultation with the court executive, court security, and authority responsible for the building's operation and maintenance, how to continue supporting the core mission of the court.

(3) The presiding judge(s) may order:

(3)(A) the time-limited partial closure of the courthouse;

(3)(B) the time-limited complete closure of the courthouse; or

(3)(C) the indefinite complete closure of the courthouse.

(4) If the presiding judge orders a complete or partial building closure that in any way affects the public's ability to conduct court business in that location,

- (4)(A) the presiding judge may order that operations resume in an alternate location;
and
- (4)(B) the presiding judge shall ensure that notice is posted in at least two conspicuous places informing the public of:
- (4)(B)(i) the building's physical closure;
 - (4)(B)(ii) the anticipated length of time the building will be closed; and
 - (4)(B)(iii) the procedures for conducting court business, including where cases will be heard and how to file court documents.
- (5) Communication of decision to close the courthouse.
- (5)(A) In courts of record, the presiding judge shall as soon as possible inform the State Court Administrator, the Chief Justice, the Court Communications Director, the Court Security Director, the Court Facilities Director, the Sheriff whose jurisdiction covers the affected courthouse, and the other organizations or lessees occupying the building of the presiding judge's decision to close the courthouse.
- (5)(B) In courts not of record, the presiding judge shall as soon as possible inform the court executive, the Justice Court Administrator, the Court Communications Director, the Court Security Director, the law enforcement agency whose jurisdiction covers the affected courthouse, and the other building occupants of the presiding judge's decision to close the courthouse.
- (6) The Court Communications Director shall immediately inform the media and public of the closure.
- (7) If the presiding judge determines that there is a need to extend a court closure order, the presiding judge shall so order and the steps of paragraphs (1) through (4) shall repeat.
- (8) For all courthouses that house more than one level of court, the presiding judges of each court level shall confer and come to a consensus decision regarding action pursuant to subsection (3) above.
- (8)(A) In the event that a closure is ordered by consensus, the presiding judges of the closed courthouse shall all sign the closure order.
- (8)(B) In the event there is not consensus among the presiding judges, the Chief Justice shall determine whether to issue and sign the closure order.