

JUDICIAL COUNCIL MEETING

AGENDA September 22, 2020

Meeting held through Webex

Chief Justice Matthew B. Durrant Presiding

1. 12:00 p.m. Welcome & Approval of Minutes.....Chief Justice Matthew B. Durrant
(Tab 1 - Action)
2. 12:05 p.m. Chair's Report.Chief Justice Matthew B. Durrant
(Information)
3. 12:10 p.m. Administrator's Report and COVID-19 Update.Judge Mary T. Noonan
(Information)
4. 12:20 p.m. Reports: Management Committee.....Chief Justice Matthew B. Durrant
Budget & Fiscal Management CommitteeJudge Mark May
Liaison Committee.....Judge Kara Pettit
Policy & Planning CommitteeJudge Derek Pullan
Bar Commission Rob Rice, esq.
(Tab 2 - Information)
5. 12:45 p.m. Education Committee Report Judge Diana Hagen
(Tab 3 - Information) Tom Langhorne
Kim Free
6. 12:55 p.m. Board of District Court Judges Report Judge Christine Johnson
(Information) Shane Bahr
7. 1:05 p.m. Problem-Solving Court Recertifications..... Judge Dennis Fuchs
(Tab 4 - Action)
8. 1:20 p.m. Board of Juvenile Court Judges Report..... Judge F. Richards Smith
(Information) Neira Siaperas
9. 1:30 p.m. Board of District Court Judges Request for Order Requiring a Declaration
Concerning CARES Act..... Judge Andrew Stone
(Tab 5 - Action) Nancy Sylvester
10. 1:50 p.m. Technical Innovation Justice Deno Himonas
(Tab 6 - Action)

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|-----|-----------|--|------------------------------|
| | 2:00 p.m. | Break | |
| 11. | 2:10 p.m. | Civil Justice Data Commons Initiative Justice Deno Himonas
(Tab 7 - Action) | |
| 12. | 2:20 p.m. | Regulatory Reform Update..... Justice Deno Himonas
(Tab 8 - Discussion) | Larissa Lee
Brent Johnson |
| 13. | 2:45 p.m. | Budget - Carryforward Requests..... Judge Mark May
(Tab 9 - Action) | Karl Sweeney |
| 14. | 2:55 p.m. | Old Business/New Business All
(Discussion) | |
| 15. | 3:15 p.m. | Executive Session - there will be an executive session | |
| 16. | 3:30 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.

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|---|----------------|
| 1. Village Project Grant
(Tab 10) | Jim Bauer |
| 2. Probation Policies 4.9 and 5.7
(Tab 11) | Neira Siaperas |
| 3. Rules for Public Comment
(Tab 12) | Keisa Williams |

Tab 1

Agenda

JUDICIAL COUNCIL MEETING**Minutes****August 21, 2020****Meeting conducted through Webex****12:00 p.m. – 3:15 p.m.*****Chief Justice Matthew B. Durrant, Presiding*****Members:**

Chief Justice Matthew B. Durrant, Chair
 Hon. Kate Appleby, Vice Chair
 Hon. David Connors
 Hon. Ryan Evershed
 Hon. Paul Farr
 Hon. Michelle Heward
 Justice Deno Himonas
 Hon. Mark May
 Hon. Kara Pettit
 Hon. Derek Pullan
 Hon. Brook Sessions
 Hon. Todd Shaughnessy
 Hon. John Walton
 Rob Rice, esq.

Excused:

Hon. Brian Cannell
 Hon. Augustus Chin

Guests:

Hon. Brendan McCullagh, West Valley Justice Court
 Christopher Williams, OLRGC

AOC Staff:

Hon. Mary T. Noonan
 Cathy Dupont
 Michael Drechsel
 Heidi Anderson
 Brody Arishita
 Shane Bahr
 Geoff Fattah
 Alisha Johnson
 Larissa Lee
 Meredith Mannebach
 Bart Olsen
 Jim Peters
 Clayson Quigley
 Neira Siaperas
 Karl Sweeney
 Nancy Sylvester
 Jessica Van Buren
 Keisa Williams
 Jeni Wood

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

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Due to the coronavirus pandemic, the Council held their meeting entirely through Webex.

On July 22, 2020 the Judicial Council by email, voted and approved to extend the public comment period from 45 days to 90 days for CJA Rule 3-101.

Motion: Judge Kate Appleby moved to approve the July 16, 2020 meeting minutes, as presented. Judge Paul Farr seconded the motion, and it passed unanimously.

2. OATH OF OFFICE: JUDGE DAVID CONNORS AND JUDGE MICHELLE HEWARD: (Chief Justice Matthew B. Durrant)

Chief Justice Durrant conducted the Oath of Office for Judge David Connors and Judge Michelle Heward during the New Judicial Council Member Orientation prior to this meeting.

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

Chief Justice Durrant thanked everyone for attending the Annual Budget Meeting. Chief Justice Durrant and other court members met with legislators to address access to justice issues through the Supreme Court's Regulatory Reform program. Chief Justice Durrant thanked Judge Mary T. Noonan and Cathy Dupont for their remarkable work.

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

Judge Noonan welcomed Chris Williams who recently joined the Office of Legislative Research and General Counsel. At the end of this fiscal year the court returned funds from the Main Line General Fund (\$560,500) and Contracts and Leases General Fund (\$459,100). The EOCJ approved returning those funds to the Judiciary and approved an additional \$1.5M to fill 25 of the 50 vacant JA positions. Judge Appleby commended all involved with this effort.

5. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Budget & Fiscal Management Committee Report:

Judge Mark May said the work of the committee was discussed at the Budget meeting.

Liaison Committee Report:

Judge Kara Pettit noted the committee has not met. Michael Drechsel has been working on a couple of bills. Ann Marie McIff was confirmed by the Senate to the Fifth District Court (new position) and Tasha Williams was confirmed by the Senate to the Second District Juvenile Court. Mr. Drechsel is preparing a memorandum addressing legislation that passed during the special session concerning eviction cases and federal law.

Policy and Planning Committee Report:

Judge Derek Pullan highlighted that a policy decision was made by the committee to reject an amendment request to a rule requiring a notarized signature on consent forms.

Bar Commission Report:

Rob Rice said the Bar Commission has not met recently. The Fall Forum will be held entirely online over a couple of days. The Spring Convention 2021 is scheduled to be held in person in St. George. The Summer Convention 2021 is scheduled to be held in Sun Valley.

6. ABILITY-TO-PAY MATRIX AND UNSECURED BONDS: (Keisa Williams and Michael Drechsel)

Chief Justice Durrant welcomed Keisa Williams and Michael Drechsel. HB 206 becomes effective on October 1, 2020, at which point the pretrial release decision-making process will include a requirement that judges impose the "least restrictive reasonably available conditions"

that will ~~reasonably~~ ensure” court appearance, public safety, and the integrity of the judicial process. If a financial condition is deemed necessary under that standard, judges must consider an individual’s ability-to-pay the amount set.

The Pretrial Release and Supervision Committee developed an ability-to-pay matrix to assist judges in determining affordable monetary bail amounts, and unsecured bonds. The Committee is recommending that the Judicial Council implement the matrix statewide and encourage the use of unsecured bonds.

Keisa Williams has been working with the Department of Public Safety, BCI, the Sheriffs’ Association, the Chiefs of Police Association, and county jails on a mechanism to provide judges with some financial information at the PC phase. A solution has been identified with an October 1 completion for law enforcement officers to ask arrestees two questions: 1) gross household income, and 2) number of dependents. Any information obtained will be made available in Judicial Workspace. Internal AOC programming will be required. Ms. Williams is working on a JAG grant to pay for associated one-time costs and the work will need to be prioritized by the IT Department.

Much like the old bail schedule, the ability-to-pay matrix is meant to provide guidance and encourage uniformity. Unlike the old bail schedule, the matrix is not charge-based and would be used in conjunction with an individualized assessment of the defendant.

H.B. 206 provides an exception to the ability-to-pay analysis requirement for unsecured bonds. Unsecured bonds are essentially an IOU with the court – a ~~written~~ undertaking without sureties.” Defendants would not be required to pay any money upon release, but if they failed to appear the bond could be forfeited and a judgment entered in the amount listed on the bond.

Numerous states and jurisdictions across the country have been using unsecured bonds for years. Two Pretrial Justice Institute studies found that unsecured bonds are as effective as secured bonds in achieving court appearance and public safety, while decreasing the pretrial jail population. Taylorsville Justice Court has been using unsecured bonds for over five years with great success. In that time, only two unsecured bonds have been forfeited. Taylorsville reports that the vast majority of defendants are grateful for the opportunity and show up to court.

Brody Arishita reviewed what changes would be made to the system. Judge Connors agreed with this for misdemeanor cases but questioned their effectiveness on felonies. Ms. Williams noted the current studies did not break down statistics by charge.

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

Motion: Judge Farr moved to approve the Ability-to-Pay Matrix and support in concept the procedure for unsecured bonds, as presented. Judge Pettit seconded the motion, and it passed unanimously.

7. CJA RULES FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. The Judicial Council approved Code of Judicial Administration Rules 3-402, 4-403, 4-202..08, 4-106, 4-411, 6-506, 9-101, and 9-109 for public comment. During the 45-day comment period, one comment was received on Rule 3-402 and four comments were received on Rule 4-411. Policy and Planning reviewed the comments and made one amendment to the published draft of Rule 3-402. No amendments were made to the published draft of Rule 4-411. The Policy and Planning Committee recommended the following rules to the Judicial Council for final approval.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Farr moved to approve Code of Judicial Administration Rules 3-402, 4-403, 4-202..08, 4-106, 4-411, and 6-506, as presented, with an effective date of November 1, 2020. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to approve Code of Judicial Administration Rules 9-101 and 9-109, as presented, with an effective date of August 21, 2020. Judge Pettit seconded the motion, and it passed unanimously.

8. A SURVEY OF DRUG COURT SANCTIONS – PRICE, UTAH: (Michael Drechsel)

Chief Justice Durrant welcomed Michael Drechsel. Mr. Drechsel was inspired with Ms. Williams work on HB206. The legislative auditor was contacted by a legislator about a concern that females in the Seventh Judicial District, were subjected to jail time more regularly or for longer terms than males. The auditor found:

- Use of jail time appears to be limited in duration and frequency in recent years.
- A Sanction/Incentive Matrix is in place. This gives guidelines as to what level of sanction or incentive a judge can give based on the Drug Court task accomplished or offense committed. Sanctions can range from community service hours to incarceration. However, the Seventh District Drug Court's practice is to consider other sanctions before considering jail time.
- The Judicial Council certifies each drug court, based upon assessment and information collected by Administrative Office of the Courts staff. The certification is based on implementation of national best practices from the National Association of Drug Court Professionals.
- Limited tracking of outcomes does exist.

The auditor did not find gender-bias in this audit. The auditor did not feel as though they needed additional work on this.

Chief Justice Durrant thanked Mr. Drechsel.

9. JUSTICE COURT REFORM TASK FORCE UPDATE: (Judge Paul Farr and Jim Peters)

Chief Justice Durrant welcomed Judge Paul Farr and Jim Peters who discussed the work of the task force. The task force considered proposals by the Justice Court Board of Judges. The

task force also discussed a proposal from Senator Kirk Cullimore on small claims cases. The task force will continue to consider reform ideas and research from other states including: the use of magistrates in justice courts, and moving debt collection cases to the justice courts and the resulting need for a centralized structure for those cases. The next meeting in September will include a presentation on circuit courts from Justice Michael Zimmerman, Dr. Jennifer Yim, and Joanna Landau. Justice Himonas will speak about ODR at a future meeting. Judge Farr and Michael Drechsel presented information about the work of the task force to the Legislature's Judiciary Interim Committee. Many legislators have requested updates from the task force.

Chief Justice Durrant thanked Judge Farr and Mr. Peters.

10. AMENDMENTS TO RULE 3-413. JUDICIAL LIBRARY RESOURCES: (Judge Mary T. Noonan, Larissa Lee, and Jessica Van Buren)

Chief Justice Durrant welcomed Judge Mary T. Noonan, Larissa Lee, and Jessica Van Buren. The Law Library and Self-Help Center are supervised and report to the Appellate Court Administrator. However, the Law Library Director attends AOC Director Meetings and operates a budget separate from the Appellate Courts. Ms. Lee and Ms. Van Buren recommend that the Judicial Council approve moving the Law Library and Self-Help Center under the AOC's umbrella and amend the attached rule to have the Law Library Director report to the State Court Administrator rather than the Appellate Court Administrator. This move would remove some unnecessary bureaucracy because Ms. Van Buren's departments function much more like an AOC department. The amendment also reflects the changes to the code books provided to judges, as required by the cuts to the Court's budget in the June Special Legislative Session.

Chief Justice Durrant thanked Judge Noonan, Ms. Lee, and Ms. Van Buren.

Motion: Judge Appleby moved to approve moving the Law Library and Self-Help Center to the supervision of the State Court Administrator and to approve amendments to CJA Rule 3-413, the purchase of the Code books, with an effective date of August 21, 2020, as presented. Judge Pullan seconded the motion, and it passed unanimously.

11. MYCASE UPDATE: (Heidi Anderson and Judge Kara Pettit)

Chief Justice Durrant welcomed Heidi Anderson and Judge Kara Pettit. Heidi Anderson reviewed the MyCase timeline. In the fall of 2018 the MyCase project began. In early 2019 a schedule was developed for this program. In April 2019 pilot locations were selected. Internal testing began in July 2019. By September 2019 the MyCase program was deployed in Workspace and went live in the West Valley Justice Court. In April 2020 discussions began for using this program for protective orders files in district courts. MyCase allows individuals to track their court information and make payments to the courts. It uses the IT solutions created for the ODR program. Case types eligible for MyCase would include infractions, state felonies, parking citations, parking court cases, traffic citations, traffic court cases, divorce/annulments, temporary separations, misdemeanor cases, and other misdemeanors.

Limitations to MyCase are that this is a case based program, not an individual based program. It is currently limited to public documents. IT is working on 1) Data validation, 2) Case linking, and 3) Marketing. They are working on development resources for 1) Pro se e-

filing, 2) Hearing documents, 3) Private documents, and 4) Notices. Judge Shaughnessy said this will help with the clerks not having to mail many documents to pro se litigants and felt getting this operational sooner was as important as work on upgrades and enhancements. Ms. Anderson agreed with that approach and noted the system is ready. However, the marketing has not been done to notify the public that they can have access. Plus, the courts need to train internally on this. Judge Shaughnessy said one possibility would be to mail out a notice to all active pro se cases. The committee agreed to move forward with the program and have this item addressed with the Management Committee at a future date.

Chief Justice Durrant thanked Ms. Anderson and Judge Pettit.

12. UTAH STATE BAR FOUNDATION JOINT GRANT: (Geoff Fattah, Nancy Sylvester, and Brent Johnson)

Chief Justice Durrant welcomed Geoff Fattah, Nancy Sylvester, and Brent Johnson. Geoff Fattah asked the Council to approve applying to the Bar Foundation for a grant to cover the cost of a public service announcement (PSA) to reach underserved populations. He presented an estimate of advertising costs for the PSA Campaign. Mr. Fattah recommended the courts invest in a month-long public service ad campaign through radio and Facebook. Mr. Fattah recommended the slogan “Let the Courts Come to You.” The total cost for this campaign would be \$34,000. The Bar Foundation has approximately \$10,000 and could perhaps give the courts a portion of that. The Budget & Fiscal Management Committee approved Mr. Fattah seeking a grant in the amount of \$34,000. Mr. Rice noted the Bar Foundation is separate from the State Bar.

Chief Justice Durrant thanked Mr. Fattah, Ms. Sylvester, and Mr. Johnson.

Motion: Justice Himonas moved to approve submitting a grant request to the Bar Foundation, as presented. Judge Appleby seconded the motion, and it passed unanimously.

13. BUDGET – CARRYFORWARD SPENDING REQUESTS: (Judge Mark May and Karl Sweeney)

Chief Justice Durrant welcomed Judge Mark May and Karl Sweeney. The Judiciary receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY2020 are normally to be spent between July 1, 2019 and June 30, 2020; however the Legislature has approved the Judiciary carryforward funds of approximately \$3.2 million in unspent FY2020 funds into FY2021.

Item 20. Utah Code Books – Appellate Court

Jessica Van Buren

\$4,648 one-time funds

Fulfill request by Appellate Court to supply each Appellate judge a hard copy of the Utah Code and Rule books since they would otherwise share a single set among all judges.

Item 21. Upgrade Court Services’ Analytics Software

Clayson Quigley

\$40,000 one-time funds

Upgrade Court Services' Cognos Analytics software from 11.0.7 to 11.1.6. Judge Pettit said the Budget Committee questioned whether a software upgrade was the correct path or could the court do something on this end and whether the software upgrade is supported. Heidi Anderson provided some insight on this program request. Mr. Sweeney said there is \$300,000 in carryforward funds available so he hesitates to leave it out of the approval process in case other requests come up before the questions on this could be answered. Mr. Quigley said an upgrade would help with data collection and an upgrade would allow for analyst training. Judge Pullan questioned whether this is the right vendor to work with if the errors they are experiencing may be related to the vendor and not the older system. Ms. Anderson will work with the vendor to ensure those errors are resolved.

Item 22. Weighted Caseload Analysis

Clayson Quigley

\$17,000 one-time funds

Conduct a third party analysis of our Weighted Caseload methodology.

Item 23. One-month Public Service Ad Campaign for COVID-related Outreach

\$34,000 one-time funds

This will fund a one-month statewide public service ad campaign in English and in Spanish, encouraging the public to call or email the courts, rather than come in person during the pandemic.

Item 24. IT Inventory for Computer, Printer, Scanner and other Peripherals

Replacements

\$150,000 one-time funds

The IT Division has established an annual desktop and laptop replacement schedule that provides for each unit to be replaced once every five years. The Division has annually for the past two years requested \$250,000 for the program—this request for \$150,000 takes into account that an inventory of laptops currently exists (funded through CARES purchases) to draw from and laptops will not need to be funded from this request.

Item 25. IT Webex Virtual Hearing Improvement Project

\$150,000 one-time funds

The funding request is to enable some additional functionality within Webex to ease the use and attendance for the hearings.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge May moved to approve Utah Code Books – Appellate Court (\$4,648) using FY20 carryforward funds, as presented. Judge Sessions seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to reject the Upgrade Court Services' Analytics Software (\$40,000), as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to approve Weighted Caseload Analysis (\$17,000) using FY20 carryforward funds, as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Justice Himonas moved to approve One-month Public Service Ad Campaign for COVID-related Outreach (\$34,000) using FY20 carryforward funds, as presented. Judge Appleby seconded the motion, and it passed unanimously.

Motion: Judge Appleby moved to approve IT Inventory for Computer, Printer, Scanner and other Peripherals Replacements (\$150,000) using FY20 carryforward funds, as presented. Judge Farr seconded the motion, and it passed unanimously.

Motion: Judge Farr moved to approve IT Webex Virtual Hearing Improvement Project (\$150,000) using FY20 carryforward funds, as presented. Judge Sessions seconded the motion, and it passed unanimously.

14. OLD BUSINESS/NEW BUSINESS

Judge John Walton asked about whether the courts will hold spring conferences. Judge Noonan said principally due to budget cuts a decision has not been made, however, if they are to be held, they will be held virtually. Cathy Dupont clarified that the funds are not available for in-person conferences but they are available for virtual conferences.

Judge May asked if the Council would approve changing the Director of the Office of Fairness and Accountability request from \$100,000 to \$120,000.

Motion: Judge Connors moved to approve expanding the Director of Fairness and Accountability request from \$100,000 to \$120,000 to include additional office expenses. Judge Appleby seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION

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

16. CONSENT CALENDAR ITEMS

a) Forms Committee Forms. Petition to register Office of Recovery Services (ORS) support order, Order on petition to register Office of Recovery Services (ORS) support order, Subpoena, Notice to persons served with a subpoena, Objection to subpoena, Declaration of compliance with subpoena, Application for subpoena under the Utah Uniform Interstate Depositions and Discovery Act, and Notice of deposition and request for subpoena in case pending out of state. Approved without comment.

b) Committee Appointment. Appointment of Brent Hall, Lisa Lokken, Anna Thomas, Dr. Alex Jensen, and Amanda Alkema to the Standing Committee on Children and Family Law. Approved without comment.

17. ADJOURN

The meeting adjourned.

Agenda

JUDICIAL COUNCIL
BUDGET AND PLANNING SESSION

Minutes
August 21, 2020
Matheson Courthouse
Meeting held through Webex
8:30 a.m. – 1:00 p.m.

Chief Justice Matthew B. Durrant, Presiding

Members:

Chief Justice Matthew B. Durrant, Chair
Hon. Kate Appleby, Vice Chair
Hon. Brian Cannell
Hon. David Connors
Hon. Ryan Evershed
Hon. Paul Farr
Hon. Michelle Heward
Justice Deno Himonas
Hon. Mark May
Hon. Kara Pettit
Hon. Derek Pullan
Hon. Brook Sessions
Hon. Todd Shaughnessy
Hon. John Walton
Rob Rice, esq.

Excused:

Hon. Augustus Chin

Guests:

Commissioner Catherine Conklin, Second District Court
Phil Dean, State Budget Director and Chief Economist
Hon. Diana Hagen, Court of Appeals
Hon. Hruby-Mills, Third District Court
Kristina King, OLRGC
Ken Matthews, CCJJ

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Heidi Anderson
Shane Bahr
Geoff Fattah
Kim Free
Alisha Johnson
Tom Langhorne
Larissa Lee
Bart Olsen
Jim Peters
Clayson Quigley
Nini Rich
Neira Siaperas
Karl Sweeney
Nancy Sylvester
Keisa Williams
Jeni Wood

Guests (cont.):

Hon. David Mortensen, Court of Appeals
Hon. Richard Mrazik, Third District Court
Nate Talley, GOMB Budget & Policy Manager
Chris Williams, OLRGC

1. WELCOME: (Chief Justice Matthew B. Durrant)

Chief Justice Matthew B. Durrant welcomed everyone to the meeting. Chief Justice Durrant welcomed new Council members, Judge David Connors and Judge Michelle Heward. Chief Justice Durrant conducted the Oath of Office with Judge Connors and Judge Heward during the New Judicial Council Orientation prior to this meeting. Judge Connors and Judge Heward will both serve on the Policy & Planning Committee.

2. **OVERVIEW: (Judge Mary T. Noonan)**

Judge Mary T. Noonan provided an explanation of the process for budget requests and the duties of the Judicial Council.

At the end of this fiscal year the court returned funds from the General Fund (\$560,500) and Contracts and Leases General Fund (\$459,100). The EOCJ approved returning the funds to the Judiciary and approved \$1.5M to fill 25 of the 50 vacant JA positions.

Annually, the Judiciary submits requests to the Legislative Fiscal Analyst Office (LFA) for ongoing and one-time funding for new initiatives. Before these requests are submitted to the LFA, the Judicial Council reviews the requests and determines if they should go forward through the legislative process. The final prioritized list is called the Annual Budget Plan. This year's preliminary Annual Budget Plan contains eight requests totaling approximately \$2,100,000 ongoing and \$220,000 in onetime funds. It has been previously reviewed and prioritized by the Budget and Fiscal Management Committee for discussion and approval by the Judicial Council. Requests that are approved by Judicial Council to forward to the Legislature will be addressed in the 2021 General Session. If approved by the legislature, the requests will then be added to the FY2022 budget.

The requests approved for advancement to the Legislature will fall into one of the following two categories:

a) Judicial Priorities/Building Blocks—Items requested that the Judicial Council elects to pursue through the legislative appropriations process. Building block requests are submitted to the Legislature and to the Governor.

b) Legislative Fiscal Note—Items requested by a Board or Committee that the Judicial Council elects to pursue through legislation and an accompanying fiscal note (i.e. the addition of a new Judge requires legislation and, therefore, cannot be submitted via a building block and would be required to go through the legislative fiscal note process).

Clayson Quigley reviewed court filings.

Supreme Court

Supreme Court filings have increased 1% over the past year.

Court of Appeals

Court of Appeals filings have increased 1% over the past year.

District Courts

Overall, district court filings are down 3% since last year. Property rights have decreased by 12%. General Civil cases have decreased by 15%. Torts increased by 9% over the past year and Probate cases have increased by 1%. Average age of pending cases has increased significantly and jury trials have decreased significantly due to the pandemic.

Juvenile Courts

There has been a 10% increase in filings over the past year. Juvenile court referrals have decreased by 12% last year and continue to decrease this year in nearly every category (felony, misdemeanor, infractions, and status). Child welfare cases have increased by 55% this year, a

significant increase for child welfare proceedings. Delinquency cases have increased 10%. Judge Brook Sessions felt that due to the increase in domestic violence cases, the child welfare cases are increasing.

Justice Courts

Justice courts overall case filings have decreased by 9% over the past year. The average age of pending cases has seen a significant increase. Appeals have decreased in justice courts over the past year from 972 to 761.

3. UTAH ECONOMIC OUTLOOK: (Phil Dean and Nate Talley)

Chief Justice Durrant welcomed Phil Dean, State Budget Director and Chief Economist and Nate Talley, Budget and Policy Manager, from the Governor's Office of Management and Budget. The economy is fluid with lots of caveats, however, the State Budget office views the coming budget cycle with cautious optimism. The State Budget office will be taking additional time to review future trends as they don't want to be soliciting budget additions and then shortly thereafter ask for budget cuts. The national gross domestic product has seen a massive decline over the second quarter. Mr. Dean expects the third quarter US GDP may see significant improvement. Utah's economy is in the recovery mode.

Mr. Talley reviewed national unemployment insurance claims history and noted the sum of the national initial weekly claims since week ending March 14, 2020 through August 15, 2020 was approximately 53 million claims (33% of pre-pandemic workforce). For Utah during the same time period there were approximately 200,000 initial claims (12% of the pre-pandemic workforce). Utah continuing unemployment claims have also been considerably better than the national average, with the US unemployment rate in mid-August at approximately 10% while Utah is at 4.5% which is the lowest in the nation. Initial claims have been declining over the past several weeks. Utah labor force participation is almost back at pre-pandemic levels and is about 5% points above the national average of labor force participation. In July 2020 year over year job growth in Utah was -1.8% whereas the national average was -7.7%.

Mr. Dean stated traffic counts, which identify traffic on Utah roads, saw a significant decline in March, with slowly increasing and now is nearly normal.

Federal Funding - Utah

\$11.5 Billion in estimated federal support as of June 2020 (excluding \$2.7 Billion in maximum eligible Municipal Liquidity Facility)

- \$5.2 Billion Paycheck Protection Program awards
- \$1.25 Billion Coronavirus Relief Fund (\$935 Million to state, \$315 Million to Salt Lake and Utah Counties)
- \$900 Million other CARES Act funding to state and local governments
- \$2.5-2.8 Billion IRS economic impact payments to households
- \$900 Million in federal pandemic unemployment compensation, pandemic unemployment assistance and federal pandemic extensions

Utah ranks number 1 for population increase from 2010-2019.

Public Programs - Utah

- Medicaid – Utah enrollment has increased significantly over the past year
- SNAP Utah Supplemental Nutrition Assistance Program has decreased over the past year, an unexpected result and may be due to the pandemic impacting how people are accessing food

COVID-19 Public Health Indicators - Utah

- Utah has among the lowest case fatality rates at .8% of those with a COVID-19 diagnosis, nationally the percentage is about 3% at the present time and trending downward.
- Daily Case Counts have continued to decline since mid-July, consistent with nationwide averages.
- Daily ICU Referrals remains well below the 85% of ICU beds capacity level – with COVID-19 referrals being a minority of ICU utilization.

Source	FY 2020		
	Post 2020 Session Revenue Projection	June 15, 2020 Revenue Projection Revision	Difference One-Time
General Fund	2,816,738	2,790,753	-25,985
Education Fund	5,177,225	4,339,971	-837,254
Final Payments Timing		770,000	770,000
Total GF/EF	7,993,963	7,900,724	-93,239

	FY 2021		
	Post 2020 Session Revenue Projection	June 15, 2020 Revenue Projection Revision	Difference Ongoing
	2,933,354	2,826,819	-106,535
	5,483,056	5,602,294	119,238
		-770,000	-770,000
	8,416,410	7,659,113	-757,297

The tables above adjust revenues for the change in Federal tax receipts (which the state followed) from April 15 to July 15. This changed pushed \$770M into FY 2021 from FY 2020 and the table above pulls this revenue back to FY 2020 and takes it out of FY 2021. After making this adjustment, the forecasted decline in state revenues due to the pandemic was a \$93M reduction for FY 2020 and a \$757M decrease for FY 2021. This explains the need for the budget cuts adopted by the legislature.

FY 2020 ended up coming in \$100M higher than the June 15, 2020 Projection – which gives strength to the optimistic outlook that additional budget cuts for FY 2021 will not be necessary. If additional federal funds are forthcoming, the risk to further budget cuts decline even further. Mr. Dean believed this was not a true recession, it was a health driven recession. There will be a new process for budget requests, more information to follow.

Fifth Special Session Budget Changes

- \$100 Million in rainy day funds to address one-time shortfalls
- K-12 WPU increase lowered to 1.8% from the previously appropriated 6% level for a reduction of almost \$290 Million in ongoing funding

- Total education of \$6.9 Million in one-time and \$126.5 Million ongoing to post-secondary education (excluding buildings)
- Nearly \$40 Million in General Fund reductions for state employee salary increases
- Repeal of \$11 Million in ongoing funding for a new 30 bed forensic hospital unit at the Utah State Hospital and various services for people with disabilities, child and family services, and services for individuals with mental health and substance abuse issues.
- \$5 million in ongoing funding reductions for affordable housing, which represents 50% of the new funding appropriated during the 2020 General Session

Sales Tax Revenues

- The General Fund Portion of state sales tax collections are preliminarily estimated to have grown by 7.2% overall in Fiscal Year 2020, above the revised General Fund sales tax estimate of 5.7%.
- Individual income tax collections are preliminarily estimated to have shrunk by 7.6% in Fiscal Year 2020, significantly impacted by the income tax filing deadline extension from April 15, 2020 to July 15, 2020. This is more favorable than the Consensus projection of a 9.3% reduction.
- Initial revenue estimates suggest a moderate FY 2021 year-end revenue surplus of about \$70 million relative to revised Consensus numbers. This initial estimate will be adjusted as final accounting closeout occurs.

Chief Justice Durrant thanked Mr. Dean and Mr. Talley.

4. **BUDGET AND FISCAL MANAGEMENT PRIORITIZATION: (Judge Mark May, Heidi Anderson, Shane Bahr, Commissioner Michelle Blomquist, Commissioner Michelle Tack, Commissioner Catherine Conklin, Nini Rich, Geoff Fattah, Judge Elizabeth Hruby-Mills, Judge Richard Mrazik, Keisa Williams, Larissa Lee, Karl Sweeney, Judge Diana Hagen, Tom Langhorne, and Kim Free)**

Chief Justice Durrant welcomed the presenters. Judge May explained the process for requesting funding. Factors in ranking items include 1) How essential is this request to accomplish the mission of the Courts, and 2) Does the Expenditure provides a good return on investment. Only one submission receives the highest rating for each criteria. Criteria #1 receives a double weight. The submissions are shown ranked in point order, highest to lowest. Judge Kara Pettit explained the definition of mission critical and noted that when making their decisions on these budget requests, the Budget and Fiscal Management Committee was explained the definitions of the factors and understood their meaning.

IT Infrastructure and Development. Heidi Anderson

\$1,452,000 ongoing funds

To improve access to justice in Utah by improving the Courts' information technology infrastructure and development through upgrading outdated hardware/software, ensuring ongoing funding for critical security software and adding additional development staff. Since COVID began, the courts have conducted 34,347 meetings, hearings, and trainings including 260,388 Webex participants. There are 473 Webex hosts that have produced 1,634,000 minutes.

Commissioner Salary Parity. Shane Bahr, Commissioner Michelle Blomquist, Commissioner Michelle Tack, Commissioner Catherine Conklin

\$92,500 ongoing funds

This award would restore commissioners' salaries to the previous standard of 90% of District/Juvenile Court judge salary, which would promote both retention and recruitment of qualified commissioners. Currently commissioners earn 84.5% of a District/Juvenile Court judge salary. Since this reduction, turnover has reached 50%. Judge David Connors felt respect was an important factor with commissioners. Commissioner Conklin said the morale among commissioners is a real issue and has impacted retention as wages in the private sector are higher. Justice Deno Himonas questioned whether this is the right time to request raises for one group when other staff raises are frozen.

Child Welfare Mediator. Nini Rich

\$55,000 ongoing funds

To improve access to justice in Utah by providing ongoing funding to replace one-time funding for a half-time child welfare mediator in the Child Welfare Mediation Program serving Juvenile Court Dependency cases.

Automate Records Indexing Creation. Judge David Mortensen, Larissa Lee

\$210,000 one-time funds

To automate the process for creating an index for the appellate record on appeal. The employees currently spend several hours manually putting together each index. The goal with automating record pagination is to reduce this time to zero. Contractors would be hired to create this program in-house. This program will make the judges and clerk's jobs easier to search documents, resulting in cost savings now and moving forward. Larissa Lee said this is a prerequisite for e-filing, however, even without e-filing; this would save court personnel around 3,000 hours of time every year. Judge Connors questioned if this was an IT request and if so, should be included with their requests. Judge Noonan said bundled packages sent to the Legislature for funding are broken down to include exactly what is asked. Judge Shaughnessy stated nothing would prevent the Council from prioritizing requests and perhaps the courts should include this request with the IT request. Judge Kate Appleby favored the approach outlined by Judge Connors and Judge Shaughnessy. Judge Appleby recommended the Council agree that the IT requests (inclusive of this request) should be prioritized at #1.

Public Outreach and Education Coordinator. Geoff Fattah, Judge Elizabeth Hruby-Mills, Judge Richard Mrazik

\$100,000 ongoing funds

The Standing Committee on Judicial Outreach is requesting 1 FTE to provide much-needed support for public outreach and education in all corners of Utah's communities. This need has been amplified due to the COVID-19 pandemic and its future impact in years to come. Karl Sweeney noted there are not enough ongoing turnover savings funds to self-fund this request with ongoing money for FY 2021. Mr. Sweeney recommended increasing the request to \$120,000 since the current request for \$6,000 in office expenses (which was proposed before the Office of Fairness and Accountability was created) should be increased to \$26,000 to be adequate; this would leave \$94,000 for salary and benefits.

Manual PSA NCIC Calculations. Keisa Williams

\$220,550 ongoing funds

Significantly increase PSA auto-calculations to include arrested individuals with out-of-state criminal history. Currently, 30% of all criminal case hearings have out-of-state criminal records but due to the lack of NCIC information being included, the PSA given to judges for those cases is absent this information. Keisa Williams explained how the results of PSAs are sent to the courts and that PSAs currently are not programmed to generate when someone has a “hit” (meaning a criminal record) from another state.

Grants Coordinator. Larissa Lee, Karl Sweeney

\$91,400 ongoing funds

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court departments. This position will help increase grant funding in a time of widespread budget cuts and provide much-needed support for employees with existing grant responsibilities. Justice Himonas said we are leaving millions of dollars on the table just based on the limited work we have done so far, at almost no cost to the Courts. Justice Himonas was willing to also support the use of one-time funds to see what could be accomplished. Judge Shaughnessy asked Mr. Sweeney about court policies when it comes to applying for grants and wondered if the policies should be reviewed if they haven’t been in a while. Judge Shaughnessy believed this request may be premature before reviewing what policies and limitations existed on funding court needs through grants. Ms. Lee noted the Finance Department accounting manual contains a section on grants with links to the grant rules and statutes. Justice Himonas said they’ve been scrupulously following the policies. Ms. Lee gave a reference to the policies in the Court’s accounting manual. Judge Shaughnessy clarified that he did not mean the Court’s policies were not being followed but that the policies ought to be reviewed to ensure they are consistent with best practices, for example, not hiring FTEs with grant money. Ms. Lee said the courts have \$1.4 million in grants and hiring this coordinator would boost the Court’s governance and compliance processes.

Judge Shaughnessy wasn’t sure if this position was oversight of current grants or would be charged with requesting new grants. Justice Himonas said the position would meet both objectives of grant writing and management. Judge Pullan felt at some point the Council has to decide what parts of their operations they are comfortable with funding through grant money. Rob Rice asked if this was a normal position in other courts. Ms. Lee said many other courts hold this position. Judge Appleby asked whether the courts have explored opportunities with partnering with other entities to leverage the expenses. Judge Noonan noted grants are subject to annual reviews. Justice Himonas noted each of the grants have been reviewed and recommended by the Legislature (Executive Appropriations Committee) if needed.

Judicial Administration Certificate Program (“JACP”). Judge Diana Hagen, Tom Langhorne, Kim Free

\$50,000 ongoing funds + \$10,000 one-time funds

The express intent of this program is to strengthen courts’ organizational management and leadership by providing consistent education in core areas of responsibility. The Westminster JACP is a unique, comprehensive curriculum designed to bring rigor and standing

to the profession of judicial administration. The program is dedicated to the advancement of the missions, mandates, and purposes of Utah's courts.

Chief Justice Durrant thanked the presenters.

Motion: Judge Appleby moved to approve the IT Infrastructure and Development request for \$1,452,000 and include the Automate Records Indexing Creation of \$210,000 for a total of \$1,662,000 (ongoing funds of \$1,452,000 and one-time funds of \$210,000) and prioritize in the first position. Judge Shaughnessy seconded the motion, and it passed with Judge Pettit dissenting to adding the Automate Records Indexing Creation with this request.

Judge Shaughnessy said the Council must be very careful when prioritizing these items. Judge Pullan acknowledged that the IT requests are proximate to the courts ability to provide equal justice under the law and are short-term in focus, however given the current environment, the Public Outreach Coordinator position, which is more long-term focused, should also be considered a top priority. Judge Pullan recommended that as the Council prioritizes items that fulfill the Court's mission, that it consider long term not just short term needs. Chief Justice Durrant was interested in more information on the Grant Coordinator position. Justice Himonas agreed with Judge Pullan and recommended that for the future the Budget and Fiscal Management Committee ensure both long term and short term components of the Court's mission be emphasized in the prioritization process. Justice Himonas clarified that he is not aware of any grant compliance issues but in hiring a Grant Coordinator wants to increase the levels of assurance for all aspects of compliance for current and future grants. Justice Himonas wasn't sure this would need to be an ongoing funded position as many grants pay for someone to administer the grant. Judge Shaughnessy agreed that at some point in the future it may be wise to fill a Grant Coordinator position, however, at this point, the Council may not have a firm understanding of what is fiscally appropriate and what is prudent. Judge Shaughnessy believed this item should be deferred or processed through alternate funding. Judge Brook Sessions thought the position could be used to manage the current grants then make a decision later on whether to seek more grants using the Grant Coordinator role.

Judge Pettit said the Public Outreach Coordinator was a high priority, however, the Budget and Fiscal Management Committee felt the Legislature-funded items that were rescinded should be the highest priority for this coming year, with the Public Outreach Coordinator next in line. The Grant Coordinator position hits a home run as to return on investment, but because we are able to administer and search for new grants with existing personnel, it garnered a lower number on the "essential" factor. Judge Connors thought the Council should consider the items addressed last year and consider the message sent to commissioners if the Council did not support them this year. Judge Connors noted these are all great programs and that the first three items prioritized by the Budget and Fiscal Management Committee in their recommendations should remain as they are. Judge Michelle Heward thanked the Council for the thoughtful discussions and concurred with Judge Connors on the ranking. Judge Heward felt the Child Welfare Mediator position was critical. Judge Heward felt that returning to school may result in an increase in child welfare and neglect cases therefore the Child Welfare Mediator position funding is critical. Judge Pettit reviewed the Board of District Court Judges and the Board of Juvenile Court Judges requests ranking. Judge May reviewed the Board of Appellate Court

Judges ranking. Judge Appleby noted the Board of Appellate Court Judges did not have an opportunity to meet and discuss the rankings. Judge Farr wondered how the courts went from creating budget cut scenarios that included furloughs and layoffs to two months later the Council is now considering raises.

Mr. Sweeney recommended that the Judicial Council fund the Child Welfare Mediator position with Court-generated future ongoing turnover savings (expected in late FY 2021) and the Grants Coordinator position with carryforward FY 2020 one-time funds instead of asking the legislature for funds. This would enable the Judicial Council to rank the 4 remaining items (IT having been previously agreed as #1). Mr. Sweeney will bring these two requests and return to the Council to address them with internal funding requests at a later date.

5. FINALIZE JUDICIAL COUNCIL PRIORITIES: (Judge Mark May)

Chief Justice Durrant welcomed Judge Mark May.

Judicial Council members, by motion and vote, assign any requests not advanced as a Judicial Priority/Building Block or Legislative Fiscal Note into one of the following two categories:

a) Deferral or Alternative Funding

i. Deferral – Items which are removed from consideration for general fund money in the 2021 General Session and will be brought back to the Council in the spring or summer of 2021 for reconsideration of funding through (1) submission as a 2022 General Session Judicial Priority, (2) FY 2021 year-end surplus funds (1x funds), (3) carryforward funds into FY 2022 (1x funds) or (3) ongoing turnover savings (ongoing funds generally used for personnel matters).

ii. Alternative funding—Items requested for which funding may be available from sources other than the Legislature including grants and items (2), (3) or (4) above.

b) Elimination – Items requested that the Judicial Council elects not to pursue during the 2021 Legislative session are removed from consideration for general fund money and will not be automatically considered again.

Fiscal notes are attached to legislation. Building blocks do not require statute to advance.

The Committee completed the prioritized list. The results of the voting are as follows:

Ranked	Amount	Ongoing or One-time	Item
1	\$1,452,000	Ongoing	IT Infrastructure and Development
	\$210,000	One-time	(Included with IT request) Automate Records Indexing Creation
2	\$100,000	Ongoing	Public Outreach and Education Coordinator
3	\$220,550	Ongoing	Manual PSA NCIC Calculations
4	\$92,500	Ongoing	Commissioner Salary Parity
5	\$50,000	Ongoing	Judicial Administration Certificate Program
	\$10,000	One-time	Judicial Administration Certificate Program

The total request for ongoing funds is \$1,915,050 and for one-time funds is \$220,000.

Chief Justice Durrant thanked Judge May.

Mr. Sweeney reminded the Council that deferred items are not sent to the Legislature. Judge Appleby requested Judge Noonan inform the Judiciary of the results of today's meeting.

Motion: Justice Himonas moved to approve the list as prioritized as listed above and send the entire list to the Legislature. Judge Farr seconded the motion, and it passed unanimously.

6. ADJOURN

The meeting adjourned at 12:59 p.m.

Tab 2

Agenda

**JUDICIAL COUNCIL'S
MANAGEMENT COMMITTEE**

**Minutes
September 9, 2020
Meeting held through Webex
12:00 p.m. – 12:24 p.m.**

Chief Justice Matthew B. Durrant, Presiding

Committee Members:

Hon. Kate Appleby, Vice Chair
Hon. Paul Farr
Hon. Mark May
Hon. Todd Shaughnessy

Excused:

Chief Justice Matthew B. Durrant, Chair

Guests:

Jim Bauer, TCE Third Juvenile Court
Travis Erickson, TCE Seventh District Court
Hon. Renee Jimenez, Third Juvenile Court
Hon. Cyndee Probert, Fillmore Justice Court

AOC Staff:

Hon. Mary T. Noonan
Cathy Dupont
Michael Drechsel
Shane Bahr
Larissa Lee
Jim Peters
Neira Siaperas
Jeni Wood

1. **WELCOME: (Chief Justice Matthew B. Durrant)**
Judge Kate Appleby welcomed everyone to the meeting.
2. **REVIEW COVID CASES FOR COURTHOUSES WORKING IN THE YELLOW PHASE: (Jeni Wood)**
Cathy Dupont noted there were no changes to yesterday's reporting. The one question of concern was Emery County. Ms. Dupont spoke with Travis Erickson, Seventh District TCE, about the increasing COVID cases and the possibility of moving Emery County back to the Red phase. Travis Erickson said 4 out of the 5 the judges in Emery County felt the safe and appropriate measure would be to move to the Red phase. Judge Todd Shaughnessy requested the opinion of the local health department. Mr. Erickson said the calendars already reflect operation in the Red phase; therefore, waiting another week to address it will allow time for a discussion with the local health department and will not affect court operations. The committee agreed to address this next week, until then, the county will remain status quo.

Ms. Dupont explained the narrative of the charts on the DOMO website. Ms. Dupont will get clarification from the Utah State Health Department on acceptable COVID counts and Emery County.

3. THIRD DISTRICT JUVENILE SALT LAKE, WEST JORDAN, TOOELE AND SUMMIT RISK RESPONSE CHECKLIST (TOOELE COUNTY IS APPROVED TO OPERATE IN THE YELLOW PHASE): (Judge Renee Jimenez and Jim Bauer)

The Management Committee approved Tooele County to operate in the Yellow phase on August 26, 2020. The Third District Juvenile Courts located in the Salt Lake City Courthouse, West Jordan Courthouse, Tooele Courthouse, and Summit Courthouse met all requirements on the Checklist.

Motion: Judge Farr moved to approve the Third District Juvenile Salt Lake City, West Jordan, Summit, and Tooele Court's Risk Response Plan, as presented. Judge Shaughnessy seconded the motion, and it passed unanimously.

4. FILLMORE JUSTICE COURT REQUEST TO MOVE TO THE YELLOW PHASE: (Judge Cyndee Probert)

The Management Committee approved the Fillmore Justice Court Risk Response Checklist on July 29, 2020. Nathan Selin, Executive Director, Central Utah Public Health Department analyzed the COVID-19 case data for Millard county, and has determined that the number of new COVID-19 cases in the county has been decreasing over the last fourteen days.. Due to the low case counts in the county, the local healthcare system utilized by the county is projected to be able to sustain the current number of active cases, while preserving the ability to address minor influxes in cases in the future.

Motion: Judge Farr moved to approve Millard County for operations in the Yellow phase, as presented. Judge May seconded the motion, and it passed unanimously.

5. OLD BUSINESS/NEW BUSINESS: (All)

Ms. Dupont asked if the committee preferred to hold the March Council meeting in St. George. The Utah State Bar will hold their meeting in St. George. Part of the budget cutting exercise was to remove travel funds. Judge Farr and Judge May felt traveling to St. George may set a negative precedence and it is unknown if it will be safe at that time. The committee agreed to hold the meeting virtually. This will be addressed at the Council meeting.

6. EXECUTIVE SESSION

An executive session was not held.

7. ADJOURN

The meeting adjourned.

Agenda

**JUDICIAL COUNCIL'S
BUDGET & FISCAL MANAGEMENT COMMITTEE**

**Minutes
September 10, 2020
Meeting held through Webex
12:00 p.m. – 1:00 p.m.**

Members Present:

Hon. Mark May, Chair
Hon. Augustus Chin
Hon. Kara Pettit

Excused:

Michael Drechsel

Guests:

Justice Deno Himonas, Supreme Court
Larry Webster, Second District TCE

AOC Staff Present:

Hon. Mary T. Noonan
Cathy Dupont
Shane Bahr
Amy Hernandez
Alisha Johnson
Larissa Lee
Daniel Meza Rincon
Bart Olsen
Chris Palmer
Jim Peters
Nini Rich
Neira Siaperas
Karl Sweeney
Jeni Wood

1. WELCOME AND APPROVAL OF MINUTES: (Judge Mark May)

Judge Mark May welcomed everyone to the meeting. Judge May addressed the meeting minutes.

Motion: Judge Kara Pettit moved to approve the August 13, 2020 minutes, as presented. Judge May seconded the motion, and it passed unanimously.

2. FY 2021 PERIOD 1 FINANCIALS: (Alisha Johnson)**Updated Forecast of FY 2020 Carry-forward to FY 2021**

Alisha Johnson provided the FY21 fiscal year end turnover savings forecast. Ms. Johnson noted the funds returned \$1.5M in one-time funds to backfill personnel were not included in the spreadsheet below.

#		Funding Type	Amount
1	Carried over Ongoing Savings (from FY 2020)	Internal Savings	44,296
2	Current Ongoing Turnover Savings (Beginning in FY 2022)	Internal Savings	(11,802)
	NET TOTAL SAVINGS		32,494
3	Ongoing Turnover Savings Pledged to Budget Cuts (retirements)		(245,300)
4	Ongoing Turnover Savings Pledged to Budget Cuts (non-retirements)		(230,148)
Forecast of Turnover Savings for FY 2021 at Fiscal Year End			\$ (442,954)

3. FY 2021 CARRY-FORWARD AND ONGOING TURNOVER SAVINGS REQUESTS: (Karl Sweeney, Chris Palmer, Heidi Anderson, Larissa Lee, Peyton Smith, Amy Hernandez, and Nini Rich)

#26 Utilize Existing Incentive Gift Cards

\$4,175 one-time funds

The AOC Directors and TCEs would like to utilize the existing inventory of gift cards purchased in FY 2020. The cards total \$13,915. The request is funding for the 30% tax impact to the recipients. The gift card values were increased to cover a large portion of the tax.

Motion: Judge Chin moved to approve sending the Utilize Existing Incentive Gift Cards request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#27 IT WebEx FTR Automation Project

\$150,000 one-time funds

The funding request is to enable additional functionality within Webex to automate the conversion to FTR.

Motion: Judge Chin moved to approve sending the IT Webex FTR Automation Project request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#28 MyCase eFiling for Pro Se Parties

\$375,000 one-time funds

\$80,000 ongoing funds (will begin in FY22)

The ability for pro se parties to efile information for the top 6 case types would make the courts more efficient in handling 80% of pro se filings for the FY20.

Motion: Judge Chin moved to approve sending the MyCase eFiling for Pro Se Parties request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#29 Grants Coordinator Position

\$91,400 one-time funds (mid-point salary with benefits)

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court levels and departments. This position will provide much needed support for employees with existing grant responsibilities, help increase grant funding in a time of widespread budget cuts and, in conjunction with the Judicial Council, identify and implement best practices with respect to grant funding and grant-funding protocols. Judge Noonan said the courts have a history of the Council committing one-time funds to continue certain positions until the legislature provides ongoing funds.

Motion: Judge Chin moved to approve sending the Grants Coordinator Position request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

#30 West Jordan Jury Assembly Room Furnishings

\$66,700 one-time funds

Replace Jury Assembly Room chairs and tables in the West Jordan Courthouse. Judge May felt this request should be addressed closer to the end of the fiscal year as spending right now may be premature. Mr. Sweeney felt it would be fine to wait. Judge Chin confirmed there are not in-person jury trials being conducted now.

Motion: Judge Pettit moved to defer sending the West Jordan Jury Assembly Room Furnishings request to the Judicial Council, as presented. Judge Chin seconded the motion, and it passed unanimously.

#31 Fix Court's Protective Order System

\$50,000 one-time funds

The Court's protective order system ("CPOS") is not in compliance with federal statutes, federal regulations, state statutes, and judicial rules. The current CPOS requires programming changes that must be performed by Court Services and IT to bring it back into compliance. Amy Hernandez stated IT will require additional funding, however, that amount will be determined at a later date.

Motion: Judge Pettit moved to approve sending the Fix Court's Protective Order System request to the Judicial Council, as presented. Judge Chin seconded the motion, and it passed unanimously.

#32 Small Claims ODR Facilitator Training

\$15,000 one-time funds

Recruitment and Training of 18 new volunteer ODR Facilitators in order to accommodate an eventual statewide rollout of the ODR Program for small claims cases.

Motion: Judge Chin moved to approve sending the Small Claims ODR Facilitator Training request to the Judicial Council, as presented. Judge Pettit seconded the motion, and it passed unanimously.

Mr. Sweeney recommended moving money not used to create a larger reserve. Judge Pettit agreed this would be a good idea. Cathy Dupont felt comfort in increasing the reserves because there is more than adequate senior judge funding, however, once jury trials begin, the courts may need additional funding for senior judge usage as the backlog of trials is large. Judge Pettit thanked Ms. Dupont for anticipating funds' usage.

Motion: Judge Pettit moved to increase the reserve with the additional \$160,000. Judge Chin seconded the motion, and it passed unanimously.

3. OLD BUSINESS/NEW BUSINESS: (All)

There was no additional business discussed.

4. ADJOURN

The meeting adjourned at 12:48 p.m.

Agenda

UTAH JUDICIAL COUNCIL POLICY AND PLANNING COMMITTEE MEETING MINUTES

Webex video conferencing
September 4, 2020: 12 pm to 2 pm

DRAFT

MEMBERS:	PRESENT	EXCUSED	GUESTS:
Judge Derek Pullan, <i>Chair</i>	•		Judge Ryan Harris
Judge Brian Cannell	•		Brent Johnson
Judge Augustus Chin	•		Paul Barron
Judge David Connors	•		Bart Olsen
Judge Michelle Heward	•		Michael Drechsel
Mr. Rob Rice	•		Shane Bahr
Judge John Walton		•	Jim Peters
			STAFF:
			Keisa Williams
			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 August 7, 2020 meeting. Rob Rice moved to approve the minutes as drafted. Judge Cannell seconded the motion. Judge Connors abstained. The motion passed with a majority vote.

(2) 3-201. Court commissioners

3-201.02. Court commissioner conduct committee:

Rule 3-201

Ms. Williams: Policy and Planning has been reviewing these two rules for a number of months. The proposed amendments to rule 3-201 were made by Policy and Planning in November 2019, primarily the change from “sanctions” to “corrective actions.”

Judge Pullan: The sentence starting at line 134 addresses negative comments received during a public comment period for a commissioner’s appointment or retention, but the language isn’t clear. If the comment will negatively affect a presiding judge’s decision to remove a commissioner, is it a positive comment?

Judge Connors: Does that mean the intent is to only disseminate comments if they are negative, presuming any negative comment would affect a presiding judge’s decision? Or is the intent to provide commissioners with all public comments, both positive and negative?

Judge Pullan: I recommend providing negative comments only. The intent is to give commissioners the opportunity to respond to any comments that are adverse to them.

Judge Connors recommended amending the sentence to state that if there are any negative comments, the negative comments will be provided to the commissioner with the names redacted and the commissioner shall have an opportunity to respond. The Committee agreed.

Rule 3-201.02

**Due to the extent of the proposed changes, Policy and Planning reviewed a clean version of the draft rule.*

Judge Pullan: I am concerned about the definition of misconduct starting at line 16. It appears to be self-defining - "...misconduct means: action that constitutes willful misconduct..." I'm also concerned about the addition of a mental state that would allow a commissioner to engage in all kinds of misconduct, with a defense that it was all a mistake.

Judge Harris: I have been the chair of the Court Commissioner Conduct Committee (CCCC) for about 6 months. In that time, the committee has identified a number of issues with this rule. A general overhaul of the rule has been in the works for a couple of years. In one of the drafts, the definition of misconduct was imported from the Rules of Professional Conduct (RPC), Rule 8.4, but that definition was removed because the CCCC isn't where people should go if they have a complaint about a commissioner's violation of the RPC. The RPC govern a commissioner's conduct as a lawyer, as opposed to the commissioner's actions as a commissioner. The CCCC's role is to address commissioners' alleged violations of the Code of Judicial Conduct.

Mr. Rice: I would propose eliminating (1)(A)(iii)(c) as well. It addresses performance failure, which is conduct that should be handled by a presiding judge and not the CCCC. One of the distinctions we were trying to make with these two rules is that issues of employee performance should be managed by the presiding judge, and violations of the code of judicial conduct should be handled by the CCCC.

Mike Drechsel: About a year ago, Judge Christiansen-Forster and I tried to create a system similar to the Judicial Conduct Commission (JCC) process because commissioners sit on the bench, they wear a robe, and to the public they appear to be the equivalent of a judge. The definition of misconduct in this rule is almost identical to the grounds for censure, reprimand, or removal of a judge in Utah Code section 78A-11-105(1). In the JCC's administrative rules, they define misconduct in the same circular way.

Policy and Planning discussed removing paragraph (1)(A) entirely. While the court isn't bound by the statutory provision or the JCC's rules, Policy and Planning determined that the definition of misconduct should remain in the rule as drafted to mirror the JCC.

Judge Pullan: In line 52, it says all actions and materials shall be kept confidential, but the Judicial Council can publicly censure a commissioner.

Mr. Rice: That is similar to the Utah Bar's process. Those complaints are kept confidential until a bar review committee makes the decision to publicly admonish someone.

Mr. Drechsel: This came up last year. At that time, Policy and Planning decided to leave out any reference to the confidentiality of records because it could create a conflict with the records classification and access rules, rules 4-202.02 and 4-202.03.

After further discussion, Policy and Planning amended lines 52-54 to read, "The confidentiality of all actions and materials related to a complaint, hearing, appeal, and Council review are governed by rule 4-202.02, other than any public censure by the Council."

Judge Harris: A new appellate process is outlined in paragraph (5). The lack of an appellate process was a concern, especially when the CCCC dismisses a complaint without a hearing. Now, if a complaint is dismissed without a hearing, the complainant can appeal to the Council for a de novo review of the file. The appeal can be heard by the Council as a whole, by a designated member of the Council, or by a committee of the Council.

After discussion, Judge Connors moved to approve rule 3-201 and rule 3-201.02 as amended. Judge Heward seconded. The motion passed unanimously.

(3) 4-202.08. Fees for records, information and services:

Ms. Williams: This summer the Council approved an increase in fees for Xchange, but the corresponding rule amendment was overlooked. The proposed changes starting at line 58 simply reflect what the Council has already approved. I recommend approving this rule on an expedited basis and sending it out for public comment.

Judge Connors: In line 8, it says the rule does not apply to the Self Help Center. Does that mean the fees are inapplicable to patrons receiving assistance from the Self-Help Center or to court staff in the Self Help Center? Do the charges apply to judges and court employees? We may need to add clarifying language to the Applicability paragraph.

Judge Pullan: I don't believe we are charging ourselves a fee so we probably don't need to address that issue today. I'm concerned that if we wait to approve the rule until we can seek confirmation, we will have a rule that is inconsistent with the Council's decision. Once the rule is approved, Ms. Williams can research Judge Connor's question and bring it back to the committee at a later date.

Judge Connors moved to approve the rule as proposed with an effective date of September 1, 2020, and to recommend to the Judicial Council that the rule be sent out for public comment. Judge Chin seconded. The motion passed unanimously.

(4) 4-403. Electronic signature stamp usage

3-104. Presiding judges

Brent Johnson was unable to participate. These items will be addressed at the October meeting.

(5) Back from public comment (already approved):

- 1-201. Membership – election
- 6-102. Election of district court judges to the Judicial Council
- 7-101. Juvenile Court Board, Executive Committee and Council Representatives

Ms. Williams: All three rules were approved by the Council on an expedited basis and subsequently went out for public comment. No comments were received.

After discussion, Policy and Planning made no changes to the rules. The rules remain in effect as drafted.

(6) Cases under advisement – tracking system:

At its August meeting, Policy and Planning asked Mr. Barron to develop a proposed technical solution to issues related to tracking and reporting on cases under advisement.

Paul Barron reviewed the proposal included in the meeting materials. A link would be added to CORIS that would allow judges to see all cases under advisement, similar to a process available in the juvenile system (CARE). Improvements are underway in CARE to enhance the quality and functionality of that process and the same could be done for the district court. Mr. Barron wasn't sure if the appellate court uses a similar tracking system. A webpage could be created that would open up immediately, allowing judges to run an under advisement report.

Judge Pullan: Would the report only include cases where tracking was initiated by a clerk? For example, when a notice to submit has been filed, the system asks whether you want the case to be tracked. The default setting is 60 days, but the judicial assistant or clerk is making the decision at that time whether to trigger the notice or not.

Mr. Barron: Yes, but court staff would have the ability to set up indicators manually as well. The documents would be called “requests for decision.” A box would never be checked; the document would sit where it was with an indicator that it is ready. If nothing happens, it will be presented again in 90 days.

Shane Bahr: The board of district court judges’ biggest concern was that something may be submitted, but it’s not really under advisement until it hits the judge’s desk. Right now that requires a lot of human interaction and we would want a way to ensure that what we’re reporting are cases truly under advisement.

Mr. Barron: No matter what we build, some monitoring will be required by the judge, judicial assistant, or clerk. The proposed solution would make it easier for judges to obtain information about, or monitor their own reports.

Judge Connors: I lose sleep over this. I require my case managers to send me a weekly list of the cases we are tracking as under advisement. I go through the report and address cases close to the deadline and make a note of decisions coming up. There is potential for human error in those reports. If a case was never brought to my attention, how would I know action needs to be taken? Is it fair to fault a judge if he or she didn’t know a case was sitting there past 90 days?

Judge Pullan: This issue is on Policy and Planning’s October agenda. Jennifer Yim, Justice Durham, and Bridget Romano from JPEC, and Judge Christine Johnson, the chair of the board of district court judges, will be addressing the committee. One of the concerns is that judges shouldn’t be penalized for missing a deadline if it was outside of their control, but our own system is grounded in human intervention and cases aren’t always being tracked accurately.

Judge Pullan will report to the Council on this discussion at its September meeting.

(7) Office of Fairness and Accountability:

- CJA 3-419
- Office charter
- Director job description
- Research

Ms. Williams: The rule draft is based almost entirely on the office charter and director job description. I included a few things from my research of other states. I haven’t been involved in the Council’s discussions regarding the office, but from what I understand, the Council may want to create an independent advisory board in addition to the office. Most of the other states have an advisory council in some form or fashion so there is a lot to draw from.

Judge Chin: I think the rule is a good start, but I need time to conduct a more in-depth review of all of the materials before I could make any substantive recommendations.

Mr. Rice: The court’s objective is a diverse judiciary. Language stating that the office will support the promotion of diversity on the bench should be added to the Objectives section, and to the body of the rule.

Judge Pullan: The objectives need to reflect the multi-faceted way in which we intend to address that problem. Including it at the beginning of the rule makes sense to me. A general responsibility of the office should be outreach and recruitment, including diversity among court employees. The director will be a liaison to other branches of government. I like the idea that the director would be continuously examining our processes and policies, collecting and analyzing data, educating judges and employees, and making recommendations to the Council regarding improvements. The objectives should also state that the office shall strive to eliminate racial and ethnic unfairness in the judiciary.

Judge Connors: Recruitment of a diverse judiciary is really important. It's a long process and it requires continuous, dedicated efforts. It's also a topic of debate with the legislature so we should think carefully about how that objective is worded. The list in paragraph (1) should be identical to the list in paragraph (3)(C).

Judge Pullan: I agree. Recruitment is an important part of what this office does. One of the long term goals may begin with children in middle school and helping them visualize themselves as lawyers or judges. There are a host of barriers that we need to study and we should consider whether current requirements are necessary. In the short term, I am very concerned about defendants before me for a bail hearing and ensuring I'm making the right decision based on data collected by the office. Racial minorities are disproportionately represented. The rule is missing 80% of what the office is trying to accomplish. What data are we collecting about race in the judiciary? What judicial and court employee skills are we trying to improve?

Judge Connors: The question is where we want this office to direct its resources. Promotion of diversity on the bench and implicit bias in judicial decision making are two different things that need to be handled in very different ways. If we give the office too much to do, we may render them ineffective. Maybe the office should coordinate with other organizations already addressing judicial recruitment, and focus most of its resources on more proximate goals.

Mr. Rice: I agree with Judge Connors that the director shouldn't be doing the heavy lifting in regard to judicial recruitment. I have worked with the Utah Center for Legal Inclusion on ways to build a pipeline.

Ms. Williams: I am concerned about getting too detailed in the rule. As I was conducting my research, I became more and more aware of how much I don't know. We might be better served to keep the rule general in nature and wait until we hire a director with expertise in this area to provide guidance and recommendations about specific objectives and duties.

Judge Pullan: I agree that we should think about proximate and long term objectives and how the office's resources should be applied. I view this office as addressing both of those issues. I think we wait until the director is on board to help us determine how energy and resources can be applied to both. The director may be hired before we finalize a rule draft.

Bart Olsen: The director position has been posted for 2-3 weeks and it closes on Monday night.

Judge Connors: I recommend that we wait for input from the director in drafting objectives.

After further discussion, Judge Pullan asked committee members to send Ms. Williams their recommended amendments to the rule draft and asked Ms. Williams to incorporate those recommendations and bring the rule back to the committee in October.

(8) Old business/new business:

Judge Connors: A question came up at the board of district court judges' meeting about whether we should recommend that the Council consider modifying the administrative order regarding the requirement of consent by both parties on remote hearings. Isn't the presumption that everyone would be in favor of remote hearings? The wording of the current order seems backwards.

Mr. Bahr: That issue will be considered by the Management Committee next week.

Judge Connors: Another concern is dealing with motions to disqualify special masters. I discussed this with Brent Johnson but we haven't come to a conclusion on how best to deal with it. It falls under rule 63 of the rules of civil procedure. The policy question is whether we should consider special masters "judicial officers" for purposes of disqualification.

Judge Pullan: That may be a good issue for the civil rules committee to consider. Policy and Planning conducts research and makes policy recommendations to the Council, and is responsible for the Code of Judicial Administration rules. That is a policy question, but it seems to fall under the jurisdiction of the Supreme Court's advisory committee. Sometimes our work touches on rules of procedure and when that happens we send it to the appropriate advisory committee or coordinate with them when issues overlap. Let's think about that more and once we've defined the issue better we can discuss whether to send it to the advisory committee or up to the Council.

(9) ADJOURN:

With no further items for discussion, the meeting adjourned without a motion. The meeting adjourned at 2:05 pm. The next meeting will be on October 2, 2020 at 12 (noon) via Webex video conferencing.

Tab 3



UTAH STATE COURTS

Agenda

Standing Education Committee's 2020 Annual Report to the Judicial Council



UTAH STATE COURTS

First and most importantly...

**The Standing Committee on Education
and
your education department**

APPRECIATE YOUR SUPPORT!



UTAH STATE COURTS

000041

**Welcome all Justice Court Judges
to the Annual Judicial Conference:**

Breaking down education silos!



UTAH STATE COURTS

OVERARCHING THEME...

Successfully overcoming the challenges of COVID-19 and its associated budget woes

Replacing canceled in-person learning with virtual learning opportunities

Successfully telecommuting



UTAH STATE COURTS

LEARNING MANAGEMENT SYSTEM (“LMS”)

Old online training program rendered obsolete

Synchronous and asynchronous learning

Managers can customize LMS classes

Content creation & sharable

Individualized employee onboarding tools

Event management system



UTAH STATE COURTS

LMS, con't

- **Web based, video based, mobile devices**
 - **Testing, supervisors monitor progress (auto generates reports and results)**
 - **Compatible with HRIS**
- **This AJC is delivered through this LMS**
 - **A brave new *virtual* world**

HIGHLIGHTS, con't

Enhanced Justice Court Education
via...

**A Reengineered Justice Court
Education Specialist Position
(welcome our newest team member
Kim Zimmerman former Justice Court
Clerk and Trainer)**



UTAH STATE COURTS

Efforts to continue the Judicial Administration Certificate Program with Westminster College



UTAH STATE COURTS

**Completely redesigned the education
department's budget which increases :**

Transparency

Traceability

Accountability

More detailed reporting to stakeholders



UTAH STATE COURTS

**Continue to develop first ever
“Procedures Manuals”**

**PJ Manual, TCE Manual, Clerks of
Court Manual, CPO Manuals,
Supervisor Manual**



UTAH STATE COURTS

Enhanced Judicial Mentoring Efforts

- **Rule 3-403 Amendments**
- **PJ assigns mentor within 7 business days after swearing in ceremony**
- **“Mentor Checklist” to be completed & submitted to Tom within 14 business days**

UTAH STATE COURTS

And Lastly...

**We again thank you for your
great support!**

Tab 4

JUDICIAL COUNCIL CERTIFICATION, SEPTEMBER 2020

The following Adult Drug Courts have met all Required and Presumed Best Practices:

Judge Keisel	District 6	Sanpete County	Manti
Judge Lee	District 6	Kane County	Kanab

The following Family Dependency Drug Courts have met all Required and Presumed Best Practices:

Judge Bunnell	District 7	Carbon County	Price
Judge Jan	District 3	Salt Lake County	Salt Lake City
Judge Eisenman	District 3	Salt Lake County	Salt Lake City
Judge May	District 3	Salt Lake County	Salt Lake City
Judge Renteria	District 3	Salt Lake County	West Jordan

The following Mental Health Courts have met all Required and Presumed Best Practices:

Judge Fannesbeck	District 1	Cache County	Logan (Adult)
Judge Knight	District 3	Salt Lake County	Salt Lake City (Juvenile)

The following courts meet all Required but do not meet one or more Presumed Best Practices but have a reasonable explanation:

Judge Bagley (Sevier County Adult Mental Health), Presumed #35; Mental Health Court has more than 15 but less than 125 active participants. BECAUSE OF THE PANDEMIC THE COURT SUSPENDED NEW ENTRIES FOR A TIME AND IS SLOWLY GETTING ITS NUMBERS BACK. LAST COUNT THEY HAD 5 ACTIVE PARTICIPANTS.

Judge Bagley (Sevier Adult Drug Court), Presumed Best Practice #35; Drug Court has more than 15 but less than 125 active participants. BECAUSE OF THE PANDEMIC THE COURT SUSPENDED NEW ENTRIES FOR A TIME AND IS SLOWLY GETTING ITS NUMBERS BACK. LAST COUNT HAD 12 ACTIVE MEMBERS.

Judge Nielsen (Utah County Family Dependency Drug Court), Presumed Best Practice #31; Team members are assigned to Family Dependency Court for no less than two years. DCFS CASEWORKER

OCCURS TOO OFTEN AND THE COURT HAS NO CONTROL OVER THAT AGENCY. Presumed Best Practice #34; New staff hires receive formal orientation training on Family Dependency Court and attend annual continuing education workshops thereafter. NO FORMAL TRAINING IS AVAILABLE HOWEVER WHEN EVER THE STATE OFFERS TRAINING THE STAFF IS REQUIRED TO ATTEND. Presumed Best Practice # 35; Family Dependency Court has more than 15 but less than 125 active participants. THE PANDEMIC HAS LIMITED THE NUMBER OF PARTICIPANTS THAT WE HAVE ACCEPTED INOT THE COURT, THAT IS EXPECTED TO CHANGE AS THE COURTS REOPEN FOR HEARINGS.

The following courts have been sent letters of non-compliance with Required and/or Presumed Best Practices:

Judge Nielsen	District 4	Utah County	American Folk	(Family Dependency)
Judge McClellan	District 8	Uintah County	Vernal	(Adult Drug Court)
Judge Torgerson	District 7	San Juan County	Monticello	(Adult Drug Court)
Judge Eldridge	District 4	Utah County	Provo	(Adult Drug Court)
Judge Taylor	District 4	Utah County	Provo	(Adult Drug Court)

UTAH JUDICIAL COUNCIL
ADULT DRUG COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED DECEMBER 16, 2019

COURT LOCATION: Kane County, Kanab

JUDGE NAME: Lee

REVIEW DATE: July, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input 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.
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
X	<input 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.
X	<input 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.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<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.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input 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.
X	<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.
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<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.
X	<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
X	<input 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.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input 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.
X	<input 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
X	<input 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.*
X	<input 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.*
X	<input 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.*
X	<input 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.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input 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.*
X	<input 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	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.
X	<input type="checkbox"/>	4	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.
X	<input type="checkbox"/>	5	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.
X	<input type="checkbox"/>	10	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.*

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
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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	<input type="checkbox"/>	25	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.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.

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
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of arrest.	
X	<input type="checkbox"/>	31	Team members are assigned to Drug Court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
X	<input type="checkbox"/>	33	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.
X	<input type="checkbox"/>	34	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.
X	<input type="checkbox"/>	35	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	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.
X	<input type="checkbox"/>	37	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.
X	<input type="checkbox"/>	38	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	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<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.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<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.
X	<input 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.

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
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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.
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input 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	<input 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.
X	<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.
X	<input type="checkbox"/>	16	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL ADULT DRUG COURT CERTIFICATION CHECKLIST

REVISED AND ADOPTED DECEMBER 16, 2019

COURT LOCATION: Sanpete County, Manti

JUDGE NAME: Keisel

REVIEW DATE: July, 2020

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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input 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.
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.	III.C.
X	<input 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.
X	<input 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.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<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.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input 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.
X	<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.
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<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.
X	<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
X	<input 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.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input 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.
X	<input 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
X	<input 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.*
X	<input 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.*
X	<input 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.*
X	<input 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.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input 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.*
X	<input 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	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.
X	<input type="checkbox"/>	4	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.
X	<input type="checkbox"/>	5	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.
X	<input type="checkbox"/>	10	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.*

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
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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	<input type="checkbox"/>	25	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.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.

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
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of arrest.	
X	<input type="checkbox"/>	31	Team members are assigned to Drug Court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
X	<input type="checkbox"/>	33	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.
X	<input type="checkbox"/>	34	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.
X	<input type="checkbox"/>	35	The Drug Court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	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.
X	<input type="checkbox"/>	37	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.
X	<input type="checkbox"/>	38	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	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<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.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	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.
X	<input 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.

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
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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.
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input 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 type="checkbox"/>	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.
<input type="checkbox"/>	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.
<input type="checkbox"/>	X	16	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
ADULT DRUG COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED DECEMBER 16, 2019

COURT LOCATION: Sevier County, Richfield

JUDGE NAME: Bagley

REVIEW DATE: July, 2020

*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.*

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X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
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X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
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X	<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.
X	<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.
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X	<input 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.
X	<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.
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X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
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X	<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.
X	<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
X	<input 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.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input 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.
X	<input 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Drug Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Drug Court because they lack a stable place of residence.	VI.D.
X	<input 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.*
X	<input 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.*
X	<input 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.*
X	<input 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.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input 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.*
X	<input 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Drug Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	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.
X	<input type="checkbox"/>	4	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.
X	<input type="checkbox"/>	5	The judge presides over the Drug Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.
X	<input type="checkbox"/>	10	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.*

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
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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	<input type="checkbox"/>	25	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.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Drug Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Drug Court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.

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
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of arrest.	
X	<input type="checkbox"/>	31	Team members are assigned to Drug Court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Drug Court issues.	
X	<input type="checkbox"/>	33	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.
X	<input type="checkbox"/>	34	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 type="checkbox"/>	X	35	The Drug Court has more than 15 but less than 125 active participants. (Covid)	IX.A.*
X	<input type="checkbox"/>	36	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.
X	<input type="checkbox"/>	37	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.
X	<input type="checkbox"/>	38	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	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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"/>	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. (Not Available in Richfield, do the best we can)	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<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.
X	<input 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.

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
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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.
X	<input 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.
X	<input 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.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input 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	<input 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.
X	<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.
<input type="checkbox"/>	X	16	The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
MENTAL HEALTH COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Sevier County, Richfield

NAME: Bagley

REVIEW DATE: July, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	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.	I.C.
X	<input type="checkbox"/>	5	Candidates for the Mental health Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Mental health Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental health Court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Mental health Court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Mental health Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Mental health Court.	III.C.
X	<input 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 Mental health Court team.	III.D.
X	<input 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	III.E.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	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.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	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.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Mental health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Mental health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

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			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
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X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
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X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Mental health 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.
X	<input type="checkbox"/>	37	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.	IV.K.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Mental health Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Mental health Court because they lack a stable place of residence.	VI.D.
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X	<input 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	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			attend each Mental health Court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Mental health Court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	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.	X.D.*
X	<input type="checkbox"/>	54	The Mental health 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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X	<input type="checkbox"/>	3	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.	II.F.
X	<input type="checkbox"/>	4	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.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Mental health Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Mental health 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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
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X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Mental health Court.	V.J.
X	<input type="checkbox"/>	25	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.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Mental health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Mental health Court.	VI.I.

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
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of eligibility screening.	
X	<input type="checkbox"/>	31	Team members are assigned to Mental health Court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Mental health Court issues.	
X	<input type="checkbox"/>	33	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.	VIII.F.
X	<input type="checkbox"/>	34	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.	VIII.F.
	X	35	The Mental health Court has more than 15 but less than 125 active participants. (Covid)	IX.A.*
X	<input type="checkbox"/>	36	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.	X.A.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental health Court.	X.C.
X	<input type="checkbox"/>	38	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.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Mental health Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<input type="checkbox"/>	4	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.	V.J.

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
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Mental health Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Mental health Court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Mental health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Mental health Courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	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.	X.B,*
X	<input 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 Mental health Court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	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.	X.H.
X	<input type="checkbox"/>	16	The Mental health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
FAMILY DEPENDENCY COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Salt Lake County, Salt Lake City

JUDGE NAME: May

REVIEW DATE: June, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	4	Candidates for the Family dependency 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.
X	<input type="checkbox"/>	5	Candidates for the Family dependency court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Family dependency court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Family dependency court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Family dependency court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Family dependency court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Family dependency court.	III.C.
X	<input 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 Family dependency court team.	III.D.
X	<input 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	III.E.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BP5
			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	The judge makes these decisions after taking into consideration the input of other Family dependency court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Family dependency court participants and team members.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Family dependency court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Family dependency court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
X	<input type="checkbox"/>	30	Upon entering the Family dependency court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Family dependency 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.
X	<input type="checkbox"/>	37	If a participant is terminated from the Family dependency 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Family dependency court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Family dependency court because they lack a stable place of residence.	VI.D.
X	<input type="checkbox"/>	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Family dependency court and continuing as needed throughout their enrollment in the program.	VI.E.*
X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of family dependency court.	VI.I.*
X	<input type="checkbox"/>	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family dependency courts), and the judge attend each staffing meeting.	VIII.B.*
X	<input type="checkbox"/>	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			dependency courts), and the judge attend each Family dependency court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Family dependency court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	The Family dependency 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.*
X	<input type="checkbox"/>	54	The Family dependency 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Family dependency court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	Each member of the Family dependency 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.
X	<input type="checkbox"/>	4	The Family dependency court judge attends current training events on legal and constitutional issues in Family dependency courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Family dependency court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Family dependency 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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
X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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 Family dependency court population.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Family dependency court's programmatic phase structure.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Family dependency court.	V.J.
X	<input type="checkbox"/>	25	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Family dependency court and continuing as necessary throughout their enrollment in the program.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Family dependency court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.

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
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Family dependency court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of child welfare petitions being filed.	
X	<input type="checkbox"/>	31	Team members are assigned to Family dependency court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Family dependency court issues.	
X	<input type="checkbox"/>	33	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 Family dependency courts.	VIII.F.
X	<input type="checkbox"/>	34	New staff hires receive a formal orientation training on the Family dependency court model and best practices in Family dependency courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
X	<input type="checkbox"/>	35	The Family dependency court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	The Family dependency 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.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Family dependency court.	X.C.
X	<input type="checkbox"/>	38	A skilled and independent evaluator examines the Family dependency court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Family dependency court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	X	4	For at least the first ninety days after discharge from the Family dependency court, treatment providers or clinical case managers attempt to contact previous participants periodically by	V.J.

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>	
			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.	
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Family dependency courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Family dependency court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Family dependency court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Family dependency courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	The Family dependency 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	<input 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 Family dependency court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	Outcomes are examined for all eligible participants who entered the Family dependency court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.
X	<input type="checkbox"/>	16	The Family dependency court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
FAMILY DEPENDENCY COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Salt Lake County, Salt Lake City

JUDGE NAME: Eisenman

REVIEW DATE: July, 2020

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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	4	Candidates for the Family dependency 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.
X	<input type="checkbox"/>	5	Candidates for the Family dependency court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Family dependency court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Family dependency court.	I.D.
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X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Family dependency court.	III.C.
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X	<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.
X	<input type="checkbox"/>	22	The Family dependency court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
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X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
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			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
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X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
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X	<input 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.*
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X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
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X	<input type="checkbox"/>	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family	VIII.A.*

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			dependency courts), and the judge attend each Family dependency court session.	
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X	<input 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.
X	<input 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 Family dependency court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	The Family dependency 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.*
X	<input type="checkbox"/>	54	The Family dependency 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Family dependency court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	Each member of the Family dependency 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.
X	<input type="checkbox"/>	4	The Family dependency court judge attends current training events on legal and constitutional issues in Family dependency courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Family dependency court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Family dependency 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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 Family dependency court population.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Family dependency court's programmatic phase structure.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Family dependency court.	V.J.
X	<input type="checkbox"/>	25	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Family dependency court and continuing as necessary throughout their enrollment in the program.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Family dependency court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.

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X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Family dependency court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of eligibility.	
X	<input type="checkbox"/>	31	Team members are assigned to Family dependency court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Family dependency court issues.	
X	<input type="checkbox"/>	33	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 Family dependency courts.	VIII.F.
X	<input type="checkbox"/>	34	New staff hires receive a formal orientation training on the Family dependency court model and best practices in Family dependency courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
X	<input type="checkbox"/>	35	The Family dependency court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	The Family dependency 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.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Family dependency court.	X.C.
X	<input type="checkbox"/>	38	A skilled and independent evaluator examines the Family dependency court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Family dependency court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<input type="checkbox"/>	4	For at least the first ninety days after discharge from the Family dependency court, treatment providers or clinical case managers attempt to contact previous participants periodically by	V.J.

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			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.	
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Family dependency courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Family dependency court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Family dependency court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Family dependency courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	The Family dependency 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	<input 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 Family dependency court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	Outcomes are examined for all eligible participants who entered the Family dependency court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.
X	<input type="checkbox"/>	16	The Family dependency court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
FAMILY DEPENDENCY COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Salt Lake County, Sale Lake City

JUDGE NAME: Jan

REVIEW DATE: August, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	4	Candidates for the Family dependency 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.
X	<input type="checkbox"/>	5	Candidates for the Family dependency court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
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X	<input type="checkbox"/>	53	The Family dependency 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.*
X	<input type="checkbox"/>	54	The Family dependency 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Family dependency court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	Each member of the Family dependency 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.
X	<input type="checkbox"/>	4	The Family dependency court judge attends current training events on legal and constitutional issues in Family dependency courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Family dependency court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Family dependency 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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
X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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 Family dependency court population.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Family dependency court's programmatic phase structure.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Family dependency court.	V.J.
X	<input type="checkbox"/>	25	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Family dependency court and continuing as necessary throughout their enrollment in the program.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Family dependency court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.

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X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Family dependency court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of screening and dcfs approval.	
X	<input type="checkbox"/>	31	Team members are assigned to Family dependency court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Family dependency court issues.	
X	<input type="checkbox"/>	33	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 Family dependency courts.	VIII.F.
X	<input type="checkbox"/>	34	New staff hires receive a formal orientation training on the Family dependency court model and best practices in Family dependency courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
X	<input type="checkbox"/>	35	The Family dependency court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	The Family dependency 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.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Family dependency court.	X.C.
X	<input type="checkbox"/>	38	A skilled and independent evaluator examines the Family dependency court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Family dependency court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	X	4	For at least the first ninety days after discharge from the Family dependency court, treatment providers or clinical case managers attempt to contact previous participants periodically by	V.J.

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>	
			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.	
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Family dependency courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Family dependency court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Family dependency court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Family dependency courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	The Family dependency 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	<input 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 Family dependency court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	Outcomes are examined for all eligible participants who entered the Family dependency court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.
X	<input type="checkbox"/>	16	The Family dependency court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
FAMILY DEPENDENCY COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Salt Lake County, West Jordan

JUDGE NAME: Renteria

REVIEW DATE: June, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	4	Candidates for the Family dependency 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.
X	<input type="checkbox"/>	5	Candidates for the Family dependency court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Family dependency court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Family dependency court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Family dependency court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Family dependency court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Family dependency court.	III.C.
X	<input 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 Family dependency court team.	III.D.
X	<input 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	III.E.

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			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	The judge makes these decisions after taking into consideration the input of other Family dependency court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Family dependency court participants and team members.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Family dependency court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Family dependency court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

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			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
X	<input type="checkbox"/>	30	Upon entering the Family dependency court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Family dependency 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.
X	<input type="checkbox"/>	37	If a participant is terminated from the Family dependency 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Family dependency court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Family dependency court because they lack a stable place of residence.	VI.D.
X	<input type="checkbox"/>	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Family dependency court and continuing as needed throughout their enrollment in the program.	VI.E.*
X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of family dependency court.	VI.I.*
X	<input type="checkbox"/>	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family dependency courts), and the judge attend each staffing meeting.	VIII.B.*
X	<input type="checkbox"/>	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family	VIII.A.*

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			dependency courts), and the judge attend each Family dependency court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Family dependency court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	The Family dependency 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.*
X	<input type="checkbox"/>	54	The Family dependency 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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X	<input type="checkbox"/>	4	The Family dependency court judge attends current training events on legal and constitutional issues in Family dependency courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
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X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of arrest.	
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X	<input type="checkbox"/>	33	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 Family dependency courts.	VIII.F.
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X	<input type="checkbox"/>	39	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.
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X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
<input type="checkbox"/>	X	4	For at least the first ninety days after discharge from the Family dependency court, treatment providers or clinical case managers attempt to contact previous participants periodically by	V.J.

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
			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.	
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Family dependency courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Family dependency court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Family dependency court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Family dependency courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	The Family dependency 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	<input 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 Family dependency court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	Outcomes are examined for all eligible participants who entered the Family dependency court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.
X	<input type="checkbox"/>	16	The Family dependency court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
FAMILY DEPENDENCY COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Utah County, American Fork

JUDGE NAME: Nielsen

REVIEW DATE: August, 2020

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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	4	Candidates for the Family dependency 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.
X	<input type="checkbox"/>	5	Candidates for the Family dependency court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Family dependency court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Family dependency court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Family dependency court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Family dependency court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Family dependency court.	III.C.
X	<input 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 Family dependency court team.	III.D.
X	<input 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	III.E.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	The judge makes these decisions after taking into consideration the input of other Family dependency court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Family dependency court participants and team members.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Family dependency court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Family dependency court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
X	<input type="checkbox"/>	30	Upon entering the Family dependency court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Family dependency 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.
X	<input type="checkbox"/>	37	If a participant is terminated from the Family dependency 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Family dependency court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Family dependency court because they lack a stable place of residence.	VI.D.
X	<input type="checkbox"/>	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Family dependency court and continuing as needed throughout their enrollment in the program.	VI.E.*
X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of family dependency court.	VI.I.*
X	<input type="checkbox"/>	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family dependency courts), and the judge attend each staffing meeting.	VIII.B.*
X	<input type="checkbox"/>	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			dependency courts), and the judge attend each Family dependency court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Family dependency court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	The Family dependency 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.*
X	<input type="checkbox"/>	54	The Family dependency 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Family dependency court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	Each member of the Family dependency 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.
X	<input type="checkbox"/>	4	The Family dependency court judge attends current training events on legal and constitutional issues in Family dependency courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Family dependency court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Family dependency 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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
X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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 Family dependency court population.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Family dependency court's programmatic phase structure.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Family dependency court.	V.J.
X	<input type="checkbox"/>	25	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Family dependency court and continuing as necessary throughout their enrollment in the program.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Family dependency court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.

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
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Family dependency court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of referral by DCFS.	
<input type="checkbox"/>	X	31	Team members are assigned to Family dependency court for no less than two years. (DCFS caseworker turnover).	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Family dependency court issues.	
X	<input type="checkbox"/>	33	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 Family dependency courts.	VIII.F.
<input type="checkbox"/>	X	34	New staff hires receive a formal orientation training on the Family dependency court model and best practices in Family dependency courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
	X	35	The Family dependency court has more than 15 but less than 125 active participants. (COVID)	IX.A.*
X	<input type="checkbox"/>	36	The Family dependency 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.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Family dependency court.	X.C.
X	<input type="checkbox"/>	38	A skilled and independent evaluator examines the Family dependency court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Family dependency court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<input type="checkbox"/>	4	For at least the first ninety days after discharge from the Family dependency court, treatment providers or clinical case managers attempt to contact previous participants periodically by	V.J.

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
			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.	
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Family dependency courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Family dependency court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Family dependency court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Family dependency courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	The Family dependency 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	<input 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 Family dependency court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	Outcomes are examined for all eligible participants who entered the Family dependency court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.
X	<input type="checkbox"/>	16	The Family dependency court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
FAMILY DEPENDENCY COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Carbon County, Price

JUDGE NAME: Bunnell

REVIEW DATE: August, 2020

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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	4	Candidates for the Family dependency 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.
X	<input type="checkbox"/>	5	Candidates for the Family dependency court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Family dependency court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Family dependency court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Family dependency court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Family dependency court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Family dependency court.	III.C.
X	<input 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 Family dependency court team.	III.D.
X	<input 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	III.E.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BP5
			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	The judge makes these decisions after taking into consideration the input of other Family dependency court team members and discussing the matter in court with the participant or the participant's legal representative.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Family dependency court participants and team members.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Family dependency court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Family dependency court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
X	<input type="checkbox"/>	30	Upon entering the Family dependency court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Family dependency 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.
X	<input type="checkbox"/>	37	If a participant is terminated from the Family dependency 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.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Family dependency court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Family dependency court because they lack a stable place of residence.	VI.D.
X	<input type="checkbox"/>	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Family dependency court and continuing as needed throughout their enrollment in the program.	VI.E.*
X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of family dependency court.	VI.I.*
X	<input type="checkbox"/>	47	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family dependency courts), and the judge attend each staffing meeting.	VIII.B.*
X	<input type="checkbox"/>	48	At a minimum, the prosecutor / assistant attorney general, defense counsel, treatment representative, law enforcement, a guardian ad litem and DCFS caseworker (in family	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			dependency courts), and the judge attend each Family dependency court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Family dependency court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	The Family dependency 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.*
X	<input type="checkbox"/>	54	The Family dependency 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Family dependency court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	Each member of the Family dependency 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.
X	<input type="checkbox"/>	4	The Family dependency court judge attends current training events on legal and constitutional issues in Family dependency courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Family dependency court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Family dependency 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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
X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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 Family dependency court population.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	Adjustments to the level of care are predicated on each participant's response to treatment and are not tied to the Family dependency court's programmatic phase structure.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Family dependency court.	V.J.
X	<input type="checkbox"/>	25	Where indicated, participants receive assistance finding safe, stable, and drug-free housing beginning in the first phase of Family dependency court and continuing as necessary throughout their enrollment in the program.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Family dependency court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.

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
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Family dependency court.	VI.I.
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of referral by DCFS.	
X	<input type="checkbox"/>	31	Team members are assigned to Family dependency court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Family dependency court issues.	
X	<input type="checkbox"/>	33	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 Family dependency courts.	VIII.F.
X	<input type="checkbox"/>	34	New staff hires receive a formal orientation training on the Family dependency court model and best practices in Family dependency courts as soon as practicable after assuming their position and attend annual continuing education workshops thereafter.	VIII.F.
X	<input type="checkbox"/>	35	The Family dependency court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	The Family dependency 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.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Family dependency court.	X.C.
X	<input type="checkbox"/>	38	A skilled and independent evaluator examines the Family dependency court's adherence to best practices and participant outcomes no less frequently than every five years.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Family dependency court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<input type="checkbox"/>	4	For at least the first ninety days after discharge from the Family dependency court, treatment providers or clinical case managers attempt to contact previous participants periodically by	V.J.

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
			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.	
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Family dependency courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Family dependency court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Family dependency court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Family dependency courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	The Family dependency 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 type="checkbox"/>	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 Family dependency court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	Outcomes are examined for all eligible participants who entered the Family dependency court regardless of whether they graduated, withdrew, or were terminated from the program.	X.H.
X	<input type="checkbox"/>	16	The Family dependency court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

FonnesbeckUTAH JUDICIAL COUNCIL
MENTAL HEALTH COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Cache County, Logan

NAME: Fonnesbeck

REVIEW DATE: March, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	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.	I.C.
X	<input type="checkbox"/>	5	Candidates for the Mental health Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Mental health Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental health Court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Mental health Court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Mental health Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Mental health Court.	III.C.
X	<input 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 Mental health Court team.	III.D.
X	<input 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	III.E.

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			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	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.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	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.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Mental health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Mental health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

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			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
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X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
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X	<input type="checkbox"/>	36	Participants are not terminated from the Mental health 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.
X	<input type="checkbox"/>	37	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.	IV.K.
X	<input 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.
X	<input 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.*
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X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Mental health Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Mental health Court because they lack a stable place of residence.	VI.D.
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X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of mental health court.	VI.I.*
X	<input 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.*
X	<input 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	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			attend each Mental health Court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Mental health Court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	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.	X.D.*
X	<input type="checkbox"/>	54	The Mental health 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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X	<input type="checkbox"/>	3	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.	II.F.
X	<input type="checkbox"/>	4	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.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Mental health Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Mental health 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Mental health Court.	V.J.
X	<input type="checkbox"/>	25	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.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Mental health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Mental health Court.	VI.I.

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
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of eligibility screening.	
X	<input type="checkbox"/>	31	Team members are assigned to Mental health Court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Mental health Court issues.	
X	<input type="checkbox"/>	33	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.	VIII.F.
X	<input type="checkbox"/>	34	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.	VIII.F.
X	<input type="checkbox"/>	35	The Mental health Court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	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.	X.A.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental health Court.	X.C.
X	<input type="checkbox"/>	38	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.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	The program conducts an exit interview for self-improvement.	

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
X	<input type="checkbox"/>	1	The Mental health Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<input type="checkbox"/>	4	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.	V.J.

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X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Mental health Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Mental health Court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Mental health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Mental health Courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	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.	X.B.*
X	<input 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 Mental health Court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	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.	X.H.
<input type="checkbox"/>	X	16	The Mental health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

UTAH JUDICIAL COUNCIL
MENTAL HEALTH COURT CERTIFICATION CHECKLIST
 REVISED AND ADOPTED 2020

COURT LOCATION: Salt Lake County, Slat Lake City

NAME: Knight

REVIEW DATE: July, 2020

*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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are defined and applied objectively.	I.A.
X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	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.	I.C.
X	<input type="checkbox"/>	5	Candidates for the Mental health Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Mental health Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental health Court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Mental health Court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Mental health Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Mental health Court.	III.C.
X	<input 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 Mental health Court team.	III.D.
X	<input 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	III.E.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	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.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	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.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Mental health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Mental health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

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			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
X	<input type="checkbox"/>	30	Upon entering the Mental health Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Mental health 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.
X	<input type="checkbox"/>	37	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.	IV.K.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Mental health Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Mental health Court because they lack a stable place of residence.	VI.D.
X	<input type="checkbox"/>	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Mental health Court and continuing as needed throughout their enrollment in the program.	VI.E.*
X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of mental health court.	VI.I.*
X	<input 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.*
X	<input 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	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			attend each Mental health Court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Mental health Court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	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.	X.D.*
X	<input type="checkbox"/>	54	The Mental health 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Mental health Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	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.	II.F.
X	<input type="checkbox"/>	4	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.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Mental health Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Mental health 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

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X	<input type="checkbox"/>	10	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.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
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X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Mental health Court.	VI.I.

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X	<input 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.
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COURT LOCATION: Salt Lake County, Slat Lake City

NAME: Knight

REVIEW DATE: July, 2020

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X	<input type="checkbox"/>	2	Eligibility and exclusion criteria are specified in writing.	I.A.
X	<input 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.*
X	<input type="checkbox"/>	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.	I.C.
X	<input type="checkbox"/>	5	Candidates for the Mental health Court are assessed for eligibility using validated clinical-assessment tool that evaluates the formal diagnostic symptoms of substance dependence or addiction.	I.C.
X	<input type="checkbox"/>	6	Evaluators are trained and proficient in the administration of the assessment tools and interpretation of the results.	I.C.
X	<input type="checkbox"/>	7	Current or prior offenses may not disqualify candidates from participation in the Mental health Court unless empirical evidence demonstrates offenders with such records cannot be managed safely or effectively in a Mental health Court.	I.D.
X	<input type="checkbox"/>	8	Offenders charged with non-drug charges, drug dealing or those with violence histories are not excluded automatically from participation in the Mental health Court.	I.D.
X	<input type="checkbox"/>	9	If adequate treatment is available, candidates are not disqualified from participation in the Mental health Court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication.	I.E.
X	<input type="checkbox"/>	10	The program has a written policy addressing medically assisted treatment.	
X	<input type="checkbox"/>	11	Participants ordinarily appear before the same judge throughout their enrollment in the Mental health Court.	III.C.
X	<input 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 Mental health Court team.	III.D.
X	<input 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	III.E.

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			other appearances or administrative reviews when the judge is unavailable.	
X	<input 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.*
X	<input 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.
X	<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.
X	<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.
X	<input type="checkbox"/>	18	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.	III.H. VIII.D.
X	<input type="checkbox"/>	19	The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.	III.H.
X	<input type="checkbox"/>	20	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.	IV.A.
X	<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.
X	<input type="checkbox"/>	22	The Mental health Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program.	IV.E.
X	<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.
X	<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.
X	<input type="checkbox"/>	25	Drug testing is performed at least twice per week.	VII.A.*
X	<input type="checkbox"/>	26	Drug testing is random, and is available on weekends and holidays.	VII.B.*
X	<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.*
X	<input type="checkbox"/>	28	Drug testing utilized by the Mental health Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen.	VII.G.
X	<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	VII.G.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			such conclusions are reached by an expert trained in toxicology, pharmacology or a related field.	
X	<input type="checkbox"/>	30	Upon entering the Mental health Court, participants receive a clear and comprehensive explanation of their rights and responsibilities relating to drug and alcohol testing.	VII.I.
X	<input type="checkbox"/>	31	The program requires a period of at least 90 consecutive days drug-free to graduate.	
X	<input type="checkbox"/>	32	The minimum length of the program is twelve months.	
X	<input 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.
X	<input type="checkbox"/>	34	Jail sanctions are definite in duration and typically last no more than three to five days.	IV.J.
X	<input type="checkbox"/>	35	Participants are given access to counsel and a fair hearing if a jail sanction might be imposed.	IV.J.
X	<input type="checkbox"/>	36	Participants are not terminated from the Mental health 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.
X	<input type="checkbox"/>	37	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.	IV.K.
X	<input 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.
X	<input 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.*
X	<input type="checkbox"/>	40	Participants regularly attend self-help or peer support groups in addition to professional counseling.	V.I.
X	<input type="checkbox"/>	41	The peer support groups follow a structured model or curriculum such as the 12-step or Smart Recovery models.	V.I.
X	<input type="checkbox"/>	42	There is a secular alternative to 12-step peer support groups.	
X	<input type="checkbox"/>	43	Participants complete a final phase of the Mental health Court focusing on relapse prevention and continuing care.	V.J.
X	<input type="checkbox"/>	44	Participants are not excluded from participation in Mental health Court because they lack a stable place of residence.	VI.D.
X	<input type="checkbox"/>	45	Participants diagnosed with mental illness receive appropriate mental health services beginning in the first phase of Mental health Court and continuing as needed throughout their enrollment in the program.	VI.E.*
X	<input type="checkbox"/>	46	Participants are not required to participate in job seeking or vocational skills development in the early phases of mental health court.	VI.I.*
X	<input 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.*
X	<input 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	VIII.A.*

YES	NO	#	REQUIRED CERTIFICATION CRITERIA <i>Adherence to these standards is required for certification.</i>	BPS
			attend each Mental health Court session.	
X	<input type="checkbox"/>	49	Pre-court staff meetings are presumptively closed to participants and the public unless the court has good reason for a participant to attend discussions related to that participant's case.	VIII.B.
X	<input 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.
X	<input 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 Mental health Court must be reasonably related to the costs of testing or other services.	
X	<input type="checkbox"/>	52	Treatment fees are based on a sliding fee schedule and are disclosed to each participant.	
X	<input type="checkbox"/>	53	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.	X.D.*
X	<input type="checkbox"/>	54	The Mental health 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
X	<input type="checkbox"/>	1	Eligibility and exclusion criteria are communicated to potential referral sources.	I.A.
X	<input type="checkbox"/>	2	The Mental health Court regularly monitors the delivery of incentives and sanctions to ensure they are administered equivalently to all participants.	II.D.
X	<input type="checkbox"/>	3	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.	II.F.
X	<input type="checkbox"/>	4	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.	III.A.
X	<input type="checkbox"/>	5	The judge presides over the Mental health Court for no less than two consecutive years.	III.B.
X	<input type="checkbox"/>	6	The Judge spends an average of at least three minutes with each participant.	III.F.*
X	<input type="checkbox"/>	7	The Mental health 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.
X	<input type="checkbox"/>	8	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.
X	<input type="checkbox"/>	9	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.

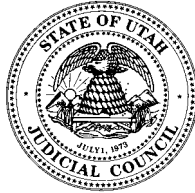
YES	NO	PRESUMED CERTIFICATION CRITERIA		BPS
		#	<i>There is a presumption that these standards must be met. If your program can show sufficient compensating measures, compliance with the standard may be waived.</i>	
X	<input type="checkbox"/>	10	Testing regimens are not scheduled in seven-day or weekly blocks. The chances of being tested should be at least two in seven every day.	VII.B.*
X	<input type="checkbox"/>	11	Drug test results are available within 48 hours.	VII.H.
X	<input type="checkbox"/>	12	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.
X	<input type="checkbox"/>	13	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.	VII.D.
X	<input type="checkbox"/>	14	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.
X	<input type="checkbox"/>	15	Standardized patient placement criteria govern the level of care that is provided.	V.A.
X	<input type="checkbox"/>	16	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.	V.A.
X	<input type="checkbox"/>	17	Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.	V.D.
X	<input type="checkbox"/>	18	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.
X	<input type="checkbox"/>	19	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.
X	<input type="checkbox"/>	20	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
X	<input type="checkbox"/>	21	Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.	V.F.
X	<input type="checkbox"/>	22	Treatment providers are supervised regularly to ensure continuous fidelity to evidence-based practices.	V.H.
X	<input type="checkbox"/>	23	Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy.	V.I.
X	<input type="checkbox"/>	24	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 Mental health Court.	V.J.
X	<input type="checkbox"/>	25	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.	VI.D.
X	<input type="checkbox"/>	26	Participants are assessed using a validated instrument for trauma history, trauma-related symptoms, and posttraumatic stress disorder (PTSD).	VI.F.
X	<input type="checkbox"/>	27	All Mental health Court team members, including court personnel and other criminal justice professionals, receive formal training on delivering trauma-informed services.	VI.F.
X	<input type="checkbox"/>	28	Participants with deficient employment or academic histories receive vocational or educational services beginning in a late phase of Mental health Court.	VI.I.

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>	
X	<input type="checkbox"/>	29	Participants complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse drug overdose.	VI.L.
X	<input type="checkbox"/>	30	Clients are placed in the program within 50 days of eligibility screening.	
X	<input type="checkbox"/>	31	Team members are assigned to Mental health Court for no less than two years.	
X	<input type="checkbox"/>	32	All team members use electronic communication to contemporaneously communicate about Mental health Court issues.	
X	<input type="checkbox"/>	33	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.	VIII.F.
X	<input type="checkbox"/>	34	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.	VIII.F.
X	<input type="checkbox"/>	35	The Mental health Court has more than 15 but less than 125 active participants.	IX.A.*
X	<input type="checkbox"/>	36	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.	X.A.
X	<input type="checkbox"/>	37	New arrests, new convictions, and new incarcerations are monitored for at least three years following each participant's entry into the Mental health Court.	X.C.
X	<input type="checkbox"/>	38	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.	X.D.
X	<input type="checkbox"/>	39	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	<input type="checkbox"/>	40	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	<input type="checkbox"/>	1	The Mental health Court offers a continuum of care for substance abuse treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.	V.A.
X	<input type="checkbox"/>	2	Treatment groups ordinarily have no more than twelve participants and at least two leaders or facilitators.	V.E.
X	<input type="checkbox"/>	3	Treatment providers have substantial experience working with criminal justice populations.	V.H.
X	<input type="checkbox"/>	4	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.	V.J.

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
X	<input type="checkbox"/>	5	Participants are assessed using a validated instrument for major mental health disorders that co-occur frequently in Mental health Courts, including major depression, bipolar disorder (manic depression), posttraumatic stress disorder (PTSD), and other major anxiety disorders.	VI.E.
X	<input 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.
X	<input type="checkbox"/>	7	Female participants receive trauma-related services in gender-specific groups.	VI.F.
X	<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 Mental health Court.	VI.I.
X	<input 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.
X	<input type="checkbox"/>	10	Before starting a Mental health Court, team members attend a formal pre-implementation training to learn from expert faculty about best practices in Mental health Courts and develop fair and effective policies and procedures for the program.	VIII.F.
X	<input type="checkbox"/>	11	Supervision caseloads do not exceed fifty active participants per supervision officer.	IX.B.
X	<input 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.
X	<input type="checkbox"/>	13	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.	X.B.*
X	<input 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 Mental health Court's adherence to best practices and in-program outcomes.	X.F.
X	<input type="checkbox"/>	15	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.	X.H.
X	<input type="checkbox"/>	16	The Mental health Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants.	II.B. X.E.

Tab 5



Administrative Office of the Courts

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

September 15, 2020

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

MEMORANDUM

TO: Utah Supreme Court and Utah Judicial Council
FROM: Nancy Sylvester
RE: Request from Board of District Court Judges for uniform, statewide CARES Act Declaration

On August 28, 2020, the Board of District Court Judges voted unanimously to require that the attached declaration be used statewide in all unlawful detainer cases. The information below discusses the reasons why. The Board requested that the Judicial Council issue an administrative order codifying this requirement. On September 15, 2020, the Management Committee asked that both the Judicial Council and the Supreme Court consider this request.

BACKGROUND

Court Services data shows that 94% of defendants in unlawful detainer cases were unrepresented in Fiscal Year 2020. Because so few defendants have representation, there is some concern that these same defendants will not apprise our district courts of their federally protected rights when facing eviction.¹

The federal [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act, Pub. L. No. 116-136](#), was enacted and signed by the president on March 27, 2020. The Act provides temporary protections for defendants in eviction cases.

The protections under the CARES Act include the following:

- A 120-day moratorium on evictions for nonpayment of rent or other fees or charges;²
- During the moratorium, a prohibition on “charg[ing] fees, penalties, or other charges to the tenant related to... nonpayment of rent;”³

¹ I came across a news article when I originally prepared this memo to the Management Committee that highlights some of the frustrating aspects of the CARES Act, namely that the protections are basically meaningless without action by the courts. This is one distinct instance in which, from an access to justice perspective, the courts cannot wait for the parties to bring in the necessary information to inform the cases' trajectories. <https://www.cnbc.com/2020/08/29/how-the-cares-act-failed-to-protect-tenants-from-eviction.html>

² Pub. L. No. 116-136, §4024(b)(1).

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 requirement that landlords provide a 30 day notice to vacate once the moratorium expires (the moratorium expired July 25, 2020) and also once any forbearance expires (no eviction may be initiated during a forbearance).⁴

The above protections only apply to covered properties.⁵ Covered properties include rental properties listed in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)).⁶ This includes housing under the following federal programs:

- Public housing (42 U.S.C. § 1437d),
- Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f),
- Section 8 project-based housing (42 U.S.C. § 1437f),
- Section 202 housing for the elderly (12 U.S.C. § 1701q),
- Section 811 housing for people with disabilities (42 U.S.C. § 8013),
- Section 236 multifamily rental housing (12 U.S.C. § 1715z-1),
- Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d))
- HOME (42 U.S.C. § 12741 et seq.),
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.),
- McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.),⁷
- Section 515 Rural Rental Housing (42 U.S.C. § 1485),
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486),
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m),
- Section 538 multifamily rental housing (42 U.S.C. § 1490p-2), and
- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

Covered properties also include rental properties with a federally backed mortgage or a federally backed multifamily mortgage loan.⁸ These are loans that are:

made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program

³ *Id.* at §4024(b)(2).

⁴ *Id.* at §4024(c); §4023(d), (e) .

⁵ *Id.* at §4024(a)(1).

⁶ *Id.* at §4024(a)(2)(a).

⁷ VAWA does not refer to this specific program. It refers to “subtitle A of title IV of the McKinney-Vento Homeless Assistance Act,” but there is no such subtitle to McKinney-Vento. However, HUD concluded in 2013 that “it was Congress’s intent to include the programs found elsewhere in title IV, which include the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Assistance Stability program.” The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs, Notice, 78 Fed. Reg. 47,717, 47,719 n.4 (Aug. 6, 2013).

⁸ Pub. L. No.116-136, §4024(a)(2)(b).

administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.⁹

Parties may be unaware of whether the property in question is a covered property. Self-represented plaintiffs can conduct their due diligence by contacting their lender or searching for their properties in these online databases:

- List of multifamily housing insured by FHA or securitized by Fannie Mae or Freddie Mac, supported by Low Income Housing Tax Credits, HUD or USDA:
https://nlihc.org/federal-moratoriums?ct=t%28update_041720%29
- Alternative listing of multifamily mortgages supported by Fannie Mae:
<https://www.knowyouroptions.com/rentersresourcefinder>
- Alternative listing of multifamily mortgages supported by Freddie Mac:
<https://myhome.freddiemac.com/renting/lookup.html>
- Alternative listing of mortgages supported by FHA:
https://www.hud.gov/program_offices/housing/mfh/hsgrent/mfhpropertysearch

However, according to the National Low Income Housing Coalition’s website there are no lookup tools that include rental properties of one to four units backed by Fannie Mae or Freddie Mac.

THE PURPOSE OF THE DECLARATION

The declaration attached to this memo will tell a district court judge whether the CARES Act applies in a particular case. If the [CARES Act](#) applies, a district court judge would then ask 1) whether the landlord gave proper notice to vacate, 2) charged late fees or penalties for non-payment of rent during the moratorium period, 3) initiated the action prior to July 25, 2020, 4) or is still in forbearance.

Members of the Board of District Court Judges noted that although they have received declarations from landlords regarding the CARES Act, they are often incomplete, so a statewide, uniform declaration is appropriate.

NEW STATE LEGISLATION

During its 2020 6th Special Session, the Utah State Legislature addressed the CARES Act in [SB6009](#). Governor Herbert signed that bill on August 31, 2020. It is now in effect. The new law is designed to permit a landlord to continue to operate under the usual unlawful detainer provisions with some modifications. In essence, the Legislature has said, a tenant residing in a CARES Act “covered property” who does not comply with a 3-day notice to pay or quit has 30 days to vacate once the court has issued its restitution order. Treble damages continue to accrue until the tenant vacates and the court’s restitution order is the 30 days “notice to vacate” contemplated by the CARES Act.

Below are the relevant provisions of that [legislation](#):

⁹ Pub. L. No.116-136, §4024(a)(2)(b)(4)(b) and §4024(a)(2)(b)(5)(b).

608 (5) The notice to vacate requirement under 15 U.S.C. 9058(c), which is
 609 part of the
 610 Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136:
 611 (a) applies only to a notice provided to a tenant of a covered dwelling in
 612 a covered
 613 property as that term is defined in 15 U.S.C. 9058(a);
 614 (b) applies only to the amount of time before a tenant may be required
 615 to vacate a
 616 covered property through an order of restitution as provided by Section
 617 78B-6-812;
 618 (c) for a notice provided under Subsection (1)(c), applies only when
 619 delinquent rent or
 620 other amounts have accrued during the 120-day moratorium described in
 621 15 U.S.C. 9058(b);
 622 (d) does not require that a tenant be given more than three business days
 after service
 to pay rent and other amounts due under a notice provided under
 Subsection (1)(c);
 (e) does not apply to a notice provided under Subsections (1)(d) through
 (h);
 (f) does not prohibit or nullify the service of any notice described in this
 section; and
 (g) does not limit the accrual of damages under Section 78B-6-811.
 (6) Service of a notice as provided by 15 U.S.C. 9058(c) or under
 Subsection (5) does
 not nullify the service or validity of any other notice provided in
 accordance with this section.

FURTHER EVICTION DEVELOPMENTS

Although the following information does not necessarily impact the Board's request for a uniform CARES Act declaration, I thought it would be useful to mention these developments since they may lead to additional requests for statewide uniformity. They also highlight the heavy lift our district court judges now have in unlawful detainer cases.

CDC MORATORIUM

On September 1, 2020, the Centers for Disease Control and Prevention (CDC) issued a [temporary national moratorium on most evictions for nonpayment of rent](#). The purpose is to prevent the spread of coronavirus by helping people avoid congregate and shared living settings. The order became effective September 4, 2020.

1. Who qualifies?

Any "covered person" qualifies, which is an adult tenant who has declared the following in writing to their landlord:

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

I have used best efforts to obtain all available government assistance for rent or housing;

I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;

I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;

If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.

I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

2. Does the federal moratorium stop all evictions?

No. The moratorium applies to residential evictions for non-payment of rent and other fees until December 31, 2020 for “covered persons.” Tenants can still be evicted for

(1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

3. What is the CDC’s authority to issue this order?

The CDC cites as authority for the order Section 361 of the Public Health Service Act ([42 U.S.C. 264](#)) and [42 CFR 70.2](#)). The federal government derives its authority for isolation and quarantine from the Commerce Clause of the US Constitution. Under Section 361, the Surgeon

General is authorized to take measures “to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.” This authority has been delegated to the CDC.

The United States Supreme Court has ruled that federal regulations have “no less preemptive effect than federal statutes.” *Fidelity Federal Sav. and Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153 (1982).

4. Is the moratorium effective in Utah?

Yes. The order applies to every state and territory with reported cases of coronavirus. It does not “apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order.” Utah has reported cases of coronavirus, but does not have any such eviction moratorium, so the CDC moratorium applies here.

5. What kinds of rental housing are covered?

The order covers “residential property.” The order defines this as “any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant” as defined in Utah law.

6. Does the moratorium prevent evictions?

Yes and no. The moratorium probably does not ultimately prevent evictions. It simply delays them until December 31, 2020. The order “has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.”¹⁰

INTERACTION BETWEEN THE CARES ACT, SB6009, AND THE CDC MORATORIUM

The CDC moratorium seems to be filling a gap in the protections available under state and federal eviction law. See pages 18 and 19 of the [order](#). The CDC order, unlike the [CARES Act](#), provides interpretative guidance. It specifically says the order should be interpreted to mitigate the spread of COVID-19 and support response efforts to COVID-19. See pages 11 and 12. One question that will likely come up is whether the CDC order prohibits the issuance of a 3-day notice, or whether it merely prohibits the actual physical eviction. Page 27 of the order provides some guidance:

Therefore, under 42 CFR 70.2, subject to the limitations under the “Applicability” section, a landlord, owner of a residential property, or other person with a legal

¹⁰ I have been in conversations with housing advocates who say there is quite a lot of rental assistance money available right now. Those advocates are working on pushing this information out to the public. This topic also came up at the September 11, 2020 meeting of the Judicial Council’s Standing Committee on Resources for Self-represented Parties. Committee member Shawn Newell, who is also a member of the Martin Luther King Commission, said he will work on distributing the information to the communities he knows will not receive it through more common media channels.

right to pursue eviction or possessory action **shall not evict any covered person** from any residential property in any State or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

(Emphasis added.) Page 10, which offers a definition of “evict” and “eviction,” is also instructive:

“Evict” and “Eviction” means **any action** by a landlord, owner of a residential property, or other person with a legal right **to pursue eviction or a possessory action, to remove or cause the removal of a covered person** from a residential property. This does not include foreclosure on a home mortgage.

(Emphasis added.)

Because of the plain language in the order and the interpretative guidance, it appears that the [CDC order](#) intends to apply to evictions at the notice stage, and thus to preempt state law, including [SB6009](#). This broad definition of eviction could also mean that a tenant is able to send the CDC declaration to their landlord at any time before the actual sheriff eviction and therefore stop the eviction. Thus, the CDC order may preempt Utah Code 78B-6-812(2)(b).

There are other aspects to consider. The CDC moratorium is broader than the CARES Act in that it applies to “covered persons” rather than “covered properties.” Covered persons, as noted above, can make quite a bit of money and still be covered by the moratorium, which means it potentially applies to a lot of people. “Covered properties” under the CARES Act, on the other hand, are only those that have some kind of federal program or funding attached to them. The moratorium also provides for a landlord who violates the moratorium being fined up to \$100,000 and/or being sentenced to one year in jail if the violation does not result in a death, or being fined up to \$250,000 and/or sentenced to one year in jail if the violation results in a death. The CARES Act has no such accountability provision for its violations, so it relies on the courts to address its provisions.

The average tenant likely has no idea about either the CARES Act protections or the CDC moratorium. The CARES Act protections can be brought to the court’s attention through the form declaration (attached), which the Third District Court is now requiring. As mentioned above, the Board of District Court Judges has also requested that the Judicial Council make the declaration required statewide so that our judges have the information they need to make informed decisions about the applicability of the CARES Act.

The question then becomes how a tenant becomes informed of their right to provide the CDC moratorium declaration to their landlord. The Self-Help Center has this information, it has been placed on our [website](#), and local housing advocates have it available and are working on distributing information about it. A judge can also ask a landlord whether the moratorium declaration has been provided to the landlord.

In the event that the CDC moratorium is challenged (I have heard that it might be), we may see a federal injunction issued. But in the meantime, its provisions are now in effect, which means our judges may inquire into whether a tenant has exercised their rights under it.

CONCLUSION

As the above indicates, between the [CARES Act, SB6009](#), and the [CDC moratorium](#), our district court judges now have a heavier lift in unlawful detainer cases. The Board's request for a uniform statewide CARES Act declaration is a step in the right direction because it will provide some basic, needed information. If our district court judges know that the CARES Act applies in any individual unlawful detainer case, they will also know whether they need to also analyze and apply the relevant provisions of SB6009. The Board appreciates the Supreme Court's and Judicial Council's consideration of this request.

Tab 6

The Technology Innovaon

Our *Phase I* innovaon is the creaon of a virtual, roboc lawyer to deliver effecv e legal services without inial, consultav e human input. We propose a *Deep Learning* project to build an engine to ingest the unstructured data within the context of the legal system, at-large (Courts, A. orneys and Consumers). We will train a neural network from millions of unstructured legal documents with *Machine Learning* and input from both attorneys and clients, then further refine the corpus with *Natural Language Processing* that accurately determines quesons asked of it.

The Courts are overloaded with vast, seemingly-disparate data. Myriad legal pleadings and briefs offer a foundaon to build upon however the data is largely unstructured. An addional complicaon is that Law is incredibly nuanced and rogue *Machine Learning* is not enough to overcome the need to retrain the *machine* for each new queson. For example, *Landlord vs. Tenant* issues will never effecv ely train an A.I. for *Injury Ligaon* or *Contracts*

We propose training an AI by ingesng and indexing the unstructured data sets collected from accessible sources like Court self-help portals, no- or low-Cost professional service providers, etc. into a deep knowledge base. This data will ulma tely be further trained and organized by pracce area and networked to augment (or replace) human lawyers, without losing the human touch. Human agents will then become free to focus on customer experience and substance over procedure.

Legal services have a lot of inherent fricon. Among the most frustrang can simply be the total me it takes to vet and meet with an attorney, or the high cost of even the most procedural parts of law (filling out forms, inpung data, etc.). By removing this fricon through automaon and virtual appointments we create novel data to lay over pleadings being fed into the system. This will drive down the total me and cost of repev e tasks, while increasing the substance, advice and deal-making delivered by the roboc or augmented attorney.

Aggregated data —alone— is not sufficient to address the current needs. A delivery system or interface is equally necessary. The interface will need to be simple enough for most consumers to self-guide through the process. To improve upon current soluons, the interface must feel natural, obvious, tangible. Speech and other visceral input/output will be core to a hyper-effecv e machine-to-human interface soluon.

It is important to note that for the first me in history, the rules governing the pracce of law are changing to allow for the delivery of legal services by a virtual agent. See [hp s://sandbox.utcourts.gov](https://sandbox.utcourts.gov). These regulatory changes allow for the creaon of roboc or virtual lawyering and disseminang a knowledge base to consumers who have heretofore not engaged the legal system.

Now is the me for a revoluon — for the next evoluon — by aligning data acquisition, general digital literacy, and regulatory reform of legal services with society's general comfort with and

confidence in technology. This opportunity hasn't been able or allowed to exist until now. We're ready.

The Technical Objectives and Challenges

Objectives

The objective of this proposed Phase I SBIR project is to demonstrate the feasibility of an AI/Machine Learning/Natural Language Processing based virtual or robotic lawyer to analyze and deliver legal services.

Many aspects of law stem from a rule-based system (if the answer to a question is "no" there is a path and if it is "yes" there is another path). By 1) structuring data for disparate sources, 2) training the best choices, and 3) creating a user-friendly interface, we visualize the creation of our robot lawyer.

We [know](#) that the current legal system fails in accessibility and is too cumbersome. This is in part because the reported (structured) cases represent less than 1% of the case filed each year in the courts. The bulk of the data remains unstructured and difficult to review.

As a result individual judges have virtually no catalogue of the specific facts and arguments from their past decisions. Alternatively, the bulk of individual consumers engage the legal system without counsel on civil matters. These pro se litigants will benefit from greater direction provided by a system that predicts how their fact set and arguments will fare.

By applying Machine Learning to the 99% of unreported cases we will accomplish 2 objectives: 1) greater consistency for decision makers through predictive reporting and 2) allow self-represented litigants to better engage the legal system.

The data held by the court is public record and we believe that the promise of the immediate benefit of the structured data to the courts will drive participation. By applying Machine Learning and NLP the improvements to be studied and developed will reduce the time required to complete a legal task by 10X. Similarly the costs to the consumer should be reduced by tenfold.

An additional objective of this robot lawyer is to compare the data collected against existing data sets. What if a legal form such as a medical directive or a will being prepared by an individual becomes an indicator of a potential COVID-19 flareup?

Challenges

Our vision comes with inherent solvable challenges:

1. Actual justice is dispersed locally. Each local court may have its own repository and much of the existing information is not well organized.

2. Research and testing need to be conducted to separate the procedural aspects of legal documents (rule based) from the substance (argument) found in the legal briefs supporting a case.
3. Testing which interfaces successfully deliver the library of legal knowledge is also necessary. Forms and processes that use iconography and spoken explanations will improve understanding of legal agreements and forms by at least 10X.

The recent action by the state of Utah, allowing a virtual agent to deliver legal services, creates an environment where such testing of the hypothesis is possible. Utah courts have demonstrated a willingness to pursue innovation and are willing to work to remove friction from their systems. Creating a neural network serves a consumer need and provides insight into the court's decision making.

Market Opportunity

The US consumer legal market is approximately \$157 billion annually. Accessing the legal system for even the relatively simple processes is difficult and the average consumer does not have enough familiarity to navigate it well. It is estimated that 80% of the population does not even engage legal services, known as the Justice Gap. See, [World Justice Report](#).

A virtual or robotic lawyer will provide significant insight for the Courts and access the consumer legal market. We have discussed our solution with judges and enterprise law firms.

Initially we see two end users of our solution: 1) courts to better understand their own data and allow for greater consistency in the decision making process and 2) self represented consumers that forego lawyers yet looking for more predictable outcomes.

The market is currently experiencing limited resources to address society's legal needs and the number of legal cases continues to rise each year. There is also an anticipated surge in cases due to the COVID-19 crisis. There will soon be a significant shortage of lawyers, only adding to the market viability of a robotic lawyer.

Rule restrictions may have been an issue for a robot lawyer to access these markets in the past, but this is now changing. Historically, a robotic lawyer would be at odds with the structure of the State bar and court system. However, the state of Utah has recently created a new regulatory environment promoting virtual legal services and other hybrids. Other states are expected to follow.

Background and current status of the team

The core team, made up of experienced lawyers and technologists, has a number of products and deployments within the legal space, specifically rule-based systems. The team is aware of

the limitations of the current Legal AI market and developed an approach to overcome these limitations.

A. Jason Velez — Platform Architect

<https://www.linkedin.com/in/ajasonvelez>

Legal tech pioneer. He is a practicing attorney (17 years) who made the jump to tech entrepreneurship. He serves as the 1LAW project lead and originator of Docubot.

George “Trey” Richards — Lead Developer

<https://www.linkedin.com/in/trey-richards-961526b4/>

Technical Co-founder and a Software Engineer and Entrepreneur. Trey specializes in Mobile and Web Development, E-commerce/blockchain integration, with an emphasis on solving real world problems in the most efficient and scalable way possible.

Dr. Kim Welch — UX/UI

<https://www.linkedin.com/in/kimwelchinfo/>

Kim Welch holds an Ed.D. in Learning Technologies. She is also certified in User Experience and Change Management. Her focus on the digital learning experience.

Jared Fitch — Reputation / Growth

<https://www.linkedin.com/in/thejaredfitch/>

Respected leader in brand-building and growth through *reputation engineering*. As a C-Suite executive at Vivint Solar (NYSE: VSLR) Fitch presided over a 2,000% growth period by re-engineering every disparate customer touchpoint — leading (in part) to a \$2.2B acquisition.

The team also includes additional engineers, data scientists and designers to enable implementation.

Name
Address 1
Address 2
City, State Zip

RE: 1LAW Seed Fund Grant Proposal

National Science Foundation
2415 Eisenhower Ave
Alexandria, VA 22314

August 04, 2020

Project Examiners,

The purpose of this letter is to attest to the potential utility of the project, presented by A. Jason Velez, to create a virtual, robotic lawyer to deliver effective legal services and provide a new level of insight of public case data. Currently, processing significant amounts of case data is tedious and resource intensive. Comparing information among individual cases is more consuming and cumbersome, each case must be processed individually.

If a product was able to curate the relevant case data automatically and then use the system to interpret this data set, it has the potential to save hours of individual case searching. It also has the potential to produce reliable and predictable information for the court system.

The Utah Courts would consider using such a product if it were to exist and encourage the National Science Foundation to support this project with a grant.

Sincerely,

Name
Title

Tab 7

Civil Justice Data Commons Initiative

Professor Tanina Rostain, Georgetown University Law Center
Dr. Amy O'Hara, Massive Data Institute, McCourt School of Public Policy
Georgetown University

We are engaged in a project, funded by the National Science Foundation, to develop models and best practices for collecting and sharing data under appropriate privacy and security safeguards for purposes of expanding access to justice, formulating policy, and increasing the effectiveness of civil justice institutions. The Covid-19 pandemic, its drastic health and financial consequences for people living in poverty, and the tremendous pressures it has exerted on courts and other civil justice institutions make this project especially urgent.

Our motivation for this project stems from the difficulties researchers, policymakers, and civil justice stakeholders currently have in obtaining information about the civil justice system. Currently, data from courts, legal service providers, and administrative agencies are collected in multiple formats under a variety of incompatible taxonomies—for instance, different ways of categorizing debt collection actions—and housed among multiple institutions. Access to these data is governed by statutes, regulations, court rules, and policies that vary from state to state, county to county, and city to city. These technical, regulatory, and public policy barriers have hindered both research efforts to understand the role of law in the lives of community members and policy efforts to make civil justice institutions fairer and more efficient. Data access difficulties have hampered the ability to understand a number of questions, including how Black and Brown people involved in the civil justice system fare, how outcomes for litigants without representation compare to those for represented litigants, or what the short and long-term consequences of being a defendant in a debt or housing case are for health, well-being, financial stability, and families. Systems for collecting, sharing, and making data available are an important step towards establishing ways for civil justice institutions to address the justice challenges faced by people living in poverty, people of color, and now the millions of people affected by the pandemic.

The first stage of this project requires understanding the interests and concerns of stakeholders in civil justice institutions – including courts, legal service providers, and agencies – in collecting and analyzing data to improve access to justice, facilitate research, improve operational efficiency, and formulate policy. We are interested in knowing what data stakeholders collect; for what purposes data are collected; what privacy and confidentiality concerns apply to sharing these data; and what mechanisms or approaches might alleviate these concerns. Interviews to understand stakeholder interests and concerns will surface knowledge gaps and promising practices to inform our approach to

improve providing access to civil justice data – including, in particular, who is permitted access to the data, for what purpose, and under what conditions. We plan to develop model governance, sharing, and access rules and embed them in a technological infrastructure in a later stage of this project.

In this first stage, we are looking for judges, court administrators, legal service providers, and access to justice leaders who are interested in and willing to talk with us about civil justice data. Our initial areas of focus have been Oklahoma, Wisconsin, DC and Cuyahoga County, OH, but we are casting a very wide net and would like to talk with stakeholders and others involved in the civil justice system across the United States.

Tab 8

Narrowing the Access-to-Justice Gap by Reimagining Regulation

**Report and Recommendations from
THE UTAH WORK GROUP ON REGULATORY REFORM**

August 2019

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Narrowing the Access-to-Justice Gap by Reimagining Regulation

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INTRODUCTION: Toward Equal Access to Justice

“An estimated five billion people have unmet justice needs globally. This justice gap includes people who cannot obtain justice for everyday problems, people who are excluded from the opportunity the law provides, and people who live in extreme conditions of injustice.”¹ This predicament is not unique to third-world countries: According to the World Justice Project, the United States is presently tied for 99th out of 126 countries in terms of access to and affordability of civil justice.² An astonishing “86% of the civil legal problems reported by low-income Americans in [2016–17] received inadequate or no legal help.”³ Yet at the same time, access to justice should be the very hallmark of the American legal system. To quote Chief Justice John Marshall, the “essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws”⁴ And “[o]ne of the first duties of government is to afford that protection.”⁵

The Utah Judiciary, the branch of government with constitutional responsibility for the administration of justice, has been in the vanguard of initiatives aimed at solving the access-to-justice problem. The judiciary, under the leadership of the Utah Supreme Court (Supreme Court or Court) and the Judicial Council, has established state-wide pro bono efforts, moved to systematize court-approved forms and make them easily accessible online, established a new legal profession in Licensed Paralegal Practitioners (LPPs), and piloted an online dispute resolution model for small claims court. Each of these initiatives takes an important step toward narrowing the access-to-justice gap. But the most promising initiative, and the focus of this report, involves profoundly reimagining the way legal services are regulated in order to harness the power of entrepreneurship, capital, and machine learning in the legal arena.

In the latter part of 2018, the Supreme Court, at the request of the Utah State Bar (Utah Bar or Bar), charged Justice Deno Himonas and John Lund (past President of the Bar) with organizing a work group to study and make recommendations to the Court about optimizing the regulatory structure for legal services in the Age of Disruption. More specifically, the work

¹ Task Force on Justice, *Measuring the Justice Gap*, WORLD JUSTICE PROJECT (Feb. 6, 2019), https://worldjusticeproject.org/sites/default/files/documents/Measuring%20the%20Justice%20Gap_Feb2019.pdf (last visited Aug. 12, 2019); see also GILLIAN K. HADFIELD, *RULES FOR A FLAT WORLD: WHY HUMANS INVENTED LAW AND HOW TO REINVENT IT FOR A COMPLEX GLOBAL ECONOMY* 281 (2017) (estimating four billion people live “outside of the rule of law—with little access to basic legal tools”).

² WORLD JUSTICE PROJECT, *Rule of Law Index 2019*, https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (last visited Aug. 12, 2019).

³ LEGAL SERVICES CORPORATION, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> (last visited Aug. 12, 2019).

⁴ *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

⁵ *Id.*

Narrowing the Access-to-Justice Gap by Reimagining Regulation

group was charged with optimizing regulation in a manner that fosters innovation and promotes other market forces so as to increase access to and affordability of legal services. With this objective firmly in mind, members of the Utah court system and the Utah Bar, leading academics, and other experts, working closely together, have outlined what a new regulatory structure should look like. This new regulatory structure provides for broad-based investment and participation in business entities that provide legal services to the public, including non-lawyer investment in and ownership of these entities, through two concurrent approaches: (1) substantially loosening restrictions on the corporate practice of law, lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing; and (2) simultaneously establishing a new regulatory body (sometimes referred to as a regulator) under the supervision and direction of the Supreme Court to advance and implement a risk-based, empirically-grounded regulatory process for legal service entities. The new regulatory structure should also solicit non-traditional sources of legal services, including non-lawyers and technology companies, and allow them to test innovative legal service models and delivery systems through the use of a “regulatory sandbox” approach, which permits innovation to happen in designated areas while addressing risk and generating data to inform the regulatory process.⁶

Bridging the access-to-justice gap is no easy undertaking: it requires multi-dimensional vision, strong public leadership, and perseverance. It also requires timely action. And it is the view of the work group that the time for regulatory reform is now. Without such reform, it is our belief that the American legal system will continue to underserve the public, causing the access-to-justice gap to expand. Therefore, the work group respectfully urges the Supreme Court to adopt the recommendations outlined in this report.

THE UTAH WORK GROUP ON REGULATORY REFORM

The core mission of the work group is to optimize the regulatory structure for legal services in the Age of Disruption in a way that fosters innovation and promotes other market forces so as to increase access to and affordability of legal services.

In the fall of 2018 and winter of 2019, Supreme Court Justice Deno Himonas and John Lund, past president of the Utah Bar, gathered members of the Utah court system and the Bar, leading academics, and other experts to form the work group. Justice Himonas and Mr. Lund

⁶ The Utah work group is not going it alone in this space. Arizona, California, and the Institute for the Advancement of the American Legal System are all evaluating and moving toward regulatory reform in an effort to narrow the access-to-justice gap. See Brenna Goth & Sam Skolnik, *Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice*, BLOOMBERG BIG LAW BUSINESS (Aug. 15, 2019), <https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice> (last visited Aug. 16, 2018); see also Institute for the Advancement of the American Legal System, *Unlocking Legal Regulation*, UNIVERSITY OF DENVER (forthcoming) (on file with author).

Narrowing the Access-to-Justice Gap by Reimagining Regulation

co-chair the work group. In addition to Justice Himonas and Mr. Lund, the group is comprised of H. Dickson Burton, immediate past President of the Bar; Dr. Thomas Clarke, Vice President of Research and Technology for the National Center for State Courts (NCSC) (ret.); Cathy Dupont, Deputy Utah State Courts Administrator; Dr. Gillian Hadfield, Professor of Law and Professor of Strategic Management, University of Toronto Faculty of Law; Dr. Margaret Hagan, Director of the Legal Design Lab and Lecturer in Law at Stanford Law School; Steve Johnson, past Chair of the Court's Advisory Committee on the Rules of Professional Conduct; Lucy Ricca, former Executive Director of and current Fellow with the Stanford Center on the Legal Profession; Gordon Smith, Dean of the J. Reuben Clark Law School at Brigham Young University and Glen L. Farr Professor of Law; Heather White, past Co-Chair of the Bar Innovation in Law Practice Committee; and Elizabeth Wright, General Counsel to the Bar.⁷

The impetus for the work group was a letter sent by Mr. Burton to the Court on behalf of the State Bar.⁸ The letter correctly noted that “[a]ccess to justice in Utah remains a significant and growing problem.” The Bar set forth its belief that, to help combat that problem, “a key step to getting legal representation to more people is to substantially reform the regulatory setting in which lawyers operate.” The Bar therefore requested that “the Court establish a small working group to promptly study possible reforms and make recommendations for revisions, possibly major revisions, to the rules of professional responsibility so as to permit lawyers to more effectively and more affordably provide legal services and do related promotion of those services.”

The work group understood from the outset that, as outlined in the letter to the Court, the charge involved “the consideration” and evaluation of “(1) the effect of modern information technology and modern consumer patterns on the current rules, (2) the potential value, in terms of making legal services accessible to clients, of non-lawyer investment and ownership in entities providing legal services and the related regulatory issues, (3) the prospect of broadening the availability of legal services through flat fee and other alternative fee arrangements not currently permitted by the rules, (4) whether there is continuing justification for the rules against direct solicitation, (5) whether and how to permit and structure lawyer use of referral systems such as Avvo in light of the rule against referral fees[,] and [(6)] the related trends and approaches being considered and/or implemented in other bars, such as Oregon and the [American Bar Association’s (ABA)] work in this area.”

⁷ A short biography for each member of the work group can be found at Appendix A. We would also like to extend a special thanks to Dolores Celio, Judicial Assistant to Justice Himonas, and Kevin Heiner (J.D. 2018, Columbia Law School) and John Peterson (J.D. 2016, Harvard Law School), law clerks to Justice Himonas, for their invaluable help researching, writing, and editing this report.

⁸ A copy of Mr. Burton’s letter is attached at Appendix B.

THE NEED FOR REGULATORY REFORM TO ADDRESS THE ACCESS-TO-JUSTICE GAP IN THE AGE OF DISRUPTION

Nelson Mandela poignantly observed that “[a] nation should not be judged by how it treats its highest citizens, but its lowest ones.”⁹ In the United States, millions of our citizens who experience problems with domestic violence, veterans’ benefits, disability access, housing conditions, health care, debt collection, and other civil justice issues cannot afford legal services and are not eligible for assistance from the civil legal aid system. This failure affects not only low-income people, but wide swaths of the population.¹⁰ The inability of these people to seek and obtain a remedy through the courts or through informal dispute resolution processes undermines the operation of the rule of law. Our justice system should be judged harshly by this failure.

This failure, however, should not be laid at the feet of lawyers. As a profession, lawyers have and continue to give generously of their time and money in an effort to mind the gap. But, as history has shown, we cannot volunteer or donate the problem away. Likewise, minor tweaks, while often helpful, are just that—minor. Serious reform requires recognition that our existing regulatory approaches are not working. And they are not working because they are not risk-sensitive and market-driven. Instead, they attempt to solve potential problems by imagining what could possibly go wrong and then dictating the business model for how legal services must be provided. This protectionistic approach has had catastrophic effects on access to justice. What follows is an examination of why and how we must shift from such a prescriptive approach based on abstract risk considerations to an outcomes-based and risk-appropriate paradigm.

⁹ NELSON MANDELA, *LONG WALK TO FREEDOM* 23 (1994).

¹⁰ *See, e.g.*, GILLIAN K. HADFIELD, *RULES FOR A FLAT WORLD: WHY HUMANS INVENTED LAW AND HOW TO REINVENT IT FOR A COMPLEX GLOBAL ECONOMY* 179 (2017).

The Access-to-Justice Gap

In this report, we describe the “access-to-justice gap” as the difference between the legal needs of ordinary Americans and the resources available to meet those needs. As noted, the civil justice system in the United States currently is tied for 99th out of 126 countries in terms of access and affordability.¹¹ And the United States has consistently shown poorly when it comes to access and affordability of civil justice: in 2015, the U.S. ranked 65th out of 102 countries¹²; in 2016, 94th out of 112¹³; and in 2017-2018, 94th out of 112.^{14,15} Without access to justice, “people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.”¹⁶ In the U.S., many people “go it alone without legal representation in disputes where they risk losing their job, their livelihood, their home, or their children, or seek a restraining order against an abuser.”¹⁷

The access-to-justice gap is especially acute among low-income Americans. In 2017, the Legal Services Corporation (LSC) contracted with NORC at the University of Chicago to explore the extent of the access-to-justice gap. NORC conducted a national survey of “low-income households” (i.e., households at or below 125% of the Federal Poverty Level (FPL)) and analyzed data from LSC’s 2017 Intake Census, through which 133 LSC grantee programs “tracked the number of individuals approaching them for help with a civil legal problem whom they were unable to serve, able to serve to some extent (but not fully), and able to serve fully.”¹⁸ The Census Bureau estimates that the number of people living below the FPL is about 60 million

¹¹ WORLD JUSTICE PROJECT, *Rule of Law Index 2019*, https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (last visited Aug. 12, 2019).

¹² WORLD JUSTICE PROJECT, *Rule of Law Index 2015*, https://worldjusticeproject.org/sites/default/files/documents/roli_2015_0.pdf (last visited Aug. 12, 2019).

¹³ WORLD JUSTICE PROJECT, *Rule of Law Index 2016*, https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf (last visited Aug. 12, 2019).

¹⁴ WORLD JUSTICE PROJECT, *Rule of Law Index 2017–2018*, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf (last visited Aug. 12, 2019).

¹⁵ The World Justice Project generates these rankings using data generated from questionnaires. The questionnaires are sent to people that the World Justice Project has identified as local experts. The responses to the questionnaires are codified as numeric values, normalized, and then subjected to a series of tests to identify possible biases and errors. The data are also subjected to a sensitivity analysis to determine the statistical reliability of the results. The data are then converted to country scores and rankings that represent the assessment of more than 120,000 households and 3,800 legal experts across the countries included in the rankings. See WORLD JUSTICE PROJECT, *Rule of Law Index 2019*, https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (last visited Aug. 12, 2019) (explaining methodology for the World Justice Project Rule of Law Index).

¹⁶ UNITED NATIONS AND THE RULE OF LAW, *Access to Justice*, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (last visited Aug. 12, 2019).

¹⁷ LEGAL SERVICES CORPORATION, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> (last visited Aug. 12, 2019).

¹⁸ *Id.*

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people, including roughly 19 million children. The three key findings of the report about this population are equal parts fascinating and disturbing:

1. Eighty-six percent [86%] of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help;
2. Of the estimated 1.7 million civil legal problems for which low-income Americans seek LSC-funded legal aid, 1.0 to 1.2 million (62% to 72%) receive inadequate or no legal assistance; and
3. In 2017, low-income Americans will likely not get their legal needs fully met for between 907,000 and 1.2 million civil legal problems that they bring to LSC-funded legal aid programs due to limited resources among LSC grantees. This represents the vast majority (85% to 97%) of all the problems receiving limited or no legal assistance from LSC grantees.¹⁹

According to the LSC report, the most common civil legal problems relate to health (41% of low-income households) and consumer-finance (37% of low-income households) issues. Several other categories of civil legal problems—rental housing, children and custody, and education—affected more than one-fourth of low-income households.²⁰

In a study conducted in 2015, two years before the LSC report, NCSC looked at the access-to-justice gap by examining the non-domestic civil caseloads in 152 courts in 10 urban counties. The resulting report, *The Landscape of Civil Litigation in State Courts* [hereinafter the *Landscape*],²¹ showed that civil litigation predictably clusters around a few subjects (debt collection, landlord/tenant cases, and small claims cases involving disputes valued at \$12,000 or less) and results in very small monetary judgments (“three-quarters (75%) of all judgments were less than \$5,200”), suggesting that, “[f]or most represented litigants, the costs of litigating a case through trial would greatly exceed the monetary value of the case.”²² Not surprisingly then, at least one party was self-represented in most cases (76%), proving that “[t]he idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion.”²³ A majority of cases were disposed of through default judgments or settlements.²⁴ The report concluded, “[t]he picture of

¹⁹ *Id.*

²⁰ *Id.*

²¹ Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts*, NATIONAL CENTER FOR STATE COURTS, <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx> (last visited Aug. 12, 2019). The “*Landscape* dataset consisted of all non-domestic civil cases disposed of between July 1, 2012[,] and June 30, 2015[,] in 152 courts with civil jurisdiction in 10 urban counties. The 925,344 cases comprise approximately five percent (5%) of state civil caseloads nationally.” *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

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civil litigation that emerges from the *Landscape* dataset confirms the longstanding criticism that the civil justice system takes too long and costs too much.” The result is predictable: “[M]any litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate these cases.”²⁵

Raw data from the Third District Court for the State of Utah suggest that its caseload tracks the caseloads studied in the *Landscape* report.²⁶ In 2018, 54,664 civil and family law matters were filed in the Third District.²⁷ Of these cases, 51% were debt collection, 7% were landlord/tenant, and approximately 19% were family law cases. Moreover, the data show that the idealized adversarial system in which both parties are represented by competent attorneys is not flourishing in Utah: ***At least one party was unrepresented throughout the entirety of the suit in 93% of all civil and family law disputes disposed of in the Third District in 2018.***

And the public is taking notice. In the 2018 State of the State Courts-Survey Analysis commissioned by NCSC, “[a] broad majority (59%) say ‘state courts are not doing enough to empower regular people to navigate the court system without an attorney.’”²⁸ And “[o]nly a third (33%) believe courts are providing the information to do so.”²⁹

The Supreme Court and the Judicial Council are resolutely working toward narrowing the access-to-justice gap. To this end, they have established a statewide pro bono system to improve the delivery of free legal services to needy parties; established a new profession—the LPP—to deliver legal services in debt collection, landlord/tenant, and family law matters; and piloted an online dispute resolution model in small claims court. These efforts are important and should be supported and expanded. But they are not enough. As NCSC recognized in the *Landscape*, “civil justice reform can no longer be delayed or even implemented incrementally through mere changes in rules of procedure.”³⁰ What “is imperative [is] that court leaders move with dispatch to improve civil case management with tools and methods that align with the

²⁵ *Id.* A legal needs survey conducted by New York in 2010 demonstrates just how stark this problem is. For example, the New York Task Force found that, in New York City, 99 percent of tenants are unrepresented when faced with eviction and homelessness. THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, *Report to the Chief Judge of the State of New York* 17 (Nov. 2010), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf> (last visited Aug. 12, 2019). In consumer credit card debt collection matters, 99 percent of New Yorkers were unrepresented, while 100 percent of the entities bringing the collections were represented. *Id.* at 16.

²⁶ The data set forth in this paragraph were provided by court services personnel for the Administrative Office of the Courts of Utah.

²⁷ For purposes of this report, the Third District Court includes all adult courts, including justice courts, in Salt Lake, Summit, and Tooele Counties.

²⁸ Memorandum from GBA Strategies to National Center for State Courts (Dec. 3, 2018) (on file with author).

²⁹ *Id.*

³⁰ Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts*, NATIONAL CENTER FOR STATE COURTS, <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx> (last visited Aug. 12, 2019).

realities of modern civil dockets to control costs, reduce delays, and ensure fairness for litigants.”³¹ And, perhaps, if we move efficiently and meaningfully enough, we can avoid a harsh but accurate assessment of our civil justice system by future generations.

The Age of Disruption

We live in an age where disruptive innovation is occurring non-stop.³² So-called “incumbent” institutions must continuously innovate to maintain and protect their positions and functions in society. The justice system is no exception. The shift of most court civil business to cases involving self-represented litigants, the rise of average education levels, and the unaffordability of lawyers has driven a new market for legal services serviced partly by non-traditional providers, which pushes the boundaries of what is the unauthorized practice of law.

Courts have struggled to adjust to a world in which unrepresented litigants are the norm. Many cases resolve by default or by failures to comply with required court processes. Judges either require special training to facilitate cases or must create special dockets where the rules of evidence are suspended. Civil and family caseloads are dropping as lawyers become ever more expensive and some litigants decide to proceed without assistance.³³ At the same time, alternative providers of dispute resolution are enticing more and more litigants away from the courts at both the high end (complex civil cases) and the low end (parking tickets, consumer debt, simple divorces, etc.).

Technology has been the leading force in disrupting the way we acquire and consume goods, sleep, work, and play. And it has certainly already altered the practice of law as we have heretofore known it. It has enabled litigants to reduce the costs of litigation, from providing them with access to information about the legal system they did not previously have to pressuring lawyers to use tools that make the litigation process less costly. Automated forms have empowered litigants to represent themselves and helped generate effective documents ranging from transactional documents (such as those used in wills, real estate purchase contracts, and business formations) to litigation pleadings (such as those in divorces, debt collection actions, and contract disputes). Moreover, lawyers have been forced to compete by lowering prices by means such as using electronic communications and document storage and transmittal, eliminating copying costs, electronically Bates stamping discovery documents

³¹ *Id.*

³² See Clayton M. Christensen, Michael E. Raynor & Rory McDonald, *What is Disruptive Innovation?*, HARVARD BUSINESS REVIEW (Dec. 2015), <https://hbr.org/2015/12/what-is-disruptive-innovation> (last visited Aug. 12, 2019).

³³ See NATIONAL CENTER FOR STATE COURTS, *Data Visualizations*, <https://public.tableau.com/profile/ncscviz/vizhome/CSPCaseloadDashboard/CaseDashboard> (last visited Aug. 12, 2019), and Court Statistics Project, *National Overview*, NATIONAL CENTER FOR STATE COURTS, <http://www.courtstatistics.org/NCSC-Analysis/National-Overview.aspx> (last visited Aug. 12, 2019) for data summaries of the trends.

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(reducing the time to do so from hours to seconds), and even employing artificial intelligence that can review thousands of pages of documents and pull relevant documents for review and use with greater accuracy than humans.

Lawyers have also benefitted from the rise of technology in several ways. Technology has enabled lawyers and law firms to dramatically cut costs in certain areas by streamlining communications with clients, simplifying and streamlining case management and billing, automating discovery, and enabling telecommuting—which allows lawyers to conduct business remotely rather than having to travel hundreds, if not thousands, of miles—just to name a few.

And, again, courts have not been immune from disruption. They, too, compete in this ever-changing world that continuing advances in technology bring. More access for litigants means a heavier workload for many already overburdened judges and their staff. Courts also have been required to handle more cases with unrepresented litigants, which increases the time spent reviewing arguments and theories and preparing rulings and orders that people without legal training can understand and follow without explanation from a lawyer. But not all disruption has created legal burdens. Disruption has also brought with it increases in efficiency, from electronic filing and storage to telephone conferences for discovery disputes and other non-dispositive matters. Information filed with the court is now more easily retrieved as well.

The potential benefits for access to justice from legal disruptions are significant. If legal services can be provided to litigants and those with potential legal problems in a much more cost effective way, then true access to justice becomes possible for millions of people who currently get no help and do nothing. Technology, especially online legal services, exponentially increases the potential to improve access to justice. But it also simultaneously increases the risk of legal and practical harm to users if those services are not of sufficient quality. However, the potential benefits are too large to pass up, so changing how legal services are regulated to both open the door to innovation and protect litigants and other users in responsible ways is critical.

Because of the assumed monopoly on the provision of legal services by lawyers (and a few related, sanctioned roles³⁴), current regulation focuses on requirements for lawyers. If

³⁴ For example, Utah allows LPPs to assist clients in a limited number of areas in which the LPP is licensed. UTAH STATE BAR, *Licensed Paralegal Practitioner*, <https://www.utahbar.org/licensed-paralegal-practitioner/> (last visited Aug. 12, 2019). Other states have similar programs. Washington allows limited license legal technicians to advise and assist people through divorce, child custody, and other family law matters, WASHINGTON STATE BAR ASSOCIATION, *Limited License Legal Technicians* (July 24, 2019), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians> (last visited Aug. 12, 2019), and permits limited practice officers to select, prepare, and complete certain approved documents used in loan agreements and the sale of real or personal property, WASHINGTON STATE BAR ASSOCIATION, *Limited Practice Officers*, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-practice-officers> (last visited Aug. 12, 2019). And Arizona

innovation brings a wide variety of legal services to consumers, then the strategy of regulating narrow roles will no longer suffice. There needs to be a way to regulate a broad array of legal services created and provided in different ways. This approach needs to be consistent, cost effective, and safe.

ACHIEVING REFORM—A ROADMAP TO SUCCESS

Fundamental reform of how legal services are regulated requires equal parts courage, caution, imagination, and deliberation. The current paradigm is deeply entrenched in the country's justice system, in the hearts and minds of those who have dedicated themselves to the law, and even in our society at large. With rare exception, long gone are the days when an Abraham Lincoln could "read into" the practice of law. For over a century now, the entry point to be allowed to provide legal services has been territory controlled by law schools molding Juris Doctors (JDs) and courts and bar associations assessing the character and fitness and broad legal knowledge of those JDs. Oddly though, in most jurisdictions, once admitted—and subject only to continuing legal education and conduct requirements—an attorney may provide any legal service across the entire spectrum of needs, everything from writing a will or closing a major contract to defending a felony or filing a class action. While very few divorce lawyers would take on a major real estate deal, their licenses allow them to do just that. The regulatory scheme regulates the provider, not the service.

This approach, though faithfully followed for the past century, has not yielded a broad-based legal services industry that provides affordable legal services to all members of society. Far from it. And this approach is coming under more pressure on a daily basis. Technologies and market forces keep undermining the fundamental premise that lawyers, and lawyers alone, can provide suitable legal services as consumers are increasingly finding tools to meet their needs outside of the regulated legal profession.

As to what the future holds for legal services, hardly anything is clear. What the Greek philosopher Heraclitus said in the 5th century B.C. is as true now as it was then: "Life is flux."³⁵ The only constant is change. So, realistically, drafting a roadmap for the way forward is best viewed as attempting to chart a course in the right direction, watching how the winds blow, tending the lines carefully, and trimming the sails as needed.

allows legal document preparers to prepare and provide certain legal documents without the supervision of an attorney. STATE BAR OF ARIZONA, *Legal Document Preparers*, <https://www.azbar.org/lawyerconcerns/regulationofnon-lawyers/legaldocumentpreparers/> (last visited Aug. 12, 2019).

³⁵ Joshua J. Mark, *Heraclitus of Ephesus*, ANCIENT HISTORY ENCYCLOPEDIA (July 14, 2010), https://www.ancient.eu/Heraclitus_of_Ephesos/ (last visited Aug. 10, 2019).

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To correctly set that course, we have studied other regulatory reform efforts and how they have fared. The most comprehensive example, and a good source of guidance and insight, is the United Kingdom's Legal Services Act of 2007 (the LSA). We have provided a thorough discussion of the LSA and its strengths and weaknesses in Appendix C. The LSA is a broad-based reform that identifies key elements for success, such as independent regulators, a risk-based approach, use of guiding principles, and the articulation of the specific outcomes expected from the regulation. With these elements in place, room can be made both for new approaches by lawyers and for innovators with ideas for legal services that do not involve lawyers.

We have also spent a great deal of time thinking about, researching, and analyzing the rules of professional responsibility and the creation of a new regulator of legal services. Through our deliberative process we came to think of two tracks, both of which are critical to the path to successful reform.

Track A: Loosening restrictions on lawyers—To make room for new approaches by lawyers, we informed ourselves about movements across the country to loosen some of the restrictions on lawyers so that they can both compete and innovate. We collaborated with the Court's Advisory Committee on the Rules of Professional Conduct. That committee participated in a design lab led by Professor Margaret Hagan of Stanford Law, which allowed for all who participated to imagine rule changes that would still fully protect clients without unduly hampering lawyers from harnessing the power of capital, collaboration, and technology. Our specific recommendations for changes to the Rules of Professional Conduct and the supporting rationale are set forth below.

Track B: The creation of a new regulatory body—Lawyers are no longer the only ones who provide legal services. There are now LPPs and other licensed paralegal professionals.³⁶ There are companies providing online legal forms and assistance with court processes. There are referral services. There are even limited types of legal services being provided by other professionals, such as real estate professionals and tax preparers. And there are many others who would be fully capable of providing discrete legal services but who lack the required license to do so. If one considers the byzantine world of Social Security, there are undoubtedly clerks working for the Social Security Administration who, if they were allowed to, could give someone much better advice about how to process a claim than could all but a few of the lawyers licensed to practice law in Utah.

So should room be made for people other than lawyers and organizations other than law firms to provide certain legal services? The answer is clearly yes. We have concluded that allowing for greater competition, subject to proper regulatory oversight, will bring innovation

³⁶ Utah will license its first LPPs within the next few weeks.

to the legal services industry in ways that are not even imaginable today. Critically, we believe that allowing for that innovation will be the solution to the access-to-justice problem that plagues our country. The question is: How can we allow for that innovation without creating intolerable levels of risk for the consumers of legal services? Our full answer to that is the detailed recommendation set forth below and in Appendix D. But the key steps we recommend are first to create a regulatory body armed with a set of risk-based principles for regulation, and second to permit that body to allow providers to provisionally test and prove their services in a “regulatory sandbox” environment, where data can be gathered and innovation can be assessed and revised as needed before more permanent licensure is granted. This body would operate under the supervision and direction of the Supreme Court. Initial funding would be obtained through grants.³⁷

Track A: Freeing Up Lawyers to Compete By Easing the Rules of Professional Conduct

Certain rules of professional conduct have been viewed by lawyers as impeding their ability to increase business and survive in the online world. Restrictions on lawyer advertising, fee sharing, and ownership of and investment in law firms by non-lawyers are concepts that need serious amendment if we are to improve competition and successfully close the access-to-justice gap.³⁸ This is a step that we believe must be taken independent of the creation of a new regulatory body. Nor are we alone in this belief. “California has taken a step towards altering the role of lawyers after a state bar task force [in June 2019] advanced controversial proposals for new ethics rules that would allow non-lawyers to invest in law firms and tech companies to provide limited legal services.”³⁹ And Arizona has recently followed suit.⁴⁰

Lawyer Advertising

Traditionally, lawyer advertising was frowned upon as being undignified. Courts went so far as to say that advertising would undermine the attorney’s sense of self-worth and tarnish the dignified public image of the profession. This changed somewhat with the United States Supreme Court’s decision in *Bates v. State Bar of Arizona*, which recognized that the lawyer

³⁷ By way of example, the Administrative Office of the Utah Courts should soon have the opportunity to enter into a Memorandum of Understanding (MOU) with the Institute for the Advancement of the American Legal System. As envisioned, the MOU would provide partial backing for this project. Implementation of the MOU would be subject to, among other items, the Court adopting the work group’s report and recommendations.

³⁸ Some of these restrictions are already worked around and effectively bypassed through means such as litigation financing. By loosening these restrictions and bringing some of these workarounds within the purview of the new rules, we can ensure more effective regulation of those workarounds and provide better protection for consumers.

³⁹ Roy Strom, *California Opens Door to More Legal Tech, Non-Lawyer Roles (1)*, BLOOMBERG BIG LAW BUSINESS (July 2, 2019), <https://biglawbusiness.com/california-opens-door-to-more-non-lawyer-roles-tech-solutions> (last visited Aug. 10, 2019).

⁴⁰ Brenna Goth & Sam Skolnik, *Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice*, BLOOMBERG BIG LAW BUSINESS (Aug. 15, 2019), <https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice> (last visited Aug. 16, 2018).

advertising ban in place in Arizona inhibited the free flow of information and kept the public in ignorance.⁴¹ The Court held that Arizona's total ban on lawyer advertising violated the free speech guarantee of the First Amendment.⁴² This case opened the door to lawyer advertising across the country.

The *Bates* Court did, however, allow states to ban false, deceptive, or misleading advertising, and to regulate the manner in which lawyers may solicit business in person. States can require warnings and disclaimers on advertising and impose reasonable restrictions on the time, place, and manner of advertising. And following the *Bates* decision, most states included such restrictions in their rules of professional conduct. Utah was one of those states.

Despite *Bates* and the many other court rulings since 1977 that removed restrictions on lawyer advertising, the belief on the part of some that lawyer advertising needs to be carefully constrained has persisted. As recently as 2013, the Bar submitted a petition to the Supreme Court requesting that lawyers be required to submit copies of all advertising and solicitations to a Lawyer Advertising Review Committee no later than the date of mailing or publishing of the advertisements or solicitations, so that the ads could be reviewed for appropriateness. The purpose of the proposed rule was to prevent Las Vegas-style advertising from creeping into Utah. Thankfully, the proposed rule was not adopted.

Last year, in recognition of the changing legal landscape, the ABA attempted to simplify the advertising and solicitation rules. Certain changes were made to the Model Rules of Professional Conduct, and states were encouraged to adopt similar rules. The Court's Advisory Committee on the Rules of Professional Conduct has monitored these changes to the Model Rules and has a review and update of the Utah advertising rules on its agenda.

The Advisory Committee's review includes an analysis of the purpose of the rules and the need to protect the public while simultaneously allowing the members of the public to be better-informed of the legal services available to them. The Committee must consider the reality that lawyers may advertise online and through attorney-matching services, pay-per-click ads, link-sharing, legal blogs, and social network accounts in order to promote services. The main concern should be the protection of the public from false, misleading, or overreaching solicitations and advertising. Any other regulation of lawyer advertising seems to serve no legitimate purpose; indeed, it is blunt, ex ante, and—like so many current regulations—neither outcomes-based nor risk-appropriate.

⁴¹ 433 U.S. 350, 365 (1977).

⁴² *Id.* at 384.

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The Committee’s review of advertising standards is well underway and we understand that a proposal should be sent to the Court for its consideration within the next two months. We applaud the Committee’s efforts with respect to lawyer advertising.

Lawyer Referral Fees

Utah Rule of Professional Conduct 7.2 prohibits a lawyer from giving anything of value to a person for recommending the lawyer’s services or for channeling professional work to the lawyer.⁴³ But use of paid referrals is one method for allowing clients to find needed legal services and one of the ways lawyers can find new clients. Again, this rule should be amended to balance the risk of harm to prospective clients with the benefit to lawyers and clients through an outcomes-based and risk-appropriate methodology.

Ownership of Law Firms and Sharing Legal Fees with Non-Lawyers

Non-lawyers have traditionally been prohibited from owning and controlling any interest in law firms. Utah Rule of Professional Conduct 5.4 provides that a “lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”⁴⁴ The rules also prohibit a lawyer from “practic[ing] with or in the form of a professional corporation or association authorized to practice law for a profit” if a non-lawyer owns any interest therein, if a non-lawyer is a director or officer or has a similar position of responsibility in the firm, or if a non-lawyer has a right to direct or control the professional judgment of the lawyer.⁴⁵

The ABA Ethics 2000 Commission vigorously debated the concept of non-lawyer ownership of law firms in 2000. The ABA House ultimately rejected a proposal to allow non-lawyer ownership of law firms. Since then, however, a number of jurisdictions have seen the need to reevaluate such proposals. In Washington, D.C., the rules of professional conduct now allow for non-lawyer ownership of firms under certain conditions.⁴⁶ And as of June 2019, a state bar task force in California advanced a proposal that would allow non-lawyers to invest in law firms.⁴⁷ Most notably, “[i]n a July 11 meeting, the Arizona task force voted to recommend

⁴³ UTAH R. PROF’L CONDUCT 7.2(f).

⁴⁴ UTAH R. PROF’L CONDUCT 5.4(c).

⁴⁵ UTAH R. PROF’L CONDUCT 5.4(d).

⁴⁶ D.C. R. PROF’L CONDUCT 5.4(b). Rule 5.4(b) permits non-lawyer ownership of firms if (1) the law firm has as its sole purpose the provision of legal services, (2) all persons having management duties of an ownership interest agree to abide by the rules of professional conduct for lawyers, (3) the managing lawyers in the firm undertake to be responsible for the non-lawyer participants, and (4) these conditions are set forth in writing. *See id.*

⁴⁷ California has proposed two different amendments to its own rule 5.4. The first proposal is seen as an incremental evolution of the current rule. *See* STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF

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scrapping Rule 5.4 . . . in its entirety.”⁴⁸ And, “[i]n a related move, the panel voted . . . to amend the state’s ethical rules to allow lawyers and nonlawyers to form new legal services businesses known as ‘alternative business structures.’”⁴⁹ We believe the Arizona approach has much to offer. Indeed, we view the elimination or substantial relaxation of Rule 5.4 as key to allowing lawyers to fully and comfortably participate in the technological revolution. Without such a change, lawyers will be at risk of not being able to engage with entrepreneurs across a wide swath of platforms.

Track B: The Creation of a New Regulatory Body

Alongside the proposed revisions set forth in Track A, we propose developing a new regulatory body for legal services in the State of Utah. Rule revisions are necessary to propel any change, but our position is that wide-reaching and impactful change will only follow reimagining the regulatory approach. Therefore, as the Supreme Court moves forward with revising the rules of practice, we endorse the simultaneous creation of a new regulator, operating under the supervision and direction of the Supreme Court, for the provision of legal services.

The proposed regulator will implement a regulatory system:

LEGAL SERVICES, *Recommendation Letter on Proposed Rule 5.4 [Alternative 1]* (June 18, 2019), <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024362.pdf> (last visited Aug. 12, 2019). The second proposal is much more comprehensive and is meant to create a major shift in how financial arrangements with non-lawyers are regulated. See STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES, *Recommendation Letter on Proposed Rule 5.4 [Alternative 2]* (June 14, 2019), <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024359.pdf> (last visited Aug. 12, 2019). This proposal allows for fee sharing between a lawyer or law firm and any person or organization not authorized to practice law if:

- (1) the lawyer or law firm enters into a written agreement to share the fee with the person or organization not authorized to practice law; (2) the client has consented in writing, either at the time of the agreement to share fees or as soon thereafter as reasonably practicable, after a full written disclosure to the client of: (i) the fact that the fee will be shared with a person or organization not authorized to practice law; (ii) the identity of the person or organization; and (iii) the terms of the fee sharing; (3) there is no interference with the lawyer’s independent professional judgment or with the lawyer-client relationship; and (4) the total fee charged is not unconscionable as that term is defined in rule 1.5 and is not increased solely by reason of the agreement to share the fee.

Id.

⁴⁸ Brenna Goth & Sam Skolnik, *Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice*, BLOOMBERG BIG LAW BUSINESS (Aug. 15, 2019), <https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice> (last visited Aug. 16, 2018).

⁴⁹ *Id.*

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1. Driven by clearly articulated policy objectives and regulatory principles (objectives-based regulation);
2. Using appropriate and state-of-the-art regulatory tools (licensing, data gathering, monitoring, enforcement, etc.); and
3. Guided by the assessment, analysis, and mitigation of consumer risk (risk-based regulation).⁵⁰

We suggest the following core policy objective for the new system: *To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services.*

As the core policy objective indicates, the explicit goal of this approach is to develop a regulatory framework that allows, supports, and encourages the growth of a vibrant market for legal services in Utah and, ultimately, across the United States. At every regulatory step, the regulator should consider how its actions impact the core objective, choosing those paths that enhance, not diminish, the achievement of that objective. Potential impacts on the core objective, from either the regulator's own decisions or from actions by participants in the market, will be measured and assessed in terms of risk to the core objective. The regulator will be guided by this primary question: What is the evidence of risk, if any, that this action will create in the consumer market for legal services? This is objectives-based, risk-based regulation.⁵¹

Examples:

- *What evidence do we see of consumer harm caused by improper influence by non-lawyer owners over legal decisions? What steps can we take to mitigate these risks in the market?*
- *What do the data tell us about the risks of consumer harm from software-enabled legal assistance in an area such as will writing? Are the actual risks of harm more likely or more significant than the risks of a consumer acting on their own or through a lawyer?⁵² How can the risks be mitigated?*

⁵⁰ Robert Baldwin & Julia Black, *Really Responsive Regulation*, 71 MOD. L. REV. 59, 65–68 (2008) (explaining risk-based regulation).

⁵¹ *Id.*

⁵² In the U.K., for example, will writing is not a regulated legal activity. The government considered and ultimately rejected a proposal to make will writing a regulated legal activity because it found that there was not a sufficient showing that regulation was necessary or that other interventions could not address concerns around quality and service. See Catherine Fairbairn, *Regulation of will writers*, Briefing Paper No. 05683 16, HOUSE OF COMMONS LIBRARY (Nov. 29, 2018), <http://researchbriefings.files.parliament.uk/documents/SN05683/SN05683.pdf> (last visited Aug. 21, 2019). The investigation by the government showed essentially the same error rate (about 1 in 4) in wills drafted by attorneys and non-attorney legal service providers. The error rate was the same across complex and simple wills. See LEGAL SERVICES CONSUMER PANEL, *Regulating will-writing* 3 (July 2011),

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- *What do the data indicate about the risk of consumer harm from non-lawyers providing legal advice in the area of eviction defense? Is the risk of these kinds of harm more significant than the harm we currently see for pro se defendants? What steps should be required to ensure and maintain quality service?*
- *What are the data on the risks of cyber and data security to consumers of legal services? Where is the impact most likely and greatest, and what regulatory resources should be brought to bear?*

This approach is meant to be open, flexible, and focused on the reality of the consumer experience with the law and legal services. The system we propose is designed specifically for the regulation of consumer-facing legal services and targeted at the risks posed to the purchasers of legal services. Opening the legal services market to more models, services, and competition will serve other important objectives including access to justice, the public interest, the rule of law, and the administration of the courts.

We propose development of the new regulatory system take place in two phases.

Phase 1

In Phase 1, the Supreme Court will set up an implementation task force much akin to the approach the Court took with respect to LPPs and online dispute resolution.⁵³ The implementation task force will be responsible for, among other items, (1) obtaining funding for the regulator, primarily through grant applications, (2) recommending necessary rule changes to the Court, (3) creating and operating a Phase 1 regulator responsible for overseeing a legal regulatory sandbox for non-traditional legal services, (4) gathering and analyzing data and other information in order to evaluate and optimize the regulatory process, and (5) preparing a final report and recommendation to the Court regarding the structure of the Phase 2 regulator. We believe Phase 1 should last approximately two years.

In short, in Phase 1, the regulator will operate as a pilot and will focus on developing an empirical approach to objectives- and risk-based regulation of legal services. The regulator will operate within the Court as part of the implementation task force.

https://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf (last visited Aug. 21, 2019).

⁵³ The implementation task force may include representatives from the Court, from Bar leadership, and others with applicable expertise—including perhaps representatives from the legal technology sector.

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During Phase 1, the regulator will operate alongside the Utah Bar, which will continue to have authority over lawyers and LPPs.⁵⁴ The regulator will regulate non-traditional legal services: organizations offering legal services to the public that have ownership, a business structure/organization, or service offerings currently not authorized under Utah practice of law and professional conduct rules. Non-traditional legal entities could include: non-lawyer owned and/or managed corporations or non-profits or individuals/entities proposing to use non-lawyer human or technology expertise to provide legal assistance to the public. The regulator's focus will be on the activity or service proposed and the risks presented to consumers by that activity or service.

Also during Phase 1, the regulator will oversee the limited market of legal entities admitted to participate in a legal regulatory sandbox. The regulatory sandbox is a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal (or unethical) under current regulations, can be piloted and evaluated. The goal is to allow the Court and aspiring innovators to develop new offerings that could benefit the public, validate them with the public, and understand how current regulations might need to be selectively or permanently relaxed to permit these and other innovations. Financial regulators have used regulatory sandboxes over the past decade to encourage more public-oriented technology innovations that otherwise might have been inhibited or illegal under existing regulations.⁵⁵ In the legal domain, the United Kingdom's Solicitors Regulation Authority (SRA) has also created a structure—the Innovation Space—that introduces a system of waivers of regulatory roles for organizations to pilot ideas that might benefit the public.⁵⁶

Establishing a legal regulatory sandbox is inherent to Phase 1 of our proposed new regulatory system. Although we are well aware that particular rules will need to be relaxed or

⁵⁴ Given the Bar's expertise regulating lawyers, including in licensing and enforcement, the regulator may benefit from drawing on such expertise.

⁵⁵ The United Kingdom's Financial Conduct Authority created the first regulatory sandbox in 2016. Since then, it has overseen 4 cohorts of regulatory sandboxes to promote financial services innovation. The Monetary Authority of Singapore has run sandboxes to encourage experimentation with financial technology. Abu Dhabi's Regulatory Lab set up a sandbox for financial technology that involved the Abu Dhabi Registration Authority, Financial Services Regulatory Authority, and the courts. Other financial technology sandboxes have been run in Australia, Mauritius, the Netherlands, Canada, Thailand, Denmark, and Switzerland. Some of the things being tested in financial sandboxes include new insurance, retirement, retail banking, investment, and retail lending offerings. In 2018, Arizona launched a regulatory sandbox for financial technology, specifically to promote entrepreneurship and investment around blockchain, cryptocurrencies, and other emerging technologies. See Arizona Attorney General, *Welcome To Arizona's FinTech Sandbox*, STATE OF ARIZONA, <https://www.azag.gov/fintech> (last visited Aug. 21, 2019). And in May 2019, Utah launched its own financial technology sandbox. See Department of Commerce, *Regulatory Sandbox*, STATE OF UTAH, <https://commerce.utah.gov/sandbox.html> (last visited Aug. 21, 2019).

⁵⁶ SOLICITORS REGULATION AUTHORITY, *Enabling innovation: Consultation on a new approach to waivers and developing the SRA Innovation Space* (Apr. 12, 2018), <https://www.sra.org.uk/sra/consultations/enabling-innovation.page> (last visited Aug. 12, 2019).

eliminated to permit innovation, we are less certain what might be on the other side of regulatory reform. What new regulations might be appropriate to ensure that new services do not generate unacceptable risks? Because the legal market has been so strictly limited, we cannot presently catalog the risks that might develop or the regulatory methods that might be effective to appropriately identify and manage those risks. Hence, the regulatory sandbox will be as much for the development of the regulator as for the development of the models, products, and services within. Below, we have put together the key features of our sandbox for Phase 1 of the project. These are features present in regulatory sandboxes around the world.

Three key features to the regulatory sandbox:

1. **Testing out what innovations are possible.** With the relaxation or elimination of the rules around unauthorized practice, fee sharing, and corporate practice of law, we can see how much and what kinds of new innovation might be possible in the legal sector. We expect to see innovations around business models (new financing, ownership or contracting models), services (new roles for experts in other fields, collaborating with lawyers), and technology (increased use of technology to offer legal advice and guidance, use of technologies such as artificial intelligence, blockchain, and mobile). Through the sandbox, we can learn what is possible, what benefits may be realized, and what risks these new offerings present. The sandbox enables the Court and the public to understand how much innovation potential there is in the legal ecosystem, beyond mere speculation that emerging tech has promise in the legal market if regulations were changed.
2. **Tailored evaluation plans focused on risk.** The sandbox model puts the burden on companies to define how their services should be measured in regard to benefits, harms, and risks. They must propose not only what innovation is possible, but also how it can be assessed. Risk self-assessment by companies participating in the sandbox will be a key requirement in order to further our regulatory goals.
3. **New sources of data on what regulation works best.** The sandbox will be the source for the new regulator's data-driven, evidence-backed policy-making. Because sandbox participants gather and share data about their offerings' performance (at least with the regulators, if not more publicly), the sandbox can help develop standards and metrics around data-driven regulation. This is particularly needed in the legal arena because we have so little data about how people engage with the legal world. It can incentivize more companies to evaluate their offerings through a rigorous understanding of benefits and

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harms to the public, and it can help regulators develop protocols to conduct this kind of data-driven evaluation.

Sandbox participants could be an accounting firm proposing to offer legal services provided by lawyers alongside its accounting services, a technology startup using AI-enhanced software to help consumers complete legal documents (wills, trusts, incorporations, etc.), or a non-profit proposing to allow its expert paralegal staff to offer limited legal advice to clients independent of lawyer supervision. To participate in the sandbox, each provider will have to agree to share relevant data with the regulator. The regulator will identify, measure, and assess potential consumer risk and then determine whether the provider will be permitted to participate in the sandbox and with what form of security (please see a more detailed outline of our proposed Phase 1 regulatory process at Appendix D). All consumer participants in the sandbox must provide informed consent. Over the course of the two-year Phase 1 sandbox, the regulator will build up its regulatory approach—in particular, its risk identification, quantification, and response approach.

Throughout Phase 1, the regulator will be in regular reporting and communication with the Supreme Court.⁵⁷ It is the goal that, by the end of Phase 1, the regulator will have developed and refined a data-driven regulatory framework focused on the identification, assessment, mitigation, and monitoring of risk to consumers of legal services, and an enforcement approach designed to respond to evidence of consumer harm as appropriate to support the core objective. The regulator will then present a comprehensive report and proposal for Phase 2 to the Court for its review and approval.

Phase 1 needs from the Supreme Court include the following:

1. Establish the Phase 1 regulator as an implementation task force of the Court and delegate regulatory authority to set up and run the regulatory sandbox. The Court should also outline regulatory objectives and regulatory principles for the Phase 1 regulator. (Suggested principles may be found at Appendix D).
2. Establish by appropriate means that providers (including their ownership/management and their employees) approved to participate in the regulatory sandbox by the Phase 1 regulator are not engaged in the unauthorized practice of law in Utah.

⁵⁷ We wish to be quite clear that, as we have reinforced throughout the report, the regulator must be, and will be, subject to the supervision and direction of the Supreme Court.

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3. Establish that licensed Utah lawyers will not be subject to discipline for entering into business with or otherwise providing services with providers approved by the Phase 1 regulator for participation in the sandbox.

Phase 2

In Phase 2, we anticipate some form of an independent, non-profit regulator with delegated regulatory authority over some or all legal services.⁵⁸ However, we will not say much about Phase 2 in this report because we do not wish to put the cart before the horse. Phase 1 of this project allows for the carefully controlled research and development of objectives-based, risk-based regulation of legal services. Phase 2 may implement the regulatory approach across the Utah legal market more broadly.⁵⁹

It is our belief that the objectives- and risk-based regulatory approach should be the future of regulation for legal services in Utah, and indeed throughout the country. Utah has an opportunity to be a leader nationwide. Phase 2 could proceed in multiple different directions as long as the objectives-based, risk-based approach remains its key characteristic. The Court may determine that the regulator is best suited for entity regulation (i.e., regulation of non-traditional legal entities like companies) and should operate alongside the Bar, which will continue to regulate lawyers. It would then be up to the Bar, in cooperation with the Court, to assess whether and how it wants to implement objectives-based, risk-based regulation for lawyers.

The Court may, on the other hand, determine that the new regulator and the objectives-based, risk-based approach should be rolled out for all legal services in Utah. In that case, the Court will have to revise its delegation of authority to regulate the practice of law via Rule 14-102 from the Bar to the new regulator. The Bar could continue to function as a mandatory Bar with regulatory functions operated under the auspices of the Court, but now through the regulator. Alternatively, the Bar could function solely as a membership organization that awards professional titles and specialized practice certifications, maintains ethical standards,

⁵⁸ We also wish to be quite clear about the meaning of the word “independent.” By independent, we mean a regulator independent from management and control by those it regulates, i.e., lawyers. We do not mean independent of control of the Supreme Court. The independent regulator we propose in Phase 2 would, as the Bar is now, no longer be operating within the Court, but would, as the Bar also is now, still ultimately be answerable to the Court for achieving the core regulatory objective and would be subject to any requirements established by the Court.

⁵⁹ The task force is aware that the Institute for the Advancement of the American Legal System presently intends to “develop a model for a regulatory entity that would focus on risk-based regulation for legal services and would operate across state lines.” Institute for the Advancement of the American Legal System, *Unlocking Legal Regulation*, UNIVERSITY OF DENVER (forthcoming) (on file with author).

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engages in advocacy, and provides continuing education.⁶⁰ It may be that those professional titles will be required by the regulator in certain oversight roles for legal service entities (e.g., Big Box Stores offering legal services to the public may be required to have Bar-approved lawyers in managerial roles) or that the Court will decide for public policy reasons that only Bar-approved lawyers may perform certain activities before the Court.

CONCLUSION

Decade after decade our judicial system has struggled to provide meaningful access to justice to our citizens. And if we are to be truly honest about it, we have not only failed, but failed miserably. What this report proposes is game-changing and, as a consequence, it may gore an ox or two or upend some apple carts (pick your cliché). Our proposal will certainly be criticized by some and lauded by others. But we are convinced that it brings the kind of energy, investment, and innovation necessary to seriously narrow the access-to-justice gap. Therefore, we respectfully request that the Supreme Court adopt the recommendations outlined in this report and direct their prompt implementation.

⁶⁰ The professional titles offered by the Bar in this system could be market indicators of levels of education, qualification and, perhaps, service. It is possible the Bar could continue to tie access to titles and certification to ethical standards of service. However, the Bar would no longer have the authority to regulate the market for legal services and members of the Bar would be forced to compete in a larger market.

APPENDIX A

DENO HIMONAS (CO-CHAIR)

Justice Deno Himonas was appointed to the Utah Supreme Court in 2015. For the decade prior, he served as a district court judge, where he was able to try hundreds of criminal, civil, and family law cases and run a felony drug court.

In addition to his judicial duties, Justice Himonas has taught at the S.J. Quinney College of Law at the University of Utah and has been a visiting lecturer at universities in Kiev, Ukraine. He is the 2017 Honorary Alumnus of the Year of the S.J. Quinney College of Law, a recipient of the Judicial Excellence award from the Utah State Bar, and a Life Fellow of the American Bar Foundation.

Justice Himonas is deeply involved in the access-to-justice movement and can often be found speaking about access-to-justice around the country. He currently chairs two access-to-justice task forces, one on licensed paralegal practitioners and the other on online dispute resolution, and co-chairs a third, which is reimagining the regulation of the practice of law.

Justice Himonas graduated with distinction from the University of Utah with a bachelor's degree in economics and went on to receive his J.D. from the University of Chicago. Upon graduation, he spent fifteen years primarily litigating complex civil matters in private practice.

JOHN LUND (CO-CHAIR)

John Lund has practiced law the old-fashioned way since 1984. He is a shareholder with Parsons Behle & Latimer, where he represents clients in challenging litigation and trials throughout the West. Mr. Lund is recognized by Chambers USA as a Band 1 lawyer for commercial litigation and is also a Fellow of the International Academy of Trial Lawyers. Mr. Lund is the immediate past president of the Utah State Bar and has been involved in leadership of the Utah Bar for over a decade. He recently concluded two terms as the lawyer representative on Utah's Judicial Council, which oversees Utah's judicial branch. He has served on various committees and projects relating to improving access to justice and innovation in the practice of law. These include co-chairing the Utah Bar's 2015 Futures Commission, developing the Utah Bar's online interactive directory of lawyers, serving on the Utah Supreme Court's task force for Licensed Paralegal Practitioners, serving on the Utah Supreme Court's task force for reform of Utah's attorney discipline system, and establishing Utah's newly formed Access to Justice Commission. Currently, Mr. Lund co-chairs a joint task force of the Utah Supreme Court and the Utah Bar that is recommending significant and potentially disruptive changes to the regulation of legal services in order to bring innovation to legal services and thereby improve access to justice.

H. DICKSON BURTON

Mr. Burton is the past President of the Utah State Bar, completing his term in July 2019. In his day job, Mr. Burton is the Managing Shareholder of TraskBritt, a nationally-recognized Intellectual Property law firm, where he litigates patent, trademark, and trade secret matters in courts around the country. He is also frequently called upon to mediate or arbitrate patent and other complex intellectual property disputes, with mediation training and certification from both the World Intellectual Property Organization and Harvard Law School. He has also served as an Adjunct Professor at the University of Utah S.J. Quinney College of Law teaching patent litigation.

Mr. Burton is the current Chair of the Local Rules Committee for the U.S. District Court for the District of Utah, and is currently serving on the Magistrate Judge Merit Selection Panel for that court.

Mr. Burton has been honored for many years in peer-review lists including Best Lawyers, IP Stars, Chambers USA, and SuperLawyers, including being listed as one of the Top 100 of all lawyers in the Mountain States.

THOMAS CLARKE

Tom Clarke has served for fourteen years as the Vice President for Research and Technology at the National Center for State Courts. Before that, Tom worked for ten years with the Washington State Administrative Office of the Courts first as the research manager and then as the CIO. As a national court consultant, Tom consulted frequently on topics relating to effective court practices, the redesign of court systems to solve business problems, access to justice strategies, and program evaluation approaches. Tom concentrated the last several years on litigant portals, case triage, new non-lawyer roles, online dispute resolution, public access/privacy policies, and new ways of regulating legal services.

CATHERINE DUPONT

Cathy Dupont is the Deputy State Court Administrator in Utah. Prior to serving as the Deputy State Court Administrator, Cathy was the Appellate Court Administrator and served as one of the Utah Supreme Court's legislative liaisons during the 2019 Legislative Session. Before joining the courts, Cathy worked as the Director of Strategy and External Relations for the state's Public Employee Health Plan and managed the Provider Relations Department and the Marketing and Communications Department. She also worked for over 20 years as an associate general counsel for the Office of Legislative Research and General Counsel, a non-partisan office responsible for drafting legislation and staffing legislative committees.

GILLIAN HADFIELD

Gillian Hadfield, B.A. (Hons.) Queens, J.D., M.A., Ph.D. (Economics) Stanford, is the Schwartz Reisman Chair in Technology and Society, Professor of Law and Professor of Strategic Management at the University of Toronto. She also serves as Director of the Schwartz Reisman Institute for Technology and Society. Her research is focused on innovative design for legal and dispute resolution systems in advanced and developing market economies; governance for artificial intelligence; the markets for law, lawyers, and dispute resolution; and contract law and theory. Professor Hadfield is a Faculty Affiliate at the Vector Institute for Artificial Intelligence in Toronto and at the Center for Human-Compatible AI at the University of California Berkeley and Senior Policy Advisor at OpenAI in San Francisco. Her book, *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy*, was published by Oxford University Press in 2017.

Professor Hadfield served as clerk to Chief Judge Patricia Wald on the U.S. Court of Appeals, D.C. Circuit. She was previously on the faculty at the University of Southern California, New York University, and the University of California Berkeley, and has been a visiting professor at the University of Chicago, Harvard, Columbia, and Hastings College of Law. She was a 2006-07 and 2010-11 fellow of the Center for Advanced Study in the Behavioral Sciences at Stanford and a National Fellow at the Hoover Institution in 1993. She has served on the World Economic Forum's Global Future Council for Agile Governance, Future Council for the Future of Technology, Values and Policy, and Global Agenda Council for Justice. She is currently a member of the American Bar Association's Commission on the Future of Legal Education and is an advisor to courts and several organizations and technology companies engaged in innovating new ways to make law smarter and more accessible.

MARGARET HAGAN

Margaret Hagan is the Director of the Legal Design Lab at Stanford University, as well as a lecturer in the Institute of Design (the d.school). She is a lawyer, and holds a J.D. from Stanford Law School, a DPhil from Queen's University Belfast, an MA from Central European University, and an AB from University of Chicago. She specializes in the application of human-centered design to the legal system, including the development of new public interest technology, legal visuals, and policy design. Her research and teaching focuses on the development and evaluation of new interventions to make the legal system more accessible. Her recent articles include "Participatory Design for Innovation in Access to Justice" (Daedalus 2019) and "A Human-Centered Design Approach to Access to Justice" (Ind. JL & Soc. Equal. 6, 199, 2018).

STEVEN JOHNSON

Steven Johnson is a 1977 graduate of the J. Reuben Clark Law School at Brigham Young University. He has been a member of Utah State Bar since 1977, and of the State Bar of California since 1989. He has worked for a small Salt Lake City law firm, is the former general counsel for an international marketer of turkeys and turkey products, and is currently a solo practitioner in Highland, Utah, advising and representing clients in a variety of legal matters including business and corporate issues, real property matters, and contracts; and he has also served as an arbitrator and mediator in private practice and for the Better Business Bureau.

He has spent a good part of his career serving in the Bar and serving the courts of the State of Utah to enhance access to justice. He has served as an officer, including chair, of both the Corporate Counsel Section and of the Dispute Resolution Section of the Bar. He has been a member of Utah State Bar's Fee Arbitration Panel since 1999, and chaired the Panel from 2006 to 2010. He was appointed as a member of the Supreme Court's MCLE Board in 1999, and served as Trustee of the Board for 4 years. He served 7 years as an Associate Editor of the *Utah Bar Journal* beginning in his second year of law school, and served for 10 years as a member of the Bar's Government Affairs Committee.

Mr. Johnson has served 20 years on the Supreme Court's Advisory Committee on the Rules of Professional Conduct, and for the last 9 years has served as chair of that committee. He has served as a member of the Supreme Court's Commissioner Conduct Commission for the past 9 years, and currently serves as a member of the Fourth District Justice Court Nominating Commission. He is a member of the Utah State Courts' Certified Panel of Arbitrators.

The Supreme Court has also asked him to serve on three Court task forces—the Licensed Paralegal Practitioner Task Force, the Office of Professional Conduct Task Force, and the Task Force on Regulatory Reform.

In 2018, the Supreme Court awarded him the Service to the Courts Award for his contributions to Utah's judicial system. In 2019, he was awarded the Utah State Bar's Distinguished Service Award.

Mr. Johnson served on 3 different occasions in the countries of Ethiopia and Eritrea, teaching government employees how to organize and manage farmer cooperatives so that they can go out and teach farmers how to run cooperatives to better their economic status. He has helped them to amend their cooperative codes to eliminate inconsistencies and to fill in gaps in the laws.

LUCY RICCA

Lucy Ricca is a Fellow and former Executive Director of the Stanford Center on the Legal Profession at Stanford Law School. Ricca was a Lecturer at the law school and has written on the regulation of the profession, the changing practice of law, and diversity in the profession. As Executive Director, Ricca coordinated all aspects of the Center's activities, including developing the direction and goals for the Center and overseeing operations, publications, programs, research, and other inter-disciplinary projects, including development and fundraising for the Stanford Legal Design Lab. Ricca joined Stanford Law School in June 2013, after clerking for Judge James P. Jones of the United States District Court for the Western District of Virginia. Before clerking, Ricca practiced white collar criminal defense, securities, antitrust, and complex commercial litigation as an associate at Orrick, Herrington & Sutcliffe. Ricca received her B.A. cum laude in History from Dartmouth College and her J.D. from the University of Virginia School of Law.

D. GORDON SMITH

D. Gordon Smith is the Dean and Glen L. Farr Professor of Law of the J. Reuben Clark Law School, Brigham Young University. Dean Smith is a leading figure in the field of law and entrepreneurship and has done foundational work on fiduciary theory. He has also made important contributions to the academic literature on corporate governance and transactional lawyering. For his work in promoting the study of corpus linguistics and design thinking in law schools, Dean Smith was included in the Fastcase 50 (2017), which honors “the law’s smartest, most courageous innovators, techies, visionaries, & leaders.”

Dean Smith earned a JD from the University of Chicago Law School and a BS in Accounting from Brigham Young University. He has taught at six law schools in the U.S., as well as law programs in Australia, China, England, Finland, France, Germany, and Hong Kong. Before entering academe, Dean Smith clerked for Judge W. Eugene Davis in the United States Court of Appeals for the Fifth Circuit and was an associate in the Delaware office of the international law firm Skadden, Arps, Slate, Meagher & Flom.

HEATHER S. WHITE

Heather White is a partner with the Salt Lake City-based law firm of Snow Christensen & Martineau, where she leads the firm's Governmental Law Practice Group. Her primary focus is on the defense of government entities in high profile civil rights disputes. Heather is a 1996 graduate of the University of Utah, S.J. Quinney College of Law.

Heather defends governmental entities and their officers against complaints asserting the deprivation of civil rights. These include all types of claims of alleged misconduct, such as excessive force, search and seizure, wrongful arrest, false imprisonment, malicious prosecution, abuse of process and denial of medical care, to name a few. At any given time, Heather is involved in multiple officer-involved shooting cases from inception, including investigations by the Department of Justice and press inquiries, through conclusion.

With deep respect for her Utah police officer clients, and their dedication to society at great personal expense, Heather has become their trusted confidant and advisor. She listens closely to determine individual needs – whether in out-of-court settlements or in public trials – then presses forward assertively with a customized approach and legal strategy. To better understand and closely connect with her clients, and the matters they are involved in, Heather regularly joins officers in the field participating in police ride-alongs. She is certified by the Force Science Institute and conducts training sessions for law enforcement throughout the state, including both client and non-client entities.

Heather also represents the two primary insurers of government entities in the State of Utah—the Utah Risk Management Mutual Association and the Utah Local Governments Trust—as well as a number of self-insured governmental agencies. She believes in the importance of educating her clients on legally related elements of their complex, public careers. In this effort, Heather regularly speaks to agencies and insurers on police training issues, liability, risk management, and incident-prevention issues.

Heather has an extensive track record of governmental civil rights cases and trials, with multiple favorable defense verdicts in state and federal trial and appeals courts. In addition, Heather regularly defends governments against claims involving accidents with government vehicles and premises liability, such as “slip and fall” accidents that might involve sidewalks, water meters, or swimming pools, cemeteries, playgrounds, recreational centers and others.

Heather is a frequent trainer, presenter, and author, covering a wide range of governmental law topics and current governmental law headline subjects.

Heather is actively involved in professional and civic organizations including: American Academy of Trial Attorneys; Utah Bar Technology and Innovation Committee; Salt Lake County

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Bar, Utah State Bar, and Federal Bar Association; Model Utah Jury Instructions, Chair of Subcommittee on Civil Rights Instructions; Magistrate Merit Selection Panel; Defense Research Institute; Utah Defense Lawyers Association; and Utah Municipal Attorneys Association

Heather has maintained a steady 5.0 Martindale-Hubbell® Peer review rating; is consistently recognized as a Utah Super Lawyer by Super Lawyer Magazine; is regularly recognized as a Utah Legal Elite by Utah Business Magazine; is listed in Best Lawyers in America; and was named a Distinguished Faculty member by Lorman Education Services.

ELIZABETH A. WRIGHT

Elizabeth Wright is General Counsel for the Utah State Bar. She is a graduate of Hamilton College and Case Western Reserve School of Law. She is admitted in New York and Utah and was an Assistant Corporation Counsel for the City of New York before moving to Utah. Wright began working for the Utah State Bar in 2011 as the Coordinator of the New Lawyer Training Program. She became General Counsel in 2014. As General Counsel, Elizabeth represents the Bar and also works closely with Bar and Court committees to modify and propose rules governing the practice of law in Utah. Elizabeth served on both the Executive and Steering Committees for Utah's Licensed Paralegal Practitioner Program helping to develop rules for the program. Elizabeth currently serves on the Utah Task Force on Legal Reform which is exploring changing the regulatory structure in Utah to foster innovation and promote market forces to increase access to and affordability of legal services.

APPENDIX B

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August 22, 2018

VIA EMAIL to cathyd@utcourts.gov

Justices of the Utah Supreme Court
c/o Appellate Court Administrator
450 S. State Street
P.O. Box 140230
Salt Lake City, UT 84114

Dear Justices of the Utah Supreme Court,

Access to justice in Utah remains a significant and growing problem. It can be readily seen in the data regarding self-represented parties in the Utah court system. However, it is a much broader and complex issue which not only involves all sort of legal needs but overlaps with a host of other challenges confronted by low and middle-income people living in Utah. We believe lawyers can and should be part of the solution to this problem. There are times well before a court action when some simple advice from an attorney could prevent a problem or resolve a conflict. Yet, as the Bar's recent survey shows, very high percentages of individuals and businesses in Utah have no sense of the value lawyers can provide, they do not know how to find the right lawyer and they believe that it will be too costly to get a lawyer's help.

There are undoubtedly many steps needed in many places. However, we believe a key step to getting legal representation to more people is to substantially reform the regulatory setting in which lawyers operate. We request the Court establish a small working group to promptly study possible reforms and make recommendations to the Court. The purpose of the working group would be to evaluate and make recommendations for revisions, possibly major revisions, to the rules of professional responsibility so as to permit lawyers to more effectively and more affordably provide legal services and do related promotion of those services. The specific areas of focus would be rules concerning (1) fee sharing, (2) advertising and (3) fee arrangements. There are also some conflict of interest issues implicated by some of the possible revisions in these areas.

The work would include consideration of (1) the effect of modern information technology and modern consumer patterns on the current rules, (2) the potential value, in terms of making legal services accessible to clients, of non-lawyer investment and ownership in entities providing legal services and the related regulatory issues, (3) the prospect of broadening the availability of legal services through flat fee and other alternative fee arrangements not currently permitted by the rules, (4) whether there is continuing justification for the rules against direct solicitation, (5) whether and how to permit and structure lawyer use of referral systems such as Avvo in light of the rule against referral fees and (5) the related trends and approaches being considered and/or implemented in other bars, such as Oregon and the ABA's work in this area.

Serving the public. Working for justice.

Narrowing the Access-to-Justice Gap by Reimagining Regulation

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In terms of the makeup of the group, we suggest that the group be co-chaired by a Supreme Court Justice and the immediate past president of the Bar, John Lund. We believe the Bar's general counsel can provide support. We would also suggest including the chair of Court's Committee on the Rules of Professional Responsibility and would also ask that Cathy Dupont be appointed to the committee. Importantly the group should be made up of people who will actually study and consider recommended changes. In that vein, we propose including one of the leaders from the Bar's Innovation in Law Practice Committee, possibly Heather White, Co-chair of that Committee.

Once established, we believe the group could be expected to provide a report and recommendation to the Court within 6 months.

We would be most pleased to attend the Court's Conference on August 27 and discuss our proposal in more detail and answer any questions or concerns from the members of the Court.

Sincerely,



H. Dickson Burton

cc: Richard H. Schwermer (ricks@utahcourts.gov)
John R. Lund (jlund@parsonsbehle.com)
John Baldwin (jbaldwin@utahbar.org)

APPENDIX C

THE LEGAL SERVICES ACT OF 2007

The Legal Services Act (LSA) overhauled the regulation of legal services in the United Kingdom.⁶¹ The regulatory overhaul was precipitated by an overall push for regulatory reform across the U.K., looking particularly at how restrictive rules and norms in the professions impacted competition and the cost of legal services. The goal of the regulatory reform was explicitly consumer and competition focused: “Putting Consumers First.”⁶² Through these reforms, the U.K. legal profession lost its self-regulatory power. The profession is now regulated by an entity, not controlled by lawyers, answerable to Parliament.

Approach of the LSA

The LSA sought to create an objectives-based, risk-based system for the regulation of legal services in the U.K. The Act itself does not set out detailed, prescriptive rules of behavior to be followed by regulated entities. Rather, the Act sets out regulatory objectives and principles to guide the regulators. It is the responsibility of the regulators to develop the details of the system within those guidelines. “Regulation needs to be proportionate and targeted, focused on outcomes and reflecting real risks in the market. It needs to tackle risk of consumer detriment but, in doing so, stop short of creating an excessive burden that might stifle innovation or restrain competition.”⁶³

1. Objectives and Principles (set out in the LSA)

a. Objectives:⁶⁴

- i. Protecting and promoting the public interest;
- ii. Supporting the constitutional principle of the rules of law;
- iii. Improving access to justice;
- iv. Protecting and promoting the interests of consumers;
- v. Promoting competition in the provision of regulated services;

⁶¹ These reforms were limited to England and Wales. Scotland is independently assessing legal market reforms. The U.K. has always had a very different system from the U.S.—split bar system, several other legal roles, many services we consider to be practice of law are not so considered in the U.K. (including providing legal advice). See Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf (last visited Aug. 13, 2019).

⁶² See LEGAL SERVICES BOARD, *History of the reforms*, https://www.legalservicesboard.org.uk/about_us/history_reforms/index.htm (last visited Aug. 13, 2019).

⁶³ See LEGAL SERVICES BOARD, *Improving Access to Justice: Rationalising the Scope of Regulation*, https://www.legalservicesboard.org.uk/projects/rationalising_scope_of_regulation/index.htm (last visited June 13, 2019).

⁶⁴ The objectives are not defined in the Act but the LSB published a separate paper defining the objectives. See LEGAL SERVICES BOARD, *The regulatory objectives: Legal Services Act 2007*, https://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf (last visited Aug. 13, 2019).

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- vi. Encouraging an independent, strong, diverse, and effective legal profession;
- vii. Increasing public understanding of the citizen's legal rights and duties; and
- viii. Promoting and maintaining adherence to professional principles.

b. Principles:

- i. Authorized persons should act with independence and integrity;
- ii. Authorized persons should maintain proper standards of work;
- iii. Authorized persons should act in the best interests of clients;
- iv. Those who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorized persons should comply with their duty to the court to act with independence in the interests of justice; and
- v. Affairs of clients should be kept confidential.⁶⁵

What Is the Regulatory Structure?

The LSA establishes one overarching regulator, the Legal Services Board (LSB). The LSB is a government regulator accountable to Parliament. The primary duty of the LSB is to “promote the regulatory objectives” when carrying out its regulatory functions.⁶⁶

The Lord Chancellor, a member of the U.K. Parliament and also Secretary of State for Justice, appoints the members of the LSB. The Board is made up of both lawyers and laypeople, and has a lay chairperson.⁶⁷ The Act creates a Legal Services Consumer Panel made up of lay people that advises the LSB on various relevant topics, particularly those considering public interest.⁶⁸ The Act also establishes a separate Office of Legal Complaints to address and help resolve consumer complaints.

Instead of directly regulating legal services providers, the LSB regulates multiple “front-line” regulators, which in turn regulate different sectors of the profession (see chart below for

⁶⁵ Legal Services Act 2007, c.29, Part 1, § 1, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁶⁶ *Id.*, Part 2, § 3, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019). The LSB does not have a standalone objective or the power to promote the regulatory objectives separate from its established regulator functions.

⁶⁷ *Id.*, sch. 4, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁶⁸ *Id.*, Part 2, § 8, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019). The Consumer Panel has significant independent authority under the Act, including the ability to independently report to the public on advice that it gives the LSB.

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overview). The LSB has authority to set governance requirements and performance targets, review rules and procedures, and investigate the front-line regulators.⁶⁹

The LSA defines certain regulated activities and persons. Both the activities and the persons follow historically grounded legal roles in the U.K. As will be discussed in more detail below, recent reviews of the effectiveness of the LSA reforms have offered strong criticism of the retention of these traditional activities and roles within the new regulatory regime.

The LSA designates six specific activities as “reserved activities”:

1. The exercise of a right of audience;
2. The conduct of litigation;
3. Reserved instrument activities (transactions involving real or personal property but not including wills);
4. Probate activities;
5. Notarial activities; and
6. The administration of oaths.⁷⁰

Those activities can only be performed by people (“authorized persons”) granted a license through one of the regulators. It is a criminal offense for an unauthorized person to perform any of the reserved activities.⁷¹ All activities other than these six are unregulated (such as the provision of ordinary legal advice or assistance with legal documents) and may be performed by any person or entity.⁷²

Nine roles are designated “authorized persons” under the LSA.

1. Solicitor;
2. Barrister;
3. Legal executive;
4. Notary;
5. Licensed conveyancer;
6. Patent attorney;

⁶⁹ *Id.*, Part 4, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019). The chart below does not list all of the front-line regulators. A complete list can be found here: <http://www.legislation.gov.uk/ukpga/2007/29/schedule/4>.

⁷⁰ *Id.*, Part 3, § 12(1), <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁷¹ *Id.*, Part 3, §§ 14, 17, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁷² In June 2016, the LSB published a report on the unregulated market for legal services. It estimated that, in cases in which parties sought legal advice, 37% was sought from non-profit legal service providers and between 4.5–5.5% was sought from for profit providers. See LEGAL SERVICES BOARD, *Research Summary: Unregulated Legal Services Providers* (June 2016), <https://research.legalservicesboard.org.uk/wp-content/media/Unregulated-providers-research-summary.pdf> (last visited Aug. 13, 2019). Based on this data, the LSB decided not to extend their regulatory reach at this time.

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7. Trademark attorney;
8. Costs lawyer;⁷³ and
9. Chartered accountant.⁷⁴

Each group is authorized to perform certain reserved activities (e.g. barristers, solicitors, and legal executives can perform all reserved activities except for notarial activities).⁷⁵

The front-line regulators generally align with authorized persons roles (e.g. the Bar Standards Board (BSB) regulates the activities of barristers and the SRA regulates the activities of solicitors). There is certainly overlap, particularly when individuals are working within regulated entities (e.g. it is common for conveyancers, legal executives, and barristers to work in entities regulated by the SRA and almost all notaries are also solicitors).

The front-line regulators are required to promote the regulatory objectives.⁷⁶ Pre-LSA, the front-line regulators were, like our bar associations, the trade associations for their associated groups. Post-LSA, they are required to separate any advocacy work from regulatory work.⁷⁷

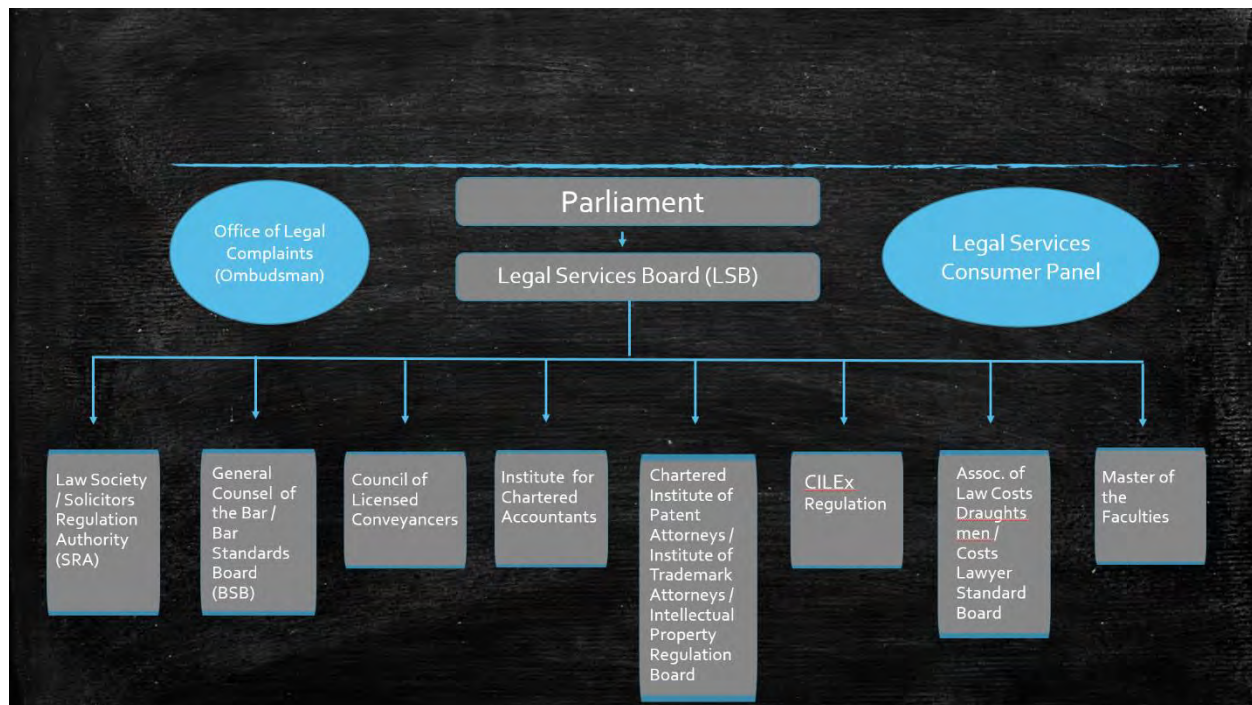
⁷³ A costs lawyer is a specialist in the law governing the allocation of costs in the U.K. legal system. Unlike the American system, under British law, prevailing parties in litigation are routinely allowed to collect their “costs” (including attorneys’ fees) from losing parties. Also, clients may seek an assessment of their legal bills from a court, which is authorized to adjust the bill.

⁷⁴ See Legal Services Act, c.29, sch. 5, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁷⁵ *Id.*, sch. 4, Part 1, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁷⁶ *Id.*, Part 4, § 28, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

⁷⁷ *Id.*, Part 4, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019). The system is somewhat complex. Under the current approach, the designated regulators under the LSB are the traditional representative organizations for the legal role (i.e. the Law Society, the General Counsel of the Bar, the Association of Law Costs Draughtsmen). Under the LSA, those organizations are required to put the regulatory function beyond the representative function, leading to the creation of the current operating regulators (i.e., the Solicitors Regulation Authority, the Bar Standards Board, and the Costs Lawyer Standard Board). One of the bigger criticisms of the LSA reforms is that this approach does not go far enough to separate the regulatory function from the representative/advocacy function and the LSB is assessing changes to make that separation more complete.



The LSA authorizes and regulates non-lawyer owned legal service entities that are called Alternative Business Structures (ABSs) (discussed in detail below).

What Does This Actually Look Like: The Solicitors Regulation Authority

The Solicitors Regulation Authority is the largest regulator of legal services in the U.K., regulating solicitors and ABSs. The SRA describes its regulatory approach as follows:

The outcomes-focused approach to regulation means that our goal is to ensure that legal services providers deliver positive outcomes for consumers of legal services and the public, in line with the intent of the LSA regulatory objectives. This is in contrast to our historical rules-based approach: we no longer focus on prescribing how those we regulate provide services, but instead focus on the outcomes for the public and consumers that result from their activities.⁷⁸

The SRA establishes specific regulatory outcomes to measure its progress toward the LSA's regulatory objectives.

- Outcome 1: The public interest is protected by ensuring that legal services are delivered ethically and the public have confidence in the legal system.
- Outcome 2: The market for legal services is competitive and diverse, and operates in the interests of consumers.

⁷⁸ SOLICITORS REGULATION AUTHORITY, *SRA Risk Framework* (Mar. 2014), <http://docplayer.net/45754930-Sra-regulatory-risk-framework-march-2014.html> (last visited June 13, 2019).

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- Outcome 3: Consumers can access the services they need, receive a proper service and are treated fairly.
- Outcome 4: Regulation is effective, efficient and meets the principles of better regulation.⁷⁹

The SRA outlines ten principles for regulated individuals and entities, including upholding the rule of law and the proper administration of justice, not allowing your lawyer independence to be compromised, acting in the best interests of the client, running a legal business in a way that encourages equality of opportunity and diversity, and protecting clients' money and assets.⁸⁰

The SRA issues a Code of Conduct, which contains professional standards for people and entities under its jurisdiction. These are not “rules” but rather guidance of “indicative behaviours” that the SRA would expect to see to achieve objectives (e.g. to ensure Outcome 3, solicitors should explain the scope of their representation to their client, provide (in writing) a description of all involved parties, and explain any fee arrangements).⁸¹

The SRA also issues specific rules in certain areas: accounts rules, authorization and practicing requirements, client protection (insurance and compensation fund), discipline and costs recovery, and specialist services.⁸²

Day-to-day regulatory activity at the SRA is guided by identified risks to the regulatory objectives and outcomes. Identification and prioritization of risks enables proportionate and responsive regulation.

⁷⁹ *Id.*

⁸⁰ SOLICITORS REGULATION AUTHORITY, *SRA Handbook: SRA Principles* (Dec. 6, 2018), <https://www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page> (last visited Aug. 13, 2019).

⁸¹ See SOLICITORS REGULATION AUTHORITY, *SRA Handbook: Code of Conduct*, <https://www.sra.org.uk/solicitors/handbook/code/content.page> (last visited Aug. 13, 2019).

⁸² See SOLICITORS REGULATION AUTHORITY, *How we regulate*, <http://www.sra.org.uk/consumers/sra-regulate/sra-regulate.page> (last visited Aug. 13, 2019).



The SRA uses a Regulatory Risk Index that groups risks into 4 categories:⁸³

1. Firm viability risks (Risks arising from the viability of the firm and the way it is structured)
2. Firm operational risks (Risks arising from a firm's internal processes, people and systems)
3. Firm impact risks (Risk that firm or individual undertakes an action or omits to take action that impacts negatively on meeting the regulatory outcomes)
4. Market risks (Risks arising from or affecting the operation of the legal services market)⁸⁴

The SRA assesses these risks by impact (potential harm caused) and probability (likelihood of harm occurring), and categorizes risks along individual, firm, theme, and market.⁸⁵ Risk informs the regulator's decisions on admission, governance, monitoring, enforcement, and soft regulatory interventions (education, etc.). Using this approach enables interventions to be proactive and flexible, including:

1. instituting controls on how a firm or individual practices;
2. issuing a warning about future conduct;

⁸³ According to Crispin Passmore, former Executive Director of Supervision and Education of the SRA, the SRA is moving away from the Regulatory Risk Index and focusing more of its approach on proactive and thematic risk assessments.

⁸⁴ SOLICITORS REGULATION AUTHORITY, *SRA Risk Framework* (Mar. 21, 2014), <https://www.sra.org.uk/risk/risk-framework.page> (last visited June 13, 2019).

⁸⁵ See *id.*

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3. closing a firm with immediate effect or imposing a disciplinary sanction, such as a fine;
4. informing the market about undesirable trends and risks;
5. adapting regulatory policy to minimize recurrence of an issue; and
6. setting qualification standards and ongoing competency requirements.⁸⁶

Alternative Business Structures

The LSA permitted participation in legal service providers by those who are not qualified lawyers: entities with lay ownership, management, or investment are designated ABSs under the Act.⁸⁷

Multiple regulators are approved to regulate ABSs, including the SRA, the BSB, the Council of Licensed Conveyancers, the Institute for Chartered Accountants, and the Intellectual Property Regulation Board.

An ABS is either (1) a firm where a “non-authorized person” is a manager of the firm or has an ownership-type interest in the firm or (2) a firm where “another body” is a manager of the firm or has an ownership-type interest in the firm and at least 10 percent of the “body” is controlled by non-lawyers.⁸⁸

ABSs may offer non-legal services alongside legal services.⁸⁹ ABSs are regulated as entities and each authorized person within the entity is independently regulated and subject to discipline. The ABS must always have at least one manager who is an authorized person under the LSA.⁹⁰ Regardless of ownership structure, control over the right to practice law must remain

⁸⁶ *Id.*

⁸⁷ Legal Services Act 2007, c.29, Part 5, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019). See also Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf. Note: the LSA also permitted Legal Disciplinary Practices (LDP), through which different categories of authorized persons can enter into partnerships (e.g. barristers and solicitors working together).

⁸⁸ Legal Services Act 2007, c.29, Part 5, § 72, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019); see also THE LAW SOCIETY, *Alternative Business Structures* (May 21, 2018), <https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/> (last visited Aug. 13, 2019).

⁸⁹ See Legal Services Act, 2007, c.29, Part 5, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019). Note that the ability to offer non-legal services alongside legal services differentiates this structure from those permitted in Washington, D.C. under its Rule 5.4(b), which permits lawyers to enter into business with non-lawyers (including non-lawyer owners or managers) but the sole purpose of the business must be providing legal services. See WASHINGTON, D.C. BAR, *Rules of Professional Conduct, Rule 5.4: Professional Independence of a Lawyer*, <https://www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule5-04.cfm> (last visited Aug. 13, 2019).

⁹⁰ Legal Services Act, 2007, c.29, Part 5, § 72, <https://www.legislation.gov.uk/ukpga/2007/29> (last visited Aug. 13, 2019).

in the hands of licensed legal professionals: designated authorized role holders.⁹¹ The SRA requires ABSs to have both legal and financial compliance officers.⁹² These roles are responsible for ensuring that the entity and all of its interest holders, managers, and employees comply both with the terms of its license and with regulations applicable to its activities (reserved and potentially non-reserved depending on the terms of the license).⁹³ If an entity, or those within it, violate the terms of the license or the rules of professional conduct, the compliance officer has a duty to correct and report to the regulator.

In keeping with the regulatory focus on opening the market and enabling competition, the bar to entry, at least within the SRA process, is relatively low. An applicant must outline which reserved activities the entity plans to offer, provide professional indemnity insurance information, and identify firm structure details (including authorized role holders) and incorporation details if applicable.⁹⁴ To grant a license, the SRA needs to be satisfied that, for example, the proposed ABS will comply with professional indemnity insurance and compensation fund requirements, appropriate compliance officers have been appointed, the authorized role holders are approved, and the lawyer-manager is qualified. The SRA may refuse to grant the license if it is not satisfied that these requirements have been shown, or if the applicant has been misleading or inaccurate, or if it feels that the ABS is “against the public interest or inconsistent with the regulatory objectives” set out in the LSA.⁹⁵ The SRA may also grant a license subject to any conditions it deems necessary.⁹⁶

Impact of the LSA

There has been some debate about the impact of the LSA on the legal services market in the U.K. and on access to justice in particular.⁹⁷ A paper produced by a workgroup chaired by Professor Stephen Mayson had this to say on the impact of the LSA:

The LSA’s reforms have gone some way in beginning to address the pressing issues of the time – independence of regulation, poor complaints handling, anti-competitive restrictions and the need for greater focus on the consumer.

⁹¹ SOLICITORS REGULATION AUTHORITY, *SRA Authorisation Rules 2011*, Rule 8.5, <https://www.sra.org.uk/solicitors/handbook/authorisationrules/content.page> (last visited Aug. 13, 2019).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ SOLICITORS REGULATION AUTHORITY, *New Firm Applications* (Sep. 29, 2017), <http://www.sra.org.uk/solicitors/firm-based-authorisation/authorisation-recognition.page> (last visited Aug. 13, 2019).

⁹⁵ THE LAW SOCIETY, *Alternative Business Structures* (May 21, 2018), <https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/> (last visited Aug. 13, 2019).

⁹⁶ *Id.*

⁹⁷ It should be noted that as the reforms were implemented the Government dramatically reduced funding for legal aid across the U.K. and the world faced the global market downturn. See Dominic Gilbert, *Legal Aid Advice Network “Decimated” by Funding Cuts*, BBC NEWS (Dec. 10, 2018), <https://www.bbc.com/news/uk-46357169> (last visited Aug. 13, 2019).

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Regulatory reform since then has been wide ranging. Regulators have increasingly simplified and focused their processes and removed barriers to market entry, enabling innovation among new and existing providers, improving consumer choice and competition.⁹⁸

In the area of non-lawyer ownership (i.e., ABSs), the market has seen increased innovation in legal services offerings but change is unsurprisingly more incremental than revolutionary. As of February 2019, it appears that regulators have licensed over 800 entities as ABSs.⁹⁹ Most entities seeking ABS licenses are existing legal services businesses converting their license; one-fifth are new entrants.¹⁰⁰ Lawyer-ownership remains the dominant form with three-fifths of ABSs having less than 50 percent non-lawyer ownership.¹⁰¹ Approximately one-fifth of ABSs are fully owned by non-lawyers and approximately one-fifth are fully owned by lawyers with some proportion of non-lawyer managers.¹⁰² A 2014 report by the SRA sought to understand how firms changed upon gaining an ABS license. Most often, firms changed either their structure or their management under the new regulatory offering.¹⁰³ Twenty-seven percent changed the way the business was financed. The SRA found that investment was most often sought for entry into technology, to change the services offered, and for marketing.¹⁰⁴ A 2018 report by the LSB found that ABSs were three times as likely as traditionally organized entities to use technology, and ABSs, as well as newer and larger providers, have higher levels of service innovation.¹⁰⁵

⁹⁸ *Legislative Options Beyond the Legal Services Act 2007*, <https://stephenmayson.files.wordpress.com/2016/07/legislative-options-beyond-the-legal-services-act-2007.pdf> (last visited Aug 13, 2019).

⁹⁹ The SRA maintains a list of all registered ABSs at <https://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page>. This is likely a small percentage of all the legal firms in the United Kingdom. In 2015, for example, there were approximately 10,300 solicitors firms in the U.K. See Mari Sako, *Big Bang or drop in the ocean?: The Authorized Revolution in legal services in England and Wales*, THOMSON REUTERS FORUM MAGAZINE (Oct. 8, 2015), <https://blogs.thomsonreuters.com/answerson/abs-ldp-drop-ocean-england-wales/> (last visited Aug. 13, 2019).

¹⁰⁰ See LEGAL SERVICES BOARD, *Evaluation: ABS and investment in legal services 2011/12-2016/17 – Main Report 4* (June 2017), <https://research.legalservicesboard.org.uk/wp-content/media/Investment-research-2017-Report-Main-report.pdf> (last visited Aug. 13, 2019).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ SOLICITORS REGULATION AUTHORITY, *Research on alternative business structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process* 17 (May 2014), <https://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page> (last visited Aug. 13, 2019).

¹⁰⁴ *Id.*

¹⁰⁵ LEGAL SERVICES BOARD, *Research Summary: Technology and Innovation in Legal Services* (Nov. 2018), <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-web-FINAL.pdf> (last visited Aug. 13, 2019).

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The market continues to develop. LegalZoom has received an ABS license and has started purchasing solicitors firms in the U.K.¹⁰⁶ Each of the Big Four accounting firms has an ABS license.¹⁰⁷ Most importantly, there is little to no evidence of ABS-specific consumer harm.¹⁰⁸

The SRA will be rolling out relatively significant changes in the form of new “Standards and Regulations (STARS)” in the coming months. Those changes are targeted at increasing liberalization of the market and increasing the efficiency of the regulatory response. Perhaps the most significant change is that solicitors will now be permitted to offer non-reserved legal activities out of unregulated businesses (i.e., a solicitor may now be employed by Tesco or a bank to offer non-reserved services like will writing).¹⁰⁹

Challenges of the LSA

In December 2016, the Competition and Markets Authority (CMA) released a report reviewing the legal services market post-LSA.¹¹⁰ Professor Stephen Mayson’s reviews of the impact of the LSA are also illuminating to understand how the reforms of the LSA may have fallen short in opening the market.¹¹¹

1. **Retention of traditional roles/activities:** As noted above, although the LSA sought to implement an objectives- and risk-based regulatory system, it also relied upon traditional legal roles and their associated activities as regulatory hooks. Both the CMA report and Professor Mayson’s work identify this continued reliance on traditional activities/roles as a proxy for regulatory strategy/intervention as problematic and limiting to the impact of the reforms. Authorized persons and reserved activities were essentially “grandfathered” or lobbied into the LSA (an “accident of history” or result of

¹⁰⁶ John Hyde, *LegalZoom Enters Market with ABS License*, THE LAW SOCIETY GAZETTE (Jan. 7, 2015), <https://www.lawgazette.co.uk/practice/legalzoom-enters-market-with-abs-licence/5045879.article> (last visited Aug. 13, 2019).

¹⁰⁷ See Joseph Evans, *Deloitte Becomes the Last of the Big Four to get ABS License for Legal Services*, THE AMERICAN LAWYER (June 22, 2018), <https://www.law.com/americanlawyer/2018/06/22/deloitte-becomes-last-of-big-four-to-get-abs-licence-for-legal-services/> (last visited Aug. 13, 2019).

¹⁰⁸ See COMPETITION AND MARKETS AUTHORITY, *Legal Services Market Study: Final Report* (December 15, 2016), <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf> (last visited Aug. 13, 2019). See also Judith K. Morrow, *UK Alternative Business Structures for Legal Practice: Emerging Market and Lessons for the US*, 47 Geo. J. Int’l L. 665, 668 (2016).

¹⁰⁹ Crispin Passmore, *Look to the STARS*, Passmore Consulting (Mar. 20, 2019), <https://www.passmoreconsulting.co.uk/look-to-the-stars> (last visited Aug. 13, 2019).

¹¹⁰ See *id.*

¹¹¹ See Stephen Mayson, *The Legal Services Act 2007: Ten Years On, and “Mind the Gaps”* (June 2017), <https://stephenmayson.files.wordpress.com/2017/06/mayson-2017-legal-services-act-10-years-on1.pdf> (last visited Aug. 13, 2019).

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- political bargaining) and do not reflect a true assessment of risk.¹¹² The CMA report recommended that “[A]n optimal regulatory framework should not try to regulate all legal activities uniformly, but should have a targeted approach, where different activities are regulated differently according to the risk(s) they pose rather than regulating on the basis of the professional title of the provider undertaking it.”¹¹³
2. **Gold-plating of regulation vs. regulatory gap:** Some regulators regulate all activities of authorized persons (including non-reserved activities) while, at the same time, unreserved activities of unauthorized persons are not regulated at all (i.e., a solicitor who drafts a bad will can be subject to regulatory control but a shopkeeper who drafts a bad will is beyond legal regulatory authority because will writing is not a reserved activity). This causes excessive costs to be imposed on authorized persons, leaves possible high-risk activities beyond regulatory scope, and is very confusing to the consumer.¹¹⁴
 3. **No prioritization among regulatory objectives:** The regulatory objectives set out in the LSA are listed without any indication of how the LSB or the front-line regulators are to prioritize them or weigh them in the event of a conflict between objectives.¹¹⁵
 4. **Continuing challenges around consumer information gap, pricing challenges (level and transparency), and access to justice:**¹¹⁶ “[C]onsumers generally lack the experience and information they need to find their way around the legal services sector and to engage confidently with providers. Consumers find it hard to make informed choices because there is very little transparency about price, service and quality—for example, research conducted by the Legal Services Board (LSB) found that only 17% of legal services providers publish their prices online. This lack of transparency

¹¹² See *Legislative Options Beyond the Legal Services Act 2007*, <https://stephenmayson.files.wordpress.com/2016/07/legislative-options-beyond-the-legal-services-act-2007.pdf> (last visited Aug. 13, 2019).

¹¹³ See COMPETITION AND MARKETS AUTHORITY, *Legal services market study: Final report* 201 (Dec. 15, 2016), <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf> (last visited Aug. 13, 2019).

¹¹⁴ See Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* 11 (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf (last visited Aug. 13, 2019).

¹¹⁵ Stephen Mayson, *Independent Review of Legal Services Regulation: The Rationale for Legal Services Regulation* 9 (University College London Centre for Ethics & Law, Working Paper LSR-1, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-1_rationale_1903_v2.pdf (last visited Aug. 13, 2019).

¹¹⁶ SOLICITORS REGULATION AUTHORITY, *Price transparency* (Nov. 2018), <https://www.sra.org.uk/solicitors/resources/transparency/transparency-price-service.page> (last visited Aug. 13, 2019).

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weakens competition between providers and means that some consumers do not obtain legal advice when they would benefit from it.”¹¹⁷

5. **Incomplete separation of regulatory and representative activities:** The separation of regulatory and representative activities, as required by the LSA, is incomplete and gives rise to tension.¹¹⁸

Keeping in mind that the reforms are still relatively new (ABSs began being licensed in early 2012),¹¹⁹ the most appropriate conclusion appears to be that, while the LSA initiated much needed reforms to the regulatory process and began the process of opening up the legal services market, significant challenges remain and require continued focus.

¹¹⁷ See COMPETITION AND MARKETS AUTHORITY, Legal Services Market Study: Final Report 4 (Dec. 15, 2016), <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf> (last visited Aug. 13, 2019).

¹¹⁸ See Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* 12 (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf (last visited Aug. 13, 2019).

¹¹⁹ See THE LAW SOCIETY, *Setting up an ABS* (Oct. 31, 2012), <https://www.lawsociety.org.uk/support-services/advice/articles/setting-up-an-abs/> (last visited Aug. 13, 2019).

APPENDIX D

REGULATOR: DETAILED PROPOSAL

Our suggested proposal for the Phase 1 regulatory structure and approach is outlined below. Although we have put a great deal of thought into this proposal, we stress that this is just a proposal. Our model assumes that the Phase 1 period will be one of research and development regarding the regulator's structure and framework and that both will likely change with increased data from the regulatory sandbox market and other inputs.

Framework (Phase 1)

The Court will operate the regulator as a task force of the Court. The Court should outline regulatory objectives for the regulator. We propose a single core objective:

To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services.

As discussed above, this objective purposely focuses the regulatory authority on the consumer market for legal services. The Court should also outline regulatory principles for the regulator. We propose five regulatory principles:

1. **Regulation should be based on the evaluation of risk to the consumer.** Regulatory intervention should be proportionate and responsive to the actual risks posed to the consumers of legal services.
2. **Risk to the consumer should be evaluated relative to the current legal services options available.** Risk should not be evaluated as against the idea of perfect legal representation provided by a lawyer but rather as against the reality of the current market options. For example, if 80 percent of consumers have no access to any legal help in the particular area at issue, then the evaluation of risk is as against no legal help at all.
3. **Regulation should establish probabilistic thresholds for acceptable levels of harm.** The risk-based approach does not seek to eliminate all risk or harm in the legal services market. Rather, it uses risk data to better identify and apply regulatory resources over time and across the market. A probability threshold is a tool by which the regulator identifies and directs regulatory intervention. In assessing risks, the regulator looks at the probability of a risk occurring and the magnitude of the impact should the risk occur. Based on this assessment, the regulator determines acceptable levels of risk in certain areas of legal service. Resources should be focused on areas in which there is both high probability of harm and significant impact on the consumer or the market. The thresholds in these areas will be lower than other areas. When the evidence of consumer harm crosses the established threshold, regulatory

action is triggered.¹²⁰ Example: Under traditional regulatory approaches, the very possibility that a non-lawyer who interprets a legal document (a lease, summons, or employment contract, for example) might make an error that an attentive lawyer would not make has been taken to justify prohibiting all non-lawyers from providing any interpretation. However, if the risk is actually such that an error is made only 10% of the time, then a risk-based approach would recommend allowing non-lawyer advisors to offer aid (particularly if the alternative is not getting an interpretation from an attentive lawyer but rather proceeding on the basis of the consumer's own, potentially flawed interpretation). If a particular service or software is actually found to have an error rate exceeding 10%, then regulatory action (suspension, investigation, etc.) would be taken against that entity or person.

4. **Regulation should be empirically-driven.** Regulatory approach and actions will be supported by data. Participants in the market will submit data to the regulator throughout the process.
5. **Regulation should be guided by a market-based approach.** The current regulatory system has prevented the development of a well-functioning market for legal services. This proposal depends on the regulatory system permitting the market to develop and function without excessive interference.

Regulator Structure

In Phase 1, the regulator will operate relatively leanly given that it will be overseeing a small marketplace (the regulatory sandbox); however, staffing needs to be sufficient to ensure that the regulator is successful from the start. The regulator must be able to respond to applicants, questions, and demands quickly and efficiently and be able to adequately monitor and assess the market's development and respond appropriately and strategically.

We preliminarily envision an executive committee or senior staff made up of a Director, a Senior Economist, and, perhaps, a Senior Technologist. It is not necessary that these individuals be lawyers. The Director will be the face of the entity, responsible for strategy, development, budget, and reporting to the Court. The Senior Economist will be responsible for developing the quantitative analytical tools used by the regulator. The Senior Technologist will be responsible both for reviewing, assessing, and explaining the technological aspects of any proposed products or services as well as offering technological expertise on a strategic level (i.e., where regulatory resources should be targeted). The support staff would need to cover

¹²⁰ The "probability threshold" approach is not unfamiliar in the legal world. Indeed, it arguably guides First Amendment constitutional law doctrine. See Jonathan S. Masur, *Probability Thresholds*, 92 IOWA L. REV. 1293, 1297 (2007).

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the following functions: operations, development, and communications. Finally, we envision creating a Board of Advisors made up of both legal and non-legal leaders, including particularly leaders in technology and academics well-versed in regulatory theory.

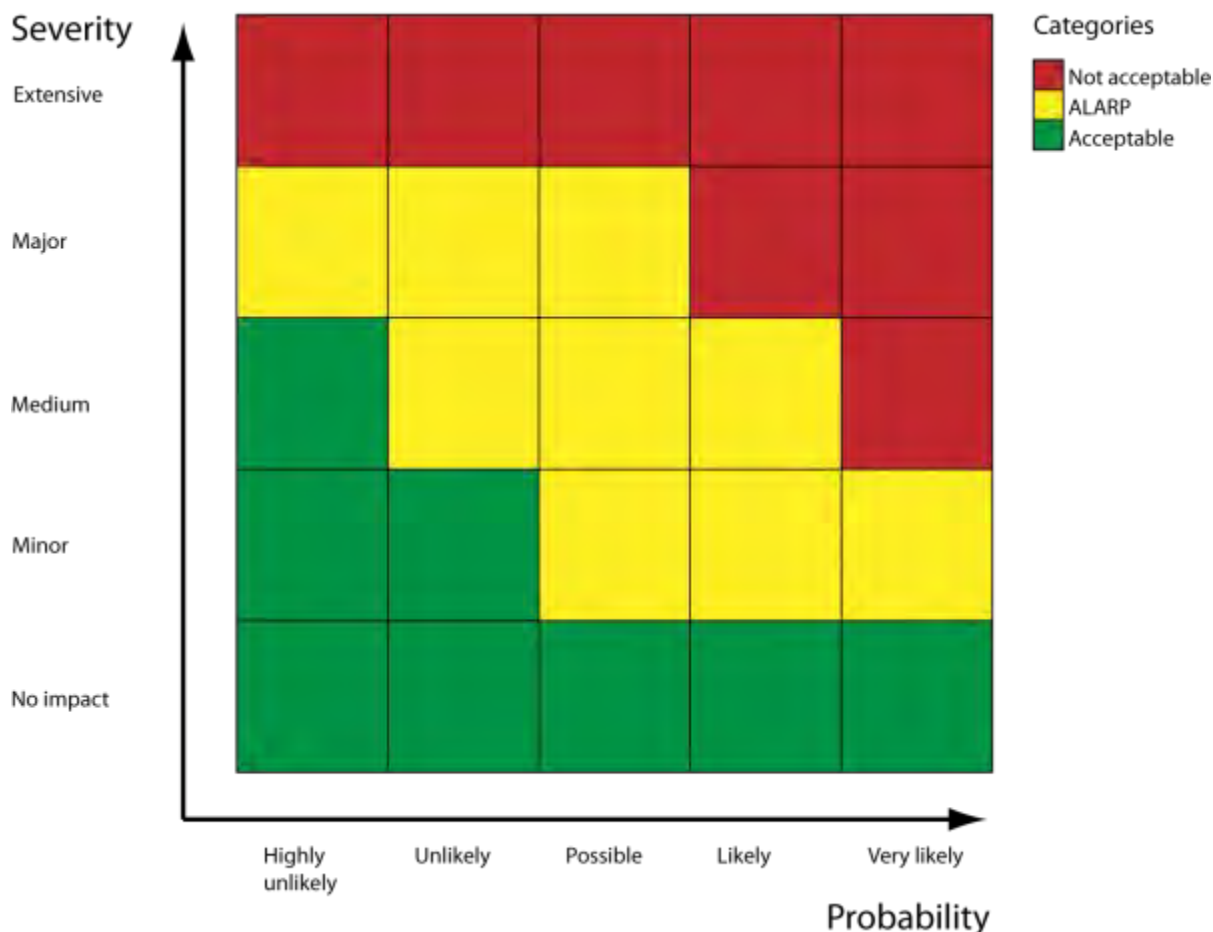
We propose that the regulator be funded primarily from fees collected from market participants. At the outset, however, we propose seeking grants for the establishment and support of the Phase 1 regulator.

Regulatory Approach

It is the regulator's job to develop a system that, applying the regulatory principles, works to achieve the regulatory objective. Identifying, quantifying, understanding, and responding to risk of consumer harm using an empirical approach is prioritized in our regulatory principles. There are two major aspects to this: (1) assessing risk of consumer harm in the market as a whole (both now and over time); and (2) assessing risk of consumer harm in a particular applicant's legal service offering.

We foresee the regulator using a risk matrix as its primary tool for identifying and understanding risk. A risk matrix is essentially a framework used to evaluate and prioritize risk based on the likelihood of occurrence and the severity of the impact. It is one of the most widespread tools used for risk evaluation. A simple example follows:

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Developing the risk matrix should be the first task for the regulator in assessing the legal services market, and it should be revised and updated market-wide on an ongoing basis. The risk matrix also guides the regulator's approach to individual regulated entities throughout the regulatory process.

We propose attention to 3 key risks:

1. Consumer achieves a poor legal result.
2. Consumer fails to exercise their legal rights because they did not know they possessed those rights.
3. Consumer purchases a legal service that is unnecessary or inappropriate for resolution of their legal issue.

Using the risk matrix, the regulator would consider likelihood and impact of each of the three key risks mentioned, as well as any other risks identified either in the market generally or as indicated for a particular participant or group of participants. For example, for an entity proposing to offer a software-enabled will drafting service (using perhaps machine learning enhanced guidance or advice or non-lawyer will experts answering questions), the regulator

would assess the likelihood that the consumer achieves a poor legal result (e.g. an unenforceable will or term) and the impact of that harm on the consumer (potentially significant, but rectifiable, in some cases).

The regulator should establish metrics by which those risks might be measured and identify the data regulated entities will be required to submit in order to assess risk on an ongoing basis. The regulated entities will be required to submit data on these in order to participate in the market. In the example above, the risk of a poor legal result can be measured through expert testing/auditing of the proposed product and through consumer satisfaction surveys. The regulator should consider what level of risk self-assessment should be required from applicants in addition to any key risks identified by the regulator.

Regulatory Process

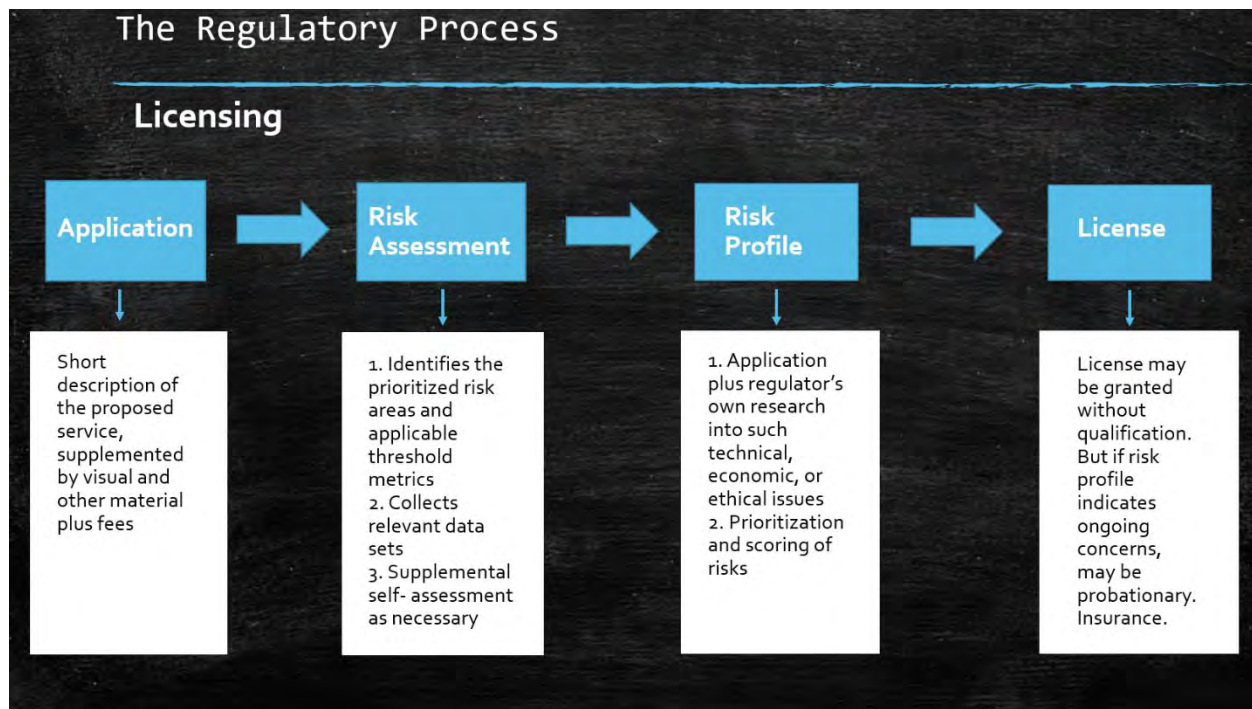
The key points of the regulatory process should be as follows: (1) licensing; (2) monitoring; and (3) enforcement. Each defines a key interaction between the regulator and the market participant.

Licensing

The licensing approach would be guided by the following analysis:

1. What is the specific nature of the risk(s) posed to the consumer by this service/product/business model?
2. Where does the proposed service/product/business model lie within the risk matrix?
3. Can the applicant provide sufficient evidence on the risk(s)?
4. What mechanisms might mitigate those risks and how? What are the costs and benefits of those mechanisms?

The visual below illustrates the proposed licensing process:



Applicant initiates process: The applicant describes the service/product/business model offered. The explanation should be simple and short. The applicant should submit supplemental materials (visuals, etc.) as necessary.

Risk Assessment: Based on the description provided in the initial application, supplemented as necessary with information requests to the applicant, the regulator initiates the risk assessment process.

1. The regulator assesses the applicant's proposal within the context of the risk matrix. Does the proposed service implicate one of the key risks, and what is the likelihood and impact of those risks being realized? The applicant must submit required data on these risks and any information on the mitigation of these risks and response to risk realization built into its model.
2. Self-assessment: the applicant will be expected to identify any risks to consumers not identified in the first step. These may be risks specific to the type of technology proposed, the business model, the area of law, or the consumer population targeted. For example, a blockchain platform for commercial smart contracting presents different concerns than a document completion tool used by self-represented litigants.
3. The regulator should develop a mechanism for sealed risk disclosures—to the extent that any necessary disclosures around technology or other risk mitigation processes should not be made public.

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Fees: The applicant should submit licensing fees both at the outset of the licensing process and annually in order to maintain an active license. The fee regime will be developed to scale with the applicant's statewide revenues.

Regulator Response—Risk Profile: The regulator will then use the application and its own research into such technical, economic, or ethical issues as necessary to develop an overall risk profile of the proposed service/product/business model. A risk profile is not a list of potential risks with little or no differentiation between them. Instead, the risk profile should assess the identified risks both in relation to each other (which are the most probable, which present the greatest financial risk, etc.) and in relation to the legal services market overall. The risk profile will also guide the regulator in its regulatory approach going forward, i.e., how frequently to audit, what kind of ongoing monitoring or reporting to employ, and what kinds of enforcement tools need to be considered.

Regulator Response—Determination on Licensure: If, based on the risk profile, the regulator finds that significant risks have been identified, but it is not clear how the applicant plans to address and mitigate those risks, the regulator can impose probationary requirements on the applicant targeted to address those risks or refuse licensure.

Monitoring and Data Collection

Once an entity is licensed, the regulatory relationship moves on to the monitoring and data collection phase. The purpose of monitoring is continual improvement of the regulatory system with respect to the core objective. Monitoring enables the regulator to understand risks in the market and identify trends and to observe, measure, and adjust any regulatory initiatives to drive progress toward the core objective. Monitoring is not the regulator simply checking the box on a list of requirements.

In monitoring, the regulator can use several different tactics. The regulator should develop requirements such that regulated entities periodically and routinely provide data on the three key risks. The regulator should have the flexibility to reduce or eliminate specific reporting requirements if the data consistently show no harm to consumers. The regulator should also conduct unannounced testing or evaluation of a regulated entities' performance through, for example, "secret shopper" audits or expert audits of random samples of services or products.

The regulator should consider imposing an affirmative duty on regulated entities to monitor for and disclose any unforeseen impacts on consumers.

The regulator should also conduct consumer surveys across the market and consider how to engage with courts and other agencies to gather performance data.

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The regulator should use the data gathered to issue regular market reports and issue guidance to the public and regulated entities. The regulators in the U.K., the SRA in particular, provide strong examples of the reporting opportunities. The SRA issues regular reports on risk, regulatory activities, regulated population, consumer reports, and equality and diversity.¹²¹ On risk, the SRA issues quarterly and annual reports that span across the market, as well as thematic reports (a report on risks in conveyancing, for example) and reports on key risks, risks in IT security, risks to improving access to legal services, etc.¹²²

Enforcement

Enforcement is necessary where the activities of licensed entities are harming consumers. Ideally, the regulator will take action when evidence of consumer harm exceeds the applicable acceptable harm thresholds outlined in the risk matrix or individualized risk assessment. The regulator should strive to make the enforcement process as transparent, targeted, and responsive as possible.

The regulator should develop a process for enforcement: intake, investigation, and redress. Evidence of consumer harm can come before the regulator through multiple avenues:

1. Regulator finds evidence of consumer harm through the course of its monitoring, auditing, or testing of regulated entities.
2. Regulator finds evidence of consumer harm through its monitoring of the legal services market.
3. Consumer complaints.
4. Referrals from courts or other agencies.
5. Whistleblower reports.
6. Media or other public interest reports.

The regulator should develop a process by which members of the public can approach the regulator with complaints about legal service. The U.K. approach is informative on this issue. The LSA established a separate and independent entity, the Office of Legal Complaints (OLC) and its Legal Ombudsman to address the bulk of consumer complaints against legal service providers. Complaints around poor service are directed to the Ombudsman, which has the authority to identify issues and trends and refer those to the frontline regulators like the SRA.¹²³ The frontline regulators like the SRA accept complaints that directly implicate significant

¹²¹ See SOLICITORS REGULATION AUTHORITY, *Research and reports* (July 2019), <https://www.sra.org.uk/sra/how-we-work/reports.page> (last visited Aug. 13, 2019).

¹²² See SOLICITORS REGULATION AUTHORITY, *Risk publications*, <https://www.sra.org.uk/risk/risk-resources.page> (last visited Aug. 13, 2019).

¹²³ See SOLICITORS REGULATION AUTHORITY, *Providing information and intelligence to the SRA* (Jan. 20, 2015) <https://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page> (last visited Aug. 13, 2019). The Ombudsman requires the consumer to complain to the service provider directly before accessing the

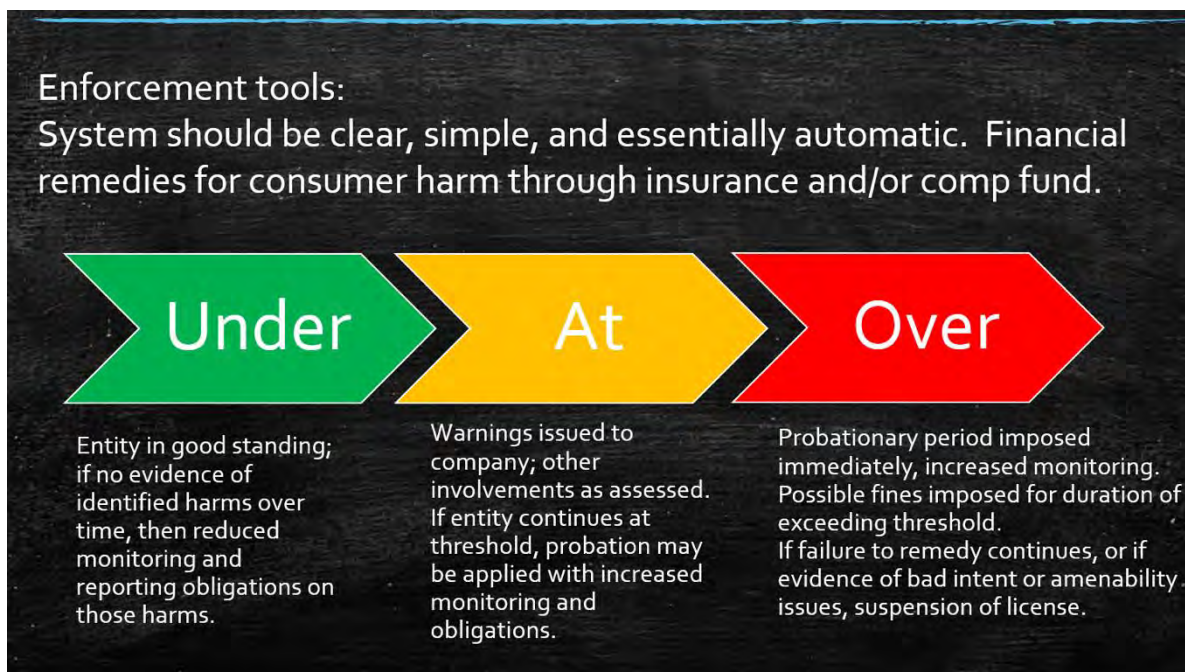
consumer risk (financial wrongdoing, dishonesty, and discrimination for example). The SRA does not, however, advocate individual complaints against service providers. Rather, the SRA will accept the information and either (1) keep the information for future use if necessary (“no engagement at present”), (2) use the information to supervise a firm more closely, or (3) use the information in a formal investigation.¹²⁴ Thus, the structure for complaints enables the frontline regulator to retain its focus on risk at the firm and market level rather than dispensing resources on investigating and managing every individual consumer complaint.

The regulator should consider establishing a Legal Ombudsperson role or office to focus on consumer questions or complaints about poor legal service (issues such as poor communication, inefficient service, trouble following client direction, etc.). This role could be contained within the regulator, but requires proper structural independence and authority to address complaints, require remedial action, and issue clear guidelines on what kinds of information should be referred to the enforcement authority of the regulator.

If the regulator makes a finding of consumer harm that exceeds the applicable threshold, then penalties are triggered. The penalty system should be clear, simple, and driven by the core objective. The regulator should strive to address harm in the market without unnecessarily interfering with the market.

office. See SOLICITORS REGULATION AUTHORITY, *Reporting an individual or firm*, <https://www.sra.org.uk/consumers/problems/report-solicitor.page> (last visited Aug. 13, 2019); see also LEGAL OMBUDSMAN, *Helping the public*, <https://www.legalombudsman.org.uk/helping-the-public/> (last visited Aug. 13, 2019). The Ombudsman has the power to require the legal services provider to take remedial actions such as return or reduce fees, pay compensation, apologize, and do additional work. See LEGAL OMBUDSMAN, *Helping the Public*, <https://www.legalombudsman.org.uk/helping-the-public/#what-problems-we-resolve> (last visited Aug. 13, 2019).

¹²⁴ See SOLICITORS REGULATION AUTHORITY, *Providing information and intelligence to the SRA* (Jan. 20, 2015), <https://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page> (last visited Aug. 13, 2019).



There should be a process to appeal enforcement decisions, both within the regulator and to the Supreme Court.

The regulator should make regular reports on enforcement data and actions to the Court.

Other Regulatory Duties

The regulator may have other duties that advance the core objective. These would obviously include its reporting duties to both the Court and the public. Reports would detail the overall state of the market, risks across the market, prioritized risk areas, and specific market sectors (by consumer, by area of law, etc.). The regulator may also have the authority to develop initiatives, including public information and education campaigns.

Regulatory Sandbox

This section presents an overview of regulatory sandboxes generally and insights into how our proposed regulatory sandbox could operate.

The regulatory sandbox is a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal under current regulations, can be piloted and evaluated. The goal is to allow regulators and aspiring innovators to develop new offerings that could benefit the public, validate them with the public, and understand how current regulations might need to be selectively or permanently relaxed to permit these and other innovations. Financial regulators have used regulatory sandboxes over the past decade to

encourage more public-oriented technology innovations that otherwise might have been inhibited or illegal under standard regulations.¹²⁵ In the legal domain, the U.K.'s SRA has also created a structure—the Innovation Space—that introduces a system of waivers of regulatory roles for organizations to pilot ideas that might benefit the public.¹²⁶

The regulatory sandbox structure has been used most extensively in the financial services sector. This is an area with extensive and detailed regulations and a significant amount of technological development and innovation. While there are significant differences between financial services and legal services, there are insights to be drawn from regulatory sandbox operation in that sector. Below are some general characteristics of sandboxes:

1. **Testing out what innovations are possible.** The regulatory sandbox can allow the regulator to selectively loosen current rules to see how much and what kinds of new innovation might be possible in their sector.¹²⁷ Regulators and the industry see that new types of technology developments, with the rise of artificial intelligence, digital and mobile services, blockchain, and other technologies, may bring new benefit to the public. Guarantees of non-enforcement in the sandbox can allow companies to raise more capital for experimental new offerings that may not otherwise be funded because of regulatory uncertainty about how the rules would apply to these new models. The regulators can use the sandbox to understand how much innovation potential there is in the ecosystem, beyond mere speculation that emerging tech has promise in their market if regulations were changed.
2. **Tailored evaluation plans focused on risk.** The sandbox model puts the burden on companies to define how their services should be measured in regard to benefits, harms, and risks. They must propose not only what innovation is possible, but also how it can be assessed.
3. **Controlled experimentation.** The sandbox allows for regulators to run controlled tests as to what changes to regulation might be possible, both in terms of what rules apply and how regulation is carried out. They can install safeguards to protect the experiments from spilling over into the general market, and they can terminate individual experiments or the entire sandbox if the evidence indicates that unacceptable harms are emerging.

¹²⁵ See *supra* n.55.

¹²⁶ SOLICITORS REGULATION AUTHORITY, *Enabling innovation: Consultation on a new approach to waivers and developing the SRA Innovation Space* (Apr. 12, 2018), <https://www.sra.org.uk/sra/consultations/enabling-innovation.page> (last visited Aug. 13, 2019).

¹²⁷ The selective loosening or non-enforcement of different rules is less applicable in our proposed sandbox because, as noted, we have a good idea of what rules need to be revised or removed (unauthorized practice of law, corporate practice, and fee sharing rules). What we are less certain of is what risks might come to bear as a result of the loosening or non-enforcement of those rules (see point 2).

4. **New sources of data on what regulation works best.** The sandbox can be a new source of data-driven, evidence-backed policy-making. Because sandbox participants gather and share data about their offerings' performance (at least with the regulators, if not more publicly), the sandbox can help develop standards and metrics around data-driven regulation. It can incentivize more companies to evaluate their offerings through rigorous understanding of benefits and harms to the public, and it can help regulators develop protocols to conduct this kind of data-driven evaluation.

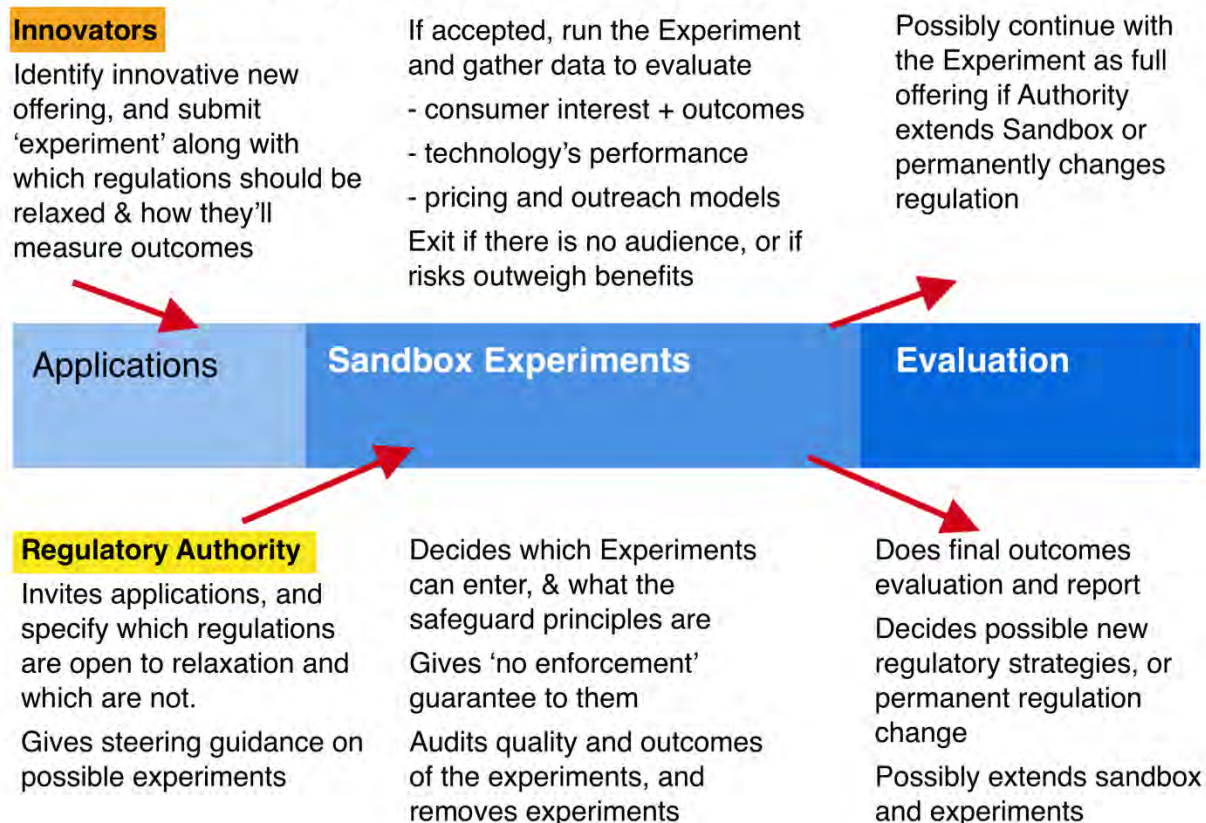
Points 2 and 4 will be key for our regulatory sandbox: identifying and assessing risk and developing data to inform the regulatory approach.

How Does A Regulatory Sandbox Work?

A regulator can create a sandbox to incentivize greater innovation and to gather more data-driven evidence on how offerings and regulations perform in regard to benefits or harms to the public. The essential steps of a regulatory sandbox are as follows:

1. **The regulator issues a call for applications.** This call defines the essential rules of the sandbox: which regulations are open to being relaxed or removed and which cannot be. It also can specify what kinds of innovations will be accepted into the sandbox, the types of data and evaluation metrics that must be prepared, the non-enforcement letters or other certifications that successful applicants will receive, and other safeguards or criteria for possible applicants. Typically, this call is for a "class" of applicants that are all accepted at the same time and run in parallel (though it could be a rolling application instead).
2. **Companies submit applications.** Any type of organization can propose a new offering to be included in a sandbox class. Applicants must detail exactly what the new offering is (e.g., what the technology is, what it intends to accomplish, and how it functions); how they expect it to benefit the public; what risks or harms they expect might arise; how they will deploy and measure this offering; and which rules or regulations need to be relaxed in order for this offering to be allowed.

A Regulatory Sandbox Model



3. **Start of the sandbox.** The regulator reviews the applications and accepts those that have demonstrated an innovative new offering, a strong assessment plan, and a strong potential for public benefit. The regulator invites these approved participants to enter the sandbox and establishes how the data-sharing, auditing, and evaluation will proceed. If the participants agree to these arrangements, they receive a letter of non-enforcement from the regulator that gives them permission to develop and launch the agreed-upon offering, within the confines of the sandbox, without being subject to the identified regulations.
4. **Sandbox runs and rolling evaluation begins.** A typical sandbox period could be six months to two years. The participant companies work on developing their offerings, putting them on the market, and collecting data on their performance. When applicants bring a new offering to the public, they must conspicuously disclose that it is part of the sandbox and refer consumers to the regulator where they can learn more about the offering and give feedback or complaints. The regulator observes the performance of the offering to see if the public uses it, if the intended benefits result, if any of

the expected or unexpected harms result, and what complaints consumers have. The regulator can suspend or cancel the non-enforcement letter at any time if the company is not performing according to the agreement, if its offering does not engage an audience, or if the offering results in harms above what the regulator has deemed acceptable.

5. **Sandbox ends and company and regulator (potentially) continue on.** Once the designated period of the sandbox finishes, the company can continue with its approved offering if it so wishes, with the non-enforcement authorization still intact. The regulator can take stock of the participants, offerings, and data, and it can use this information to shape another round of applications—perhaps changing the terms of the safeguards; the protocols for evaluation of risks, harms, and benefits; or what types of innovation it solicits. The regulator might also use the data from the completed experiments to permanently relax or change the regulations for the entire market. In this way, the sandbox can be a way to experiment with and validate different regulations. The regulator may also formalize the protocols it uses to measure harm and benefit, moving those protocols from the sandbox experiments to all company offerings in the market.

A sandbox cycle ideally will result in a class of consumer-centered innovations that demonstrate how new kinds of technologies and services can offer value to the public. It can inform regulators about what rules and protocols work best to evaluate both sandbox innovations as well as existing offerings in the market. It can also incentivize more companies to enter the market with offerings that can both serve consumers and secure investment for the company. It may also make clear which types of technologies may be harmful to the public, how better to predict and assess what kinds of harms and benefits a given potential offering may result in, and what the public does and does not want.

A Regulatory Sandbox for Legal Services

As of mid-2019, there has not been a regulatory sandbox for legal services. But there have been calls, including in the UK and in Australia, for legal regulators to create sandboxes similar to those used in financial services, to test regulatory reform for innovation and new business structures that promote broader access to justice.¹²⁸

Our team held a workshop in April 2019 to explore the prospect of a legal regulatory sandbox in the U.S. Our goal was to understand whether there might be an appetite from law firms, legal technology companies, legal aid groups, foundations, and other organizations that might be entrants into a legal services regulatory sandbox. If a state was to issue a call for

¹²⁸ Neil Rose, *Law Society calls for “innovation sandbox”*, LEGAL FUTURES (Aug. 22, 2016), <https://www.legalfutures.co.uk/latest-news/law-society-calls-innovation-sandbox> (last visited Aug. 13, 2019).

Narrowing the Access-to-Justice Gap by Reimagining Regulation

sandbox applications and the possibility to relax legal professional rules, would there be interest from groups to enter this sandbox, with an innovative offering to test?

We held the workshop as an invite-only follow-up to the Stanford Future Law conference, which is a pre-eminent gathering of those interested in legal innovation. The conference organizers helped us reach out to many attendees who might be possible sandbox entrants, including leading legal technology companies, law firms with innovation groups, venture capital groups that are interested in the legal market, other large financial and professional services companies, legal aid groups, justice technology non-profits, and foundations interested in access to justice. We then supplemented this recruitment with invites to attorneys, entrepreneurs, and funders who might be interested in new models of legal services.

The workshop was a two-hour, hands-on event. We had approximately 30 participants, which we assembled into small teams to work on exploring what ideas participants had for innovation, what current rules and regulations they might ask to have relaxed, and what concrete innovation offerings they might be interested in submitting to a sandbox. This workshop design was meant to have participants:

1. Reflect on whether a sandbox was needed,
2. Identify what kinds of innovation potential it might unlock, and
3. Validate if they would participate in a sandbox if it were to launch, and under what conditions.

Our team documented the work, discussions, and debrief of the sandbox workshop.

Positive response to sandbox and new regulatory approach. The participants were overwhelmingly positive towards the prospect of a sandbox—confirming that controlled tests were needed to encourage innovation in legal services, allow more capital investment in new technology and service models that currently would face regulatory uncertainty, and drive more benefit to the public regarding access to justice. They welcomed a risk-based, empirical approach to regulation of the legal services market. It was not difficult for them to understand the concept, and the financial services sandbox models made it easy to see how analogous models could work in law.

Willingness to enter the sandbox with near-term or long-term innovations. Many of the participants, including start-ups, alternative service providers, and consumer/legal technology companies, said that they would seriously consider entering the sandbox if it was to launch. There were near-term innovation experiments that participants would be ready to apply for within the next year. This could include projects such as chatbots that provide help and referrals to the public or a new technology-based proof-of-service offering to record digital

forms of service. There were also more long-term innovations that would only be ready for application to the sandbox once given more time and investment. Those included automated dispute resolution tools to create contract-based or court-order judgments and community-based arbitrators to resolve disputes with staffing models that include more non-lawyers and judges.

Some of the particular points raised by participants that indicate some of the conditions, safeguards, and concerns that a legal services sandbox may need to address include the following:

1. **Expanding the sandbox from legal professional rules to other rules.** Many people mentioned the possibility for a sandbox to not just suspend professional rules of conduct, but also to possibly change court rules and civil procedure rules in order to allow new services to flourish.
2. **Absolute importance of post-sandbox approval.** The participants all agreed that a crucial condition of the sandbox is that participants could continue with their offering, provided risks of harm were demonstrably within appropriate levels, after the sandbox class formally concluded. They would not invest in a new innovation if they were given a non-enforcement guarantee that would expire at the end of the sandbox. They were fine with the possibility that the guarantee might be rescinded if their offering did not perform as intended or if it harmed the public.
3. **Concern over access to evaluation data.** Participants were very concerned about who would be able to access the data that they would gather and share with the regulator about the performance and effects of their innovative offerings. Many asserted that the data should not, by default, be “public data” or subject to total transparency. They said that the prospect of having their data about acquisition cost, pricing, staffing, sales, profit and other performance analytics being shared with others would deter them from entering the sandbox. This is closely-guarded competitive information, and even sharing it with a regulator would be considered a possible threat to business strategies. They would be more comfortable sharing outcome data—such as data about number of users and outcomes of users—particularly if other competitors must share these data with the regulator as well.
4. **Concern over failed testing at the sandbox stage.** One concern of possible sandbox entrants was that a failed offering may receive more public scrutiny if it occurs as part of the sandbox than if the company stayed in the regular marketplace and had the same product failure. They expressed concern that the data about this failure would be publicly available and the story of that failure might turn out to be a liability for the company. They could instead

develop the offering in the current regulatory scheme, not expose the innovation explicitly to the regulator, and then choose how much attention to draw to their offering.

5. **More states involved, more entrants.** Several participants mentioned that they would be more likely to devote resources to entering the sandbox if there were multiple states involved in it. This multistate involvement could be explicit in the form of states as members of the sandbox, or states could be “watchers” of the sandbox with potential to also extend non-enforcement guarantees or open their markets to successful sandbox experiments. Such involvement would encourage more entrants, particularly if states with larger legal markets were to be involved. That said, participants agreed that being vetted and legitimated by a regulator in one state would be worthwhile, in the expectation that it could positively influence their relationship with other states’ regulators.

A focus on access. A final cluster of points that emerged from the workshop and subsequent conversations with interested parties was about the need to prioritize access to justice and equity in the sandbox design. Many reflected, after the workshop, that the sandbox most likely will lead to innovations, especially initially, that serve the middle and upper classes, who can afford unbundled legal service offerings. They questioned whether the sandbox could be designed to incentivize benefits to extend to people with less money to spend on services. Some specific ideas included:

1. **Obligation to distribute innovations to low-income communities.** As more offerings succeed in the sandbox, there might be obligations for the companies to give free licenses, software, or other access to people who cannot afford them.
2. **Matchmaking between technologists, legal aid, and social service groups.** Could a regulator, or associated group, help encourage more access-oriented entrants by bringing together experts with new technologies and business models with professionals who work closely with low-income communities? In this way, the regulator could help legal aid lawyers and social service providers better understand how they might harness emerging technologies and do “innovation” (when most of them do not have the resources to do this on their own). The regulator might also offer incentives and training to possible entrants who are focused on low-income consumers.
3. **Particular encouragements in the application call.** Participants also recommended that the regulator might specifically call for access-oriented innovations when it announces the sandbox. The regulator could identify promising uses of data, AI, staffing, and business models that the literature and experts have already identified for promoting access to justice.

JUDICIAL COUNCIL MEETING**Minutes****April 27, 2020****Meeting conducted through Webex****9:00 a.m. – 2:30 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
 Hon. Paul Farr
 Justice Deno Himonas
 Hon. Mark May
 Hon. Kara Pettit
 Hon. Derek Pullan
 Hon. Brook Sessions
 Hon. Todd Shaughnessy
 Hon. John Walton
 Rob Rice, esq.

Excused:**AOC Staff:**

Hon. Mary T. Noonan
 Cathy Dupont
 Michael Drechsel
 Heidi Anderson
 Shane Bahr
 Kim Free
 Amanda Herman
 Alisha Johnson
 Brent Johnson
 Tom Langhorne
 Larissa Lee
 Meredith Mannebach
 Chris Palmer
 Jim Peters
 Neira Siaperas
 Libby Wadley
 Keisa Williams
 Jeni Wood

Guests:

Jacqueline Carlton, Office of Legislative Research
 Hon. David Hamilton, Second District Court
 Michael Harmond, Supreme Court
 Commissioner Curtis M. Jensen, JPEC
 Ken Matthews, CCJJ
 Hon. Brendan McCullagh, West Valley Justice Court
 Hon. David Mortensen, Court of Appeals
 Hon. Rick Romney, Provo Justice Court
 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. Due to the recent coronavirus pandemic, the Council held their meeting entirely through Webex.

Motion: Judge Kate Appleby moved to approve the March 13, 2020 Council minutes, as amended to correct Justice Howe's name and to correct Judge Pullan's statement that he was concerned about jury trials compromising efforts to address a public health crisis. Justice Deno Himonas seconded the motion, and it passed unanimously.

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

Chief Justice Durrant and Judge Noonan met through Webex with President Stuart Adams and Speaker Brad Wilson to ensure there is consistent and cooperative communication between the Judiciary and the Legislature.

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

Judge Mary T. Noonan thanked Cathy Dupont for her assistance in setting up the meeting with President Adams and Speaker Wilson.

Judge Noonan announced many court employees have family members who are helping with the coronavirus pandemic or who are suffering because of the pandemic. Mandy Acevedo, Judge Todd Shaughnessy's clerk, is in New York assisting with the pandemic. An article was published commending Ms. Acevedo's efforts - <https://www.nyl.com/nyc/staten-island/news/2020/04/24/utah-funeral-director-volunteers-at-staten-island-morgue-#>. Utah will move from code "red" to code "orange" in the coming weeks. Eighty percent of the Judiciary is telecommuting, with special thanks to Heidi Anderson and the IT Department for preparing and distributing more than 380 laptops in a week.

Judge Noonan anticipates proposed amendments to the current Administrative Order based on feedback from the Boards of Judges who are developing recommendations for expanding the types of hearings that could be held virtually and in-person. Ms. Anderson said their department is identifying methods to hold virtual evidentiary hearings and hold jury trials under the pandemic health requirements. One idea would separate jurors in another location in the building. Rob Rice said he participated in a virtual jury trial in Utah and the proceedings went smoothly, even with the presentation of evidence.

4. COMMITTEE REPORTS:

Management Committee Report:

The work of this committee is reflected in the minutes.

Ad Hoc Budget & Finance Committee Report:

Judge Mark May noted the work of the committee will be discussed later in the meeting.

Liaison Committee Report:

Judge Kara Pettit said Michael Drechsel has been in continued communication with legislators. Judge Pettit thanked Mr. Drechsel for his Legislative Summary and noted Mr. Drechsel is meeting with the Boards and other court entities for further legislative discussions. Mr. Drechsel said legislation from the recent special session did not directly impact the courts, other than House Joint Resolution 301 Urging Fiscal Responsibility, which directs state and local government entities to spend their budgets only for essential needs for the remainder of the 2020

budget year. The resolution also urged state entities to continue limited spending in the fiscal year beginning on July 1, 2020 and ending on June 30, 2021.

Policy and Planning Committee Report:

Judge Derek Pullan noted the committee did not meet in April.

Bar Commission Report:

Rob Rice said Heather Thuet was elected as Bar President-Elect. Mr. Rice reviewed other Bar elected officials.

5. FY20 REMAINING ONE-TIME BUDGET REQUESTS: (Judge Mark May and Karl Sweeney)

Chief Justice Durrant welcomed Karl Sweeney, Court Budget Director. Due to H.J.R. 301 Urging Fiscal Responsibility, several of the previously approved requests to spend this year's one time savings have been withdrawn by the requesters because they did not meet the "essential spending" threshold. Some of the approved one time spending was spent on items that had already been ordered and could not be canceled. Other requests have been placed on hold pending further discussion by the Judicial Council. At the March 13, 2020 Council meeting several budget items were approved (\$1,869,310).

Forecasted Available One-time Funds			
#	Description	Funding Type	Amount
1	Turnover Savings as of pay period ending 4/3/2020	Turnover Savings	3,239,332
2	Turnover Savings Estimate for the rest of fiscal year	Turnover Savings	744,000
3	From TCE / ADC budgets	Internal Savings	545,100
4	Probate Notice Amendments (HB 343, 2020 GS)	Legislative Action	20,500
5	Reserve Balance (from August Judicial Council meeting)	Reserve	150,000
6	Reduction in FY 2020 funds due to FY 2020 legislative session	Legislative Action	(165,000)
7	Potential Year End Career Ladder Expense	Potential Expense	(50,000)
8	Set-aside for use in FY 2021 (carryforward)	Carryforward	(2,500,000)
Total Forecasted Available One-time Funds			\$ 1,984,932
Judicial Council Prioritized / Adopted			\$ (1,869,310)
Actual Return to State Finance Including other Savings			\$ 115,622

# One-time Spending Plan		FY20 Requests	Judicial Council Approvals	Nonrefundable or Essential (E)
One-time Budget Requests/Current Status in Bold		Amount	Amount	Non-essential (NE)
1	Courtroom A/V Upgrades (IT) - work in process partially expended	350,000	350,000	350,000 E
2	Upgrade For the Record (FTR) Digital Recording Software (IT) - Already expended	257,600	257,600	257,600 E
17	Remote Accessories - Already expended	83,000	83,000	83,000 E
3	Learning Management System (Education) - PO ready to sign - awaiting final approval	164,100	164,100	164,100 F
4	Sell-Assessment Materials (Education) - Withdrawn (W/D) by Requester	2,000	2,000	N/A NE
5	Training Equipment (Education) (laptops & equipment to create virtual training)	4,600	4,600	4,600 E
6	Alternative Dispute Resolution Training (ADR Committee) - CLASS CANCELLED	13,200	13,200	N/A NE
7	Online Dispute Resolution Facilitation Training Manual (ADR) (See Footnote)	5,000	5,000	5,000 E
8	Jury Chairs for Brigham City (1st District) (See Footnote)	15,000	15,000	15,000 E
9	Jury Tables / Chairs for West Jordan (3rd District) (Order can be Cancelled w/o penalty)	66,700	66,700	NE
10	Carpet Replacement - Ogden Courthouse (2nd District) (Past cancellation date)	19,650	19,650	19,650 E
11	Public Viewing Agenda Monitor (Court of Appeals) (Order can be Cancelled w/o penalty)	4,000	4,000	- NE
12	Matheson Café Room and Conference Room A/B/C Furniture (Facilities) (Partial Cancel)	130,500	130,500	43,500 E/NE
13	Workforce Performance Bonuses (State Court Administrator) - W/D by Requester	500,000	500,000	N/A NE
14	Nat'l Assoc. Drug Court Prof. Annual Conference (Veteran's Court Team) - Converted to virtual conference @\$500 per attendee	3,960	3,960	- NE
16	Inventory of PCs (4/7/2020 deadline) (IT) - Already expended	250,000	250,000	250,000 E
18	NEW: See separate Request #18 document below. (IT)	279,000		279,000 E
Total One-time Spending Requests (before Contingent Requests)		2,148,310	1,869,310	1,671,450
Potential Return to State Finance				513,482
Contingent Requests				
13a	Employer Paid Benefits for Workforce Bonuses (6/26/2020 deadline) (SCA) Withdraw	160,200		N/A
15	Matheson Carpet Replacement (4/15/2020 deadline) (Facilities) - Move to \$2.5M Cfwd	400,000		N/A
Total with Contingent Requests		\$ 2,708,510	\$ 1,869,310	

Potential Savings from LMS (INFOR) – Tom Langhorne, Kim Free, Libby Wadley

The following potential savings have been identified as offsets sufficient to fully pay for the INFOR LMS purchase. Other LMS systems considered did NOT have the capability to provide both of these saving:

INFOR will provide fiscal year savings because it allows the Court to eliminate the current \$18,000 annual subscription to CERTAIN, a third-party event management system (“EMS”) software provider. INFOR is the only LMS solution among the vendors competing for the LMS contract that can completely replace the functionality that CERTAIN provides within the new LMS software. INFOR also allows the court to convert many in-person classes to webinar courses (simultaneously capturing all the enrollment and completion data and storing it within INFOR). INFOR allows us to create a virtual conference with all of the features we have today.

The average yearly in-person class expenditures for venue, travel, meals and lodging for the past three years was \$64,100. The Education Department expects to replace a large number of these in-person classes with INFOR’s on-line instructional capacities, an annual savings of \$50,000. Yearly INFOR subscription costs equal \$61,800 (2 years of subscription costs are paid with the initial purchase), thereby yielding an annual net savings of \$6,200.

Replace Budgeted IT Money Spent on COVID-19 Laptops and Other Related Purchases – Heidi Anderson

Amount requested \$279,000

There were originally several items anticipated to be purchased out of the approved FY2020 IT budget (4 PVUs for Websphere \$60,000; Tybera Upgrade \$30,000; Kendo UI Components \$24,000, Router Upgrades \$65,000; and Microsoft Software \$100,000). Due to the pandemic needs for additional laptops and other related purchases for remote working, these

purchases were delayed. These were originally intended to be purchased with funding out of the \$2.5M carry forward, but due to adjustments to the FY 2020 year-end spending approved requests, these are submitted as “essential” purchases to be made as originally intended in FY 2020.

Matheson Courthouse Carpet – Chris Talbot

The Matheson Courthouse carpet replacement (\$400,000 one-time funds) request was deferred until funding could be secured. Chris Talbot confirmed that the carpet order date for delivery prior to June 30 had moved up from April 15 to April 6 due to COVID-19 constraints. Due to reduced available funds, the Budget and Finance Committee recommended that the Matheson Courthouse carpet replacement request of \$400,000 be re-submitted as a request for use of the \$2.5M carry forward spend.

Chief Justice Durrant thanked Judge May and Mr. Sweeney.

Motion: Judge Mark May moved to 1) Courtroom A/V Upgrades \$350,000; 2) Upgrade For the Record Digital Recording Software \$257,600; 3) Remote Accessories \$83,000; 4) LMS \$163,100; 5) Training Equipment \$4,600; 6) ODR Facilitation Training Manual \$5,000; 7) Jury chairs for Brigham City \$15,000; 8) Ogden Carpet Replacement \$19,650; 9) Matheson Café Room and Conference Rooms A, B, and C \$43,500; 10) Inventory of PCs \$250,000; and 11) Replace Budgeted IT Money Spent on COVID-19 Laptops and Other Related Purchases \$279,000 for a total of \$1,471,450. Judge Paul Farr seconded the motion, and it passed unanimously.

6. JUDICIAL PERFORMANCE EVALUATION COMMISSION REPORT: (Dr. Jennifer Yim and Commissioner Curtis M. Jensen)

Chief Justice Durrant welcomed Dr. Jennifer Yim and Commissioner Curtis M. Jensen. Dr. Yim introduced Commissioner Jensen, who was appointed by the House of Representative to JPEC in 2017. Commissioner Jensen commended Dr. Yim and other members of JPEC for their continued professionalism and dedication to the Judiciary.

Dr. Yim felt the Judiciary has made amazing strides in moving into a virtual world within such a limited timeframe. JPEC exceeded the statutory requirements for the fall elections. They have been conducting mid-term evaluations for judges who stand for reelection in 2022.

JPEC is now identifying ways to hold evaluations alternatively from the normal in-person observations.

In 2018, JPEC unanimously recommended 100% retention of judges. Dr. Yim notified the Council that of the approximately 70 judges scheduled for retention elections in 2020:

- 94% received unanimous recommendations by JPEC for retention,
- 3% received mixed retained votes with a favorable recommendation from JPEC for retention (split votes with at least 1% voting against retention)
- 3% received either a no recommendation, a tie vote, or a recommendation against the retention of the judge.

Since its inception, JPEC reviewed more than 300 judges, of which:

- 92% received unanimous recommendations by JPEC for retention,
- 5% received mixed retained votes with a favorable recommendation from JPEC for retention (split votes with at least 1% voting against retention)
- 3% received either a no recommendation, a tie vote, or a recommendation against the retention of the judge.

Additional information will be available in July, after judges have decided whether to run for reelection. Judges have been informed of, and were invited to discuss, this information with JPEC. JPEC noted that there has been dramatic improvements in the performance of judges who received any notes of concern in mid-term evaluations.

Chief Justice Durrant thanked Dr. Yim and Commissioner Jensen.

7. BOARD OF JUSTICE COURT JUDGES REPORT: (Judge Rick Romney and Jim Peters)

Chief Justice Durrant welcomed Judge Rick Romney and Jim Peters. The justice court judges are now fully staffed. Judge Romney thanked Amy Hernandez for her assistance with the hiring process of justice court judges. There is great communication between judges and the AOC. The Board developed proposals for salary adjustments for judges and clerks. A survey was distributed where 55 out of 81 justice court judges responded. The survey addressed issues such as temporary practices due to the pandemic and continuing district-wide meetings. Judge Romney felt some judges were concerned that they were confined to only mission-critical hearings. Jim Peters noted there are attorneys who were concerned as well. Judge Romney said judges will continue some of their current practices during the pandemic after the pandemic ends.

Judge Romney thanked the Council for the creation of the Administrative Order. Chief Justice Durrant thanked Judge Romney and Mr. Peters.

8. PROPOSED AMENDMENTS TO CJA RULES 3-101, 3-403(3)(A) AND (4)(B)(I) AND 9-103: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. As a result of complications resulting from the pandemic, the Board of Justice Court Judges requested amendments to some rules as described below.

Educational Requirements:

Because the clerks' conference scheduled to be held last month and the justice court judges' conference scheduled to be held this month have both been cancelled, the Board of Justice Court Judges would request that these requirements be suspended for the year ended June 30, 2020. In addition, the Board would request that Rule 3-101(3) be suspended, if necessary, to keep judges in good standing for upcoming retention elections. And finally, the Board would request that Rule 9-103 be suspended so that the Justice Court Administrator need not report judges to the Judicial Conduct Commission for not complying with the educational requirements described below.

Rule 3-403 of the Code of Judicial Administration addresses judicial branch education. Section (3)(A) requires that “[a]ll judges, court commissioners, active senior judges, and active senior justice court judges ... complete 30 hours of pre-approved education annually.” Justice court judges and active senior justice court judges are specifically required by Section (3)(B) to attend the annual justice court conference unless excused by the Management Committee for good cause. Section (4)(B)(i) requires that all court staff employed by the justice courts complete 10 hours of approved coursework annually.

Elections

Rules 9-101(2) and 9-109(1)(A)(i) of the Code of Judicial Administration govern the elections for Judicial Council, Board and District positions held by justice court judges. Each of these rules requires that elections take place at the annual conference held each spring. Since that conference was cancelled, the Board would propose that these elections take place at the Annual Judicial Conference in September instead. The Board would also ask that those not able to attend the conference be allowed to vote in abstentia. If that conference is at risk of being cancelled as well, the alternative would be to handle elections electronically for everyone – either this month or in September. Either way, these rules need to be amended. If the Management Committee agrees, language will be proposed at next month’s meeting for its consideration. If these provisions need to be suspended in the meantime, the Board would make that request as well.

Requesting Funds from the Justice Court Technology, Security and Training Account

Rule 9-107(5) of the Code of Judicial Administration requires that applications for funding from the Justice Court Technology, Security and Training Account be received by April 15. The Board would request that, for this year only, the deadline be extended to May 15.

The Management Committee approved the suspension of Rule 3-403(3)(B) to excuse justice court judges from attending the justice court conference; to suspend the operation of 9-101(2) and 9-109(1)(A)(i) and forward to Policy and Planning to amend the rule to allow elections to take place at the fall conference and allow elections through electronic means; approved extending the deadline found in Rule 9-107(5) from April 15 to May 15 for this fiscal year; and requested the Judicial Council make a determination on rules 3-101, 3-403(3)(A) and section (4)(B)(i), and 9-103. Tom Langhorne said the reporting period was changed last year to June 30 to comply with the fiscal year. Mr. Peters said many judges rely on conferences to obtain their education hours. There are some judges who have not fulfilled their required 30 education hours. The Education Department is providing free webinars to assist all members of the Judiciary. Mr. Langhorne approved training offered via Webex to be counted as education hours.

Mr. Rice said due to the Bar cancelling the Spring and Summer Conventions, it will be difficult for attorneys to comply with their education hours. Mr. Rice said if the education hour requirement is extended, it will be important to determine an end date of the extension. Mr. Peters said they are requesting an extension for this period only, if needed though, the rule can be extended further.

Chief Justice Durrant thanked Mr. Peters.

Motion: Judge Paul Farr moved to suspend rules 3-101(3), 3-403(3)(A) and section (4)(B)(i) but not section (5) as hours are still required to be reported, and 9-103 for this reporting year. Judge Augustus Chin seconded the motion, and it passed unanimously.

9. INTERLOCAL AGREEMENT BETWEEN SPRINGVILLE AND MAPLETON: (Jim Peters)

Chief Justice Durrant welcomed Jim Peters. Jim Peters informed the Council that Springville City Justice Court and Mapleton City Justice Court have determined that expanding Springville City Justice Courts territorial jurisdiction to include Mapleton City's boundaries would serve in the best interest of both cities. The decision was based on the following:

- The Springville Justice Court has facilities dedicated solely to the justice court, whereas, Mapleton's justice court shares the same space as its city council chambers.
- Judge Fenstermaker sits as the judge for both Mapleton and Springville. Judge Fenstermaker has expressed a desire to have the two courts combined to allow more flexibility to set hearings and manage both courts.
- Added flexibility for court scheduling will benefit Mapleton and Springville residents. Judge Fenstermaker regularly holds court in Springville on Tuesdays and Wednesdays and in Mapleton on Thursdays. By combining both courts, the court will have more flexibility to work with defendants' schedules.
- Expanding Springville's territorial jurisdiction will allow both cities to combine resources and save money. As part of the purposed territorial expansion, Judge Fenstermaker would still be compensated the same.

Springville requested that the Judicial Council Grant its application to expand the Springville Justice Court's territorial jurisdiction to include the boundaries of both Springville City and Mapleton City effective July 1, 2020.

Chief Justice Durrant thanked Mr. Peters.

Motion: Justice Himonas moved to expand the Springville Justice Court's territorial jurisdiction to include the boundaries of both Springville City and Mapleton City effective July 1, 2020. Judge Chin seconded the motion, and it passed unanimously.

10. UNIFORM FINE & BAIL COMMITTEE REPORT: (Judge David Hamilton, Shane Bahr, and Meredith Mannebach)

Chief Justice Durrant welcomed Judge David Hamilton, Shane Bahr, and Meredith Mannebach. The Uniform Fine & Bail Committee approved recommended adjustments to the Fine Schedule based on legislative changes, Wildlife Resources requests, State Parks requests, other requests, and certain changes to SMOT.

The committee may seek an amendment to the committee title to remove the word "bail" because of case law in other states around the ability to pay, what has been used as a uniform

fine and bail schedule is moving towards a uniform fine schedule. Bail will likely be taken out on the uniform schedule equation. It is anticipated that the committee will meet twice a year rather than once a year as has been historically done.

Chief Justice Durrant thanked Judge Hamilton, Mr. Bahr, and Ms. Mannebach.

11. DISTRICT/JUSTICE COURT IT PRIORITY PROCESS: (Shane Bahr and Meredith Mannebach)

Chief Justice Durrant welcomed Shane Bahr and Meredith Mannebach. There are approximately 12 technology programs in the district and justice courts. Historically, a process has not been established for employees to recommend changes to court technology programs, such as CORIS, e-warrants, etc. If created, an application committee assigned to a specific program, such as CARE, would receive recommended changes and identify a priority list to forward to the Technology Standing Committee. Ms. Anderson noted the Technology Committee will meet quarterly. Mr. Bahr said he would prepare a more streamlined description of the proposal for a future Judicial Council meeting.

Judge Noonan noted conceptually the district and justice courts are moving in the right direction, but will need further explanations of their process. Judge Noonan recommended holding this discussion in approximately 90 days to allow the standing committee to clarify the process.

Chief Justice Durrant thanked Mr. Bahr and Ms. Mannebach.

12. UNIFORM FINE & BAIL COMMITTEE SCHEDULE: (Judge David Hamilton, Shane Bahr, and Meredith Mannebach)

Chief Justice Durrant welcomed Judge David Hamilton, Shane Bahr, and Meredith Mannebach. The committee considered reports from Michael Drechsel on legislative changes, specifically H.B. 206 and H.B. 485. The committee determined to table the issues related to H.B. 206 until their May 5th meeting; specifically, the issues of fine payments on previously designated mandatory appearance charges and application of pretrial release practices. H.B. 206 has an effective date of October 1, 2020 thus providing some time to consider the specific issues in greater detail. Consideration of H.B. 485 required the committee to act now due to its effective date of July 1, 2020. This bill mandates that a security surcharge of \$10 be added to sentences. Judges retain discretion on fines but the surcharge impacts the ultimate distribution of fine related money. It was clear that in order to stay "even", considering the surcharge and its destination, fines would need to be increased by a like sum.

The committee recommended that each fine be increased by \$10, with the exception of statutorily mandated fines. The committee will review the language in the Preamble at their May 5, 2020 meeting. Due to H.B. 206 there may be additional changes identified at a later date. Judge Derek Pullan was concerned about approving the change due to a potential constitutional problem. Judge Hamilton noted more details will be addressed in the Preamble. Judge Appleby recommended approving the Preamble as soon as possible or alternatively approving both the schedule and the Preamble together. Judge Hamilton is concerned about the timing for when the Preamble will be complete. Judge Shaughnessy thought perhaps an executive session should be held to discuss potential litigation.

Chief Justice Durrant recommended tabling this item for an executive session discussion with Brent Johnson. This item was addressed during the executive session.

Chief Justice Durrant thanked Judge Hamilton, Mr. Bahr, and Ms. Mannebach.

13. ODR GRANT: (Justice Deno Himonas)

Justice Himonas sought approval for a new SJI grant for \$185,000 for the ODR code to be shared with other states and for the PEW matching funds. The grant would enable the court to pay for a full code review, documentation enhancement, and compliance with intellectual property and governance requirements. The grants would also allow the court to develop an RFI to identify other states with interest in implementing Utah's code for ODR. Utah Courts will collaborate with the National Center for State Courts to complete the work, which is estimated to take 3-6 months. This project falls within the State Justice Institute's Priority Investment Areas – Self-Represented Litigation. PEW Research will match the SJI grant funding for \$25,000. The courts are not expected to match the awarded funds with court money. The committee previously questioned who would pay the matching funds needed if the PEW Research funds are not approved. Justice Himonas noted PEW asked the courts to request the matching funds.

This project cannot generate revenue. The courts would be providing the system at no cost to other states; therefore the courts will not be receiving a profit and not competing with the private industry. There were concerns about legal issues and the current workload on the IT Department. Justice Himonas previously noted any state seeking to use this program would cover all costs, including hiring outside IT personnel to provide service.

The grants would be used for legal fees for intellectual property regulations, a penetration test to detect external hacking vulnerabilities (pin test), and code review. Ms. Anderson would use the IT Department's security assessment employee to assist with the pin-test but the time required should be minimal. Judge Appleby questioned whether the proposal should be reworded to better clarify the terms. Justice Himonas didn't believe it needed to be reworded. Judge Kara Pettit was concerned that IT should be focused on mission-critical issues rather than facilitating other state's use of our ODR code Justice Himonas believes this project is mission-critical and will benefit the state because other states will be required to share their enhancements to the code with Utah. Ms. Anderson would be required to track the hours relevant to her team for SJI and PEW. Ms. Anderson identified the grant deliverables for the court as helping to facilitate the pin test and developing the licensing agreement completed through a law firm. Other work will be done by the National Center for State Courts. .

Chief Justice Durrant recognized this program was heavily vetted and appreciated the Council's investment in understanding the program. Chief Justice Durrant thanked Justice Himonas.

Motion: Judge Farr moved to approve the SJI and Pew grants as presented. Judge Brook Sessions seconded the motion, and it passed with Judge Pettit opposed.

14. REGULATORY REFORM GRANT: (Justice Deno Himonas, Larissa Lee, and Michael Harmond)

Chief Justice Durrant welcomed Larissa Lee and Michael Harmond. The Utah Courts submitted a new regulatory reform grant to the State Justice Institute. The grant would help support the work of The Legal Services Oversight Office and Regulatory Sandbox which will approve pilot programs that will ease certain restrictions on the practice of law in a safe and controlled environment to allow legal service providers to experiment with new, innovative, and cost-effective legal services. The grant would provide the Court with approximately \$100,000 in in-kind staff assistance from the National Center for State Courts and the Institute for the Advancement of the American Legal System. The grant would pay for a project manager. The grant also requires some in-kind donation from the Court which may include time or equipment donated by the court, but does not include a cash contribution. Larissa Lee will devote approximately \$25,000 of her salary time to this project, but this contribution is not separately quantified in the grant application.

Cash match

FY21 \$107,214 (Grant) + \$100,000 (NCSC) = \$207,214 (in-kind match would include staff time)

FY22 \$92,786 (Grant)

The Board of Appellate Court Judges was concerned the in-kind contribution from Ms. Lee would interfere with her ability to carry out her Appellate Court Administrator duties. Ms. Lee noted the grant would provide funding to hire a project manager at the National Center for State Courts. Justice Himonas said the work of the courts and Ms. Lee have already met in kind requirements. Rob Jepsen, Access to Justice Commission Coordinator, will provide a significant amount of assistance. Ms. Lee noted the Board of Appellate Court Judges approved the grant. Justice Himonas I said a decision to charge fees during the pilot program depends on the decision of the Supreme Court, which reserved the right to charge fees. Justice Himonas noted the Bar would be notified if fees will be required. Mr. Rice questioned how much of the cost should be viewed as the cost of running the operation. Ms. Lee noted a vast majority of the grant will be spent on salary for a project manager and a small portion towards IT needs. Judge Shaughnessy asked if independent contracts are terminated, are the courts agreeing to fund this moving forward. Justice Himonas said they will not request funding from the Council at all. If funding runs low, they will seek additional grant funds. Justice Himonas said the independent contracts can be terminated at any time for any reason.

Mr. Rice spoke with Herm Olsen who expressed concern about the Bar's responsibility for supporting the regulatory reform program. Mr. Olsen was unsure about continued revenue due to the state of the economy. Chief Justice Durrant thanked Justice Himonas, Ms. Lee, and Mr. Harmond for a great job on this project.

Motion: Judge Pettit moved to approve the Regulatory Reform Grant, as presented. Judge Chin seconded the motion, and it passed unanimously.

15. BOARD OF APPELLATE COURT JUDGES REPORT: (Judge David Mortensen and Larissa Lee)

Chief Justice Durrant welcomed Judge David Mortensen and Larissa Lee. Judge Mortensen updated the Council on the following.

- Judge Mortensen praised Larissa Lee for her extraordinary work in the appellate courts.
- The estimated cost of e-filing would equal 8,600 hours at \$90 per hour for a total of \$774,000. The Utah appellate courts are the only appellate courts in the nation that do not allow e-filing.
- There may be requests in the future for the cost of e-filing.
- A large difference was noted from Court Services data showing the number of days a case is in the appellate courts, because Court Services began the timeline based on when a notice of appeal was filed. However, the appellate courts tracked cases from when an appeal was filed.
- Creating appellate records causes a considerable amount of work within the districts and juvenile courts. E-filing would allow for a single button to be used to create an entire appellate record.
- The appellate courts are holding 100% of their hearings virtually.
- The appellate roster includes 36 attorneys on the criminal roster, 11 attorneys on the child-welfare roster, and 3 attorneys on the termination of parental rights roster. The roster was created to ensure attorneys were acceptable to assist with indigent defense. The Indigent Defense Commission played a large role with this roster.

Chief Justice Durrant thanked Judge Mortensen and Ms. Lee.

16. RACIAL & ETHICS TASK FORCE RECOMMENDATIONS: (Judge Derek Pullan)

Judge Derek Pullan reviewed the Racial and Ethnic Fairness: Report on the State of the Criminal and Juvenile Justice Report and the Utah Commission on Racial and Ethnic Fairness in the Criminal and Juvenile Justice System (March 2004) Report. The Task Force Commission met 20 years ago and identified several areas of interest: recruiting and hiring, training, interpretation, community resources, complaint processes within police agencies and the Judiciary, and data and research. The commission disbanded in 2005. Judge Pullan requested this be a Council priority. Judge Pullan recommended having someone in the AOC review the data to evaluate the Judiciary's progress towards racial and ethnic fairness. Judge Chin suggested speaking with those that were involved in the commission, such as Dr. Jennifer Yim or Justice Michael Zimmerman. Chief Justice Durrant would like to invite those involved in the previous commissions for a discussion at the next Council meeting in an effort to reduce duplicating the work that has been done. Mr. Rice recommended contacting the Utah Center for Legal Inclusion, whose objective is to ensure law schools, attorneys, and members of the bench are diverse. Judge Shaughnessy recommended receiving data to see if the efforts from 20 years ago have shown improvement. Judge Noonan agreed that this would be an important step and that Court Services may be able to assist with this. Judge Noonan volunteered to work with Court Services to obtain updated data.

Chief Justice Durrant thanked Judge Pullan.

17. COVID-19 UPDATE: (Judge Mary T. Noonan and Chris Palmer)

Chief Justice Durrant welcomed Chris Palmer. Judge Noonan said the COVID-19 Response Team (team) up until last week met daily in the morning and focused on technology and the health and safety of court employees. The team now meets three times a week. Additionally, the TCEs, Clerks of Court, AOC Directors changed their daily afternoon meeting to twice a week. The presiding judges have participated three times in these meetings.

The team created a COVID-19 website, created a leave guidance policy, trained managers and employees on new procedures, published a remote IT equipment user guide, created a guideline for careful hiring, created and are maintaining a telecommuting dash board, and created a judicial officer well-being website. The telecommute dashboard and tracker allow the courts to identify which of the more than 1,000 court employees are working in-court, working from home, or are on other leave. Nearly 80% of judicial employees are teleworking full-time. Twenty-two percent are teleworking part-time. Only 34 employees are on disaster leave. Bart Olsen is working on identifying the reason for the 34 employees being on disaster leave, 28 of which are judicial assistants. Mr. Olsen and Heidi Anderson have been instrumental in the creation and delivery of information and technology. The IT Department is refurbishing old laptops and has ordered a considerable amount of new laptops to assist those who are telecommuting.

Judge Noonan noted the courts are beginning to address the remainder of this fiscal year budget and the FY21 budget in accordance with the recent House Joint Resolution that passed in the special session which instructed state entities to reduce costs to only what is essential. Judge Noonan suggested the following guiding principles for the budget analysis:

Principles:

- Avoid reduction of services to patrons
- If budget reductions are needed, consider administrative reductions first
- Maintain the courts commitment to the items prioritized by the Council last August and funded by the legislature for FY 21
- Evaluate current programs and services to ensure they have beneficial outcomes
- Consider revenue sources such as increases in certain fees and fines to offset budget reductions
- Provide clear and timely communication about the budget to judicial employees, judges, boards, and the Judicial Council and Management Committee.

There was concern that increasing fees might create an access to justice issue and fines are typically difficult to collect. Judge Noonan said this would be a last resort and that the principles would be published to the public. Chief Justice Durrant thanked Judge Noonan and Mr. Palmer.

Motion: Judge Shaughnessy moved to adopt the principles presented by Judge Noonan. Judge Appleby seconded the motion, and it passed unanimously.

18. RULES 1-204, 1-205, 3-111, 3-406, 4-403, 4-503, 4-905, 10-1-202, AND APPENDIX F FOR FINAL APPROVAL: (Keisa Williams)

Chief Justice Durrant welcomed Keisa Williams. The Judicial Council approved the following rules for public comment on November 25, 2019. One comment was received during the 45-day comment period. Policy and Planning reviewed the comment and made no amendments to the published draft. Policy and Planning Committee recommends the following rules to the Judicial Council for final approval with an effective date of May 1, 2020.

CJA 1-204 – Executive Committees

CJA 3-406 – Budget and Fiscal Management. At its October 28, 2019 meeting, the Judicial Council formalized a new executive committee, the Budget and Fiscal Management Committee. The Council asked Policy and Planning to review associated rules and outline the new Committee's duties. Proposed amendments to Rule 1-204 add the Budget and Fiscal Management Committee to the executive committee list, and define the committee's duties. The amendments to the State Court Administrator's responsibilities in Rule 3-406 reflect the Council's policy change regarding its budget process. The State Court Administrator will now make recommendations to the Budget and Fiscal Management Committee, rather than orders and notice to the Council, when implementing the Council's fiscal priorities and allocation of funds, and when changes to those allocations are needed.

CJA 1-205 – Standing and Ad Hoc Committees. The Online Court Assistance Program Committee no longer exists. The membership lists for the Committee on Resources for Self-Represented Parties and the Committee on Court Forms include "one member of the Online Court Assistance Committee." Because the OCAP Committee no longer exists, each membership list has been revised to remove those members, however, each committee has at least one remaining member with OCAP expertise. Both committees approved the change. The Uniform Fine and Bail Schedule Committee requested that their membership be amended by removing the juvenile court judge and adding a justice court judge. That change would ensure the both district and justice court judges are equally represented.

CJA 3-111 – Performance Evaluation of Active Senior Judges and Court Commissioners. As part of its review of new forms for reporting cases under advisement, the Standing Committee on Court Forms noticed different standards in the rules for active judges versus senior judges and commissioners. One rule (3-101) said judges must report cases over two months, while the other rule (3-111) said senior judges and commissioners must report cases over 60 days. The statute (78A-2-223) sets a standard of two months for trial judges. To allow all judicial officers to be able to use the same form, the language in Rule 3-111 has been changed from "60 days" to "two months."

CJA 4-905 – Restraint of Minors in Juvenile Court. The proposed amendment is to eliminate the subsection of the referenced statute to avoid outdated citations in the future.

CJA 10-1-202 – Verifying Use of Jury. The Second District Court requested that local supplemental rule CJA 10-1-202 be repealed because it is no longer needed. The Second District is now following practices set forth in general rules observed by all other judicial districts.

CJA Appendix F – Utah State Court Records Retention Schedule. The first amendment eliminates the requirement that the enhancement forms previously required under Rule 9-301 be retained permanently. Because Rule 9-301 was repealed, those records should now be destroyed at the same time as the file to which the record pertains. Eliminating the specific reference in the schedule will default to that result. The second amendment changes the retention for domestic violence cases to ten years to reflect the change in statute that makes those offenses enhanceable for ten years.

Chief Justice Durrant thanked Ms. Williams.

Motion: Judge Shaughnessy moved to approve amendments to rules 1-204, 3-406, 1-205, 3-111, 4-905, 10-1-202, and Appendix F with an effective date of May 1, 2020. Judge Pettit seconded the motion, and it passed unanimously.

19. BOARD OF JUVENILE COURT JUDGES RECOMMENDED CHANGES TO MARCH 21, 2020 ADMINISTRATIVE ORDER: (Neira Siaperas)

Chief Justice Durrant welcomed Neira Siaperas. This item was approved by the Management Committee meeting and unanimously approved by the Supreme Court.

Chief Justice Durrant thanked Ms. Siaperas.

20. OLD BUSINESS/NEW BUSINESS

The Management Committee approved using the technology platform in ODR and MyCase to facilitate the electronic filing of protective orders in the district court. This technology platform provides a more secure email system for the victims of domestic violence when they submit the requests for protective orders in the district court. Domestic Violence Advocacy Groups are concerned that an assailant if tech savvy would be able to intercept an emailed protective order from the victim to the court.

Prior to COVID-19, individuals filing protective orders had two options.

1. If a lawyer is obtained the protective order could be e-filed through our efilng system.
2. If it is a pro-se litigant then they would walk into the courthouse and file in person.

Once the pandemic became prevalent, the courts opted to include a third option for filing protective orders.

3. Allow a pro-se litigant an option to file for a protective order through an email method.

Domestic violence advocacy groups were concerned about sending in protective order filings through email. The IT Department concluded that the concern was valid. An email sent into the courts from outside of the courts or the state of Utah's Google domain is not secure and can be retrieved, changed, eliminated or tracked by someone other than the sender or recipient.

The IT Department determined there were two potential options as shown below. Both options are viable and provide a long term value to the courts and could solve for the concern. The IT Department conducted a high level of cost/implementation effort with some input from

valued internal parties. Either of the options create approximately 100 hours of effort on the technology staff.

- Secure email option
 - This is a low-cost option and would provide value today and in the future for data that contains sensitive information. The State of Utah uses a similar process to transmit sensitive data.
 - Court staff would take minimal training.
 - Patron would send in a request to file securely.
 - Court staff would email back with encryption enabled.
 - Patron would get a link to a login page where documents could be uploaded.
 - Court staff would open case as they do today in CMS.
 - All communication between patron and court from that point is secure.
- Minimal changes to the ODR/MyCase Platform.
 - This is also a low cost option and would provide value today and in the future for securely filing protective orders.
 - Court staff would take minimal training.
 - Patron would send in request to file to court staff.
 - Court staff would set up shell case in MyCase and CMS.
 - MyCase would email patron link and code to set up account to file.
 - Patron can upload filing request and subsequent documents to system.
 - Court staff would attach to already created shell case and process as they do today in CMS.
 - Patron would be notified via MyCase when approved or denied.

Ms. Anderson said judges would not see a difference in filing with either option. Jessica Van Buren and Nathanael Player will assist with the pilot program. MyCase ties with CORIS and not CARE therefore child protective orders would not qualify. The IT Department is researching more information on this. Neira Siaperas believed most child protective orders are being filed in person. Judge Noonan said the courts are still accepting emailed protective order requests.

21. EXECUTIVE SESSION

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

22. CONSENT CALENDAR ITEMS

a) Committee Appointments. Appointment of Judge Kirk Morgan and John Larsen to the Education Committee and the reappointment of Judge Elizabeth Lindsey and Stuart Ralphs for an additional four years; Randy Dryer (Chair) and Guy Galli or an additional three years; and Judge James Taylor and Mary Westby for an additional two years to the Forms Committee. Approved without comment.

b) Forms Committee Forms. 10-day summons; Small claims complaint; Small claims summons and notice of trial; Small claims counter complaint and notice to plaintiff; Small claims judgment; Small claims notice of appeal; Request to join the Office of Recovery Services;

Revised Petition to modify custody; Revised Order on petition to modify custody Petition and stipulation to modify parent-time; Findings of fact and conclusions of law on petition to modify parent-time; and Order on petition to modify parent-time. Approved without comment.


c) Probation Policies 4.15, 5.4, and 5.5. Approved without comment.

d) Rules 3-402, 4-411, and 4-202.08 for Public Comment. Approved without comment.

23. ADJOURN

The meeting adjourned.

Tab 9

 <h2 style="text-align: center;">FY 2021 Carryforward and Ongoing Turnover Savings Requests</h2>					
Total Available Funds			\$ 3,812,300	\$ 44,296	
			Requested		Approved by Legislature
#	Budget Obligations	One Time	Ongoing	One Time	Ongoing
	HB002 Salary Increases (main line item only)		\$ 972,000	\$ -	\$ -
	HB002 Commissioner Recruitment and Retention		\$ 92,500	\$ -	\$ -
	HB002 Child Welfare Mediator		\$ 54,900	\$ -	\$ -
	HB002 Information Technology Enhancements	\$ 450,000	\$ 932,000	\$ -	\$ -
	HB206 Bail and Pretrial Release Amendments (in HB003)	\$ 63,000	\$ (13,000)	\$ -	\$ -
	HB288 Prosecutor Data Collection Amendments (in HB003)	\$ 2,400	\$ 33,000	\$ -	\$ -
	SB0173 Disorderly Conduct	\$ 41,300		\$ 41,300	
	HB 485 Amendments Related to Surcharge Fees (in HB003)	\$ 10,500		\$ 10,500	\$ -
	Subtotal			\$ 51,800	\$ -
			Approved by Jud. Council		
Ongoing Turnover Savings - Total Available as of 7/1/2020- Ongoing Turnover Saving Beginning Balance		n/a	\$ 44,296		
Ongoing Turnover Savings - through 8/31/2020			\$ (11,802)		
Total YTD Turnover Savings			\$ 32,494		
#	Ongoing Turnover Savings - FY 2021 Requests				
1	Part-time Child Welfare Mediator convert to ongoing from one-time funding	n/a	\$ 55,000		E
	Total Ongoing Turnover Savings Requested		\$ 55,000		
N/A	Ongoing Turnover Savings - Committed to 5.26% Budget Reduction for FY 2021	n/a	\$ 475,400		
	Subtotal of Ongoing Turnover Savings Requested/Committed	\$ -	\$ 585,400		
Balance Remaining from Ongoing Turnover Savings		\$ -	\$ (541,104)	\$ -	\$ -
Carryforward spending requests - Total Available \$3,200,000 + \$560,500 appropriation from Sixth Special Session		\$ 3,760,500			
2	PSA Calculation Cost for Incuding NCIC "Hits" (Legal)	\$ 198,014		\$ 198,014	E
3	ICJ Operations Funding (Dues/Training and travel/Extradition) (Neira Siaperas) (\$24,000 approved last year - 1x)	\$ 20,000		\$ 20,000	E
4	Divorce Ed for Children Video - Teen Website (carry forward of remaining grant balance) (Public Information)	\$ 18,000		\$ 18,000	E
5	Utah Code & Rules for judges (Law Library) (\$54,069 approved last year - 1x)	\$ -		\$ -	
6	Secondary language stipend (HR) (\$65,000 approved last year - 1x)	\$ 65,000		\$ 65,000	E
7	Matheson Courthouse carpet repairs (select replacement with carpet tiles) (Facilities)	\$ 20,000		\$ 20,000	E
8	Time-limited Law Clerks (2 FTEs) (Shane Bahr) (\$190,650 approved last year - 1x)	\$ 191,200		\$ 191,200	E
9	IT Unfunded Mandates (Researching funding through CCJJ)	\$ 288,900		\$ 288,900	E
16	Public Outreach Coordinator 1st Year Funding (salary, wages, IT equipment purchases, and other office expenses)	\$ 100,000		\$ 100,000	E
17	Child Welfare Mediator PT	\$ 55,000		\$ 55,000	E
18	IT Information Technology Infrastructure and Development	\$ 1,382,000		\$ 1,382,000	E
19	Reserve - For one-time items at discretion of Judicial Council	\$ 150,000		\$ 150,000	E
20	Additional Code and Rule Books for Appellate Courts	\$ 4,648		\$ 4,648	E
22	Court Services NCSC Weighted Caseload Study	\$ 17,000		\$ 17,000	E
23	COVID Outreach Ad Campaign	\$ 34,000		\$ 34,000	E
24	Computer, Printer, Replacement Inventory (IT)	\$ 150,000		\$ 150,000	E
25	Webex Enhancements (IT)	\$ 150,000		\$ 150,000	E
	Previously Approved	\$ 2,843,762			
26	Utilize Existing Incentive Gift Cards (New)	\$ 4,175			E
27	Webex - FTR Integration (IT) (New)	\$ 150,000			E
28	MyCase efilng for Pro Se Parties (IT) (New)	\$ 375,000			E
29	Court's Grants Coordinator (New)	\$ 91,400			E
30	West Jordan Jury Assembly Room Furniture - \$66,700 (Deferred to Period 8, 2020)	n/a			
31	Fix Court's Protective Order System (New)	\$ 50,000			E
32	Small Claims ODR Facilitator Training (New)	\$ 15,000			E
19	Increase Reserve for balance remaining (Total Reserve of \$381,163 if approved)	\$ 231,163			E
	Subtotal New Recommendations	\$ 916,738			
	Grand Total Recommended Essential	\$ 3,760,500			
Total Recommended/Approved Requests		\$ 3,760,500	\$ -	\$ 2,843,762	\$ -
Balance Remaining of \$3.760M Approved Carryforward + Additional Appropriation		\$ -		\$ 916,738	\$ 44,296
LEGEND					
Highlighted items are NEW Requests.					
Items in red represent funding identified by the Legislature for a specific purpose					
E = Recommended by Budget and Finance Committee as Essential Spending					
NE = Non essential					
Carryforward Funding into FY 2021 has been increased by the legislature from \$2.5M to \$3.2M. Legislature approved					
additional appropriation of \$560K of General Funds which has been added to \$3.2M = \$3.760M total amount to be requested for use.					

19. FY 2020 Carryforward Spending Request – Judicial Council Reserve for FY 2021

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

[Changes to prior submission highlighted in yellow]

Date: 9/14/2020

Department or District: AOC Finance

Presented by: Karl Sweeney

Request title: Reserve

Amount requested: One-time Balance previously approved: \$150,000

Additional carryforward to add to reserve: 231,163

Total Reserve \$381,163

Purpose of funding request:

This is a request for additional one-time funds which will be available to pay for unexpected/unplanned one-time expenditures at the discretion of the Judicial Council. Funds not spent can be re-purposed at YE 2021 for other one-time spending priorities including FY 2021 budget reductions.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

The Judicial Council has historically maintained a reserve for contingency spending requests. For FY 2020, the reserve amount was \$150,000 which was on par with reserves for recent years. The Judicial Council approved \$150,000 as a reserve balance in July 2020.

Alternative funding sources, if any:

None.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

Risk of unexpected/unplanned expenditures cause a budget miss.

26. FY 2020 Carryforward Spending Request – Utilize Existing Incentive Gift Cards

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

Date: 8/30/2020

Department or District: AOC and District Administration

Requested by: Chris Palmer and Karl Sweeney

Request title: Utilize Existing Incentive Gift Cards in FY 2021 (30% Tax Gross Up)

Amount requested: **One-time \$ 4,175** _____

Ongoing \$ 0 _____

Purpose of funding request: The FY 2020 Carryforward Request for \$260,000 to be used for Incentive Awards was deemed “non-essential” when it was brought before the Budget and Fiscal Management Committee and Judicial Council earlier in the year.

As a low-cost alternative, the AOC Directors and TCEs are desirous to utilize the **existing** residual inventory of gift cards (bought in FY 2020 or prior) during FY 2021 to recognize outstanding performance by Court employees in FY 2021. Since the cards are already purchased and on hand (face amount of \$13,915), this request seeks to fund only the 30% tax impact to those who receive the awards (this is normally included as a part of the annual incentive award request).

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

The Courts have established a program to provide on the spot recognition for outstanding service as well as a formal nomination process to reward employees for their service in the following ways:

- An innovative idea or suggestion, implemented by the courts, which improves operations or results in cost savings
- The exercise of leadership beyond that normally expected in the employee’s assignment
- An action which brings favorable public or professional attention to the courts
- Successful completion of an approved special assignment which falls outside of the employee’s ordinary job responsibilities and which requires an unusual investment of time and effort
- Exemplary performance on a special individual or team project
- Continually outstanding performance of normal responsibilities.

Instead of funding the purchase of new incentive awards, the Courts seek to use existing cards (\$13,915 face value) for FY 2021 and seek funding only for the 30% gross up for taxes (added to the payroll of the person receiving the gift card). Although this is a nominal expenditure, it would give management the opportunity to use existing cards and provide a welcome impact to Court morale.

Alternative funding sources, if any: None.

26. FY 2020 Carryforward Spending Request – Utilize Existing Incentive Gift Cards

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

The incentive cards would be retained for use in FY 2022.

27. FY 2020 Carryforward Spending Request – WebEx to FTR Automation Project

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

Date: 9/4/2020

Department or District: AOC Information Technology

Requested by: Heidi Anderson

Request title: IT WebEx FTR Automation Project

Amount requested: One-time \$ 150,000

Ongoing \$ 0

Purpose of funding request: The funding request is to enable additional functionality within WebEx to automate the conversion to FTR.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

This will allow hearings to be automatically converted to our FTR platform.

Alternative funding sources, if any: None.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

We will have to live with current manual process of converting the FTR records from WebEx.

28. FY 2020 Carryforward Spending Request – MyCase efilng for Pro Se Parties

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

Date: 9/4/2020

Department or District: AOC Information Technology

Requested by: Heidi Anderson

Request title: MyCase efilng for Pro Se Parties - Top 6 case types

Amount requested: **One-time \$ 375,000**

Ongoing \$ 80,000 (will begin in FY 2022)

Purpose of funding request:

The ability for pro se parties to efile information for the top 6 case types (detailed below) would make the courts more efficient in handling 80% of pro se filings for the FY20.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

The courts have always had a goal to provide access to justice to the public, due to COVID this becomes even more important today and in the future. Providing a mechanism for pro se to efile anytime, anyplace, anywhere and bringing the courts to the public is a solution that benefits not only the courts, but the public as well. In FY20 there were a total of 37,810 pro se filings at the courts for all case types and if we can focus on the top six filings this will handle 80% of the pro se filings. The top 6 filing types for FY 2020 were:

1. Small Claims,
2. Divorce/Annulment,
3. Protective Orders,
4. Involuntary Commitment (Mental Health),
5. Name Change, and
6. Civil Stalking.

The enhancements would include the following below:

Ability for pro se to fill out an affidavit form within MyCase

Ability for pro se to pay filing fees

Ability to apply Electronic Signature for submissions

Ability for pro se to eFile Supplemental filings to existing cases

Contracting with an external company to do a security penetration test on the application.

28. FY 2020 Carryforward Spending Request – MyCase efilings for Pro Se Parties

Alternative funding sources, if any:

None

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

We believe COVID is limiting access to Justice. Also Clerical staff would continue to handle all pro se filings at the counter manually.

29. FY 2020 Carryforward Spending Request – Grants Coordinator Position (One-time Funds)

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

Date: 9/4/2020

Department or District: AOC Finance

Requested by: Karl Sweeney, Judge Mary Noonan, Larissa Lee

Request title: Grants Coordinator Position – One-time Funds

Amount requested: **One-time \$ 91,400 (mid-point salary with benefits)**

Ongoing \$ 0

Purpose of funding request:

The Administrative Office of the Courts (AOC) requests funding for one FTE to obtain and manage grants throughout all court levels and departments. This position will provide much needed support for employees with existing grant responsibilities, help increase grant funding in a time of widespread budget cuts, and, in conjunction with the Judicial Council, identify and implement best practices with respect to grant funding and grant-funding protocols.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

The Courts miss out on millions of dollars of grant funding per year because we lack a central person to seek out grants, build the necessary relationships, and develop expertise in drafting proposals and complying with reporting requirements. In addition, there is no consistent approach or protocol to applying for and complying with the grants we do have, which creates inconsistencies in managing the grants and could potentially expose the Courts to liability. This Grants Coordinator position solves both of these issues and places the Courts in a more competitive position to receive funding, which if successful will more than pay for the cost of this important position. And it benefits every court level and department in the AOC because this position will be housed in finance and will be available to the Utah Courts as a whole. Our research indicates approximately 25% of the states have Grants Coordinator positions in their state Courts system.

History and Background of Request:

The Courts have long maintained a portfolio of grants but our approach to both applying for and managing the grants is fragmented, inconsistent, and without central control and assistance. Consequently, we miss out on potentially millions of dollars per year in available grants because we lack the time, skill, and resources to build the necessary relationships, draft the grant proposals, and comply with financial and reporting requirements. We envision that this position will fill this critical gap in

29. FY 2020 Carryforward Spending Request – Grants Coordinator Position (One-time Funds)

resources and enable the Courts to be competitive in receiving grant funding and comply with all requirements. Currently, each grant is managed in its own department without a central person to oversee and coordinate applying for and complying with grant requirements.

Detailed Request of Need:

a) Summarize the current budget for this system or program.

There is no current budget for this position. The AOC's budget cannot currently accommodate an additional FTE.

b) What problem would be solved with additional funding? (Show historical data to support and quantify problem statement.)

Funding a Grants Coordinator position solves several problems, including (1) alleviating the burden on existing staff to prepare grant proposals and comply with reporting requirements; (2) serving as the focal point for grant coordination, reporting, and controls; and (3) expanding the Courts' capacity to obtain new grants.

1. Alleviating burden on existing staff.

First, this position would alleviate the burden on existing staff to prepare grant proposals and meet grant reporting requirements—tasks that significantly strain their capacity and experience.

Existing staff simply do not have the time, resources, or training to pursue these grants or research additional opportunities. Although there are many talented writers and researchers throughout the courts, they do not necessarily have the experience required to draft competitive proposals or prospect for new grants. In addition, beyond simply drafting proposals, successfully obtaining grants requires long-term relationship building with funders and an understanding of the complicated landscape behind federal, state, and private grants. Court staff, who are either judges or specialists in specific court operations, do not have the time and experience to build relationships with the key players at various federal, state, and private agencies—nor should they.

Nonetheless, even though they often lack the time and experience, existing staff continue to perform grant-related work. This results in a substantial burden. Staff must take time away from their primary duties to educate themselves about grant-writing, draft complicated proposals, and shepherd grants through the courts' internal grant procedures and external requirements. This generates delay in the courts' business and results in less competitive proposals. And the courts risk losing much of the experience gained from this process through staff turnover.

2. Serving as Focal Point for Grant Coordination, Reporting, and Controls

Second, this position will be responsible for direct oversight of grant applications, expenditures, modifications, and reporting, as well as providing documentation for reviews, audits, and accreditations. The person will collaborate with program staff to respond to federal and other grant applications including identification of grant goals, development of grant budgets, and development of methods to collect data necessary for program compliance. This person will work collaboratively with program and

29. FY 2020 Carryforward Spending Request – Grants Coordinator Position (One-time Funds)

financial staff responsible for the execution of the grant and establish relationships to best manage the award. This person will prepare and submit grant applications, assure program activities are in alignment with the Court's strategic priorities, identify and document cost sharing or match requirements. And working in connection with the Judicial Council and the Courts' finance and audit personnel, this person will research and establish best practices for all aspects of grant selection, application, and administration.

Upon receiving a grant, the Grants Coordinator will review the grant award documents for the Courts, address any special award considerations, and route for appropriate signature and approval. The Grants Coordinator will develop and update internal controls related to grants to reflect federal, state and program requirements and insure grant internal controls align with federal and state statutes, regulations, policies and procedures including but not limited to the procurement of goods and services, approving and processing grant invoices including sub-grant agreements and sub-grant payments. The Grants Coordinator will collaborate with program and financial staff to track federal award and sub-grantee balances, monitor grantee and sub-grantee progress report submissions and submit performance measures and fiscal reporting data to the federal and state governments as required. The Grants Coordinator will be responsible for working with federal and state government program and financial officers to address any questions or concerns about federal grant policies and procedures including changes in scope, questions about allowable expenditures, and budget changes. And finally, the Grants Coordinator will research best practices with respect to grant selection, application, and administration and then work with the Judicial Council and the Courts' finance and audit personnel to implement these best practices in grant selection, application, and administration.

Funding a Grants Coordinator position will solve these problems. In a time of widespread budget cuts due to COVID-19, this position will help the courts take advantage of federal, state, and private funds for which they are naturally competitive. And, long-term, it will help position the Courts to become even more competitive by building relationships with funders and generating institutional knowledge of the grant-writing process.

3. Expanding Courts' Capacity to Obtain Grants

Third, after gaining an understand of the Courts' current grant portfolio and ensuring compliance across all levels, this position will expand the Courts' capacity to pursue and obtain grant funding. In a time of budgetary constraints, this position will help maintain and grow existing programs, secure funding that otherwise would not be pursued for vital improvements, and conserve employee resources.

Currently, the courts lack the capacity to pursue many of the grants for which they are competitive. In January 2020, an outside consulting firm—Grants Office, LLC—prepared a report identifying ten federal grants for which the courts are competitive. Of these ten, the courts have successfully obtained only three. And although existing staff are in the process of applying for two more of these grants, they do not have the capacity to prepare competitive applications for the other five. This is a missed opportunity, as these five grants represent roughly \$2—\$4 million in funding for programs related to drug courts, domestic violence prevention, and juvenile justice. Additionally, the Grants Office report only identified a subset of federal grants. But there are other potential federal, state, and private grants

29. FY 2020 Carryforward Spending Request – Grants Coordinator Position (One-time Funds)

that the courts have yet to explore, in part because there is no staff person dedicated to identifying these opportunities.

c) What has already been done to solve this problem with existing resources and what were the results?

The courts have amassed a modest portfolio of grants through existing resources. This portfolio currently includes at least \$1,486,602 in grant funds spread across eleven grants. *See Exhibit 1, Grants Currently Held by the Courts.* These funds support programs in IT; the appellate, district, juvenile, and justice courts; and in the Courts' ADR, CASA, and divorce education programs. Various Court departments also have grant applications pending for appellate e-filing, Native American tribal outreach, a bail reform initiative, and the courts' Self-Help Center.

But despite this portfolio, existing staff have fallen short on obtaining the grants required to complete several ongoing projects. In addition, this portfolio represents a small portion of the grants for which the courts are competitive. As the Grants Office report indicates, there is at least \$2—\$4 million in federal grant funds for which the courts could strongly compete if they had additional capacity.

The appellate courts' attempt to obtain grants for their e-filing initiative illustrates the limits of existing resources. Earlier this year, the appellate courts obtained a \$50,000 grant to help fund their transition to e-filing. They also submitted a second proposal requesting an additional \$200,000, which is currently pending. These proposals consumed a significant amount of time and resources, much of it from employees, such as the Appellate Court Administrator, who do not have previous grants experience and who had to divert attention from their primary responsibilities. And despite this progress, these proposals—one of which has not yet been funded—represent just a fraction of the \$775,000 required to complete the e-filing transition. Additionally, efforts to obtain the funding needed to complete this project have stalled as staff have had to divert their attention to more pressing responsibilities—particularly in the wake of COVID-19. Without a dedicated grants position, initiatives like this e-filing transition will continue to stall or go unfunded due to a lack of staff capacity.

Cost Detail:

a) How will new funding be utilized?

The new funding will establish a full-time Grants Coordinator position. This position will be housed in the AOC's finance department, and will be responsible for obtaining and managing grants throughout all departments. It will accomplish this by building relationships with funders, preparing proposals, managing reporting requirements, and providing technical assistance to other court staff engaged in these projects.

Salaries for similar grant-related positions in Utah state agencies range from \$18.00—\$39.00 per hour. This is in line with the courts' annual salary range for a Program Coordinator I position, which is \$43,055—\$64,729. The AOC expects to compensate this position at \$25.00 per hour, including benefits, which will cost approximately \$91,400.

b) What are the anticipated results or outcomes of the new funding and how will the results be tracked?

29. FY 2020 Carryforward Spending Request – Grants Coordinator Position (One-time Funds)

The AOC anticipates four primary outcomes from funding this position. First, by increasing the number of grant proposals submitted by the courts, this position will increase the funds available for a variety of court initiatives. Second, the compliance with Federal and State statutes will be well documented and available for audit. Third, this position will also conserve employee resources by decreasing the amount of grant-related work required from existing staff. Fourth, this position will establish a set of best-practices with respect to grant selection, application, and processing that would and greatly benefit the Courts even if the position was abated.

If funded, this position will directly increase the number of grant proposals submitted by the courts. And although submitting a proposal does not guarantee funding, the AOC anticipates that an increase in proposals will ultimately yield an increase in the amount of grant funds the courts receive. These funds will help fill gaps in the courts' budget and translate into meaningful progress on court initiatives. For example, several grants identified in the Grants Office report involve enhancements to adult and juvenile drug courts. If this position is funded, the Grants Coordinator can prepare competitive proposals for these grants, allowing the courts to pursue these enhancements without turning to the limited funds in their already constrained budget. Likewise, several departments are currently exploring grants for projects such as the appellate courts' e-filing transition, increased outreach to Native American tribes, bail reform, and the courts' Self-Help Center. This position can more aggressively pursue grants for these and other projects, which will help prevent additional delay in their implementation or ensure they actually happen. In addition, this position can coordinate cross-department applications, a strategy that helps fund less expensive projects by aggregating them together into a single grant, and makes applications more competitive by combining a package of court programs that all address a funder's priorities. The appellate courts and the AOC recently took this cross-department approach on a pending federal grant application to support their e-filing and tribal outreach initiatives.

Along with filling gaps in the courts' budget, this position will also reduce the need for many existing court employees to engage in grant-related work. The AOC anticipates that this will result in increased productivity among these employees and reduced delay in the completion of their primary responsibilities. Moreover, some grants may also expand the capacity of existing departments. For example, the budget for the appellate courts' e-filing transition calls for hiring IT contractors to build the proposed e-filing system—a task that could otherwise take several years for existing IT staff to complete under their current workload.¹ Overall, the AOC anticipates that funding this position will increase revenue for underfunded court initiatives and expand employee capacity.

The AOC will report the results of this position to the Judicial Council annually. This report will track the number of proposals submitted, the status of each proposal (whether it is pending, accepted, or rejected), and the amount of funds requested in each. It will also track the status of ongoing projects for which this position seeks funding and the amount of technical assistance provided to other court staff. In addition, the report will summarize this position's outreach and relationship-building efforts to potential funders, and provide qualitative data on how it has helped reduced the amount of grant work required by existing staff.

¹ Some existing staff, however, will likely need to stay heavily involved in the management of certain grants, such as the juvenile courts' complex and multi-year Court Improvement Grant. But this position can help alleviate the burden on these staff members by providing technical assistance, and by helping their departments pursue additional grants.

29. FY 2020 Carryforward Spending Request – Grants Coordinator Position (One-time Funds)

This position will also establish the types of best practices that will have an ongoing beneficial impact on the court system for years to come.

c) What are potential negative effects if the funding is not received?

Without this position, the courts will struggle to improve their capacity to pursue grants and to comply with grant reporting requirements. As a result, they will continue to leave funding on the table—including funding they would likely receive if they dedicated adequate resources to building relationships and preparing competitive proposals. This means that important initiatives such as access to justice, tribal outreach, and appellate e-filing will go unfunded or underfunded. It also means that existing programs, such as drug courts and domestic violence prevention, will operate without the improvements they could receive through existing grants. In addition, the burden of pursuing grants will continue to fall on existing staff. This will generate additional delays in their primary responsibilities and result in proposals that, despite the effort involved, will be less likely to receive funding. Long-term, the failure to invest in the expertise and relationship-building required for successful grant work will put the courts at a disadvantage in competing for future grants. Finally, the absence of a grant coordinator could potentially expose the Courts to liability.

Alternative funding sources, if any:

This request is for an FTE position, but some of the important work it seeks to address could be accomplished through a half-time position. Based on the AOC's review of grants for which the courts are competitive, it is unlikely that this position could be established through grant funding, as the generalist nature of this position is unlikely to align with a specific grant's funding priorities.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

We will continue to search for funding sources.

Exhibit 1: Grants Currently Held by the Courts

Department	Grant	Funder	Amount
Juvenile Courts	Court Improvement Program	Federal – Dept. of Health & Human Serv. / Children’s Bureau	\$450,000
Juvenile Courts	Court Improvement Program - Data	Federal – Dept. of Health & Human Serv. / Children’s Bureau	
Juvenile Courts	Court Improvement Program - Training	Federal – Dept. of Health & Human Serv. / Children’s Bureau	
AOC / Justice Courts	Domestic Violence Prevent	Federal – Dept. of Justice / Office of Violence Against Women	\$150,000
AOC	State Access and Visitation / Co-Parenting Mediation Program	Federal – Dept. of Health & Human Serv. / Children’s Bureau	\$100,000
CASA	CASA – Mentoring	Federal – Dept. of Justice / Nat’l CASA Association	\$25,000
CASA	CASA – Professional Development	Federal – Dept. of Justice / Nat’l CASA Association	\$9,000
CASA	CASA – State Victim Assistance	Federal – Dept. of Justice / Office of Victims of Crime	\$289,902
Appellate Courts	E-filing Study & Assessment	Federal – State Justice Institute	\$50,000
Information Tech.	Online Dispute Resolution	Federal – State Justice Institute	\$185,000
Appellate Courts	Regulatory Reform	Federal – State Justice Institute	\$200,000
District Courts	Justice Reinvestment Initiative	State – Utah Commission on Criminal and Juvenile Justice	\$7,700
AOC	Divorce Education for Children	Utah Bar Foundation	\$20,000
Total:			\$1,486,602

Utah Code of Judicial Administration

Rule 3-411. Grant management.

Intent:

To establish the policy and procedures for obtaining grant funds.

To delineate the responsibility for the administration of grant funds and projects.

To facilitate the coordination of grant funded projects in the courts.

Applicability:

This rule shall apply to the application process for and management of grants for the judiciary.

Statement of the Rule:

(1) Application process.

(1)(A) A person interested in applying for grant funds shall prepare a proposal including

(1)(A)(i) the issues to be addressed by the project,

(1)(A)(ii) an explanation of how the grant funds will contribute toward resolving the issues identified, and

(1)(A)(iii) an identification of possible funding sources for the continuing costs of the project when grant funds are no longer available.

(1)(B) If the applicant is seeking new federal funds or to participate in a new federal program, the proposal shall include:

(1)(B)(i) the number of additional permanent full-time and part-time employees needed to participate in the federal program; and

(1)(B)(ii) a list of any requirements the state must meet as a condition for receiving the federal funds or participating in the federal program.

(1)(C) Submission of the proposal.

(1)(C)(i) The proposal shall be reviewed by the court executives or their designees and the judges in the districts which will be affected by the project.

(1)(C)(ii) If the court executives or their designees and the presiding judges in the districts which will be affected by the project approve the proposal, the proposal shall be forwarded to the grant coordinator at the administrative office.

(1)(C)(iii) If the court executives or their designees and the presiding judges in the districts that the project will affect approve the proposal, but sufficient time to comply with paragraph (1)(D) prior to submission of the proposal to the funding source is not available, the proposal may be submitted simultaneously to the funding source and the grant coordinator at the administrative office.

(1)(D) Review of the proposal. The grant coordinator shall review the proposal with the Finance Manager and the court level administrator. This review must be complete prior to submission to the Board(s) of Judges.

(1)(E) Recommendation by the Board of Judges. The Board of Judges for affected courts must recommend to the Council that the grant proposal be pursued.

(1)(F) Approval by the Council. Any proposal to apply for grant funds must be approved by the Council.

(1)(G) Approval by the Legislature. The Judicial Council shall submit proposals to the Legislative Executive Appropriations Committee or to the Legislature as required by statute.

(1)(H) If the Council approves the proposal, the grant coordinator shall work with the requestor and the affected courts in seeking the grant funds. The administrative office shall constitute the designated agency for approving grant applications if such approval is required by the grant application.

(1)(I) If the Council or a Board of Judges does not approve the proposal, the proposal shall not be submitted to the funding source or, if already submitted to the funding source, the proposal shall be withdrawn.

(1)(J) No funds shall be accepted from a funding source until the proposal is approved.

(2) Administration of grant funds and projects.

(2)(A) The administrative office shall receive, administer and be accountable for all grant funds awarded to the courts and provide detailed budget reports to the Council upon request.

(2)(B) The administrative office shall name the project director for each grant. The project director may delegate the supervision of non-judicial daily operations and other non-judicial duties required by the grant. The presiding judges of the districts affected by the project shall supervise any judicial or quasi-judicial duties required by the grant.

(3) Grant applications by non-judicial branch applicants.

(3)(A) Endorsement of a grant application prepared by a non-judicial branch applicant may only be made by the Judicial Council.

(3)(B) Any grant application by a non-judicial branch applicant which contemplates participation of the courts or expenditures of court resources should be referred to the Judicial Council for review and endorsement. Judicial branch employees shall not participate in the preparation of a grant application by a non-judicial branch applicant without Judicial Council approval.

31. FY 2020 Carryforward Spending Request – Fix Court’s Protective Order System

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

Date: 9/1/2020

Department or District: AOC Domestic Violence Program Office
Requested by: Amy Hernandez

Request title: Fix Court’s Protective Order System

Amount requested: **One-time \$ 50,000** _____

Ongoing \$ 0 _____

Purpose of funding request:

The Court's protective order system (“CPOS”) is not in compliance with federal statutes, federal regulations, state statutes, and judicial rules. The current CPOS requires programming changes that must be performed by Court Services and IT to bring it back into compliance. We request funds to extend Dr. Daniel Levin's time-limited position as the Protective Order Program Coordinator from 01/01/2021 to 6/30/2021 so he can continue to identify the business requirements for those programming changes and coordinate efforts between the courts and outside agencies. Dr. Levin was hired to identify and fix issues within the CPOS (Court Services areas), train court staff about compliance requirements, and work with external agencies on improving data communication from the CPOS. He has been working with the CPOS since June of 2020 under the joint direction of Court Services (Clayson Quigley) and the Domestic Violence Program Office. This is currently a grant-funded position.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

In 2019, Michael Drechsel and I were approached by prosecutors and victim advocates who reported that Utah's CPOS was not transmitting data to the National Instant Criminal Background Checks System Index (NICS Index) and Utah's Bureau of Criminal Identification (BCI) on some protective orders. This data would have prevented restricted individuals from purchasing firearms in other states from licensed firearm vendors. The Utah Department of Public Safety (DPS) and BCI voiced concerns that if the CPOS was not updated, a restricted individual could purchase a firearm and harm the public. After this discussion, the Court’s Office of General Counsel and I determined that the CPOS would require changes. I applied for a Violence Against Women Act (VAWA) grant funding to hire an individual to fix the issues within the protective order system, train court staff about compliance requirements, and work with external agencies on improving data communication from the system. I received \$46,228.78 to hire Dr. Daniel Levin in a time-limited position for this project. Those funds will be depleted by December 31, 2020.

31. FY 2020 Carryforward Spending Request – Fix Court’s Protective Order System

As Dr. Levin has worked on updating the CPOS, he has discovered the need for more changes than we originally anticipated in order to become compliant with federal statutes, federal regulations, state statutes, and judicial rules. Currently, the ownership of the CPOS is split between Court Services and Information Technology (IT). Dr. Levin is able to make changes in the areas of the CPOS owned by Court Services. However, programming changes are needed in both the Court Services' CPOS areas and IT's CPOS areas. Changes to CPOS will also result in changes required on DPS' side of the statewide protective order system ("statewide" is the combination of CPOS and DPS POS systems). With these impacts to the Courts and DPS, Court CIO Heidi Anderson expressed the need for a list of business requirements for programming changes in IT's CPOS areas and coordination efforts with DPS. The development of the business requirements, the coordination with DPS, and the update of the Court Services' CPOS areas will require many hours of labor beyond Dr. Levin's grant-funded hours. To address these issues, we request carryforward funds to extend Dr. Levin's position through June 30, 2021.

If approved, Dr. Levin will:

- ensure consistency between both the CPOS development system and the production system as there are currently significant discrepancies between the systems;
- research and develop business requirements for the CPOS to ensure that the system becomes compliant with federal statutes, federal regulations, state statutes, and judicial rules;
- improve the formatting within the CPOS to match formatting requests where possible from the Forms Committee;
- continue to audit the CPOS for compliance with federal statutes, federal regulations, state statutes, and judicial rules and alert court staff and judicial officers when a protective order is found to be out of compliance;
- provide training to court staff and judicial officers (in conjunction with the Office of General Counsel) about system changes; and
- continue to work with external stakeholders such as DPS, prosecutors, defense attorneys, and NICS Index staff to improve the statewide CPOS.

These actions will lay the foundation for updating the CPOS and ensure that protective orders are entered into the system correctly by court staff. Ultimately, the CPOS will become a more efficient system that prohibits restricted individuals from purchasing firearms and advances justice under the law.

Alternative funding sources, if any:

None. Currently, Dr. Levin's position is paid for by VAWA grant funds. However, those funds will be depleted by December 31, 2020. VAWA has indicated they will not be able to continue this funding past December 31, 2020.

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

If this request is not funded at this time, the Domestic Violence Program will continue to update the CPOS. However, the workload required to update the CPOS will be onerous in addition to my other

31. FY 2020 Carryforward Spending Request – Fix Court’s Protective Order System

duties. I am only funded for twenty hours a week for the Domestic Violence Program. Updates could only be completed in a piecemeal fashion which would reduce the efficiency of the system. The safety of Utah residents relies upon on the efficiency of this system to effectively transmit data. Without an efficient protective order system, an individual restricted from firearms may exploit the system vulnerabilities and purchase a firearm endangering many Utah residents.

32. FY 2020 Carryforward Spending Request – Small Claims ODR Facilitator Training

The Judicial Branch receives budget funds annually through the Legislative appropriations process. Funds appropriated for FY 2020 are normally to be spent between July 1, 2019 and June 30, 2020; however **the Legislature has approved the Judicial Branch carryforward approx. \$3.2M in unspent FY 2020 funds into FY 2021. The Legislature has also granted the Judicial Branch an additional \$560,500 in one-time funding bringing the total available to \$3,760,500. This is a request to the Budget and Finance Committee and the Judicial Council to allocate the use of some of these anticipated unspent funds for one-time or ongoing projects that will be delivered in FY 2021.**

Date: September 2, 2020

Department or District: AOC

Requested by: Nini Rich

Request title: Small Claims ODR Facilitator Training

Amount requested: **One-time \$ 15,000** _____

Ongoing \$ 0 _____

Purpose of funding request: Recruitment and Training of 18 new volunteer ODR Facilitators in order to accommodate an eventual statewide rollout of the ODR Program for small claims cases.

Executive summary (include background/history, expected outcomes, relation to performance measures and court mission). Attach supporting data or documents.

There are currently only 6 trained ODR Facilitators. In April 2020, the Judicial Council approved a \$5,000 request to create a training manual for ODR Facilitators in anticipation of the need to train additional facilitators as the ODR program expands to more Justice Courts. That project has now been completed. In July of 2020, we created a plan to recruit and train an additional 18 ODR Facilitators in 5 months in anticipation of a possible year-end grant from Salt Lake County COVID-19 Response funds. We did not receive that funding but the detailed training plan and timeline are attached.

The attached plan is for a Salt Lake County-wide rollout by the end of December 2020 but it can be adapted and customized to meet the Court's current needs and timeline. This plan was created by Nancy McGahey, the ODR Facilitator who created the ODR Facilitator Manual and trained the first new Facilitator using the new manual. The attached plan projects that it will take between 242 and 398 hours to recruit and train 18 additional ODR Facilitators. Nancy's rate to do this work as a private contractor is \$30.00/hour which amounts to between \$7,260 – \$11,940. We are requesting a total of \$15,000 to cover any training materials and/or unanticipated delays or complications due to COVID-19.

Alternative funding sources, if any:

None known

If this request is not funded at this time, what are the consequences or is there an alternative strategy?

At this time, ODR Facilitators are the limiting resource for an expansion of Small Claims ODR. The ODR computer application is ready, the Justice Court Judicial Assistants are already in place and only need some additional training to be able to use the ODR platform for small claims cases.

ODR Expansion Project Proposal

Facilitator Training & Rollout Plan

Project Goal

Expand the ODR facilitator capability to accommodate all small claims cases filed in municipal courts located in Salt Lake County by the end of December 2020.

Rationale for Number of New Facilitator Recruits Needed

Currently six facilitators have handled an average of 38 ODR cases each month among the three courts that have participated in the pilot. All new courts in Salt Lake County that would be joining ODR will generate about 6,334 new small claims filings, based on 2019 statistics. This excludes West Valley City, which is already online with ODR, and government cases that are filed in the Salt Lake City Justice Court. If 20% of these new filings end up in ODR with an assigned facilitator, it would represent an additional 1,267 new ODR cases annually, or about 106 new cases each month. This represents about three times the current caseload and would require an additional 18 new facilitators.

Project Objectives

- Recruit and train 18 new volunteer ODR facilitators.
- Provide ongoing oversight of ODR facilitators and program administration responsibilities through December 2020.
- Train a court program manager to assume ODR administrator responsibilities beginning in January 2021.

Strategy

In order to accommodate the large volume of small claims cases in Salt Lake County using the ODR platform, it is suggested that courts receive training and begin accepting small claims cases for the ODR platform in a staggered, three stage plan, with stages spaced about one month apart. This staggered approach should allow time to train enough facilitators to manage the anticipated caseload and maintain high quality service.

Based on information gathered from ODR cases, it takes an average of about four (4) weeks from the date of filing to the date when a case is assigned to a facilitator. During these four weeks, each group of facilitators will receive instructor-led training. Each group of facilitators will then be ready to begin hands-on training with live cases in a timeframe that coincides with the average date of new cases being assigned to a facilitator.

Facilitator Training

New facilitators will be divided into three groups. Each group will begin the first phase of training every month starting in September 2020. All training will be conducted virtually using a web-based audio and video conferencing application. The training will consist of three general phases, as follows:

Phase I—Facilitators will participate in instructor-led training that consists of 15-20 hours spread out over two or three weeks and conducted in two- or three-hour blocks of time.

Phase II—This phase will allow trainees to gain hands-on experience using live cases with instructor oversight and guidance. Trainees will work in pairs during this phase, which will last over a period of three to four weeks and be broken out among multiple sessions. The total time for each pair will last between five and ten hours, depending on each trainee’s performance.

Phase III—The final phase of the training will be led by the instructor and consist of virtual meetings with all facilitator trainees who have completed or are nearing completion of Phase II of the training. These sessions will last approximately one or two hours each and provide opportunities for all trainees to ask questions and share personal experiences. The frequency of these sessions will be determined by facilitator need and occur biweekly or weekly beginning with week 11 or 12 of the project.

Court Rollout

This suggested plan targets having an estimated number of 34-37 new cases each month for which a facilitator trainee would be assigned for the hands-on portion of the facilitator training (phase II). Numbers in parentheses indicate an estimated average monthly number of cases that would be assigned to an ODR facilitator. This monthly number assumes that 20% of small claims filings are assigned a facilitator, based on current trends in the ODR pilot. The suggested target date to begin accepting ODR filings for each court group was established by assuming an average of four weeks from date of filing to date when a facilitator is assigned; this date coincides with the beginning of phase II of the facilitator training.

Courts	Target Date to Begin ODR Filings	Est. Date: facilitator assigned
<ul style="list-style-type: none"> GROUP ONE COURTS Salt Lake County (22) + Sandy City (14) 	week 4 of timeline	week 9 of timeline
<ul style="list-style-type: none"> GROUP TWO COURTS Salt Lake City (12) + Midvale (12) + Murray (9) + South Salt Lake (4) 	week 8 of timeline	week 13 of timeline
<ul style="list-style-type: none"> GROUP THREE COURTS Taylorsville (17) + W. Jordan (9) + Holladay (2) + S. Jordan (1.5) + Draper (2) + Herriman (1) + Bluffdale (.5) + Riverton (1) 	week 13 of timeline	week 18 of timeline

Project Activities

Preparations

(to be completed during weeks 1-2)

Task	Estimated Time
<ul style="list-style-type: none"> Order from Court IT: Nancy would need one facilitator login AND one administrator login (Complete prior to beginning instructor-led training) 	COURT IT
<ul style="list-style-type: none"> Order from Court IT: 18 ODR login account shells and court Gmail accounts (Complete prior to beginning hands-on mentorship phase of training) 	COURT IT
<ul style="list-style-type: none"> Court Rollout Plan defined with target dates for facilitator assignments (see suggestion) NOTE: This plan will affect the timeline for the facilitator training plan (see proposed timeline) 	COMMITTEE
<ul style="list-style-type: none"> Complete account set-up for all new facilitators (ODR Administrator) 	4-6 hrs

Recruit Facilitator Candidates

(18 people total)

Task	Estimated Time
• Write announcement (identify benefit to facilitators, i.e. credit earned for court roster)	5 hr.
• Create application form	6 hr.
• Identify Selection Committee (send/receive commitments from current facilitators)	1 hr.
• Collect and review applications; distribute to committee	10 hrs
• Schedule and Interview applicants	30 hrs

Train Facilitators

(Three groups of six people each, spread out over Sept-Oct-Nov-Dec, conducted via Zoom)

Task	Estimated Time
• GROUP ONE, Phase I—Instructor led training over Zoom (4-6 sessions over 2-3 weeks)	12-15 hrs
• GROUP ONE, Phase II—individualized mentorships, working in pairs (5-10 hrs each pair)	15-30 hrs
• GROUP TWO, Phase I—Instructor led training over Zoom (4-6 sessions over 2-3 weeks)	12-15 hrs
• GROUP TWO, Phase II—individualized mentorships, working in pairs (5-10 hrs each pair)	15-30 hrs
• GROUP THREE, Phase I—Instructor led training over Zoom (4-6 sessions over 2-3 weeks)	12-15 hrs
• GROUP THREE, Phase II—individualized mentorships, working in pairs (5-10 hrs each pair)	15-30 hrs
• ALL NEW FACILITATORS, Phase III—5-10 Weekly or biweekly group Q&A Sessions	10-20 hrs

Ongoing Monitoring of Caseload & Performance

Task	Estimated Time
• Review facilitator caseload and performance (1-2 hrs/day from week 11-22) (12 weeks X 7-14 hrs/wk)	84-168 hrs

Train New ODR Administrator (Meredith)

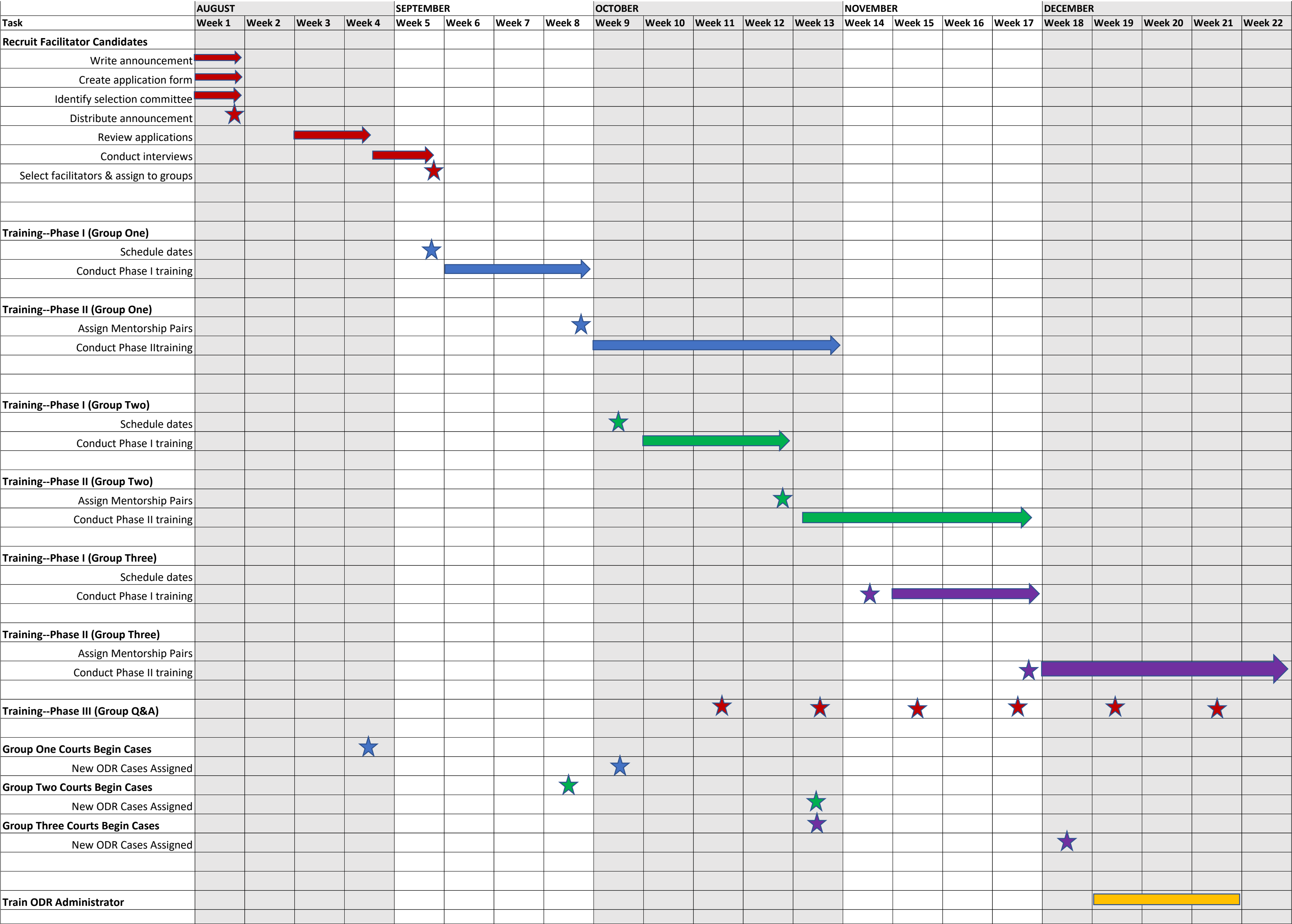
(conducted via Zoom—Nov to Dec)

Task	Estimated Time
• Recommend Meredith attend one iteration of phases I & II facilitator training session with private debriefing after each session	5 hrs
• Recommend Meredith attend final 2-3 phase III group facilitator Q&A sessions	
• Train on Administrator software using Administrator Manual w/consultation time	6-12 hrs

Total Estimated Time

Based on the time estimates above, this project could take between 242 and 398 hours from August through December 2020. Because estimates may be low, more hours may be required.

Attachment: Project Timeline



Tab 10

Judicial Council Grant Application Proposal Code of Judicial Administration 3-411

NON-FEDERAL GRANTS

Contact Person/Phone: James Bauer 801 310-5850 Date: 8/5/2020

Judicial District or Location: 3rd Juvenile

Grant Title UServeUtah Community Engagement Grant Grantor: UServeUtah Utah Comm.
on Service and Volunteerism

Grant type (check one); ☒ New ☐ Renewal ☐ Revision

Grant Level (check one); ☒ Low ☐ Med. ☐ High.
\$10,000 to \$50,001 \$50,000 to \$1,000,000 Over \$1,000,000

Issues to be addressed by the Project: Lack of resources to reimburse The Village Project volunteers for travel expenses.
Lack of funds for volunteer appreciation event.

Explanation of how the grant funds will contribute toward resolving the issues identified: Funds will be used to reimburse volunteers for travel expenses.
In addition, funds will be used for a volunteer appreciation event. \$1,000 provided by SLC Rotary is used for career exploration programs for youth.

Fill in the chart(s) for estimated state fiscal year expenditures for up to three years:

Total Funding Sources

			(PROVIDE EXPLANATION OF ALL MATCHES IN THE COMMENTS SECTION)				
			MATCHING STATE DOLLARS				
			General Fund	Dedicated Credits	Restricted Funds	Other (Write In)	Maintenance of Effort
State Fiscal Year	Grant Amount	Other Matching Funds from Non-State Entities					Total Funds
FY2021	\$5,500		\$50,681				\$56,181
FY 2021		\$1,000					\$1,000
FY							\$0

			(PROVIDE EXPLANATION OF ALL MATCHES IN THE COMMENTS SECTION)				
			MATCHING STATE DOLLARS				
			General Fund	Dedicated Credits	Restricted Funds	Other (Write In)	Maintenance of Effort
State Fiscal Year	Grant Amount	Other Matching Funds from Non-State Entities					Total Funds
FY 2020						\$19,555	\$19,555
FY							\$0
FY							\$0

Comments The matching general funds are used to fund the program coordinator for the Village Project program, as well as related costs such as office supplies. \$50,681 is already part of the 3rd Juvenile FY 2021 budget. The \$1,000 is provided by the SLC Rotary for career exploration programs for youth.
The in kind match is based on 769 volunteer hours donated in 2019 at an hourly rate of \$25.43 per hour.

Will additional state funding be required to maintain or continue this program or its infrastructure when this grant expires or is reduced? Yes _____ No X If yes, explain: _____

Will the funds to continue this program come from within your exiting budget: Yes X No _____ N/A _____

How many additional permanent FTEs are required for the grant? 0 Temp FTEs? 0

This proposal has been reviewed and approved by the following:

The court executives and judges in the affected district(s).

The Grant Coordinator and the Budget Manager at the Administrative Office of the Courts.

The affected Board(s) of Judges.

Approved by the Judicial Council _____ by _____
Date _____ Court Administrator

Copy forwarded to Legislative Fiscal Analyst _____
date _____

TO: CHIEF JUSTICE MATTHEW B. DURRANT
FROM: JIM BAUER, TRIAL COURT EXECUTIVE 3RD JUVENILE COURT
RE: VILLAGE PROJECT GRANT
DATE: AUGUST 5, 2020

The Village Project is a 3rd District Juvenile Court Mentoring program that has been in existence since 1994.

Alicia Green, Probation Officer and Coordinator for the Village Project, recently applied for and received a grant in the amount of **\$5,500** for the Village Project. The source of funding is UServeUtah and the Utah Commission on Service and Volunteerism.

If approved, the funds will be used to fund an appreciation event for mentor volunteers, reimbursing volunteers for travel expenses, and food costs for youth.

There is a 100% match requirement for this grant. The Court has exceeded the 100% match requirement by funding other costs of the Village Project such as the salary and benefits for the coordinator, a laptop computer, and office supplies. In addition, the court receives an in kind match from the volunteer hours provided by the mentor volunteers.

In addition, Alicia has procured funding from the SLC Rotary in the amount of **\$1,000** for career exploration programs for youth involved in the Village Project.

Pursuant to the Utah Code of Judicial Administration (3-411) grant funds may not be received prior to approval by the 3rd District Juvenile Court Judges, the Board of Juvenile Court Judges, and the Judicial Council.

I am seeking approval from the Judicial Council to receive these grant funds in the amount of \$6,500 to be used during fiscal year 2021.

Thank you for your consideration of this request.

Tab 11



Administrative Office of the Courts

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

August 27, 2020

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

MEMORANDUM

TO: Members of the Judicial Council Management Committee

FROM: Neira Siaperas
Utah Juvenile Court Administrator

DATE: August 27, 2020

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 the Management Committee for review and consideration. Additionally, I seek placement on the Judicial Council's consent agenda for September 22, 2020.

Section 4.9 Drug Testing

This policy was last updated September 26, 2007. The purpose of the policy is to provide direction to probation officers regarding drug testing youth. Changes to this policy include updates to training requirements for probation staff who conduct drug tests; a provision requiring that drug tests only be conducted on youth with a court order for drug testing; a requirement that a youth and their parent sign a Drug Testing Acknowledgement form prior to the first test being conducted; replacement of "Motion and Order for Drug Testing Fee" with "Report and Recommendation"; updates to parental notification, parameters for release; and utilization of the Non-Complaint Behavior Response Matrix by the probation officer when a youth tests positive.

Section 4.14 Case File Review

This policy was last updated November 20, 2017. The purpose of the policy is to provide guidelines for probation supervisors to review electronic case records. Updates to this policy include a change in verbiage from case file "audit" to case file "review"; new guidelines for probation supervisors for addressing the results of file audit reviews with probation staff; and the addition of a requirement for the Chief Probation Officer to review a sampling of file reviews on a quarterly basis.

Section 5.7 Transporting a Minor Not in Custody

This policy was last updated November 1, 2010. The purpose of the policy is to provide direction to probation staff when transporting youth who are not in custody. Changes to this policy include a

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efficient, and independent system for the advancement of justice under the law.**

provision that these transports be approved by probation management; updates to safety and staffing procedures; and the addition of a requirement that the youth's parent sign the Transport Release and Waiver form prior to a transport.

I will be available to respond to questions during your meeting on September 8, 2020.

Thank you.

Neira Siaperas

4.9 Drug Testing

Policy:

This policy provides direction to probation staff regarding drug testing to assist with assessing individual treatment needs and ensuring accountability for minors under the jurisdiction of the juvenile court.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:

- General Counsel Opinion, April 5, 2016, Releasing Minors Who Test Positive

References:

- [Collecting Specimens OTP](#)

Procedure:

1. Probation staff shall complete the approved *Collecting Specimens Training (OTP)* prior to conducting any drug tests.
2. The probation staff shall ensure that random urinalysis is conducted on minors who have been ordered by the Court to submit to drug testing.
3. The probation staff shall inform the minor and their parent/guardian/custodian of the general procedures and rules of drug testing and have them sign the *Drug Testing Acknowledgement* form (Addendum 4.9.1). The probation staff shall eFile the Acknowledgement form.
4. The probation staff shall complete the *Positive Drug Test Statement* form (Addendum 4.9.2) when the results of a drug test are positive.
 - 4.1. The right to request a confirmation test is waived when the minor accepts the results of the test and signs the *Positive Drug Test Statement* form.
 - 4.2. A confirmation test should be requested if the minor does not agree with the results of the test.
 - 4.2.1. The probation officer shall follow the approved chain of custody protocol for specimens sent for confirmation testing as outlined by local district practice.
 - 4.3. The probation officer may submit a [Report and Recommendation for Drug Testing Fee](#) (Addendum 4.9.3) and recommend that the minor be ordered to pay a \$25.00 fee per positive test panel when the minor has been court-ordered to provide random drug tests.
5. The probation staff shall notify the minor's parent/guardian/custodian of a positive drug test result and release the minor to the parent/guardian/custodian or another responsible adult.

- 5.1. If a parent/guardian/custodian or responsible adult is not available and it is determined by a probation staff that the minor is not currently impaired, he or she may be released on their own. The determination that the minor is not impaired may only be made by a probation staff who has completed the approved drug and alcohol training within the last three years.
 - 5.2. If a parent/guardian/custodian or responsible adult is not available and the minor is determined to be impaired, alternatives such as youth services should be considered.
6. The probation officer shall consult the [Non-Compliant Behavior Response Matrix](#) to determine a response to a positive drug test.

Addendum 4.9.1 Drug Testing Acknowledgment

Addendum 4.9.2 Drug Test Statement

Addendum 4.9.3 [Report and Recommendation for Drug Testing Fee](#)

Addendum 4.9.4 General Counsel Opinion, April 5, 2016, Releasing Minors Who Test Positive

History:

Effective September 26, 2007

Drug & Alcohol Committee June 5, 2018

Update by Policy Group August 29, 2019

Legal Review September 13, 2019

Approved to be opened for comment by BJCJ November 8, 2019

Updated by Probation Policy Workgroup February 20, 2020

Approved by Chiefs May 14, 2020

Approved by JTCEs June 4, 2020

Approved by BJCJ July 10, 2020

DRUG TESTING ACKNOWLEDGMENT

1. Cooperate with probation staff and answer all questions honestly.
2. As a condition of the Court's order or in order to support your case plan goals you are subject to random testing for alcohol and drug usage.
3. Failure or refusal to submit to such testing or tampering with a sample is considered the same as a "positive test" and may result in further court action. Failure to provide a sample within 60 minutes of the request may also result in further court action.
4. All sample collections will be witnessed by trained probation staff.
5. Any positive result may be subject to additional sanctions. If you test positive, you will be requested to sign a Positive Drug Test Statement.
6. You are required to inform probation staff prior to the test about any prescribed or over the counter medications you are taking. You may be required to provide verification from a physician. If you test positive for a medication that has not been specifically prescribed to you, the test will be considered positive for unauthorized use.
7. You may challenge a positive test result at the time you are tested and request a confirmation test. The confirmation test may be at your own expense if it is determined to be positive.
8. The test results will be released to you, your parent/guardian/custodian, and to the Court. Release to any other parties will be available only by Court order.
9. You will be released to a parent/guardian/custodian or responsible adult if you test positive, except as provided below.
10. You may be released on your own if a parent/guardian/custodian or responsible adult is not available, and it is determined by probation staff that you are not presently impaired.

ACKNOWLEDGMENT

I, the undersigned, have read or have had read to me the above information and understand these instructions. I understand that if I fail to cooperate or provide false, incomplete, or misleading information it may result in further court action.

Date: _____

Minor: _____ **Probation Officer:** _____

Parent: _____ **Parent:** _____

POSITIVE DRUG TEST STATEMENT

Minor:	
Case Number:	
Assigned PO:	
Collected by:	
Date:	

I understand that I have tested positive for the following drug(s):

- ☐ THC ☐ Methamphetamine ☐ Cocaine ☐ Opiates
☐ Alcohol ☐ Amphetamine ☐ Other

I also understand that I have the right to have these results confirmed by laboratory testing.

<input type="checkbox"/>	I accept the results of the above test(s) and admit to using said drug(s). By doing so, I also waive my right to request a confirmation test.
<input type="checkbox"/>	I do not accept the results of the above test(s) and request a confirmation test be performed. I will be responsible for the cost of such test if it is positive.

Minor _____ Date _____

Probation Officer _____ Date _____

Parent/Guardian _____ Date _____

☐ Notification of the positive test for drugs or alcohol was given to the parent/guardian on _____

Admission Statement:

Blank lined paper with a large, faint watermark reading "A" in the top right corner.

Administrative Office of the Courts

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

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Mike Pepper, Probation Supervisor
From: Brent Johnson, General Counsel
Re: Releasing minors who test positive
Date: April 5, 2016

This memorandum is in response to your question about whether it would be appropriate for the Probation Chiefs to amend the existing policy on releasing minors who have tested positive for drugs. The policy change would allow a probation officer to release a minor when the officer is unable to locate a parent as long as it is apparent that, although the youth has tested positive, the youth is not presently impaired. It is my opinion that you can create such a policy.

As a general rule, liability results from when policies are violated or employees make unreasonable decisions under those policies. The key is thus to make sound policies and then ensure that employees follow and make good decisions under those policies. There are various circumstances in which we ask probation officers to exercise judgment on how to proceed in a particular circumstance. A probation officer might be called upon to exercise judgment when facing a violent situation or when executing a search. The key in those circumstances is whether the probation officer exercises reasonable judgment in the officer's response. Neither an individual nor an organization will be liable for consequences resulting from the reasonable exercise of a discretionary function. As long as the policy is reasonable, and as long as the officer's decision under the policy is reasonable, liability is unlikely to follow.

In the case of drug tests, I understand that when a person tests positive for drugs it does not mean the person is presently impaired. Drugs often remain in a person's system for some period after the drugs have been ingested. Thus, even when a minor tests positive it is not conclusive evidence that the minor is impaired. It is reasonable to have a policy to allow release of minors who are not impaired. The court just needs to ensure that officers understand and follow such a policy.

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.

In deciding what to do with a minor who has tested positive, there is certainly an important hierarchy on options. In appropriate circumstances a minor might need to be taken into custody. In other circumstances it might be appropriate to release the minor to his or her parents. In circumstances in which it is not appropriate for youth to be taken into custody and when a parent cannot be located, it is reasonable to have a policy that allows a probation officer to release the minor if it is evident that the youth is not presently impaired.

There may be a couple ways of managing such a policy. A drug test might indicate that, although drugs are in the system, they are not of a sufficient level to indicate present impairment. If there is a way to make that type of connection, that would be ideal. In the alternative, if there is not a way to make that connection, then perhaps there is a way to train probation officers to conduct tests to determine whether the youth is impaired. It is my understanding that the first option is not feasible and therefore training is the appropriate action to pursue.

The judiciary's education department currently offers a drug class taught by T.J. Harper. I have reviewed the curriculum for the class and my questions about the class have been answered by the education department and Mr. Harper. The class trains probation officers to evaluate whether a person is impaired. The class incorporates concepts such as recognizing "euphoria," "dilated pupils," and "excitation." The instructor provides details on what these concepts mean and how they can be assessed. Based on my review of the class, I am satisfied that the class can be used as the necessary training and certification to allow probation officers to exercise judgment on whether a minor may be released. Only those probation officers who have successfully completed the class should be making those decisions.

In conclusion, you can create a policy to allow release of a juvenile who tests positive but is not impaired. The probation officers who are allowed to follow the policy must be only those who have successfully completed the class offered by the education department.

Section 4.9 Drug Testing

Policy:

This policy provides direction to probation staff regarding drug testing shall be administered to detect and deter substance abuse, **to assist with** assessing individual treatment needs and ensuring accountability for minors under the continuing jurisdiction of the juvenile court.

Scope:

This policy applies to all probation **department staff** officers of the Utah State Juvenile Court.

Authority:

- **General Counsel Opinion, April 5, 2016, Releasing Minors Who Test Positive**

References:

- [Utah State Juvenile Court: Drug Testing Policies and Procedures \(Revised 2011\)](#)
- [Collecting Specimens OTP](#)

Procedure:

1. **Probation staff shall complete the approved Collecting Specimens Training (OTP) prior to conducting any drug tests.**
2. **The probation staff shall ensure that random urinalysis is conducted on minors who have been ordered by the Court to submit to drug testing. Minors under the continuing jurisdiction of the Juvenile Court who have a Court order or case plan authorizing drug testing shall submit to random urinalysis testing.**
 - 2.1 ~~Such minors will receive a drug test to establish a baseline to determine any measurable illicit substances in their system.~~
 - 2.2 ~~A minor who tests positive for drug use is not allowed to leave the test facility unless released to a parent, guardian or other responsible adult. If a release to a responsible adult is not possible, the probation officer may seek other alternatives, such as detention and youth service programs.~~
3. ~~The first random drug test following the baseline test that is positive for illicit substances may result in a verbal warning or other sanctions. The minor may be required to submit to a substance abuse evaluation and follow the recommendation of the evaluator. All drug tests following the baseline found to be positive for illicit substances may initiate a motion to the Court requesting the~~

assessment of a fee of \$25.00 per panel screen regardless of how many drugs test positive.

4. **The probation staff shall inform the minor and their parent/guardian/custodian of the general procedures and rules of drug testing and have them sign the Drug Testing Acknowledgement form (Addendum 4.9.1). The probation staff shall eFile the Acknowledgement form.** Probation may require the minor and parent(s) / guardian(s) to sign a drug testing acknowledgment form that advises them the testing MUST be witnessed and explains what will occur if the minor tampers with a urine specimen or tests positive for illicit drugs (Addendum 4.9.1).
 5. **The probation staff shall complete the Positive Drug Test Statement form (Addendum 4.9.2) when the results of a drug test are positive.**
 - 5.1. **The right to request a confirmation test is waived when the minor accepts the results of the test and signs the Positive Drug Test Statement form.** If the minor signs the form indicating they accept the results of the test, they waive their right to request a confirmation test.
 - 5.2. **A confirmation test should be requested if the minor does not agree with the results of the test.** If the minor signs the form indicating they do not accept the results of the test, it will be considered a request for a confirmation test to be performed. The minor will be responsible for the cost of the confirmation test if it confirms the minor is positive.
 - 5.2.1. **The probation officer shall follow the approved chain of custody protocol for specimens sent for confirmation testing as outlined by local district practice.**
 - 5.3. **The probation officer may submit a Report and Recommendation for Drug Testing Fee (Addendum 4.9.3) and recommend that the minor be ordered to pay a \$25.00 fee per positive test panel, when the minor has been court-ordered to provide random drug tests.**
- ~~5. The probation department may submit a Motion and Order for Drug Testing Fee (Addendum 4.9.3, Motion and Order for Drug Testing Fee).~~
- 5.1 The probation department may recommend the Court order the minor to pay \$25.00 per panel screen regardless of how many drugs test positive in addition to the cost of confirmation.

~~5.2 The Positive Drug Test Statement shall be attached to the Motion and Order for Drug Testing Fee.~~

6. The probation staff shall notify the minor's parent/guardian/custodian of a positive drug test result and release the minor to the parent/guardian/custodian or other responsible adult.

6.1. If a parent/guardian/custodian or responsible adult is not available and it is determined by a probation staff that the minor is not currently impaired, he or she may be released on their own. The determination that the minor is not impaired may only be made by a probation staff who has completed the approved drug and alcohol training within the last three years.

6.2. If a parent/guardian/custodian or responsible adult is not available and the minor is determined to be impaired, alternatives such as youth services should be considered.

7. The probation officer shall consult the Non-Compliant Behavior Response Matrix to determine a response to a positive drug test. ~~Each positive drug test requires completion of the Positive Drug Test Statement form and notification to the parent or guardian of the minor (Addendum 4.9.2, Positive Drug Test Statement).~~

Addendum 4.9.1 Drug Testing Acknowledgment

- ~~● Utah State Juvenile Court: Drug Testing Acknowledgment (Approved 2007)~~

Addendum 4.9.2 Drug Test Statement

- ~~● Utah State Juvenile Court: Drug Test Statement (Approved 2007)~~

Addendum 4.9.3 Motion & Order Report and Recommendation for Drug Testing Fee/Restitution

- ~~● Utah State Juvenile Court: Motion & Order Report and Recommendation for Drug Testing Fee/Restitution (Approved)~~

Addendum 4.9.4 General Counsel Opinion, April 5, 2016, Releasing Minors Who Test Positive

History:

Effective September 26, 2007

Drug & Alcohol Committee June 5, 2018

Update by Policy Group August 29, 2019

Legal Review September 13, 2019

Approved to be opened for comment by BJCJ November 8, 2019

Updated by Probation Policy Workgroup February 20, 2020

Approved by Chiefs May 14, 2020

Approved by JTCEs June 4, 2020

Approved by BJCJ July 10, 2020

Proposed Policy Update for 4.9 Drug Testing

1. Comment/Theme:

- ❖ *In the policy "The determination that the minor is not impaired may only be made by a probation staff who has completed the approved drug and alcohol training within the last three years." Just a clarification- what is the "approved drug and alcohol training" Is this a class offered by the AOC, (Juvenile Drug and Alcohol Issues- This is how the class is named in the PO career track)or is it the OTP drug testing procedures?. Why 3 three years? Is this a class in the PO career track that is required to take every three years? (I could totally be wrong with the career track updates is the drug and alcohol class required every three years? I looked through the career track and that class is required as a PO I and not required again- so it could be possible PO's could get to a point that they would not have had that class within the last three years.)*
- ❖ *In the drug testing policy, it has in there that the PO cannot release the youth on their own unless they have taken an approved Drug and alcohol class every 3 years. What class is being referred to here?*
 - **Policy Committee Response:** The requirement for the Juvenile Drug and Alcohol Issues class to be taken every three years will be added to the PO career track (approved by Chiefs group March 2020)
 - **Policy Committee Decision:** NA

2. Comment/Theme:

- ❖ *The proposed policy appears a little conflicted. It discusses how it is to be by order, then it talks about how it should only be because it's a case plan goal. That seems to contradict a little bit. A judge may order a youth to be drug tested where drugs aren't his main problem or even a current problem, but we would still need to do random UA's, as per the court order even if it's not a case plan goal.*
- ❖ *So does this policy allow for drug testing for nonjudicial youth? For example in Paragraph 3. It states that the PO may conduct random urinalysis on minors when it assists with the completion of a case plan goal?*
 - **Policy Committee Response:** After further review, the committee determined that the general standard practice statewide is to only drug test youth with a court order. If it is determined that youth without a court order would benefit from a drug test, there are options to collaborate with community partners and the family.
 - **Policy Committee Decision:** Removed Item 3 "The probation staff may conduct random urinalysis on minors when it assists with the completion of a case plan goal."

3. Comment/Theme:

- ❖ *Paragraph 7 can there be a link to the policy and/or the number of the policy referenced consistently with other policies.*
 - **Policy Committee Response:** NA
 - **Policy Committee Decision:** A link was added to the Non-Compliant Behavior Response Matrix.

4. Comment/Theme:

- ❖ *the subparagraph to para. 5.3 need to be numbered correctly ie (5.3.1, 5.3.2, etc)*
 - **Policy Committee Response:** The policy is currently numbered consistent with other policies.
 - **Policy Committee Decision:** NA

4.14 Case File Review

Policy:

This policy provides guidelines for probation department supervisors to review electronic case records.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Reference:

- [File Review Scoring Matrix](#)

Procedure:

1. The probation supervisor shall conduct case file reviews using the Case Record Review Form (Addendum 4.14.1).
2. The probation supervisor shall review at least one case from each probation officer's caseload each month.
 - 2.1. The probation supervisor shall provide coaching and feedback to the probation officer on the results of the review.
 - 2.2. The probation officer and probation supervisor shall develop a plan to resolve any items that need to be addressed.
3. The Chief Probation Officer shall review a sampling of case reviews conducted by their probation supervisor(s) on a quarterly basis.

[Addendum 4.14.1 Case Record Review Form](#)

History:

Effective November 20, 2017

Updated by Policy Group December 19, 2019

Comment Period End March 20, 2020

Approved by Chiefs Group June 11, 2020

Approved by JTCE Group August 6, 2020

Approved by BJCJ August 14, 2020

Case Record Review Form

000310

(Refer to the **File Review Scoring Matrix** for explanation)

Case Number: _____

Probation Officer: _____

Low

Case Name: _____

Reviewer: _____

Moderate

PO Assignment Date: _____

Review Date: _____

High

DRAFT FOR APPROVAL

Section 4.14 Electronic Case Record Audit File Review

Policy:

This policy provides guidelines for probation department supervisors to ~~audit review~~ electronic case records ~~to ensure policy compliance and proper case management..~~

Scope:

This policy applies to all probation supervisors department staff of the Utah State Juvenile Court.

Authority Reference:

- [File Review Scoring Matrix](#)

Procedure:

1. ~~Each~~ **The probation** supervisor ~~will~~ **shall conduct case file reviews** use the approved audit form to conduct audits of electronic case records (See addendum 4.14.1) **using the Case Record Review Form (Addendum 4.14.1).**
2. ~~Each month, t~~The **probation** supervisor ~~will~~ **shall** randomly audit **review** at least one case from each probation officer's caseload under their supervision **each month.**
 - 2.1. ~~The supervisor shall choose the case to be audited.~~ **The probation supervisor shall provide coaching and feedback to the probation officer on the results of the review.**
 - 2.2. ~~The results of the audit shall be shared with the probation officer.~~ **The probation officer and probation supervisor shall develop a plan to resolve any items that need to be addressed.**
 - 2.3. ~~The probation officer will correct any deficiencies in the electronic record within 30 days.~~
3. ~~At least quarterly, t~~The Chief Probation Officer ~~will~~ **shall** review a sampling of case audits **reviews** conducted by their **probation** supervisor(s) **on a quarterly basis.**

Addendum 4.14.1 Case Record Review Form

History:

Effective November 20, 2017

Updated by Policy Group December 19, 2019

Comment Period End March 20, 2020

Approved by Chiefs Group June 11, 2020

Approved by JTCE Group August 6, 2020

Approved by BJCJ August 20, 2020

5.7 Transporting A Minor Not In Custody

Policy:

This policy provides direction to probation department staff when transporting minors who are not in custody.

Scope:

This policy applies to all probation department staff of the Utah State Juvenile Court.

Authority:

- Human Resources Policy and Procedures
 - [Code of Personal Conduct 500, 13.1-13.2](#)
- [Utah State Fleet Services Administration Code R27-3](#)

Reference:

- [Work Crew Deputy Probation Officers Operating Manual](#)
- [Policy 5.1 Probation Searches](#)
- [Addendum 5.1.1. Legal Counsel Opinion- Search & Seizure](#)

Procedure:

1. Probation staff may transport a minor who is not in custody under the following conditions:
 - 1.1. There is no other means of transportation;
 - 1.2. There appears to be no immediate threat to personal safety, the safety of the minor or the safety of others; and
 - 1.3. The transport has been approved by probation management.
2. Probation staff shall adhere to the following when transporting a minor who is not in custody:
 - 2.1. A state vehicle shall be used for all transports;
 - 2.2. Two or more probation staff shall be present when transporting a minor. For exceptions, refer to the [Work Crew Deputy Probation Officers Operating Manual](#);
 - 2.2.1. At least one of the probation staff involved in the transport shall have completed the *Probation Officer Safety Training* series.
 - 2.3. The vehicle, minor and the minor's personal property shall be searched for restricted or illegal items prior to the minor entering the vehicle;
 - 2.4. The minor's personal items shall be secured in the trunk or cargo area;
 - 2.5. The minor shall be properly seatbelted;
 - 2.6. The vehicle shall be searched again for restricted or illegal items following transport.

3. Probation officers shall require that a minor and their parent, guardian and/or custodian sign a *Transport Release and Waiver Form* prior to transporting any minor (see Addendum 5.7.1 Transport Release and Waiver).
4. Probation officers operating or assisting with a work crew shall follow the policies and procedures outlined in the [*Work Crew Deputy Probation Officer's Operating Procedures Manual*](#).

Addendum 5.7.1 Transport Release and Waiver

History:

Effective November 1, 2010

Update by Policy Workgroup 2/19/19

Sent back to Policy Workgroup for legal review re: consent to searches by BJCJ 3/7/19

Approved for release for comment by BJCJ September 11, 2019

Approved by Chiefs January 9, 2020

Update by Probation Policy Group February 20, 2020

Approved by Chiefs group March 12, 2020

Approved by Chiefs May 14, 2020

Approved by JTCE Group June 4, 2020

Approved by BJCJ July 10, 2020

Transport Release and Waiver

Minor's Name: _____ Case Number: _____

Transport Date: _____ **or** Program Begin Date _____ End Date _____

Probation Officer(s) Providing Transport: _____

Transported From Address: _____

Transported To Address: _____

Purpose and Summary of Transport:

I/We, the parent(s) or legal guardian(s) of _____, agree to allow

Minor's Name

the said minor be transported. I/We agree to hold harmless and release, and waive any claims against the Juvenile Court and all associated agencies from any and all liability claims where the Juvenile Court or associated agencies have not been negligent in the performance of their duties.

Minor's Signature

Date

Parent/Guardian Signature

Date

****Complete this section only if parents are not available to sign:**

I, _____ reviewed this waiver form with _____
Probation Officer *Parent/Guardian Name*

on _____ and they agreed to waive liability for transport.
Date Reviewed

5.7 Transporting A Minors ~~Who Are Not In Custody~~

Policy:

This policy provides direction to probation department staff when transporting minors who are not in custody.

~~The Probation department may transport minor, as necessary, when no other means of transportation is available. However, efforts should be made to have parents transport minors to and from activities and in any other circumstances that would support court orders or probation requirements.~~

Scope:

This policy applies to all probation **department** staff of the Utah State Juvenile Court.

Authority:

Code of Personal Conduct 500. 13.1-13.2

Utah State Fleet Services Administration Code R27-3

~~Policy 5.1 Probation Searches and Addendum 5.1.1. Legal Opinion – Search & Seizure~~

Reference:

Work Crew Deputy Probation Officers Operating Manual

[Policy 5.1 Probation Searches](#)

Addendum 5.1.1. Legal Counsel Opinion- Search & Seizure

Procedure:

1.The Probation department **staff** may transport a minor who is not in custody under the following conditions:

1.1 If There are **is** no other means of transportation;

1.2. There appears to be no immediate threat to personal safety, the safety of the minor or the safety of others; and

1.3 The transport has been approved by probation management.

2. Probation staff shall adhere to the following when transporting a minor who is not in custody:

2.1 A state vehicle shall be used for all transports;

2.2 ~~Whenever possible, minors will be transported by at least Two~~ **or more** probation staff **shall be present when transporting a minor. For exceptions, refer to the Work Crew Deputy Probation Officers Operating Manual;**

2.2.1. At least one of the probation staff involved in the transport shall have completed the Probation Officer Safety Training series.

~~If only one probation officer is available he or she shall not transport a minor of the opposite gender.~~

2.3 ~~4.~~The probation officer shall search the minor for weapons or contraband prior to allowing the minor to enter the vehicle. **The vehicle, minor and the minor's personal property shall be searched for**

restricted or illegal items prior to the minor entering the vehicle;

2.4 ~~5. The probation officer shall search the vehicle before and after transporting the minor. The minor's personal items shall be secured in the trunk or cargo area;~~

2.5 The minor shall be properly seatbelted;

~~6. The probation officer shall secure any backpacks or purses in the trunk or cargo area.~~

~~7. The probation officer shall ensure all safety belts have been fastened and doors have been locked using a child lock if available.~~

~~8. Probation staff shall not transport the minor if there is physical resistance, presence of weapons, or concerns about flight.~~

2.6 The vehicle shall be searched again for restricted or illegal items following transport.

3. Probation officers shall require that a minor and their parent, guardian and/or custodian sign a *Transport Release and Waiver of Liability Form* prior to transporting the any minor to pre-planned activities (see Addendum 5.7.1 *Transport Release and Waiver of Liability Form*).

4. ~~9. Probation officers~~ assisting with or operating **or assisting with** a work crew shall follow the policies and procedures outlined in the *Work Crew Deputy Probation Officer's Operating Procedures Manual*.

Addendum 5.7.1 ~~Transport Release and Waiver of Liability Form~~

History:

Effective November 1, 2010

Update by Policy Workgroup February 19, 2019

Sent back to Policy Workgroup for legal review re: consent to searches by BJCJ 3/7/19

Approved for release for comment by BJCJ September 11, 2019

Approved by Chiefs January 9, 2020

Update by Policy Workgroup February 20, 2020

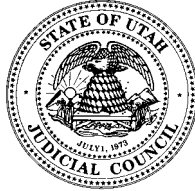
Approved by Chiefs group March 12, 2020

Approved by Chiefs May 14, 2020

Approved by JTCE Group June 4, 2020

Approved by BJCJ July 10, 2020

Tab 12



Administrative Office of the Courts

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

September 14, 2020

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

MEMORANDUM

TO: Management Committee / Judicial Council

FROM: Keisa Williams

RE: Rules for Public Comment

The Policy and Planning Committee recommends the following rules to the Judicial Council for public comment.

CJA 3-201. Court Commissioners (AMEND)

The proposed amendments in lines 134-139 are clarifying and not substantive. Throughout the remainder of the rule, the term “sanction” is replaced with “corrective action” to make it clear that both the Council and the presiding judge(s) can take corrective actions in response to a complaint or poor performance. The proposed amendments also include removal as a possible corrective action.

CJA 3-201.02. Court Commissioner Conduct Committee (AMEND)

In July 2020, the Judicial Council reviewed and issued a ruling on findings and recommendations made by the Court Commissioner Conduct Committee. During its deliberations, the Judicial Council noted two issues with this rule: (1) the typo in 3-201.02(2)(B) referencing 3-201(6), on its face, appeared to limit the sanctions the CCCC could recommend; and (2) the complainant was not afforded an equal right to cross-examine witnesses under 3-201.02(2)(A)(i).

The proposed amendments address the two issues raised by the Council, more clearly define the committee’s charge and complaint procedures, and create an appeals process if the Committee dismisses a complaint without a hearing.

CJA 4-202.08. Fees for records, information, and services (AMEND)

Earlier this summer the Council approved fee increases for Xchange with an effective date of September 1, 2020, but the corresponding rule amendment was overlooked. The proposed amendments, starting at line 58, reflect the amounts the Council approved.

**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 3-201. Court Commissioners.**Intent:**

To define the role of court commissioner.

To establish a term of office for court commissioners.

To establish uniform administrative policies governing the qualifications, appointment, supervision, discipline and removal of court commissioners.

To establish uniform administrative policies governing the salaries, benefits and privileges of the office of court commissioner.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) **Definition.** Court commissioners are quasi-judicial officers established by the Utah Code.

(2) **Qualifications.**

(2)(A) Court commissioners must be at least 25 years of age, United States citizens, Utah residents for three years preceding appointment and residents of Utah while serving as commissioners. A court commissioner shall reside in a judicial district the commissioner serves.

(2)(B) Court commissioners must be admitted to practice law in Utah and exhibit good character. Court commissioners must possess ability and experience in the areas of law in which the court commissioner serves.

(2)(C) Court commissioners shall serve full time and shall comply with Utah Code Section 78A-2-221.

(3) **Appointment - Oath of office.**

(3)(A) Selection of court commissioners shall be based solely upon consideration of fitness for office.

(3)(B) When a vacancy occurs or is about to occur in the office of a court commissioner, the Council shall determine whether to fill the vacancy. The Council may determine that the court commissioner will serve more than one judicial district.

(3)(C) A committee for the purpose of nominating candidates for the position of court commissioner shall consist of the presiding judge or designee from each court level and judicial district that the commissioner will serve, three lawyers, and two members of the public. Committee members shall be appointed by the presiding

judge of the district court of each judicial district. The committee members shall serve three year terms, staggered so that not more than one term of a member of the bench, bar, or public expires during the same calendar year. The presiding judge shall designate a chair of the committee. All members of the committee shall reside in the judicial district. All members of the committee shall be voting members. A quorum of one-half the committee members is necessary for the committee to act. The committee shall act by the concurrence of a majority of the members voting. When voting upon the qualifications of a candidate, the committee shall follow the procedures established in the commissioner nominating manual.

(3)(D) If the commissioner will serve more than one judicial district, the presiding judges of the districts involved shall select representatives from each district's nominating committee to form a joint nominating committee with a size and composition equivalent to that of a district committee, except that a maximum of two judges from each district shall serve on the joint nominating committee.

(3)(E) No member of the committee may vote upon the qualifications of any candidate who is the spouse of that committee member or is related to that committee member within the third degree of relationship. No member of the committee may vote upon the qualifications of a candidate who is associated with that committee member in the practice of law. The committee member shall declare to the committee any other potential conflict of interest between that member and any candidate as soon as the member becomes aware of the potential conflict of interest. The committee shall determine whether the potential conflict of interest will preclude the member from voting upon the qualifications of any candidate. The committee shall record all declarations of potential conflicts of interest and the decision of the committee upon the issue.

(3)(F) The administrative office of the courts shall advertise for qualified applicants and shall remove from consideration those applicants who do not meet minimum qualifications of age, citizenship, residency, and admission to the practice of law. The administrative office of the courts shall develop uniform guidelines for the application process for court commissioners.

(3)(G) The nominating committee shall review the applications of qualified applicants and may investigate the qualifications of applicants to its satisfaction. The committee shall interview selected applicants and select the three best qualified

67 candidates. All voting shall be by confidential ballot. The committee shall
68 receive public comment on those candidates as provided in paragraph (4). Any
69 candidate may be reconsidered upon motion by a committee member and upon
70 agreement by a majority of nominating committee members.

71 (3)(H) When the public comment period as provided in paragraph (4) has closed, the
72 comments shall be given to the nominating committee. If any comments would
73 negatively affect the committee's decision on whether to recommend a
74 candidate, the candidate shall be given all comments with the commenters'
75 names redacted and an opportunity to respond to the comments. If the
76 committee decides not to recommend a candidate based on the comments, the
77 committee shall select another candidate from the interviewed applicants and
78 again receive public comment on the candidates as provided in paragraph (4).

79 (3)(I) The chair of the nominating committee shall present the names, applications, and
80 the results of background investigations of the nominees to the judges of the
81 courts the court commissioner will serve. The committee may indicate its order of
82 preference.

83 (3)(J) The judges of each court level the court commissioner will serve shall together
84 select one of the nominees by a concurrence of a majority of judges voting. If the
85 commissioner will serve more than one judicial district, the concurrence of a
86 majority of judges in each district is necessary for selection.

87 (3)(K) The presiding judge of the district the court commissioner will primarily serve
88 shall present the name of the selected candidate to the Council. The selection
89 shall be final upon the concurrence of two-thirds of the members of the Council.
90 The Council shall vote upon the selection within 45 days of the selection or the
91 concurrence of the Council shall be deemed granted.

92 (3)(L) If the Council does not concur in the selection, the judges of the district may
93 select another of the nominees or a new nominating process will be commenced.

94 (3)(M) The appointment shall be effective upon the court commissioner taking and
95 subscribing to the oath of office required by the Utah Constitution and taking any
96 other steps necessary to qualify for office. The court commissioner shall qualify
97 for office within 45 days after the concurrence by the Council.

98 (4) **Public comment for appointment and retention.**

99 (4)(A) Final candidates for appointment and court commissioners who are up for
100 retention shall be subject to public comment.

- 101 (4)(B) For final candidates, the nominating committee shall be responsible for giving
102 notice of the public comment period.
- 103 (4)(C) For court commissioners, the district in which the commissioner serves shall be
104 responsible for giving notice of the public comment period.
- 105 (4)(D) The nominating committee or district in which the commissioner serves shall:
106 (4)(D)(i) email notice to each active member of the Utah State Bar including
107 the names of the nominees or court commissioner with instructions on
108 how to submit comments;
- 109 (4)(D)(ii) issue a press release and other public notices listing the names of the
110 nominees or court commissioner with instructions on how to submit
111 comments; and
- 112 (4)(D)(iii) allow at least 10 days for public comment.
- 113 (4)(E) Individuals who comment on the nominees or commissioners should be
114 encouraged, but not required, to provide their names and contact information.
- 115 (4)(F) The comments are classified as protected court records and shall not be made
116 available to the public.
- 117 (5) **Term of office.** The court commissioner shall be appointed until December 31 of the third
118 year following concurrence by the Council. At the conclusion of the first term of office and
119 each subsequent term, the court commissioner shall be retained for a term of four years
120 unless the judges of the courts the commissioner serves vote not to retain the
121 commissioner in accordance with paragraph (8)(B) or unless the Judicial Council does not
122 certify the commissioner for retention under rule 3-111. The term of office of court
123 commissioners holding office on April 1, 2011 shall end December 31 of the year in which
124 their term would have ended under the former rule.
- 125 (6) **Court commissioner performance review.**
- 126 (6)(A) **Performance evaluations and performance plans.** The presiding judge of
127 each district and court level the commissioner serves shall prepare an evaluation
128 of the commissioner's performance and a performance plan in accordance with
129 Rule 3-111. Court commissioners shall comply with the program for judicial
130 performance evaluation, including expectations set forth in a performance plan.
- 131 (6)(B) **Public comment period results.** When the public comment period for a
132 commissioner provided in paragraph (4) closes, the comments shall be given to
133 and reviewed by the presiding judge of each district and court level the
134 commissioner serves. If there are any negative comments ~~would negatively~~

~~affect the presiding judge's decision of whether to sanction the commissioner take~~
~~corrective actions or remove the commissioner from office in accordance with~~
~~paragraph (7), the negative comments shall be provided to the~~ commissioner
~~shall be provided all comments~~ with the commenters' names redacted and the
commissioner shall be given an opportunity to respond to the comments.

(7) **Sanctions Corrective action or removal during a commissioner's term.**

(7)(A) **Sanctions Corrective action.**

(7)(A)(i) The Council may take corrective actions ~~court commissioner may be~~
~~sanctioned by the Council~~ as the result of a formal complaint filed
under rule 3-201.02.

(7)(A)(ii) If the commissioner's performance is not satisfactory, ~~the~~
~~commissioner may be sanctioned~~ corrective actions may be taken in
accordance with paragraph (7)(A)(iii) by the presiding judge, or
presiding judges if the commissioner serves multiple districts or court
levels, with the concurrence of a majority of the judges in either district
or court level the commissioner serves.

(7)(A)(iii) ~~Sanctions~~ Corrective actions may include but are not limited to private
or public censure, restrictions in case assignments with corresponding
reduction in salary, mandatory remedial education, ~~and~~ suspension
without pay for a period not to exceed 60 days, and removal under
(7)(B)(i)(c).

(7)(B) **Removal.**

(7)(B)(i) **Removal by Judicial Council.** During a commissioner's term, the
court commissioner may be removed by the Council:

(7)(B)(i)(a) as part of a reduction in force;

(7)(B)(i)(b) for failure to meet the evaluation requirements; or

(7)(B)(i)(c) as the result of a formal complaint filed under rule
3-201.02 upon the concurrence of two-thirds of the
Council.

(7)(B)(ii) **Removal by District or Court Level.**

(7)(B)(ii)(a) During a commissioner's term, if the commissioner's
performance is not satisfactory, the commissioner may
be removed by the presiding judge, or presiding judges if
the commissioner serves multiple districts or court levels,

only with the concurrence of a majority of the judges in each district or court level the commissioner serves.

(7)(B)(ii)(b) If the commissioner serves multiple districts or court levels and one district or court level contests a commissioner removal decision made by the other district or court level, the Management Committee will review the decision, with final determination by the Judicial Council.

(7)(C) **Review of District or Court Level Decisions.** If the commissioner disagrees with a district or court level's decision to ~~sanction~~remove the commissioner or take corrective action~~er remove~~, the commissioner may request a review of the decision by the Management Committee of the Council.

(8) **Retention.**

(8)(A) The Council shall review materials on the commissioner's performance prior to the end of the commissioner's term of office and the Council shall vote on whether the commissioner is eligible to be retained for another term in accordance with rule 3-111.

(8)(B) At the end of a commissioner's term, the judges of each district and court level the commissioner serves may vote not to retain the commissioner for another term of office. The decision not to retain is without cause and shall be by the concurrence of a majority of the judges in each district and court level the commissioner serves. A decision not to retain a commissioner under this paragraph shall be communicated to the commissioner within a reasonable time after the decision is made, and not less than 60 days prior to the end of the commissioner's term .

(9) **Salaries and benefits.**

(9)(A) The Council shall annually establish the salary of court commissioners. In determining the salary of the court commissioners, the Council shall consider the effect of any salary increase for judges authorized by the Legislature and other relevant factors. Except as provided in paragraph (6), the salary of a commissioner shall not be reduced during the commissioner's tenure.

(9)(B) Court commissioners shall receive annual leave of 20 days per calendar year and the same sick leave benefits as judges of the courts of record. Annual leave not used at the end of the calendar year shall not accrue to the following year. A

203 commissioner hired part way through the year shall receive annual leave on a
204 prorated basis. Court commissioners shall receive the same retirement benefits
205 as non-judicial officers employed in the judicial branch.

206 (10) **Support services.**

207 (10)(A) Court commissioners shall be provided with support personnel, equipment, and
208 supplies necessary to carry out the duties of the office as determined by the
209 presiding judge.

210 (10)(B) Court commissioners are responsible for requesting necessary support services
211 from the presiding judge.

212 *Effective May/November 1, 20__*

Rule 3-201.02. Court Commissioner Conduct Committee.**Intent:**

To establish a procedure for the review of complaints filed against court commissioners.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:**(1) Court Commissioner Conduct Committee.**

(1)(A) The Court Commissioner Conduct Committee is established to:

(1)(A)(i) receive, review, and investigate any complaint filed against a court commissioner;

(1)(A)(ii) conduct any hearing related to a complaint, and

(1)(A)(iii) make recommendations to the Council and the presiding judge(s) of the district(s) the commissioner serves regarding corrective actions or removal of the commissioner pursuant to CJA 3-201, where the Committee finds misconduct by a preponderance of the evidence. For purposes of this rule, "misconduct" means:

(1)(A)(iii)(a) action that constitutes willful misconduct in office;

(1)(A)(iii)(b) final conviction of a crime punishable as a felony under state or federal law;

(1)(A)(iii)(c) willful and persistent failure to perform commissioner duties; or

(1)(A)(iii)(d) violations of the Code of Judicial Conduct.

(1)(A)(1)(B) The ~~Court Commissioner Conduct~~ Committee ~~shall~~ consists of the following members:

(1)(A)(i)(1)(B)(i) as chair, the Court of Appeals member of the Ethics Advisory Committee, who shall serve as chair of the Committee;

(1)(A)(ii)(1)(B)(ii) two presiding judges from judicial districts with a court commissioner, which presiding judges shall be from districts other than the district the commissioner primarily serves;

(1)(A)(iii)(1)(B)(iii) the immediate past Bar Commissioner member of the Judicial Council; and

~~(1)(A)(iv)~~(1)(B)(iv) the chair of the Supreme Court Advisory Committee on the Rules of Professional Conduct.

(1)(C) Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action.

(1)(C)(i) If the chair is recused, a majority of the remaining members shall select from among themselves a chair pro tempore.

(1)(C)(ii) If a presiding judge is recused, the chair shall temporarily appoint a presiding judge of another judicial district with a commissioner.

(1)(C)(iii) If the immediate past Bar Commissioner member of~~an~~ the ~~Judicial~~ Council is recused or otherwise unable to serve, the chair shall temporarily appoint another past Bar Commissioner member on of the ~~Judicial~~ Council.

(1)(C)(iv) If the chair of the Supreme Court Advisory Committee on the Rules of Professional Conduct is recused or otherwise unable to serve, the chair shall temporarily appoint another member of the Supreme Court Advisory Committee on the Rules of Professional Conduct.

(1)(D) Three members of the Committee constitute a quorum. Any action of a majority of the quorum constitutes the action of the Committee. The chair shall vote only as necessary to break a tie vote. The Committee shall be organized and meet only as often as necessary to resolve a complaint not previously dismissed by the chair pursuant to paragraph (2)(C) below. Committee members may attend meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

~~(1)(B)~~(1)(E) The confidentiality of all actions and materials related to a complaint, hearing, appeal, and Council review are governed by Rule 4-202.02, other than any public censure by the Council.

(2) Complaint submission and initial review.

(2)(A) A person who has a complaint against a commissioner shall submit a copy of the complaint to the Committee chair.

(2)(B) Each complaint shall be in writing and shall contain:

(2)(B)(i) the complainant's name;

(2)(B)(ii) the complainant's preferred contact information;

(2)(B)(iii) the name of the involved commissioner;

(2)(B)(iv) a description of the commissioner's actions in sufficient detail to inform the Committee of the nature and date of the alleged misconduct; and

(2)(B)(v) when possible, supporting documentation.

(1)(C) ~~— Upon receiving a complaint, the chair shall conduct an initial review to determine if the allegations raise an issue that would be appropriately addressed by the full Committee. The chair shall dismiss frivolous complaints and complaints found to raise only issues of law or fact for which the remedy is the review of the case by the trial court judge or by an appellate court. If the chair dismisses a complaint following initial review, the chair shall provide notice of and basis for the dismissal to the complainant, the presiding judge(s) of the district(s) the commissioner serves, and the commissioner. The chair shall refer any complaint not dismissed following initial review to the full Committee.~~ **Informal complaint.**

~~An informal complaint against a court commissioner may be filed with the presiding judge of the court the court commissioner serves. The presiding judge shall conduct such investigation and take such corrective action as warranted by the complaint.~~

(1)(D) ~~—~~ **Formal complaint.**

(1)(E) ~~— A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.~~

(1)(F) ~~— All proceedings and materials related to a formal complaint shall be kept confidential.~~

(1)(G) ~~— The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.~~

(1)(H) ~~— The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.~~

~~(1)(I) The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.~~

~~(2)(C)~~

(3) Committee examination

~~(3)(A) The Committee shall examine any complaint referred to it by the chair under paragraph (2)(C) to determine whether the allegations set forth therein, if true, could support a finding of misconduct by a commissioner. If no such finding is possible, even if the allegations are presumed true, the Committee shall dismiss the complaint, and the chair shall notify the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves of the dismissal in writing. If a finding of misconduct is possible, the matter should proceed to a hearing.~~

~~(3)(B) If the Committee determines that the matter should proceed to a hearing, the chair shall send notice to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves. The notice shall:~~

~~(3)(B)(i) inform the commissioner of the allegations and the canons allegedly violated;~~

~~(3)(B)(ii) invite the commissioner to respond to the allegations in writing within 30 days; and~~

~~(3)(B)(iii) include a copy of the complaint.~~

~~(3)(C) If the commissioner chooses to respond to the allegations, the commissioner shall send a copy of the response to the complainant, the Committee chair, and the presiding judge(s) of the district(s) the commissioner serves.~~

~~(3)(D) At any time prior to a hearing, the complainant may request to withdraw his or her complaint. If such a request is made, the Committee may grant the request and dismiss the complaint, or it may deny the request and proceed with the hearing.~~

(2)(4) Hearings of the Court Commissioner Conduct Committee.

~~(4)(A) If the Committee determines that a matter should proceed to a hearing under paragraph (3), a hearing shall be scheduled after receipt of the commissioner's response or expiration of the time to respond in paragraph (3)(B)(ii). Notice of the date, time, and place of the hearing shall be sent to the complainant, the~~

commissioner, and the presiding judge(s) of the district(s) the commissioner serves.

(4)(B) Hearings shall be closed to the public.

(4)(C) Not later than 20 days before the hearing, the commissioner and complainant shall exchange all proposed exhibits and a list of all potential witnesses. The commissioner and the complainant are not considered witnesses.

(4)(D) The commissioner and complainant may be present at the hearing and have the assistance of counsel.

(4)(E) The Committee shall interview the complainant, the commissioner, and any witnesses determined by the Committee to have relevant information. The commissioner and complainant have the right to testify.

(4)(F) The complainant may ask the Committee to pose specific questions to the commissioner, and the commissioner may ask the Committee to pose specific questions to the complainant. But ordinarily, neither the complainant nor the commissioner, whether acting on their own or through counsel, will be allowed to cross-examine the other unless, upon request, the Committee chair determines that cross-examination would materially assist the Committee in its deliberation.

(4)(G) The commissioner and complainant may present, examine, and cross-examine witnesses.

(4)(H) Testimony shall be presented under oath and a record of the proceedings maintained.

(4)(I) At any time before final decision by the Committee, the commissioner may admit some or all of the allegations in the complaint, and may stipulate to findings and recommendations by the Committee.

(4)(J) Within 30 days after the completion of the hearing, the Committee shall make written findings and conclusions concerning the allegations in the complaint and provide a copy to the complainant, the commissioner, the presiding judge(s) of the district(s) the commissioner serves, and the Council.

(4)(K) If the Committee finds misconduct by a preponderance of the evidence, the Committee shall recommend appropriate corrective actions under CJA Rule 3-201.

(4)(L) In making recommendations for corrective actions, the Committee shall consider the following non-exclusive factors:

(4)(L)(i) the nature of the misconduct;

- (4)(L)(ii) the gravity of the misconduct;
- (4)(L)(iii) the extent to which the misconduct has been reported to or is known by the presiding judge(s) of the district(s) the commissioner serves or the commissioner, and the source of the dissemination of information;
- (4)(L)(iv) the extent to which the commissioner has accepted responsibility for the misconduct;
- (4)(L)(v) the extent to which the commissioner has made efforts to avoid repeating the same or similar misconduct;
- (4)(L)(vi) the length of the commissioner's service with the courts;
- (4)(L)(vii) the effect the misconduct has had upon the confidence of court employees, participants in the judicial system, or the public in the integrity or impartiality of the judiciary;
- (4)(L)(viii) the extent to which the commissioner profited or satisfied his or her personal desires as a result of the misconduct; and
- (4)(L)(ix) the number and type of previous corrective actions against the commissioner.

(4)(M) At the conclusion of the Committee's work, a copy of the complete file shall be delivered to the State Court Administrator or designee.

(5) Council review of committee action.

(5)(A) Appeals from decisions without a hearing.

- (5)(A)(i) Complaints dismissed prior to hearing, either by the chair under paragraph 2(C) or by the Committee under paragraph (3)(A), may be appealed by the complainant to the Judicial Council. All such appeals must be submitted in writing to the Chair of the Council, and must be received within 30 days of the notice of dismissal. In the appeal, the complainant must set forth the specific grounds on which the appeal is based. A copy of the appeal shall be provided to the Committee chair, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves.
- (5)(A)(ii) The Council, a designated Council member, or a committee of the Council shall conduct a de novo review of the file, and shall either affirm the dismissal, or shall require the Court Commissioner Conduct Committee to set the matter for hearing or re-hearing.

197 (5)(A)(iii) The Council's decision shall be in writing and a copy provided to the
198 Committee chair, the complainant, the commissioner, and the
199 presiding judge(s) of the district(s) the commissioner serves.

200 (5)(A)(iv) If the dismissal is affirmed, the complainant has no other right of
201 appeal.

202 **(5)(B) Council review following a hearing.**

203 (5)(B)(i) The Committee's findings, conclusions, and recommendations
204 following a hearing will be reviewed by the Council, and considered at
205 a meeting of the Council to be held at least 45 days after issuance of
206 the Committee's decision.

207 (5)(B)(ii) The complainant, the commissioner, or presiding judge(s) of the
208 district(s) the commissioner serves may file objections to the
209 Committee's findings, conclusions or recommendations. Any such
210 objections must be submitted in writing to the Council within 30 days
211 of the date the Committee's findings, conclusions, and
212 recommendations were issued.

213 (5)(B)(iii) No person other than the members of the Council are entitled to
214 attend the Council meeting at which the Committee's decision is
215 reviewed.

216 (5)(B)(iv) In conducting its review, the Council shall review the record of the
217 Committee's hearing, and shall determine whether to adopt, modify,
218 or reject the Committee's findings, conclusions, and
219 recommendations, including any recommendations for corrective
220 action.

221 (5)(B)(v) The Council's decision shall be in writing and provided to the
222 Committee chair, the commissioner, the complainant, and the
223 presiding judge(s) of the district(s) the commissioner serves.

224 (5)(B)(vi) The decision reached by the Council after review is final and is not
225 appealable.

226 **(5)(C) Annual Report.** The chair of the Committee shall report to the Council not less
227 than annually on the Committee's work including a general description of any
228 complaint dismissed without a hearing.

229 ~~(2)(A)(i) The hearings of the committee shall be closed to the public. The~~
230 ~~committee shall interview the complainant, the court commissioner,~~

and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present and examine and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.

(2)(A)(ii) The committee shall make written findings concerning the merits of the complaint and provide a copy of the findings to the complainant, the court commissioner, and the presiding judges of the court the commissioner serves.

(2)(B) If the committee finds the complaint to have merit, the committee shall recommend to the Council that a sanction be imposed under CJA Rule 3-201(6). The committee shall dismiss any complaint found to be without merit.

(2)(C) **Council Review.**

(2)(C)(i) **Complaints dismissed without a hearing.** The chair of the committee shall report to the Council not less than annually on the committee's work including a general description of any complaint dismissed without a hearing.

(2)(C)(ii) **Complaints with a committee hearing.**

(2)(C)(ii)(a) The Council shall review the record of the committee hearing to determine the correct application of procedures and to determine the sanction to be imposed.

(2)(C)(ii)(b) The complainant, commissioner or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council. No person is entitled to attend the Council meeting at which the complaint is reviewed.

Rule 4-202.08. Fees for records, information, and services.**Intent:**

To establish uniform fees for requests for records, information, and services.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts. This rule does not apply to the Self Help Center.

Statement of the Rule:

(1) **Fees payable.** Fees are payable to the court or office that provides the record, information, or service at the time the record, information, or service is provided. The initial and monthly subscription fee for public online services is due in advance. The connect-time fee is due upon receipt of an invoice. If a public online services account is more than 60 days overdue, the subscription may be terminated. If a subscription is terminated for nonpayment, the subscription will be reinstated only upon payment of past due amounts and a reconnect fee equal to the subscription fee.

(2) **Use of fees.** Fees received are credited to the court or office providing the record, information, or service in the account from which expenditures were made. Fees for public online services are credited to the Administrative Office of the Courts to improve data quality control, information services, and information technology.

(3) **Copies.** Copies are made of court records only. The term "copies" includes the original production. Fees for copies are based on the number of record sources to be copied and are as follows:

(3)(A) paper except as provided in (H): \$.25 per sheet;

(3)(B) microfiche: \$1.00 per card;

(3)(C) audio tape: \$10.00 per tape;

(3)(D) video tape: \$15.00 per tape;

(3)(E) floppy disk or compact disk other than of court hearings: \$10.00 per disk;

(3)(F) electronic copy of court reporter stenographic text: \$25.00 for each one-half day of testimony or part thereof;

(3)(G) electronic copy of audio record or video record of court proceeding: \$10.00 for each one-half day of testimony or part thereof; and

(3)(H) pre-printed forms and associated information: an amount for each packet established by the state court administrator.

(4)(A) **Mailing.** The fee for mailing is the actual cost. The fee for mailing shall include necessary transmittal between courts or offices for which a public or private carrier is used.

(4)(B) **Fax or e-mail.** The fee to fax or e-mail a document is \$5.00 for 10 pages or less. The fee for additional pages is \$.50 per page. Records available on Xchange will not be faxed or e-mailed.

(5) **Personnel time.** Personnel time to copy the record of a court proceeding is included in the copy fee. For other matters, there is no fee for the first 15 minutes of personnel time. The fee for time beyond the first 15 minutes is charged in 15 minute increments for any part thereof. The fee for personnel time is charged at the following rates for the least expensive group capable of providing the record, information, or service:

- (5)(A) clerical assistant: \$15.00 per hour;
- (5)(B) technician: \$22.00 per hour;
- (5)(C) senior clerical: \$21.00 per hour
- (5)(D) programmer/analyst: \$32.00 per hour;
- (5)(E) manager: \$37.00 per hour; and
- (5)(F) consultant: actual cost as billed by the consultant.

(6) **Public online services.**

(6)(A) The fee to subscribe to ~~public online services~~ Xchange shall be as follows:

- (6)(A)(i) a set-up fee of \$25.00;
- (6)(A)(ii) a subscription fee of ~~\$30.00~~ 40.00 per month for any portion of a calendar month; and
- (6)(A)(iii) ~~\$.40~~ 15 for each search over ~~200~~ 500 during a billing cycle. A search is counted each time the search button is clicked.

(6)(B) When non-subscription access becomes available, the fee to access public online services without subscribing shall be a transaction fee of \$5.00, which will allow up to 10 searches during a session.

(6)(C) The fee to access a document shall be \$.50 per document.

(7) **No interference.** Records, information, and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts. The Administrative Office of the Courts may disconnect a user of public online services whose use interferes with computer performance or access by other users.

(8) **Waiver of fees.**

(8)(A) Fees established by this rule other than fees for public online services shall be waived for:

- (8)(A)(i) any government entity of Utah or its political subdivisions if the fee is minimal;
- (8)(A)(ii) any person who is the subject of the record and who is impecunious; and
- (8)(A)(iii) a student engaged in research for an academic purpose.

(8)(B) Fees for public online services shall be waived for:

- (8)(B)(i) up to 10,000 searches per year for a news organization that gathers information for the primary purpose of disseminating news to the public and that

88 requests a record to obtain information for a story or report for publication or
89 broadcast to the general public;
90 (8)(B)(ii) any government entity of Utah or its political subdivisions;
91 (8)(B)(iii) the Utah State Bar;
92 (8)(B)(iv) public defenders for searches performed in connection with their duties
93 as public defenders; and
94 (8)(B)(v) any person or organization who the XChange administrator determines
95 offers significant legal services to a substantial portion of the public at no charge.

96

97 *Effective May/November 1, 20__*