

In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF THE IDAHO)
RULES FOR TREATMENT COURTS)
(I.R.T.C.))
_____)

ORDER

The Court, having received a recommendation from the Treatment Court Committee to amend the following Idaho Rules for Treatment Courts, and the Court being fully informed;

NOW, THEREFORE, IT IS ORDERED that the Idaho Rules for Treatment Courts (I.R.T.C) be AMENDED as follows:

Idaho Treatment Court Rule 3. Treatment Court Formation and Dissolution

(a) The Idaho Drug Court and Mental Health Court Act specifies the goals, purposes, policies for acceptance and related operating guidance for the operation of Treatment Courts in Idaho. In addition, the Act establishes a statewide Treatment Court Committee and vests it with the responsibility for establishing standards and guidelines and providing ongoing oversight of the operation of Treatment Courts in Idaho. This rule provides additional direction for the development, establishment, operations, and termination of Treatment Courts. The provisions of this rule apply to all Treatment Courts, including those addressing adult felony or misdemeanor cases. This rule acknowledges that an Executive Committee may be formed consisting of sitting Committee members and be authorized to act on their behalf for the provisions identified in this rule.

(b) The judicial district must submit an operations application, on a form to be prescribed by the Treatment Court Committee, prior to beginning operations of a new Treatment Court. This application shall be signed by the Administrative District Judge, Trial Court Administrator, and Treatment Court District Manager, and submitted to the Treatment Court Committee no less than sixty (60) days in advance of a proposed starting date. The operations application shall include the following:

(1) A memorandum of agreement (MOA) signed by the Administrative District Judge, Trial Court Administrator, Treatment Court District Manager, the proposed presiding judge, the prosecuting attorney(s) or city attorneys for the participating jurisdictions, the public defender(s) for the participating jurisdictions, the community supervision agency, law enforcement, the treatment provider, and any other entity necessary to the operation of the Treatment Court. This MOA will describe each person's or entity's participation and specific commitments to the Treatment Court.

(2) Documentation of training for all team members for the Treatment Court that would include one or more of the following:

- (A) A certification of completion for an online training;
- (B) A training hosted and conducted by the Treatment Court District Manager or Administrative Office of the Court;
- (C) Documentation of attendance to a national, state, or local conference.

(3) The policy and procedures manual and separate participant handbook.

(c) Judicial districts that are requesting to create multiple Treatment Courts or combining Treatment Courts within existing resources will only need to submit an MOA if there are any new team members in the proposed additional Treatment Court.

(d) Upon receiving the completed operations application, the Treatment Court Committee shall recommend for approval or disapproval to the Idaho Supreme Court. The Court will review the application, the Committee's recommendation, and make a final determination. If the operations application is approved by the Idaho Supreme Court, the Administrative Director of the Court is authorized to sign all necessary documents.

(e) If there is no substantive change to the MOA, any successor to the role of any signatory to the MOA electing to abide by the agreement may separately acknowledge and agree to the terms of the MOA. Any substantive change to the MOA requires all persons or entities outlined in I.R.T.C. 3(b)(1) to sign a new MOA. For purposes of this rule, a change in the person or entity occupying any of the roles outlined in I.R.T.C. 3(b)(1) is not considered a substantive change.

(f) A judicial district planning to dissolve a Treatment Court must submit a letter of planned dissolution to the Statewide Treatment Court Coordinator for communication to the Treatment Court Committee, signed by the Administrative District Judge, Trial Court Administrator, and Treatment Court District Manager, as soon as reasonably possible and prior to the proposed ending date.

Idaho Treatment Court Rule 7. Treatment Court Application

(a) The Treatment Court Coordinator shall maintain a record of each applicant's Treatment Court Application and any documentation in support thereof. Such record shall contain sufficient information to justify the Treatment Court's acceptance or denial of the application, and may include:

- (1) A written application for admission to the Treatment Court;
- (2) Any risk and needs assessments related to the applicant;
- (3) Any substance abuse or mental health screening or assessment reports related to the applicant;

(4) The decision of the Treatment Court as found in the Notice of Eligibility for Treatment Court form.

(b) Applications for those not accepted into a Treatment Court shall be retained for no less than five years.

Idaho Treatment Court Rule 9. Admission to Treatment Court

(a) No person has a right to be admitted to a Treatment Court.

(b) A person desiring to participate in a Treatment Court shall submit an application for admission, developed and approved by the judicial district or Treatment Court program, and a Consent for Disclosure of Confidential Information to the Treatment Court Coordinator and shall submit any information required by the Treatment Court to evaluate whether the person meets the criteria for admission.

(c) The Treatment Court Judge may issue an Order for Assessment for Treatment Court if the applicant does not have a current substance use disorder assessment, mental health assessment, or Level of Service Inventory – Revised (LSI-R).

(d) Treatment Court personnel may review the applicant's ~~Pre-Sentencesentence~~ Pre-Sentence Investigation (PSI) report for purposes of screening the applicant, notwithstanding any limitations pursuant to Idaho Criminal Rule 32.

(e) The Treatment Court Team shall screen each applicant to determine if the applicant meets eligibility requirements and criteria for admission into the particular Treatment Court.

(f) Once the Treatment Court Judge, in consultation with the Treatment Court Team, determines the applicant's eligibility or ineligibility for participation in the Treatment Court, the Treatment Court Judge or designee shall issue a Notice of Eligibility for Treatment Court to be provided to the presiding judge and filed in the underlying criminal case.

(g) Parolees may apply to a Treatment Court. A parolee must meet eligibility requirements of the Treatment Court, must have pled or been found guilty of a new felony or misdemeanor charge, and must have permission of the Parole Commission.

(h) If an applicant is ordered into a Treatment Court, the presiding Judge will enter an Order for Participation in a Treatment Court and an Order for Payment of Treatment Court Fees.

(i) A Treatment Court Judge may adjust the participant's Treatment Court fees. If fees are adjusted, the Treatment Court Judge shall enter an Order to Adjust Treatment Court Fees.

Idaho Treatment Court Rule 11. Participation in a Treatment Court Outside of the Originating County

(a) For the purpose of allowing a defendant to participate in a Treatment Court in a different county, including any county outside of the originating judicial district, the originating court may order a change of venue or transfer of supervision under the following conditions. ~~court may elect between a change of venue or a transfer of supervision.~~

(1) Change of Venue. The ~~court may change venue~~ originating court shall enter an order changing venue in the underlying criminal case only after:

(A) the defendant has entered a plea of guilty or has been found ~~plead~~ guilty in the originating county;

(B) the Treatment Court Judge ~~and coordinator~~ in the receiving county have ~~has~~ stipulated to the change of venue; and

(C) the prosecuting attorneys from each county involved stipulate to the change of venue.

(2) Transfer of Supervision. If a defendant has been accepted into the out-of-county Treatment Court, the sentencing judge can, without the need of a change of venue;

(A) order as a condition of probation (in post-sentencing Treatment Courts), or

(B) order (in presentence Treatment Courts) that the defendant participate and successfully complete an out-of-county Treatment Court.

(b) The Notice of Eligibility for Treatment Court shall only be entered by a Treatment Court Judge or designee after a Treatment Court Team's assessment of the defendant's eligibility, and in the circumstance where a change of venue is desired, there is consent to the change of venue by all necessary parties as set forth in I.R.T.C. 11(a)(1).

(c) If a defendant is ordered to participate in an out-of-county Treatment Court, the Treatment Court Judge in the receiving court shall have the authority to impose incentives and sanctions, including jail time, upon the participant. If a participant is terminated from the Treatment Court, the procedures outlined in I.R.T.C. 17 shall be followed.

(d) Clerk's Duties.

(1) Upon entry of an order for change of venue, the clerk of the originating court reassigns the case within the court's case management system.

(2) In cases where a transfer of supervision occurs, the clerk in the receiving county shall forward all signed court orders to the originating county.

(3) In cases where a transfer of supervision occurs, the clerk in the originating county shall post the charge(s) for out-of-county Treatment Court fees as ordered by the judge.

(e) Treatment Court Fees

(1) Change of Venue: In the case where a change of venue has occurred, all fees, fines, court costs, and restitution shall be paid in and distributed by the receiving county.

(2) Transfer of Supervision: Where there has been a transfer of supervision, the originating judge or Treatment Court Judge shall order the payment of Treatment Court fees to the county of the applicable Treatment Court. All other fees, costs, fines and restitution shall be paid in the originating county, which shall then forward the amount of Treatment Court fees to the county of the applicable Treatment Court. Upon graduation or termination, the originating Court shall enter an order stopping the assessment of Treatment Court fees.

Idaho Treatment Court Rule 17. Terminations from Treatment Courts

(a) If a Treatment Court Judge, after consultation with the Treatment Court Team, finds that a participant may no longer be amenable to supervision within the Treatment Court, the Treatment Court Judge shall advise the participant that it has been proposed that they may be terminated from the Treatment Court.

(b) A termination hearing shall be held within twenty-one (21) days of the state filing of a motion to for termination. The time limit in this subsection may be extended on a showing of good cause. Good cause may include the assignment of another judge to preside over a termination hearing.

(c) The Treatment Court Judge may preside over the termination proceedings. If the Treatment Court Judge elects not to preside over the termination hearing, the Treatment Court Judge shall forward the matter for reassignment.

(d) Pending a termination hearing, a participant may be ordered into custody and may be admitted to bail in the discretion of the Treatment Court Judge, and a participant who is also a parolee may be subject to any hold imposed by the parole commission.

(e) Upon an absconded participant's arrest or voluntary return, the Treatment Court Judge may continue the participant in the Treatment Court program or the participant's case may proceed to a termination hearing.

(f) A participant shall be advised by the Treatment Court Judge of the proposal to terminate the participant from that Treatment Court. After the filing of a the state's motion for termination to terminate, the participant shall be advised of the alleged grounds for termination, the date and

time set for the termination hearing, and any terms of bail imposed, pending the termination hearing.

(g) Prior to a termination hearing, the court must advise the participant of the following Notification of Rights for Termination Hearing:

- (1) that the participant has the right to require the State to disclose the evidence against the participant;
- (2) that the participant is not required to make a statement and that any statement made may be used against the participant;
- (3) that the participant has the right to be self-represented and to present the case without the aid of an attorney;
- (4) that the participant has the right to hire counsel of the participant's own selection, or if indigent, have counsel by court appointment;
- (5) that the participant may admit or deny any allegation presented against the participant;
- (6) that if the participant denies the allegation(s), the case will proceed with an evidentiary hearing;
- (7) that if the case proceeds to an evidentiary hearing, the following will apply:
 - (A) the burden will be upon the State to prove by a preponderance of the evidence that the participant willfully violated one or more terms of the participant's conditions of participation in the Treatment Court; and
 - (B) the participant has the right to confront and cross examine witnesses, to call the participant's own witnesses, to present evidence, and to the subpoena power at no cost to the participant.
- (8) that if the participant admits the allegation(s), the participant is waiving the rights herein and there is no need for the State to prove the allegation(s) in support of the proposed termination from Treatment Court, and the matter will proceed to sentencing or disposition (see I.R.T.C. 18(c));
- (9) that if the participant is not satisfied with the decision of the court, the participant may appeal to the next higher court, so long as the notice of appeal is filed within forty-two (42) days of the entry of the final disposition judgment.
- (910) that any recommendation of the parties is not binding on the court, but can be considered by the court in rendering its decision; and

(1011) that the participant's exercise of any of the rights herein will not be held against the participant.

(h) The Idaho Rules of Evidence shall apply in a termination hearing to the same extent that the Idaho Rules of Evidence apply in a probation violation hearing.

(hi) A participant subject to a proposed termination from a Treatment Court may waive, either orally on the record or in writing, the notification of the grounds upon which termination is proposed and the participant's right to a termination hearing. ~~And may consent to proceed directly to sentencing or disposition.~~ A waiver of the hearing constitutes an admission to the allegations contained in the state's motion for termination. Upon waiver of the hearing, no additional hearing regarding violation of a term of probation or a violation of any condition of a presentence agreement of participation in Treatment Court is required.

(ij) If a participant waives their right to a termination hearing, or a participant enters an admission, or the participant is found to have willfully violated a condition of the Treatment Court, the judge presiding over the termination hearing shall enter the ~~Notice~~ Order of Termination from Treatment Court and Stopping Participant Fees.

(jk) If a participant is not found to have willfully violated a condition of the Treatment Court, the judge presiding over the termination hearing shall enter an order documenting such finding and continuing the participant's prior condition(s) of Treatment Court supervision.

Idaho Treatment Court Rule 18. Sentencing or Disposition upon Termination from Treatment Court

(a) Except for the provisions found in this rule applicable only to a participant's termination from a Treatment Court, sentencing and disposition proceedings will be conducted as set forth in applicable statute and rule.

(b) A motion for a probation violation or a violation of any condition of a presentence agreement of participation in Treatment Court is not required to be filed if an order of termination has already been entered in the record and the court may proceed directly to sentencing or disposition.

(bc) The judge presiding over a participant's termination proceedings may preside over the sentencing or disposition proceedings, so long as that judge has authority to do so.

(ed) If the judge that presided over a participant's termination proceedings elects not to preside over a participant's sentencing or disposition proceedings or the judge does not have the

authority to preside over a felony sentencing or disposition proceedings, the judge shall recuse and refer the matter for reassignment.

(~~de~~) If the participant was admitted into a Treatment Court by means of a transfer of supervision as set forth in I.R.T.C. 11(a)(2), the case shall be set before the original sentencing judge or referred for reassignment. ~~A motion for a probation violation is not required to be filed if an order of termination has already been entered in the record and the court may proceed directly to disposition.~~

(~~ef~~) A judge presiding over a sentencing or disposition may not re-admit, admit, or order the participant back into a Treatment Court unless the participant has applied for participation in a Treatment Court and the sentencing court has been provided the Notice of Eligibility for Treatment Court form accepting the participant into a Treatment Court (see I.R.T.C. 18(c)).

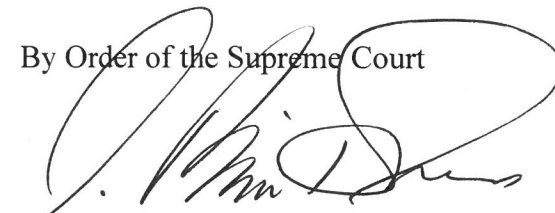
IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2023.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the rule by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Rules for Treatment Courts.

IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

DATED this 12th day of June, 2023.

By Order of the Supreme Court

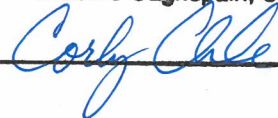


G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:


Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Amendment SRTC entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court June 15, 2023
Melanie Gagnepain, Clerk

By  Deputy