



Adult Drug Court Manual

2015

A Guide to Starting and Operating Adult Drug Courts in Massachusetts.

Executive Office of the Trial Court
One Pemberton Square, Boston, MA 02108

Contents

Introduction	2
What are Drug Courts?	3
Integrating a Drug Court into the Criminal Case Process	4
Assessment of Need and Target Population	5
Resource Mapping	5
Goals and Mission Statement	6
The Drug Court Team	7
Developing the Team	7
Team Roles and Responsibilities	8
Judge	9
Probation Officer	10
Drug Court Coordinator	10
Specialty Court Clinician	11
Clerk	12
Prosecutor	12
Defense Counsel	12
Treatment Provider	12
Law Enforcement	13
Developing an MOU	13
Training on Drug Court Development	13
Participant Eligibility Criteria	14
Screening and Referral	15
Assessment	16
Intake	18
Treatment Services and Aftercare	19
Phases	20
Phase I: Assessment & Stabilization	21
Phase II: Intensive Treatment	21
Phase III: Step-Down Treatment	21
Phase IV: Maintain Treatment and Recovery	22

Graduation	22
Incentives and Sanctions	23
Drug Testing	25
Reports from Treatment Providers	26
Staffings	27
Court Session	28
Continuum of Treatment Services	28
Program Monitoring, Data Collection, and Evaluation	29
Confidentiality	30
HIPAA	31
HIPAA Order	31
42 CFR Part 2	32
42 USC 290(dd)	33
Consent Form	34
After Drug Court	34
Drug Court Certification Process	36
The Center of Excellence for Specialty Courts	36
Adult Drug Court Certification Process	37
Appendices	39
Appendix A: Specialty Courts Mission	39
Appendix B: Sample Drug Court Mission Statement	42
Appendix C: Sample Memorandum of Understanding	43
Appendix D: Sample Participant Handbook	44
Appendix E: Drug Court Order of Special Conditions	57
Appendix F: Medical Drug Disclosure	61
Appendix G: HIPAA Order	62
Appendix H: HIPAA and CFR Release	64
Massachusetts Drug Courts Contact	66

Introduction

Beginning in 2013, the Trial Court of the Commonwealth of Massachusetts undertook a comprehensive review of its systems and policies. With input from court employees and stakeholders from across the system, a strategic plan was developed to chart the next ten years and beyond for the Trial Court system. In accordance with the plan, a policy statement to guide specialty courts and a statement of the mission of specialty courts were created. These documents are included in Appendix A. to this manual.

Drug courts and other specialty courts have been created pursuant to the inherent authority of the courts to sentence defendants within statutory requirements. The majority of drug courts in Massachusetts are post-disposition. Many defendants enter drug court as a result of a probation violation hearing. The mechanism for entry into drug court is by means of specific terms of probation. An order to “comply with any and all terms of the drug court” is entered on the probation order as a specific condition. The probationer must then comply with standard drug court conditions (such as remaining drug and alcohol free), as well as those conditions designed to meet an individual probationer’s needs (such as participating in residential treatment).

The goals of the expansion of specialty courts in Massachusetts, including drug courts, are to reduce recidivism and to provide increased access and linkage to treatment and community resources. Drug courts utilize evidence-based best practices to improve outcomes. Drug court attempts to enhance the lives of individual participants by addressing the underlying causes for court involvement, while ensuring public safety.

To achieve these goals, the Trial Court has undertaken a number of initiatives, including the establishment of the Center of Excellence for Specialty Courts within the Executive Office of the Trial Court. This Center will assist in buttressing the work of the Trial Court and its partnering agencies by organizing continuing education and opportunities for dissemination of new literature and case law as it emerges.

The creation of this Manual is one of these initiatives. The purposes of this Manual are the following:

1. To identify the basic principles of evidence-based best practices applicable to adult drug court in the Commonwealth;
2. To develop a certification process applicable to adult drug courts in the Commonwealth;
3. To identify resources to assist existing drug courts in enhancing their practices and to prepare for the certification process; and
4. To identify resources to assist new courts in establishing adult drug courts that comply with evidence-based best practices and meet certification requirements.

The framework of the Manual comports with the national Ten Key Components of Drug Courts.¹ It addresses issues broadly to allow individual courts to account for local variations based on need and available resources.² It incorporates the Adult Court Best Practice Standards, Volume I (2013) and Volume II (2015).³ In addition, the Manual is designed to provide guiding principles while permitting innovative practices as unanticipated needs arise, and as national best practices are enhanced and modified.

What are Drug Courts?

Drug courts are problem-solving courts that operate under a specialized model in which the judiciary, prosecution, defense bar, probation, law enforcement, substance use, mental health, and social service communities work together to provide treatment to people with substance use challenges, help individuals in the criminal justice system become productive citizens, and reduce recidivism.

Eligible persons with drug-addiction may be sent to Drug Court in lieu of incarceration or traditional probation. Drug Courts endeavor to keep individuals in

¹ *Defining Drug Courts: The Key Components*, National Association of Drug Court Professionals, Drug Court Standards Committee, Office of Justice Programs, Drug Court Program Office, 1997
http://www.nadcp.org/sites/default/files/nadcp/KeyComponents_0.pdf

² Many sections of this manual were derived from Michigan's drug court manual, *Developing and Implementing a Drug Treatment Court in Michigan*, November 2012.
<http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/Specialty/DC-PlanningImplementation.pdf>

³ *Adult Drug Court Best Practices Standards*, National Association of Drug Court Professionals, Volume I (2013) and Volume II (2015) <http://www.nadcp.org/standards>

treatment long enough for it to work, while supervising them closely. For a minimum term of one year, participants are:

- monitored for their engagement in substance use treatment and other services they require to get and stay clean and sober;
- held accountable by the Drug Court judge for meeting their obligations to the court, society, themselves, and their families;
- regularly and randomly tested for drug use;
- required to appear in court frequently so that the judge may review their progress; and
- rewarded for doing well or sanctioned when they do not live up to their obligations.⁴

Integrating a Drug Court into the Criminal Case Process

The majority of drug courts in Massachusetts are a post-adjudicative form of probation. Drug court participants are probationers who have been adjudicated, found guilty, or had criminal cases continued without a finding after admitting to sufficient facts, and are placed on supervised probation. Often drug court participants have served committed time for past crimes, or participants enroll in drug court as part of a split sentence in which they are placed on probation after serving committed time. Typically, the court orders drug court as a condition of probation, either at a sentencing hearing, or after finding a violation of probation. Violations of drug court conditions, such as failure to attend treatment or positive drug screens, are violations of probation. If there is probable cause for the violation, the drug court participant can be detained pending the final violation of probation hearing.⁵ If a violation of probation is found by the judge, the judge can revoke probation and commit the drug court participant for a period of time or the judge can modify the conditions of probation.⁶ Generally, revocation of probation happens only after the court has exhausted all intermediate sanctions and/or the

⁴ <http://www.nadcp.org/learn/what-are-drug-courts>

⁵ Dist. Ct. R. Prob. Viol. 3(b)(iii), 3(c)(vii), and 4(d) provides that probation violation hearings are to be held within 30 days of the service of the notice of violation, “except in exceptional circumstances,” regardless of whether the probationer agrees to delay. Additionally, a court may order a probationer taken into custody pending the commencement and completion of a probation violation hearing. Dist. Ct. R. Prob. Viol. 6(h).

⁶ Dist. Ct. R. Prob. Viol. 8(d).

probationer evinces unsuitability by committing a new criminal offense and posing a threat to public safety.

Assessment of Need and Target Population

The current mainstream drug court model in Massachusetts is a target population of “high risk/high need” offenders. A high risk/high need offender is an individual who is addicted⁷ to illicit drugs or alcohol and is at substantial risk for reoffending or failing to complete a less intensive disposition, such as standard probation or pretrial supervision. Best Practice Standards I B. By comparison, individuals who are low-risk and/or low-need, who do not have these characteristics, tend to perform just as well in less intensive programs, such as standard probation and diversion.⁸

Resource Mapping

The resources available in a community to treat the drug court participants will be an essential factor in establishing and maintaining a drug court. Mapping is a process to identify the spectrum of substance use disorder treatment providers within the community. It is important for the court to consider the variety of treatment providers and types of treatment available, ranging from services for those who need residential treatment to those who need outpatient treatment. It is highly recommended that a sequential intercept mapping exercise be conducted to identify resources and gaps in services. This process will also set forth a plan to respond to identified gaps so that necessary resources are available to drug court participants.

⁷ Diagnostic terminology is in flux in light of recent changes to the 5th edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*. The terms *addiction* and *dependence* are defined in accordance with the American Society of Addiction Medicine (ASAM), which focuses on a compulsion to use or an inability to abstain from alcohol or other drugs. The ASAM definition is as follows: “Addiction is characterized by inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one’s behaviors and interpersonal relationships, and a dysfunctional emotional response.” See <http://www.asam.org/for-the-public/definition-of-addiction>. Illicit drugs include addictive or intoxicating prescription medications that are taken for a nonprescribed or nonmedically indicated purpose.

⁸ DeMatteo, David S., Douglas B. Marlowe, and David S. Festinger. 2006. *Secondary Prevention Services for Clients who are Low Risk in Drug Court: A Conceptual Model*. *Crime & Delinquency*. 52: 114-134.

Alternatively, drug court candidates may have their court cases transferred to a regional drug court supported by the resources necessary for that individual's treatment. Transfers should follow the process set forth in the departmental transfer policy.

In addition to requiring substance abuse treatment, many drug court programs offer ancillary services to their participants. These resources are sometimes a required part of the program, such as with community-based support groups, but are sometimes specific to a participant based on need. For example, a participant who is unemployed may be referred to vocational training. See Best Practices Standards VI.

Goals and Mission Statement

The drug court team should establish goals for the drug court that are specific to the target population and the identified needs within the community. Creating a mission statement is one way in which the drug court team can begin to identify the goals and objectives for the drug court. A mission statement should clarify the goals and values of the drug court, and the intent in establishing the drug court.

The mission statement can address why the community needs the drug court, and what benefits the drug court will provide. For example, an ultimate goal of drug court is to reduce recidivism. Other specific goals may include reducing the rate of overdose within a community, decreasing crimes that are often fueled by drug addiction, or addressing jail over-crowding concerns.

When constructing a mission statement, the team should consider accountability. Individual goals and general themes reflected in a mission statement should be attainable and measurable, and should focus on critical issues for the drug court.

Establishing measurable goals will also aid in data collection and grant writing. For example, “reduce substance abuse” is an important area of focus for drug courts, but as is, that goal is difficult to track and measure. Look at the things the drug court team plans to do to reduce substance abuse, such as increasing accountability through drug testing, requiring attendance at community-based support groups, and incorporating treatment into all phases of the program. In this manner ultimate goals can be tracked through a series of objectives.

Some goals may require a more qualitative measurement than data-driven study. For example, the drug court may wish to implement a one-time risk/needs assessment to help determine the level of service each participant requires. This goal can be measured relatively easily by determining whether or not such an assessment tool was implemented, but consider what other program objectives can be addressed by establishing this goal. The court may be able to track the success of participants in the program versus those not in drug court, and eventually make systemic changes based upon the results. In other words, this one-time goal should fit into the larger picture of the program’s mission statement and ongoing goals.

A sample Mission Statement is included in Appendix B.

“Citizens who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other citizens to participate and succeed in the Drug Court” Best Practice Standard II. This means that the drug court provides equivalent access, equivalent retention, equivalent treatment, equivalent incentives and sanctions, and equivalent dispositions.

The Drug Court Team

Developing the Team

The drug court team is a group of professionals who are responsible for overseeing operations of the drug court and managing supervision of the drug court participants.

The judge is the leader of the drug court team. Other members may include a program coordinator, assistant district attorney, defense attorney, probation officer(s), clerk, case manager, specialty court clinician, treatment providers, local law enforcement, and representatives from local organizations that provide services to drug court participants.

To the extent possible, the team members remain consistent from session to session. This consistency is particularly important for the roles of judge and probation officer. It is recommended that these positions have a trained back-up who is available to fill in when necessary.

Certain positions and partners are essential for the operation of drug court, such as the judge, the probation officer, the clerk, and treatment providers. The prosecutor and defense attorney involvement is recommended, but at a minimum both should be advised of every court date and afforded an opportunity to appear. The drug court coordinator and specialty court clinician are emerging as part of recommended best practices, but these positions may not yet be available to all courts. A strong, well-coordinated team is essential to making drug court a success with the desired outcomes for drug court participants.

Although drug court teams are collaborative, membership in a drug court team anticipates that each team member will continue to perform his or her specific role and responsibilities. Defense counsel on the team, for example, must continue to zealously advocate for the rights of his or her client.

Team Roles and Responsibilities

All members of the drug court team must have a strong grasp of the following:

- Knowledge of substance use disorder including disorders related to addictions, and drug use, as well as mental health disorders, including trauma.
- Knowledge of non-pharmacological and pharmacological therapeutic options.
- Knowledge of gender, age, race, language, and cultural issues that may impact the offender's success.
- Knowledge of the impact that substance use has on the court system, the lives of participants, their families and the community at large.

All members of the drug court team are expected to perform the following:

- Participate fully as a team members, committed to the drug court mission and goals, and work as a full partner to ensure overall participant success.
- Contribute to the education of peers and colleagues as appropriate.
- Participate in on-going training opportunities within the state and nationally as available.

Judge

The drug court judge presides over drug court sessions and leads the team. The role of the drug court judge includes the following responsibilities:

- Heads the team.
- After considering input from team members, makes final decision on participant eligibility.
- Presides over drug court session.
- Makes all decisions in the drug court case, including the imposition of incentives or sanctions.
- Creates an appropriately collaborative atmosphere, and maintains an effective pace for the team.
- Ensures that the drug court team meets regularly to review participant progress and participant needs. Although the practice of judicial presence in staffing is a best practice according to the National Association of Drug Court Professionals, it is within the judge's discretion to decide whether or not to participate in the staffings.
- Effectively leads the team to develop and continuously improve all the protocols and procedures of the program.

Key support to the judge comes from the probation officer, the specialty court clinician, and drug court coordinator. When the specialty court clinician is not available, the primary support role falls to the probation officer. Similarly, the drug court coordinator, if available, assumes some of the roles that are otherwise taken on by the probation officer.

Probation Officer

The probation officer plays a crucial role in the success of drug courts. The probation officer actively monitors drug court participants inside and outside of the drug court setting. The role of the probation officer includes the following responsibilities:

- Assess and recommend participant eligibility.
- Complete intake process, which includes informing participants and their defense counsel of the drug court conditions and responsibilities, as well as the consequences of non-compliance.
- Monitor adherence with treatment and probation conditions.
- Develop partnerships and close working relationships with the treatment community.
- Coordinate the utilization of community-based services such as housing, entitlements, transportation, education, vocational training, job skills training and placement to provide a strong foundation for recovery.
- Develop post program services, client outreach, mentor programs and alumni associations when appropriate or feasible.
- Pursue working relationships with a variety of gender, race, age, and culturally specific treatment services, to make them available as needed.
- Ensure random and comprehensive drug and alcohol testing.
- Collect all relevant data on participants.
- Discuss with participants their progress in meeting treatment goals.
- Make suggestions for changes in services needed for an effective case plan.

Drug Court Coordinator

Ideally each court will have a drug court coordinator. When available, the coordinator takes on some of the administrative duties that would otherwise fall to the probation officer and/or specialty court clinician. These responsibilities include fostering a relationship with treatment providers, wrap-around services, and community groups, and assisting with data collection and data entry.

Specialty Court Clinician

The specialty court clinician works through the Department of Mental Health Court Clinic system and will be assigned to the drug court by DMH Forensic Services in collaboration with the Trial Court. Where available, the specialty court clinician is responsible for supporting probation in making sure participants are referred to the appropriate level of care. The specialty court clinician is a key resource for the judge and the team to make the right treatment decisions. If a specialty court clinician is not available, the responsibilities fall to the probation officer to make a fact-based referral to treatment and to work in concert with community-based treatment providers who can conduct clinical assessments to support placements in the proper level of care.

The role of the specialty court clinician includes the following:

- Complete a biopsychosocial assessment including clinical level of care assessment to determine level of care needs.
- Recommend appropriate treatment options for participants, typically in staffings.
- Engage treatment providers to best meet participant needs. Refer participants to treatment and assist in care coordination.
- Discuss treatment progress with treatment providers and participants in preparation for staffings.
- Provide direct support to participants.
- Inform drug court team on clinical perspectives.
- Expand and maintain relationships with treatment providers.
- Pursue working relationships with a variety of gender, race, age, and culturally specific treatment services, to make them available as needed.
- Provide care planning information and referrals for after-hours supports as needed.
- Engage the participants' families as appropriate.
- Work with probation and other members of the drug court team to ensure appropriate consents and releases of information are signed.

- Work with Department of Mental Health, Department of Public Health-Bureau of Substance Abuse Services, and providers to foster coordinated care opportunities.
- Coordinate with other court clinic staff who conduct evaluations if statutory evaluations become necessary (e.g, M.G.L. c. 123, §§ 12, 15, or 35).

Clerk

A drug court clerk is responsible for making docket entries and ensuring the appropriate files are present for drug court sessions. The clerk also facilitates the transfer of cases according to the Departmental transfer policy.

Prosecutor

A drug court prosecutor should be knowledgeable about substance use disorders and should make sentencing recommendations that include completion of drug court when warranted by the facts of the case and the defendant's criminal history. The assistant district attorney should also attend drug court staffings when possible, and all drug court sessions. As a member of the drug court team, the assistant district attorney ensures that community safety remains a primary concern.

Defense Counsel

Defense counsel must advocate zealously for a client's right at each stage of the proceedings in a drug court. Defense counsel advises the client of the risks and benefits of drug court. The defense attorney should attend drug court staffings when possible and all drug court sessions. If the participant has received a probation violation notice, he or she is entitled to be represented by counsel. Counsel should be appointed to represent the probationer at all stages of the probation violation hearing. Waiver of counsel at a probation violation hearing shall be accepted "only if the court determines that such waiver is being made knowingly and voluntarily." Dist Ct. Prob. Viol. Rule 6(a).

Treatment Provider

The drug court treatment provider shares information regarding the progress and adherence to the treatment plan of a participant. In addition, the treatment provider

adds an important perspective and can advise the team based on clinical expertise in substance use disorders and recovery, mental health and trauma as well as other health conditions, as appropriate.

Law Enforcement

A drug court law enforcement representative serves as a link between the drug court team and the local and regional law enforcement community.

See Best Practices Standard VIII: Multidisciplinary Team and Standard III: Roles and Responsibilities of the Judge

Developing an MOU

A memorandum of understanding (MOU) describes the roles and responsibilities of each team member of a drug court. Generating such agreements at the outset of drug court can clarify roles and delineate responsibility for case management, reporting, and data. For example, will treatment providers report directly to the court on an individual's treatment progress, or will that information be relayed to the probation officer? Each drug court may decide whether to use a single MOU signed and dated by all team members, or separate MOUs for each team member. The duration and terms of the MOU should be included. A sample MOU is found in Appendix C.

In addition to MOU's with treatment providers, it is recommended that an MOU be executed in which the District Attorney's Office agrees not to prosecute participants who admit to a relapse to use. This MOU should also apply to the law enforcement member of the team.

Training on Drug Court Development

The Specialty Court Center of Excellence offers training on the fundamentals of beginning a drug court called Drug Court 101 for team members beginning the process of starting a drug court. The Center for Excellence, in conjunction with the Departmental Chief Justice also coordinates a Peer Mentorship Program, which matches experienced drug court judges and probation officers with new drug court teams. This is particularly

helpful in providing direct and specific guidance to teams as they begin the process of starting a drug court.

Several national organizations offer training on developing drug courts. These training programs educate on the fundamental steps for creating a drug court, and can apply considerations specifically related to a community’s target population.

The Drug Court Planning Initiative	DCPI is a training program sponsored by the National Drug Court Institute (NDCI). DCPI is designed to assist jurisdictions in the planning and development of drug court programs. Each interactive DCPI training session is designed to familiarize participants with the building blocks of a drug court. Training participants have an opportunity to learn from and work with actual drug court practitioners and subject-matter experts throughout the DCPI process. http://www.ndcrc.org/node/1204
The National Drug Court Training and Technical Assistant Program	NDCTTAP is available through the Center for Court Innovation and provides an extensive listing of resources that have been created and shared by existing drug courts. Resources for various types of problem-solving courts are available, and include information and sample documents for nearly every aspect of a drug court program. http://www.drugcourtta.org/
American University	American University School of Public Affairs hosts the Bureau of Justice Assistance Drug Court Technical Assistance Program. A searchable publication and resources database, and various forms of technical assistance are available on line http://www.american.edu/spa/jpo/initiatives/drug-court/

Participant Eligibility Criteria

It is important for each drug court to establish in writing clear, objective, and specific eligibility criteria for admitting candidates into drug court. Requirements that are too vague can lead to unintentionally disparate treatment, or perceptions that the drug court is unfair. The primary eligibility requirement for all drug courts is that the offender must have a substance use disorder. This will be discussed in greater detail in the section on Assessment. Currently, most drug courts in Massachusetts are post-adjudication. A second threshold eligibility requirement for these courts is that the participant must have been found guilty, pleaded guilty, or have admitted to sufficient facts to be found

guilty of a criminal charge or charges. The final threshold eligibility requirement for post-adjudication courts is that part or all of the participant's sentence must place the participant on probation.

Determining other eligibility requirements can specifically address the needs and resources of each individual drug court. Factors to consider include the nature of the current offense, criminal history, drug of choice, residency, and whether treatment resources are available to meet the offender's needs. In addition, the participant must be deemed to be high risk/high need. This concept will be further discussed in the section on Assessment.

Disqualification criteria should be identified as well. These are factors that would render an individual ineligible for drug court. Disqualifications fall into two categories: criminal history disqualifications and clinical disqualifications. Current or prior criminal offenses may disqualify potential participants if it can be shown that offenders with such records cannot be managed safely or effectively in drug court. Criminal history disqualifications could include defendants who have a prior conviction for a sex offense or arson. If adequate treatment is available, candidates should not be disqualified from drug court because of co-occurring mental health or medical conditions or because they have been legally prescribed psychotropic or addiction medication. See Best Practice Standards I.

Screening and Referral

Once eligibility requirements have been clearly articulated, potential drug court participants can be identified. A screening process must be established to determine that the eligibility requirements are met and the offender satisfies the basic drug court criteria. All drug courts in Massachusetts must use a standard evidence-based screening tools to evaluate drug court candidates. In addition to the screening tools, those performing the screening must evaluate the offender based on the established eligibility criteria specific to the particular drug court, such as whether the offender falls within the target population.

Referrals to Drug Court may come from a variety of sources. A defense attorney may inquire as to whether a client is eligible for drug court, a prosecutor or probation officer may recommend drug court as a probation condition, or a judge may ask that a defendant or probationer be screened for potential drug court participation.



Regardless of which source initiates a referral to drug court, there must be a clear avenue for receiving and screening referrals. The most common protocol is that the drug court probation officer or drug court coordinator receives all referrals. The probation officer then performs the screening utilizing both the screening instrument and the local eligibility criteria. The results of the screening are then reported by the probation officer to the court at the offender’s next scheduled court appearance.

Assessment

Two types of assessments occur when an individual is referred to drug court. The first is an assessment to determine the scope of the participant’s drug use. This includes a determination as to whether an individual qualifies as the high risk/high need target demographic for drug court. As noted earlier, the current mainstream drug court model in Massachusetts is a target population of “high risk/high need” participants. Individuals are both high risk and high need when they have serious substance use disorders, and they also have a history of poor response to standard treatment or antisocial personality traits. A high risk/high need offender is an individual who is addicted to illicit drugs or alcohol and is at substantial risk for reoffending or failing to complete a less intensive

disposition, such as standard probation or pretrial supervision. [See footnote 7 above] Best Practice Standards I B. Second, a more detailed assessment is performed to determine the type and level of treatment the participant needs to receive in drug court.

The substance use disorder and high risk/high need assessment is administered by the probation officer or specialty court clinician. The assessment is able to distinguish between people who have a documented serious drug use and those who misuse drugs, but are not dependent. It also measures the individual's level of risk, prognosis and amenability to treatment. These determinations should be made using the most advanced validated risk tool available.

After a candidate is assessed for substance use disorders, and risk/need, the team must also utilize an assessment process to determine what type of treatment the participant should receive. Generally, the specialty court clinician will complete a biopsychosocial assessment to determine level of care and/or coordinate with the local treatment provider who may have conducted an assessment as well. If a clinician is not available, the probation officer will identify a community based provider to conduct a clinical assessment to support placements in the proper level of care.

The probation officer should also explain drug court to the candidate, including the expectations of drug court. If the individual has a pending criminal case, the probation officer should only meet with the defendant if defense counsel is present or with the agreement of defense counsel. The probation officer should gauge the candidate's commitment to drug court. The individual must agree to be placed in drug court. The probation officer should give the candidate the Participant Handbook, a sample of which is contained in Appendix D, and discuss frequently asked questions.

Drug Court Participant Handbook

The sample handbook in Appendix D provides an example of what participants typically need to know. The handbook must be easy to read and informative, and it should be provided to every drug court participant and their counsel. Drug Court teams can use their discretion to amend the sample handbook according to the needs of each individual

drug court population. The handbook should also include information on resources such as crisis hotline and drug testing.

The judge decides whether an individual will be admitted into drug court. The judge's decision, however, is based on input from team members who have had contact with the candidate. The judge will consider assessment recommendations by the specialty court clinician and probation officer, and the prosecution and the defense attorney. The judge should also review an individual's criminal record and any other relevant information. It is imperative that the team does not apply subjective criteria or personal impressions to determine participants' suitability for the program. Best Practice Standards IA.

Intake

Once a participant is admitted into drug court by the judge, the probation officer will meet with the participant to complete an Intake Form. The participant is provided with several documents. First, all participants must read and sign the Order of Special Conditions and Addendum, a sample of which is found in Appendix E. By signing the Form, the participant waives his or her right to attorney representation,⁹ waives his or her doctor/clinician confidentiality rights, and also agrees to follow the drug court rules. If applicable, the participant is advised about the process of staffing and waives his or her right to be present at staffings. All participants should be provided a copy of the relevant sections of Health Insurance Portability and Accountability Act (HIPAA) and relevant sections of the Code of Federal Regulations (42 CFR Part 2). Participants need to waive their confidentiality rights to facilitate communication among team members regarding substance abuse treatment information. If the participant has not already received the participant handbook, it should be provided to the participant by the probation officer.

⁹ This waiver of counsel applies only to the regular court sessions and staffings. If the participant has received a probation violation notice, he or she is entitled to be represented by counsel. Counsel should be appointed to represent the probationer at all stages of the probation violation hearing. Waiver of counsel at a probation violation hearing shall be accepted "only if the court determines that such waiver is being made knowingly and voluntarily." Dist. Ct. Prob. Viol. Rule 6(a).

Treatment Services and Aftercare

A primary goal of drug court is to ensure the participant engages in and complies with treatment.

Programs vary with regard to the expected time frame between admission to drug court and the first substance use disorder treatment session. This time frame should be as short as possible. It is a best practice for a drug court participant to have his or her first session with a treatment provider within two weeks of being admitted to drug court.

The appropriate level of care should be determined by treatment professionals through the use of a validated evidence-based placement instrument. An individualized treatment plan should be developed for each participant. These plans should take into account general factors related to the participant's clinical needs, prognostic risks, and personal strengths and resources. Given that treatment modalities are determined by these individual risks and needs, it is important to ensure that the program accepts participants with needs that can be met by the types of treatment available in the community.

In addition to the ability to meet the level of care needed by a particular participant, it is important that a new drug court consider **cultural** and **gender** issues. Research indicates that cultural sensitivity can improve the therapeutic relationship and improve treatment outcomes. Research also shows that holding separate treatment groups for men and women

Both the substance use disorder and mental health symptoms should be addressed in

tends to produce better outcomes, especially for women.

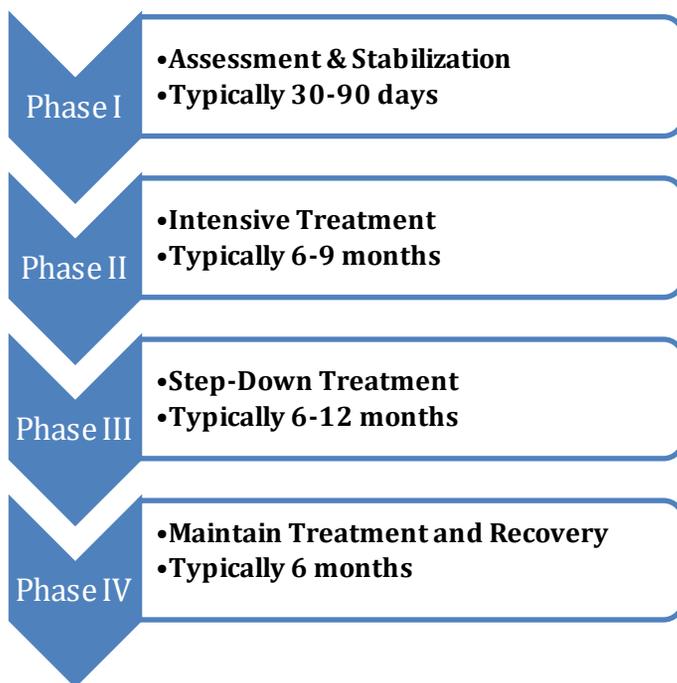
order to most effectively treat participants with co-occurring mental health disorders. The treatment plan should be comprehensive in addressing both substance use disorder issues and mental health issues, such as depression, anxiety, and trauma-related issues, including post-traumatic stress disorder. See Best Practice Standards V.

Phases

A drug court typically consists of four structured phases, with advancement through the phases based on objective criteria. The phase structure focuses on progressive goals for the participant. As participants progress, they are promoted to a higher phase where in-court monitoring is reduced and requirements are changed. For example, when promoted, the number of court appearances per week may be lessened and a new requirement to complete a GED may be instituted.

It typically takes an individual 16-27 months to complete all phases. The minimum amount of time a participant can be in drug court is 12 months, and the suggested

maximum is 3 years.¹⁰ All phases, except the first, should have a minimum time period. The amount of time a participant remains in each phase should fall within standard guidelines, but may relate to their individual criminogenic risks. Each court will design their phases to fit local needs and resources, but the following phase structure represents a typical model:



¹⁰ <http://www.nadcp.org/learn/what-are-drug-courts>

Phase I: Assessment & Stabilization

The first phase is **Assessment & Stabilization**. The typical duration of Phase I is 30-90 days. The requirements of Phase I are a full assessment by a treatment provider, random and comprehensive drug and alcohol testing multiple times a week, weekly meetings with the probation officer, and attendance at a weekly or bi-weekly court status hearing before the judge. The court-appearance requirement, and weekly meeting with a probation officer requirement, may vary depending on whether the participant is receiving in-patient treatment.

Criteria to complete Phase I are full compliance with treatment, report from treatment provider that the participant is stable in recovery, and self-help programs are in place.

Phase II: Intensive Treatment

The second phase is **Intensive Treatment**. The typical duration of Phase II is 6-9 months. The requirements of Phase II are random and comprehensive drug and alcohol testing multiple times a week, reporting to the probation officer every week or every other week, appearing in court before the judge weekly or every other week, and treatment in accordance with the individualized treatment plan. Often participants in Phase II are in residential treatment, or structured living environments that include treatment.

Typical criteria to complete Phase II are 90 days of negative drug tests, on-going intensive treatment, and the participant exhibits pro-social and healthy behaviors.

Phase III: Step-Down Treatment

The third phase is **Step-Down Treatment**. The typical duration of Phase III is 6-12 months. The requirements of Phase III usually include random drug testing multiple times a week, reporting to the probation officer less frequently, attending drug court less frequently, and the use of wrap-around services specific to the participant's needs.

Typical criteria to complete Phase III are 9 months of negative drug tests, completion of supervised probation requirements, compliance with treatment, employment or

attending school, and a written application letter to the drug court for advancement to Phase IV.

Phase IV: Maintain Treatment and Recovery

The final phase is to **Maintain Treatment and Recovery**. The typical duration of Phase IV is 6 months. Phase IV allows the participant more independence in their access to treatment and wrap-around services, and requires the participant to be more self-sufficient. Typical requirements of Phase IV include random drug testing, reporting to probation less frequently, attending drug court less frequently, and use of wrap-around services. Often, the participant is required to have a hair follicle test to document 90 days of sobriety.

Graduation

Completion of Phase IV is graduation from drug court. Once a participant graduates from drug court, probation may be terminated and the graduate is no longer under probation supervision.

Typical requirements to graduate drug court are the following:

- successful completion of all four drug court phases,
- substance free for 12 consecutive months,
- passing a 90-day hair drug test,
- treatment provider approval for graduation,
- progress toward vocational, educational, and employment goals,
- a written graduation application,
- community service,
- suitable residence,
- a continued care plan, and
- a sponsor.

Certain requirements may be flexible, while others are not. The team must decide in advance which requirements must be met in their entirety and the level of flexibility built into the other requirements.

Graduation is formally recognized with a graduation ceremony during the drug court session. Generally, a certificate of graduation is signed by the judge and awarded to the participant. The drug court team should determine how to hold graduation ceremonies; for instance, whether they will be for individual or multiple participants, and who might be notified of the ceremonies (participants' families, friends, local stakeholders). If the local news media will be invited to the graduation ceremony, the participants must sign a release agreeing to be identified.

Incentives and Sanctions

When a participant deserves recognition for compliance or fails to meet expectations, the judge should impose appropriate incentives or sanctions, respectively. Consequences for participants' behavior must be predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behavior modification. See Best Practices Standards IV. Incentives and sanctions are used to address a participant's progress, or lack of progress. A full list of incentives and sanctions is included in the Participant Handbook in Appendix D. Possible incentives and sanctions are listed below.

The most successful programs utilize a variety of mid-range responses to participants' behaviors.¹¹ Starting in the middle of the incentives and sanctions range allows programs to increase or decrease their responses to violations or achievements.

INCENTIVES - NADCP states that incentives are "critical for producing long-term behavioral improvements." In fact, giving incentives to individuals who are high-risk is especially effective because these participants are desensitized to punishment and are unaccustomed to being rewarded. Incentives do not need to be costly (courtroom applause or verbal praise from the judge) and can be individualized. For example, if a

¹¹ See *Principles of Evidence-Based Sentencing and Dispositional Reform*, the National Association of Drug Court Professionals (NADCP) <http://www.nadcp.org/sites/default/files/nadcp/NADCP%20Principles%20of%20Evidence-Based%20Sentencing.pdf>.

participant enjoys writing, an incentive might be allowing the participant to read a poem he or she wrote.

Drug court teams should determine what specific incentives and sanctions will be given for specific participant behaviors. This encourages fairness among participants and allows participants to predict the consequences of their actions. Making clear what rewards a participant might expect, or the consequences they will face for negative behavior, will help the participants to understand their roles and responsibilities in drug court.

Evidence-based best practices require that the Drug Court utilizes a range of sanctions. “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.” Best Practice Standards IV E

INCENTIVES	SANCTIONS
<ul style="list-style-type: none"> • APPLAUSE • BOOKS • MBTA PASSES • COURT APPEARANCES DECREASED • COURT APPEARANCES ENDED • CURFEW EXTENSION • ENTRY INTO GIFT DRAWING • EARLY GRADUATION • EARLY DISMISSAL FROM REVIEW HEARING • GIFT CERTIFICATE • JUDGE SHAKES HAND • JUDICIAL PRAISE • PERMISSION TO TRAVEL • PHASE PROMOTION • PROBATION REPORTING DECREASED 	<ul style="list-style-type: none"> • COMMUNITY SERVICE • COURT APPEARANCES INCREASED • CURFEW IMPOSED • DETENTION • DRUG TESTING INCREASED • ESSAY • HOME DETENTION • JAIL • LETTER OF APOLOGY • PHASE DEMOTION • PHASE TIME EXTENDED • PROBATION REPORTING INCREASED • SIT IN CUSTODY IN COURTROOM

It is important to distinguish incentives and sanctions from therapeutic adjustments. “Participants do not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements but are not responding to the treatment interventions. Under such circumstances, the appropriate course of action may be to reassess the individual and adjust the treatment plan accordingly. Adjustments to treatment plans are based on the recommendations of duly trained treatment professionals.” Best Practice Standards IV G.

If the judge is considering whether to impose a sanction for an alleged failure, it must be done in the context of a probation violation hearing. The probationer is entitled to notice of the alleged violation, has the right to counsel, and has the opportunity to be heard. The hearing is conducted pursuant to the District/Municipal Court Rules for Violation of Probation Hearings.

Each drug court team must make a decision about use of phase demotions. Phase demotions can be significantly more demoralizing to participants than other sanctions that may be equally effective in correcting the participant’s behavior. An important factor that should frame this discussion is the need for consistency among and between participants. Phase requirements and program expectations should be clearly stated in the program contract or handbook, and then adhered to and supported by the team. For example, if the program requires 180 days of sobriety for graduation, allowing a participant with a recent relapse to graduate may create an appearance of unfairness to other participants.

Drug Testing

Reliable, regular, and observed drug testing is an essential component of drug court. Drug testing provides an objective means of determining recent use. It also serves as a deterrent to future use, because participants know they could be tested at any time and face consequences for using drugs. Drug testing also identifies participants who remain abstinent and can guide incentives or rewards.

Testing should be conducted on a random basis and at different times of the day or night, including weekends. Less frequent but truly random testing can be more beneficial than daily testing as long as the participant believes that he or she could be tested at any time. Creating a system that ensures the random nature of testing is a recognized best practice. See Best Practice Standards VII.

Depending on regional resources, drug testing can be conducted by the probation department, the sheriffs' offices, the office of community corrections, or a combination of these resources. The collection and custody of drug testing specimens should be performed in accordance with best practice standards.

Prior to their admission into drug court, defendants are informed, that failure to produce a sample and production of a questionable sample, i.e., a sample with low creatinine, will be considered a failure or positive test and that the tests are presumptively valid. If a participant disputes a result and seeks a confirmatory test, the court should have the ability to re-test for confirmation of the original test results. The judge has the option of ordering the participant to pay for the re-test, unless it is negative.

Participants should also be advised that the nonmedically indicated use of intoxicating or addictive substances, including alcohol, marijuana and prescription medication is prohibited, regardless of the licit or illicit status of the substance. Best Practice Standard IV. F. Drug court participants are required to advise their medical providers that they have a history of substance use disorder and must request that non-addictive medications be prescribed, if medically appropriate. See sample form at Appendix I. The drug court team should rely on expert medical input to guide these determinations.

Reports from Treatment Providers

Successful drug courts rely heavily on the effectiveness of treatment. Cooperation and communication between the court and treatment is essential. The court must receive complete and accurate reports from treatment providers about the compliance and progress of drug court participants. This can take the form of written reports, oral

reports to the probation officer, or the attendance of treatment providers at staffings to report directly to the judge and the drug court team. All treatment providers must sign confidentiality waivers, as discussed further in the section on Confidentiality. The court must determine the scope of information the treatment provider must provide to the court. The court may issue a HIPAA Order which will further facilitate the information sharing essential to a successful drug court.

Staffings

Prior to holding the drug court session, the drug court team holds a “staffing” The staffing is attended by team members. It is a best practice is for the staffing to be led by the judge. Judicial participation, however, is discretionary and not mandatory to drug court. The purpose of the staffing is to update team members on the progress of each participant scheduled to appear that day in court, and to discuss any potential issues.

The drug court team will need to determine which team members will attend each staffing meeting. The probation officer and treatment providers are the primary means of learning about the participant’s progress. Treatment performance and compliance with other probation conditions are discussed, which helps to prepare the judge for the court session that immediately follows the staffing. By supporting and reinforcing the goals of the treatment providers, the likelihood of a successful outcome for the participant is enhanced.

If information is provided in the staffing that may support a potential sanction, defense counsel is appointed to represent the probationer. If defense counsel is not present, discussion of that participant is deferred until counsel is available.

Staffings are distinguished from staff meetings. Staff meetings are held on a less frequent basis, usually quarterly or twice a year, and there is no discussion of individual cases. The purpose of the staff meeting is to discuss the drug court program generally, brainstorm about ways to improve, identify upcoming trainings, and to reflect on the progress and direction of the program.

Court Session

The drug court session follows the staffing usually immediately or later the same day. The drug court session is a docket dedicated solely to drug court participants. Cases are scheduled for hearing, and each participant scheduled that day for a hearing will personally appear before the judge. Participants attend the court session as a group and remain in the courtroom as each fellow participant interacts with the judge. This allows participants to see the consequences of others' actions and builds a sense of mutual support among participants. Best practices suggest that the judge should interact with each participant for at least three minutes. In addition, while it may be natural to spend a longer period of time with a participant who is struggling, evidence shows that it is more effective to spend more time praising a participant who has made progress during the week.

Although many programs set rigid guidelines for the frequency of judicial reviews determined by program phase, research indicates that low-risk offenders are successful with fewer judicial reviews than high-risk offenders. The National Association of Drug Court Professionals (NADCP) indicates in their publication, *Principles of Evidence-Based Sentencing and Dispositional Reform*, that high criminogenic risk offenders require “close and continuous monitoring of substance use, criminal activity, and treatment attendance. In addition, frequent status reviews are required by a criminal justice professional, typically a judge, who has the authority to impose meaningful and substantial rewards for accomplishments and sanctions for infractions.” Research shows that holding status reviews for high-risk participants less often than biweekly or monthly will have little effect on improving their behavior or reducing substance use.

Continuum of Treatment Services

“The drug court should provide or refer participants for treatment and social services to address conditions that are likely to interfere with their response to substance abuse treatment or other services (responsivity needs), to increase criminal recidivism (criminogenic needs), or to diminish long-term treatment gains (maintenance

needs).” Best Practice Standards VI A. “In the first phase of drug court, participants should receive services designed primarily to address responsivity needs, such as housing, mental illness symptoms, withdrawal, and substance-related cravings. In the interim phases, participants receive services designed to resolve criminogenic needs that frequently co-occur with substance use disorder, such as criminal-thinking patterns and family conflict. In the later phases, participants should receive services designed to maintain treatment gains by enhancing their long-term adaptive functioning such as vocational or educational counseling.” Best Practice Standards VI. B.

The continuum of treatment services available to the drug court participants should include a range of treatment services of varying intensity, from acute to stabilization to support services when needed. Not all participants will need residential placements. Other services, including inpatient rehabilitation services, which are short-term residential treatment (12-30 days); intensive outpatient services, outpatient services, medication assisted treatment, and sober houses are various examples of the continuum of care that may be needed for participants.

In addition to treatment options, drug court participants are supported by additional services that further sobriety. Such services include mental health, health and dental services, housing assistance, self-help groups, workforce development, education, job readiness and training programs, employment search, family therapy, parenting education, therapy for children, phone counseling, recovery support network, community groups, and recovery coaches. See Best Practice Standards VI

Program Monitoring, Data Collection, and Evaluation

Evaluation is a critical component of the drug court concept. The quality of the evaluation depends upon accurate and thorough data collection throughout the duration of the drug court. It is important to think ahead about how to evaluate the effectiveness and performance of the drug court program. See Best Practice Standards X.

There are generally two types of evaluations that might take place in a drug court. The first is called a process evaluation, which tells the team what is, or is not, working in

the program's day-to-day operations. For instance, the court may examine its screening process to ensure that potential participants are being screened quickly and efficiently. Or, the court may review its drug testing protocol to ensure that participants are being tested frequently and randomly, and that accurate test results are available in a timely manner.

The second type of evaluation is an outcome evaluation, which measures the effectiveness of the program. Such an evaluation might look at the graduation rate in the program, and the recidivism rate of both successful and unsuccessful participants. A comparison group of similar offenders handled by traditional methods will be beneficial to have for baseline information and comparison.

Data can be used by drug courts over time to ensure that evidence-based practices are utilized by each agency involved in the drug court.

Recommendations that establish data tracking and capturing methods will be available from the Center of Excellence. The Center of Excellence will identify metrics necessary to generate both process and outcome evaluations, and will provide courts with guidance on how to utilize MassCourts for these purposes.

Confidentiality

In general, confidentiality in drug court is addressed by three federal statutes: the Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2, and 42 USC 290(dd). It is recommended that a drug court engage in two best practices to address confidentiality considerations:

- 1) Before a defendant is admitted into drug court, the court should require the execution of a consent form by the participant that meets HIPAA requirements. See Appendix H for a sample consent form.
- 2) When a defendant is admitted into drug court, the court should issue an order requiring treatment providers to disclose relevant treatment to the drug court team. See Appendix G for a sample order.

HIPAA

HIPAA was enacted to improve health care by establishing standards for the electronic transmission of certain health records. It prohibits certain entities from disclosing a patient's health information without proper consent or authorization. HIPAA does not apply to the courts, law enforcement, or probation officers.¹²

HIPAA also does not apply to correctional facilities or law enforcement having lawful custody of an inmate or detainee if the protected health information (PHI) is necessary to provide healthcare to the individual, to protect the individual, other inmates, security officers or employees, or for the federal administration, maintenance of safety and security of the facility including law enforcement.¹³

That said, HIPAA may apply to the treatment providers who are members of the team. Treatment providers who fall within HIPAA cannot discuss any patient health information, which includes "any individually identifiable health information; broadly defined to include any part of a medical record or payment history" unless consent is given or pursuant to court order.

HIPAA Order

Federal regulations permit a HIPAA-covered entity to disclose any protected health information in the course of a judicial proceeding in response to an order of court and only to the extent that the PHI is expressly authorized by such an order.¹⁴ The court can issue an order requiring that treatment providers disclose relevant treatment information about a drug court participant to the drug court team. Although not required by the rule, the order should acknowledge that disclosure of the information will be used by members of the drug court team for drug court purposes, that no re-disclosure will occur, and that the order expires upon the participant's termination or graduation from the drug court program. Finally, any order should provide that the disclosure should be the "minimum necessary to accomplish the intended use,

¹² Marlowe, Douglas B. and Hon. William Meyer (ret.), *The Drug Court Judicial Benchbook*, National Drug Court Institute, § 9.5, © 2011, citing the National GAINS Center.

¹³ Id., citing 45 C.F.R. § 165.512(d)(5).

¹⁴ Id., citing 45 C.F.R. § 165.512(e)(1).

disclosure, or request.”¹⁵ Thus, the court should limit the disclosure to whether the individual attended treatment, participated in treatment, prognosis, and any information the treatment provider believes is necessary to put the drug court participant’s compliance with treatment in context. A sample order is contained in Appendix G.

42 CFR Part 2

42 CFR Part 2, prohibits the release of identification and alcohol or other drug-use information from any program that is assisted or regulated by the federal government.¹⁶ The programs covered by 42 CFR Part 2 must (1) involve substance abuse education, treatment, or prevention, and (2) be regulated or assisted by the federal government.¹⁷ This is a very broad definition, as the first part includes not only diagnosis and treatment, but also referral for treatment. Thus, a court employee who administers an alcohol or other drug screening and assessment or a judge who orders substance abuse treatment as a condition of probation or drug court participation arguably brings the court within the ambit of the federal definition of the program.¹⁸

The second part of the definition is also broad, as it covers both direct and indirect funding and assistance. The regulations include (1) any entity being a recipient of any federal funds, including funds not used for alcohol or other drug diagnosis, treatment, or referral; (2) activities conducted by a state or local governmental unit, which through revenue sharing or otherwise receives federal funds that could be (but are not necessarily) spent on a substance abuse program; or (3) a program that receives tax exempt status or the program has donors who receive income tax deductions for

¹⁵ Id., citing 45 C.F.R. § 164.502(b), 164.514(d). Technically, the “minimum necessary” requirement does not apply when the participant has consented to disclosure, but the better practice in drug courts is that the standard applies regardless of the existence of consent.

¹⁶ Marlowe, Douglas B., *The Drug Court Judicial Benchbook*, National Drug Court Institute, § 9.5, © 2011.

¹⁷ Id. § 9.6

¹⁸ Id., citing Jeffrey Tauber et al., Nat’l Drug Court Inst., *Federal Confidentiality Laws and How They Affect Drug Court Practitioners* 6 (1999).

contributions to the program.¹⁹ Thus, any state or local court system would almost certainly qualify as being a recipient of federal assistance.²⁰

Regardless of whether the drug court meets the two tier qualification for being a federally assisted program, the drug court judge is going to be the recipient of treatment information protected by federal confidentiality laws.²¹ When a court receives information protected by the federal confidentiality laws, the court is prohibited from re-disclosing such information, absent proper consent or those limited authorized disclosures permitted without consent.²²

42 USC 290(dd)

42 USC 290(dd) states that, “records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall . . . be confidential.” There are two exceptions to this code and those apply, “within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or between such components and the Uniformed Services.”

Specifically, the law prohibits the sharing of substance abuse treatment records and pertains to “any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation or research which is directly or indirectly

¹⁹ Marlowe, Douglas B., *The Drug Court Judicial Benchbook*, National Drug Court Institute, § 9.6, © 2011.

²⁰ *Id.* § 9.6, n.19, noting that not all courts have read the regulations in such an expansive manner. See e.g., *Ex parte Execution*, 773 So.2d 431, 431 (Ala. 2000) (holding that the treatment program must receive the federal funds, and not just the University of Alabama at Birmingham). See also *United States v. Zamora*, 408 F. Supp. 2d 295, 295 (S.D. Tex. 2006) (relying on the 42 C.R.R. § 2.12(e)(2) exception and stating that the treatment program itself not the hospital must receive direct federal assistance and noting emergency room exception); *Ctr. For Legal Advocacy v. Earnest*, 320 F.3d 1107, 1111-1112 (19th Cir. 2003) (holding, consistent with amendment to federal regulations, that referrals to substance abuse treatment providers by emergency rooms does not make emergency rooms a program unless the ER's primary function is AOD treatment or the ER holds itself out to the public as providing such services).

²¹ *Id.*, citing Tauber, et al., *supra* note 13, at 8.

²² *Id.*, citing 42 C.F.R. § 2.32, 2.35; see Legal Action Cntr., *supra* note ____, at 35-36, 135-136.

assisted by any department or agency of the United States,” which is interpreted to include any state or local court system. While drug test results are not protected unless used for diagnosis or treatment, because of the therapeutic use of drug testing results in drug courts, these records should be considered protected under federal confidentiality laws.

Consent Form

Because it is important that the court and treatment providers maintain ongoing communication and exchanges of information regarding drug court participants, those participants are required to sign a valid consent form, allowing the disclosure of their treatment information. (Appendix H) There are two requirements for a valid consent form: advisement of the participant’s rights under the law, and the actual consent. The consent form must reflect the name of the drug court participant, the name of the person(s) permitted to disclose information, the name of the program disclosing information, the purpose of the disclosure, and what kind of information may be disclosed.

If a consent form is not signed, failure of team members to follow these three laws can result in hefty fines, loss of all federal funding, loss of state licenses, and criminal charges. In addition, the consent form should include a statement concerning how the staffing will be conducted. The participant’s written consent to a discussion of his or her progress within the staffing and a waiver of his or her right to be present at staffing should be obtained.

After Drug Court

Graduation from drug court is not graduation from the challenges of a substance use disorder, which can be a chronic and relapsing condition. While substance use

management continues after graduation, the tools learned in the drug court need to be utilized every day if long-term sobriety is to be achieved.²³

Some participants struggle to maintain their sobriety after court supervision and accountability abruptly end at graduation. As a result, some drug courts choose to begin an alumni group as an option for participants who could benefit from continued support from the court and other drug court participants.

Due to worry over support and accountability diminishing some participants relapse shortly before graduation as a means to remain in the program. Thus, some programs institute step-down groups. These are groups in which participants can receive support prior to graduation. Participants may join when promoted to the final phase of the program or at a designated time before their scheduled graduation (for example, during their last three months of participation). Some courts require participation in an alumni or step-down group, while other programs make participation optional.

Alumni programs can engage in a variety of activities, including planning sober social events, publishing newsletters, participating in subsequent drug court graduations, and developing 12-step meetings for the court's alumni.

Some programs engage alumni as mentors for current participants. These mentors provide a support system for new participants as they navigate drug court. Drug court mentors provide support and encouragement to new participants, provide transportation for participants, attend graduation ceremonies, plan sober social activities, and sometimes serve as sponsors in 12-step groups.

The Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project at American University prepared a comprehensive report on Drug Court Alumni strategies. The report, entitled, *Good Beginnings: Development and Maintenance of Drug Court Alumni Groups*, can be accessed through the American

²³ Herrera, Ismael, *Lee County Drug Court Launches Alumni Group*, Copyright ©2015 - 20th Judicial Circuit of Florida.
<http://www.ca.cjis20.org/home/main/articledisplay.asp?Article=59567.htm&Display=mobile>

Drug Court Certification Process

The Center of Excellence for Specialty Courts

In 2014, the Trial Court, working in partnership with the DPH-BSAS and DMH, contracted with the University of Massachusetts Medical School's Program of Law and Psychiatry to create the Center of Excellence for Specialty Courts. The Center of Excellence is organized around five core areas: research, evaluation, training legal research and support, and outreach. The Center of Excellence will perform the following core functions:

- Perform a range of long-term projects, analyze data, and guide policy change and improvement.
- Assist the Trial Court evaluation teams in conducting evaluations of specialty courts to improve operations and to comply with evidence-based best practices.
- Research developments in case law and federal and state legislation relevant to specialty courts, and provide analysis of the impact of any legal developments on the operations of specialty courts in Massachusetts.
- Remain informed on current substance use, mental health, and social science research that impacts specialty courts, and provide information and analysis of how such research impacts special court operations in Massachusetts.

The mission of the Massachusetts Center of Excellence for Specialty Courts is comprised of the following:

- Standardize positive outcomes for those participating in specialty court programs.
- Act as a groundbreaking laboratory of data and ideas.
- Provide technical assistance to judges, probation officers, and other specialty court team members.

- Foster collaboration across state agencies to coordinate resources in more efficient and effective ways.

Adult Drug Court Certification Process

The purpose of the drug court certification process is to support adult drug courts throughout Massachusetts in utilizing nationally-recognized best practices for program operation. The certification process goals are 1) to educate drug courts on national best practices, 2) ensure that drug court participants are enrolled in effective drug courts, and 3) ensure that drug court operations are consistent with providing participants with all constitutionally protected rights. The Center of Excellence will coordinate and provide trainings, and may act as a liaison for the drug court to enroll in national trainings. The Center of Excellence will also serve as a resource to applicant drug courts in the creation of policies and procedures, mission statements, and the development of other documents or procedures specific to that drug court which are necessary for certification. In addition, the certification process will include the varied and innovative approaches to drug courts, and will foster and support drug courts designed to address specific community needs consistent with evidence-based practices.

The adult drug court certification process begins with an application submitted by the drug court team to the Center of Excellence. The application must be submitted at the direction of the departmental Chief Justice.

Once the Center of Excellence possesses a completed application, the certification process will begin with a document review, conducted by the certification team. The Trial Court will establish a certification team consisting of at least one judge, one probation officer, and a treatment provider or specialty court clinician. The document review will include the drug court's policy and procedures manual, its mission statement, the participant handbook, a list of drug court team members, and copies of any team members' drug court training certificates.

After the document review, the certification team will conduct a site visit to see the drug court in operation and to meet the members of the drug court team. The

certification team may engage in additional conversations with the presiding justice or other drug court team members after the site visit.

The certification team will then write a report to the departmental Chief Justice. If the report recommends certification, the departmental Chief Justice will review and forward the report to the Chief Justice of the Trial Court. The Chief Justice of the Trial Court will review the report and recommendation of the certification team and make the final certification determination. A copy of the certification issued by the Chief Justice of the Trial Court will be provided to the drug court Presiding Justice and the departmental Chief Justice. Certifications will remain active for 3 years.

If the certification team is unable to recommend certification, it will transmit a report to the departmental Chief Justice. This report will outline the steps recommended to achieve certification. The report will include an action plan for the Center of Excellence to assist the drug court in meeting this goal, and a time frame after which the certification team will reconsider the drug court for certification. The departmental Chief Justice will be responsible for monitoring the adoption of the certification recommendations put forth by the certification team.

Appendices

Appendix A: Specialty Courts Mission

The Mission of the Specialty Courts is to:

Provide innovative judicial processes, practices, and collaborations that increase public safety by reducing recidivism for targeted populations for whom traditional deterrence methods have not been effective.

Trial Court Policy for Specialty Court Sessions

The Massachusetts Trial Court is committed to establishing new specialty court sessions (also known as problem-solving court sessions) and to enhancing existing drug and other specialty court sessions. By using evidence-based best practices, these court sessions target individuals with underlying medical, mental health, substance use disorders and other issues that contribute to these individuals coming before the courts with greater frequency. The goal of specialty court sessions is to reduce recidivism and to improve public safety.

A hallmark of a specialty court session is the integration of treatment and services with judicial case oversight and intensive court supervision. By providing focused case management with consistent accountability to the court, specialty court sessions promote improved outcomes which reduce recidivism and enhance public safety. We are fortunate that peer-reviewed, evidence-based practices necessary for maximum efficacy of specialty court sessions have been adopted in Massachusetts and are designed to protect all due process, equal protection, and constitutional rights of defendants in the existing specialty court sessions. The objective of our specialty courts is to operate in accordance with proven evidence-based practices.

The following policy is promulgated to provide direction and guidance to those courts within the departments of the Trial Court that currently operate specialty court sessions and for those courts that seek to establish specialty court sessions. The policy is intended to ensure effective and efficient programs and services, while allowing for innovation and flexibility in the operation of specialty court sessions. Because the goals, as well as the evidence-based practices, are vastly different for the various specialty court sessions, specific policies and procedures applicable to each type of specialty court session will be established in separate operating guidelines.

I. Establishment of New Specialty Court Session.

A new specialty court session may be initiated by the Chief Justice of the Trial Court, the Chief Justice of a department, or upon the submission of a written plan by a first justice of a court after consultation with the clerk/register/clerk-magistrate, chief probation

officer and chief court officer. The written plan shall include the following information and must be approved by the Chief Justice of the Department.

A. Describe the particular need for and the anticipated benefits of the proposed specialty court session, including the support within the community of the following: potential treatment and service providers and clinicians; justice partners, such as prosecutors, defense counsel and law enforcement; and court personnel, such as clerk magistrates, case managers, probation officers and judges.

B. Describe with specificity the operational needs and the resources available to the particular court, identifying community services and treatment resources, and any issues of court staffing, workload and court security.

C. Describe the specific procedures and protocols to be followed for participant eligibility and screening, specialty court session operations, and probation supervision.

D. Describe the training needs prior to the establishment of a specialty court session, and how these needs will be met.

E. Describe any foreseeable concerns relating to the collection and submission of statistical data and case information.

F. Describe any foreseeable operational issues, and how they will be resolved prior to the establishment and implementation of a specialty court session in the particular court.

G. Describe the targeted outcomes for the specialty court and how those results will be documented, measured and evaluated.

II. Interdepartmental Transfers.

Where appropriate, a Trial Court justice at a court that does not maintain a specialty court session, in consultation with the presiding justice of the specialty court session, may seek approval by his/her departmental Chief Justice for an interdepartmental transfer of a case to a specialty court session in accordance with existing transfer procedures.

III. Data Collection and Privacy/Confidentiality Rights.

In order to evaluate the effectiveness of specialty court sessions and to provide data necessary for future planning purposes, the Executive Office of the Trial Court, in consultation with the departmental Chief Justices and the Commissioner of Probation, shall establish and maintain uniform means of collecting and analyzing data and statistics on cases handled in specialty court sessions. All data gathering and statistical analysis shall be conducted and maintained in a manner and format that complies with existing law and which does not compromise the privacy and confidentiality rights of individual participants.

IV. Grant Funding

In accordance with the Trial Court's grant policy, a justice of a specialty court session shall obtain the prior authorization of that court's departmental Chief Justice before seeking funding or other assistance from any federal, state, municipal, non-profit or other agency, organization or corporation. In addition, said justice shall notify the Grants Manager of the Executive Office of the Trial Court of any such efforts to obtain outside funding and shall comply with the Trial Court grant policy.

Appendix B: Sample Drug Court Mission Statement

The mission of the (city/town/region) _____ Drug Court is to promote public safety and the quality of life for the probationer and the community by providing structure and support for sobriety and recovery for court-involved individuals. The aim is to assist participants in regaining health, finding and enjoying new friends, repairing damaged family relationships, and meeting their responsibilities to their families, friends, community, the Court and themselves.

Appendix C: Sample Memorandum of Understanding

Appendix D: Sample Participant Handbook

The Franklin County Substance Abuse Intervention Project known as Drug Court

The Substance Abuse Intervention Project is a special session of the Greenfield District Court and the Orange District Court that promotes sobriety and recovery for individuals where substance abuse is a central factor in their court involvement.

Greenfield District Court
425 Main Street
Greenfield, MA 01301

Orange District Court
One Court Square
Orange, MA 01364

For more information, contact:
John Jones
Assistant Chief Probation Officer
413-774-5531, ext. 274

For more information contact:
Stephen Wheeler
Chief Probation Officer
978-544-8281, ext. 234

Conditions of probation are established in the docket, the probation order, and the drug court order. If there is a conflict between those orders and this Handbook, a probationer must comply with the Court's orders.

This handbook is subject to change.

September 2013

Table of Contents

Entering Drug Court 1

Prescription Medication Requirements 4

Personal Behavior Rules 4

Greenfield Drug Court Overview and Requirements 5

Orange Drug Court Overview and Requirements 7

Phase I – Assessment Period 9

Phase II 10

Phase III 11

Phase IV 12

Phase V 13

Graduation 14

Addenda:

Court Order 15

Release of Substance Abuse Records Form19

Consent Form for Release of Confidential Information 21

Drug Court Confidential Medical Disclosure 22

REMEMBER:

THIS IS ABOUT YOU.

It is not about the person sitting next to you.

THIS IS ABOUT YOUR PROGRESS.

Each Drug Court participant comes with different strengths and needs.

Rewards and sanctions are matched to each person's strengths and needs.

You will undermine your own success if you waste energy comparing yourself to others.

BE ENCOURAGED BY YOUR OWN SUCCESS!

Mission Statement

The mission of the Franklin County Substance Abuse Intervention Project (Drug Court) is to promote public safety and the quality of life for the probationer and the community by providing structure and support for sobriety and recovery for court-involved individuals. The aim is to assist participants in regaining health, finding and enjoying new friends, repairing damaged family relationships, and meeting their responsibilities to their families, friends, community, the Court, and themselves.

Entering Drug Court

The Substance Abuse Intervention Project is a special session of the Greenfield and Orange district courts. An overview of requirements can be found on pages 5-6 for Greenfield and pages 7-8 for Orange.

Referral

Referrals to Drug Court come from attorneys and probation officers from the Greenfield District Court, Orange District Court, Franklin Superior Court and Franklin Probate and Family Court.

Eligibility

Typically, the Case Management Team reviews an individual's criminal record and history of substance abuse and treatment to determine if he or she is likely to benefit from the Drug Court program. The Team may include a judge, probation officer, court administrator, treatment provider, defense attorney, prosecutor, and representative of the sheriff's department.

You may benefit from the program if:

- You have an identified substance abuse or alcohol problem.
- You have no pending trials for matters of a serious nature.
- You are motivated for treatment.
- You are able and willing to participate in all aspects of the program.

If admitted to Drug Court you are required to review with your attorney and then sign both the Drug Court Order which contains the core requirements of the program and to sign consent forms for the release of confidential information. A copy of the Order and Release of Information forms is located from pages 15-20. Upon acceptance, you enter Phase I (also known as the assessment phase). You will be responsible for knowing the contents of this manual.

Program Progress

Participants who do well regain some of their health, find and enjoy new friends, repair damaged family relationships, and meet their responsibilities to their families, friends, community, the Court, and themselves. The journey is not always smooth, however, and the judge may impose sanctions when a participant fails to adhere to the program's requirements.

The program's basic requirements are as follows:

- Be honest in all matters pertaining to the program;
- Comply with all laws and court orders;
- Comply with phase requirements;
- Comply with testing requirements; cooperate with home and work visits;

- Be on time for all court, counseling, medical and employment appointments;
- Do not consume alcohol (including over-the-counter products containing alcohol);
- Do not have alcoholic beverages in your residence;
- Do not use illicit drugs;
- Do not use over-the-counter products containing alcohol unless approved in advance by probation; (Check every label.)
- Do not use prescribed drugs (except in an emergency) until approved by probation;
- Do not use prescribed drugs except as prescribed by a physician who has been made aware of your addiction and participation in Drug Court;
- Do not enter a business where alcoholic beverages are the primary product for sale;
- Do pay court assessments and perform community service as ordered.

Sanctions include, among other things:

- Admonishment by the Judge;
- Additional self-help meetings or exercises;
- Additional written reflections on self-help meetings;
- Additional drug or alcohol testing;
- Community service;
- Reading, research, or essay writing;
- Day in the Dock;
- Immediate detention;
- Financial penalties;
- Return to an earlier phase;
- Extension of probation;
- Additional supervision (including electronic monitoring);
- Termination from Drug Court;
- Incarceration.

If the Judge believes a participant is not responding to his or her treatment plan, that plan may be modified, even in the absence of a violation of probation. A modification may include any condition aimed at assisting you with recovery including, for example:

- Individual counseling;
- Additional individual counseling;
- An intensive outpatient program;
- Residential treatment;
- Other counseling groups or programs as recommended.

Recognition for successes and progress may include:

- A positive report from the probation officer to the Judge in the court session;
- A positive report from the treatment provider to the Judge in the court session;
- Praise from the Judge;
- A lifesaver from the Judge;
- An incentive from the Judge;
- Applause from drug court participants and staff;
- Movement from one phase to the next;
- A decrease in weekly requirements;
- Graduation, with a diploma;
- The possibility of an early termination of probation or reduction in supervision.

Prescription Medication Requirements

Drug Court participants are required to inform their physicians that they are in Drug Court and that they have an addiction.

If your doctor prescribes a medication in response to an illness or injury, you must notify your probation officer and the Drug Court's treatment representative immediately and bring in documentation of any medication prescribed. You must sign a release allowing Drug Court staff to talk with your physician about your use of the medication.

You will fill prescriptions at only one pharmacy. Upon request you must bring your medication to your probation officer. You must obtain permission from your probation officer before refilling any prescription. Any unused medication must be turned in to your probation officer.

You must see your own doctor for all your medical needs. The Emergency Room should be used for life-threatening situations only.

If you have a chronic condition that requires ongoing use of certain medications, such as narcotic pain medication, and the Case Management Team becomes concerned about your dependence on that medication, the Team may determine that you are not eligible to continue with the Drug Court Program.

Personal Behavior Rules

There are expectations about how participants behave in Drug Court and in all meetings that are part of the program, including treatment groups. These expectations include the following:

- Turn off all cell phones, pagers and other electronics;
- Refrain from using profanity or obscene language;

- Show respect for the Court by wearing clean clothing. At a minimum, this means no hats, tank tops, shorts, or clothing bearing drug or alcohol related themes.
- Do not form private relationships with one another while in drug court.

This includes sexual relationships and, more generally, conversations containing material you would not be willing to share in group.

Greenfield Drug Court Overview and Requirements

The Drug Court Program involves five steps towards recovery, beginning with an assessment period during Phase I and ending with graduation at the end of Phase V. The program takes a minimum of 13 months to complete successfully. Whether it will take longer depends upon you. You will participate in the following:

Weekly Court Session - Greenfield District Court - Wednesdays at 2:00 p.m.

This is a public court session. Unless excused, you must attend the whole session (which usually lasts less than one hour). You will bring an A.A. attendance card, a treatment verification slip and, during Phase I, an AA reflection sheet.

The Judge calls each person to the front individually. Usually individuals closest to graduation are called first. A probation officer gives a report about that person's attendance at self-help meetings and about results of drug screens that week. A treatment liaison gives a summary of that individual's treatment attendance, attitude and participation. Then the Judge has a brief conversation with that participant.

Self-Help Meetings (A.A., N.A., Smart Recovery)

Participants in Drug Court attend a minimum of 5 self-help meetings per week. You may be required to attend more meetings if the Judge determines it will be in your best interest. You will have the person leading each meeting sign a verification card, and then you will bring the card to each Drug Court session. If you are excused from a treatment session, you must attend and verify a sixth self-help meeting.

During the first phase, participants write reflections about each self-help meeting they attended and submit the reflections to the Judge at each court session.

Treatment

All Drug Court participants are required to engage in a substance abuse evaluation through the court-approved clinic program treatment (ServiceNet) to determine what treatment will be most appropriate. Treatment may include individual counseling with a substance abuse counselor, the Partial Hospitalization Program, the Howard Street After-Care Program, and Court Clinic programs through ServiceNet, Clinical and Support Options (CSO) or other approved programs.

To arrange the initial evaluation the participant must contact the Intake Coordinator at ServiceNet at the beginning of Phase I at (413) 772-2935, then push 3 for Intake when prompted. Make sure to specify that you are a participant in Drug Court and need an assessment with Helen Lincoln-White or her designee.

As you move from one phase to another, you will complete a phase plan with the assistance of the ServiceNet treatment provider. The provider may also assist you in preparing to write the essay required to move from one phase to another.

Random Screens through the Franklin County Sheriff's Department

Every Drug Court participant in Greenfield is assigned a color. Every morning (including weekends and holidays) a tape recording accessed at the number below announces what color will be screened that day. The message is available from about 6 a.m. until 12 noon.

Telephone number to call for recorded message: (413) 774-2296.

If your color is to be screened that day, you must report to the Franklin County House of Correction that day during the hours listed below.

Where: Franklin County House of Correction
160 Elm Street
Greenfield, MA

When: Every day (seven days a week including holidays)
8 a.m. until 12 noon

Failure to call in time to arrive for testing, to report for testing or to complete a test could result in the issuance of a notice of violation of probation and in the imposition of a Drug Court sanction. The probation department may conduct additional random tests at other times than those indicated on the recorded message.

Orange Drug Court Overview and Requirements

The Drug Court Program involves five steps towards recovery, beginning with an assessment period during Phase I and ending with graduation at the end of Phase V. The program takes a minimum of 13 months to complete successfully. Whether it will take longer depends upon you. You will participate in the following:

Weekly Court Session: Orange District Court - Tuesdays at 8:30 a.m.

Drug court participants report to Probation at 8:30 a.m. This is a public court session. Unless excused, you must attend the whole session (which lasts less than one hour). You will bring an A.A. attendance card and a treatment verification slip, and, during Phase I, an AA reflection sheet

The Judge calls each person to the front individually. Usually individuals closest to graduation are called first. A probation officer gives a report about that person's attendance at self-help meetings and about results of drug screens that week. A treatment liaison gives a summary of that individual's treatment attendance, attitude and participation. Then the Judge has a brief conversation with that participant

Self-Help Meetings (A.A., N.A., Smart Recovery)

Participants in Drug Court attend a minimum of 5 self-help meetings per week. You may be required to attend more meetings if the Judge determines it will be in your best interest. You will have the person leading each meeting sign a verification card, and then you will bring the card to each Drug Court session. If you are excused from a treatment session, you must attend and verify a sixth self-help meeting

Treatment

All Drug Court participants are required to engage in treatment and must participate in a Substance Abuse evaluation through the court-approved clinic program to determine what treatment will be most appropriate. Treatment may include individual counseling with a substance abuse counselor, the Partial Hospitalization Program, the Howard Street After-Care Program, and Court Clinic programs through CHD, Clinical and Support Options (CSO) or other appropriate programs.

To arrange the initial evaluation the participant must contact the CHD Intake Coordinator at the beginning of Phase I at (800) 232-0510. Make sure to specify that you are a participant in Drug Court and that you need an assessment.

As you move from one phase to another, you will complete a phase plan with the assistance of the CHD treatment provider or coordinator. The provider may also assist you in preparing to write the essay required to move from one phase to another.

Random Screens

Every Drug Court participant in Orange is required to be available for a drug screen every day of the week including weekends and holidays. Every morning after 8:30 a.m. you must call the number below. A recorded message will instruct you if you must report to the Orange District Court for a screen that day.

Telephone number to call: (978) 544-8281 extension 228

On Monday through Friday, if you are required to report for a screen, you must do so between 8:30 A.M. and 1:00 P.M. or 2:00 P.M. and 3:00 P.M.

On Saturdays, Sundays and holidays, if you are required to report for a screen, you must do so between 10:00 A.M. and 12:00 Noon.

Failure to report for testing, or to complete a test will be considered a failed test which may result in the issuance of a warrant for your arrest, a notice of violation of probation and in the imposition of a Drug Court sanction. The probation department

may conduct additional random tests at other times than those indicated on the recorded message.

Phase I -Assessment Period

The assessment period is at least five weeks long during which time you are expected first and foremost to be honest, to comply with all Drug Court obligations and to stay clean and sober.

During the weekly public court session, the Judge calls up each person individually and hears a report from the probation officer and treatment provider about that person's week. When it is your turn, the Judge will review your progress, inquire about your situation, offer encouragement and congratulations for successes and sanctions or interventions for failures. You will stay for the whole meeting. When you have been able to comply with Drug Court requirements for five weeks successfully, you may move to Phase II.

Getting clean and sober is tough. You will have to make real changes in your lifestyle and behavior. It is hard to give up old habits and old "friends" and build new ways. Honesty is a critical ingredient to getting clean and sober. Being able to ask for help is important because most people find they are not able to do it on their own.

Bring your self-help meeting card, AA reflections sheet and treatment verification with you to each Drug Court session.

Phase I Requirements

- BE HONEST.
- Familiarize yourself with this handbook.
- Schedule a substance abuse evaluation with Helen Lincoln-White. Intake number is 413-772-2935, then push 3 for Intake.
- Sign releases so Drug Court personnel can communicate with therapists and doctors.
- Attend the weekly Drug Court session. (In Greenfield, arrive by 2:00 p.m. on Wednesdays. In Orange, arrive by 8:30 a.m. on Tuesdays.)
- Attend 5 self-help meetings each week. Have your card signed at each meeting and bring your card to the Drug Court session.
- Write reflections about each AA meeting you attend using the form provided at Drug Court. Bring the week's reflection sheet to each Drug Court session.
- Attend an approved treatment program, and have the counselor verify your attendance on the form provided at Drug Court. Bring your verification to each Drug Court session.
- Develop a personal Relapse Prevention Plan.
- Submit to random screens.
- One week in advance of moving to Phase II, submit a brief statement about what changes you have made to your lifestyle and behavior.

Phase II

During Phase II, you can expect that your life will continue to change in many ways. The Judge may want to know how you are adjusting to the schedule and routines of Drug Court. You will begin to meet people who are in recovery through AA, NA and/or Smart Recovery groups, and the Judge will encourage you to take advantage of contacts you make there. You will be encouraged to get a temporary sponsor. In treatment, you can expect to focus on early relapse prevention. Before you move to the next phase, you will reflect on the changes you are experiencing and will be asked to write an essay about those changes. The essay must be submitted the week before you move to the next phase.

Generally an individual completes Phase II after 12 weeks of successful sobriety.

Phase II Requirements

- BE HONEST.
- Attend the weekly Drug Court session.
- Attend 5 self-help meetings each week. Have your card signed at each meeting and bring your card to the Drug Court session.
- Attend an approved treatment program and have the counselor verify your attendance on the form provided at Drug Court. Bring your verification to each Drug Court session.
- Submit to random screens.
- Get a primary care physician and schedule a physical exam.
- If not already done, complete a psychological assessment and engage in individual or family counseling if recommended and ordered by the Judge.
- Revise your Relapse Prevention Plan as necessary.
- One week in advance of moving to Phase III, submit a brief statement on how being honest with yourself and others has changed you, your living situation or your relationship with others.

Phase III

The move to Phase III recognizes that you have completed the milestone of (at least) 90 days clean and sober. Experience has shown that many individuals at this stage of recovery still need external structure and reporting to continue with their sobriety.

During Phase III, you will begin to develop your own individual structure for staying clean and sober. Toward the end of Phase III, the Judge will ask you to put together a Phase IV Plan with a treatment provider that describes what that structure is. The Phase IV Plan covers your personal plans and goals for treatment, peer support, education, work, housing, health and recreation while you are in Phase IV.

Phase III Requirements

- BE HONEST.
- Attend the weekly Drug Court session. (Arrive by 2:00 p.m. on Wednesdays in Greenfield. In Orange, arrive by 8:30 a.m. on Tuesdays.)

- Attend 5 self-help meetings per week. Have your card signed at each meeting, and bring your card to the Drug Court Session.
- Attend an approved treatment program and have the counselor verify your attendance on the form provided at Drug Court. Bring your verification to each Drug Court session.
- Submit to random screens.
- Review your Relapse Prevention Plan and modify it as needed.
- Behave in a way that serves as a good role model to new participants.
- Get a sponsor.
- One week in advance of moving to the next phase, submit a Phase IV Plan.
- One week in advance of moving to the next phase, submit a brief statement on how you stay clean and sober when stressed; provide an example of a situation where in the past you might have turned to substances.

Phase IV

During Phase IV, you will continue to meet the same requirements as earlier phases, except that you will come to Drug Court every other week. Most participants begin to work on achieving some of their Phase IV Plan goals in addition to maintaining their sobriety. In Phase IV Drug Court participants are expected to be in stable substance-free housing.

Toward the end of Phase IV, the Judge will ask you to work on a Phase V Plan with a service provider, which covers the same categories as the Phase IV Plan. The Phase V Plan will reflect your long-range life goals and strategies for recovery during Phase V and for the time beyond graduation from Drug Court.

In general, individuals move to Phase V after 12 weeks of continuous sobriety in Phase IV.

Phase IV Requirements

- BE HONEST.
- Attend the Drug Court session every other week.
- Attend 5 self-help meetings each week. Have your card signed at each meeting and bring your card to the Drug Court session.
- Stay in touch with your sponsor regularly and consider doing the Steps.
- Attend an approved treatment program and have the counselor verify your attendance on the form provided at Drug Court. Bring your verification to each Drug Court session.
- Submit to random screens.
- Review your Relapse Prevention Plan and modify it as needed.
- Behave in a way that serves as a good role model to new participants.
- Be in stable substance-free housing.
- One week in advance of moving to the next phase, submit a Phase V Plan.
- One week before moving to the next phase, submit a brief statement about what your plans are for maintaining your sobriety after your probation is terminated and outlining any changes you believe would help you maintain your sobriety

over the long term. Describe whether you have felt this secure in your sobriety in the past and what you must do to make your current success last.

Phase V

Phase V offers a safety net for you as you continue to strengthen your recovery. You still will be required to fulfill your treatment, peer support and screening obligations, but you will attend the Drug Court session once every four weeks. Participants must meet their Drug Court commitments successfully in Phase V for 12 consecutive weeks in order to graduate from the Program.

Phase V Requirements

- BE HONEST.
- Attend the Drug Court session every fourth week.
- Attend 5 self-help meetings each week. Have your card signed at each meeting and bring your card to the Drug Court session.
- Attend an approved treatment program and have the counselor verify your attendance on the form provided at Drug Court. Bring your verification to each Drug Court session.
- Submit to random screens.
- Maintain an active relationship with your sponsor.
- Review your Relapse Prevention Plan and make modifications as necessary.
- Behave in a way that serves as a good role model to new participants.
- Find employment, enroll in an educational program or demonstrate a structure to your life that allows you to be productive and healthy.
- One week in advance of graduation, submit an essay describing the qualities and benefits that you have gained through your recovery and whether and how you might help others do the same. You may also comment in a separate statement about positive and negative aspects of the Drug Court Program from your perspective.

Graduation

To graduate, you must have two consecutive phases of sobriety.

Before you graduate, you may be asked to come to a case conference meeting to give the Case Management Team your ideas about the Drug Court experience. Are there ways that it could be improved? What was helpful for you? What was not?

Graduation from Drug Court does not necessarily end your probation period, so check with your probation officer to see what orders (such as drug screens) are still in place for you once you graduate.

Graduation is held during the Drug Court session. You may invite others to be present to watch your graduation which marks an ending and a beginning. All graduates of the Substance Abuse Intervention Program have demonstrated courage, persistence, growth

and grit. By your success, you will give hope to those who are following behind you. You are encouraged to return on occasion to give hope and inspiration to others going through the program.

Graduating from the Drug Court signifies that you have gained proficiency in recognizing triggers that lead to your abuse of substances and in finding and using available tools and resources to avoid a relapse.

Continued success is assured if you continue to use what you have put together during Drug Court by making use of the resources and skills that have enabled you to reach this point.

You remain in charge of and responsible for your own future.

Appendix E: Drug Court Order of Special Conditions

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS.

Trial Court of the Commonwealth
District Court Department
Orange Division
Complaint No.

COMMONWEALTH OF MASSACHUSETTS

v.

Order Of Special Conditions Relating To
The Franklin County Substance Abuse Intervention Program
("Drug Court")

As you have agreed to enter the Franklin County Substance Abuse Court Intervention Program (hereinafter, "Drug Court"), IT IS ORDERED that you comply with the following special conditions of probation:

1. Be honest in all matters pertaining to the Drug Court program.
2. Comply with all phase requirements.
3. Do not consume alcohol or alcoholic beverages; do not have alcoholic beverages in your residence; do not enter a business where alcoholic beverages are the primary product for sale.
4. Do not use prescription drugs except when taken according to directions and pursuant to a valid prescription from a medical practitioner.
 - A. Do not accept a prescription for a narcotic without first advising the prescribing physician of your addiction history, your participation in Drug Court, and your treatment program.
 - B. Fill prescriptions at only one pharmacy.
 - C. Do not use prescribed drugs until approved by probation unless it is a verified emergency.

- D. Provide a copy of every new prescription to your probation officer no later than the day after it is written; if the courthouse is closed then on the next day it is open.
 - E. Immediately produce all prescription drug containers and drugs for inspection upon request.
 - F. Do not use non-prescription drugs or products which might interfere with the accuracy of a drug screen.
 - G. Sign any releases needed to confirm your compliance with this order.
5. Do not use over-the-counter products which contain alcohol unless approved in advance by probation. (Check every label.)
6. Submit to drug and alcohol screens including random testing as directed. Failure to screen will be viewed as a positive test result.
7. Cooperate with home and work visits.
8. Comply with all conditions of Drug Court. You shall:
- A. Comply with orders for placement and treatment in a non-residential or residential program ordered by the Court
 - B. Participate in self-help programs approved by your probation officer at least five (5) times each week unless ordered otherwise by the Court.
 - C. Produce proof of participation in required self-help programs at the Drug Court session and when ordered to do so by your probation officer.
 - D. Attend group therapy or counseling meetings and/or individual therapy or counseling sessions as ordered at a place determined by the treatment provider.
 - E. Verify attendance at required group therapy or counseling meetings and/or individual therapy or counseling sessions when you appear at the Drug Court session and as ordered by your probation officer.
 - F. Be on time for all court, counseling, medical and employment appointments.
 - G. Obtain a sponsor.
 - H. Comply with such other conditions as may be required from time to time by this Court, the treatment provider, or your probation officer.
 - I. Appear at each session of the Drug Court unless excused in advance by the Court.

- J. Comply with all conditions of probation imposed by this and any Court including the payment of money and performance of community service.
- K. Satisfy the Court that you have gained control of your addiction or of your abuse of substances including alcohol and drugs, that you are employed if employable or have otherwise created a stable environment for yourself, and that you have a plan that will help you avoid the dangers of a relapse after graduation.
- L. Other special conditions:

12. By signing below, you agree to the terms of this Order, you acknowledge having read the Drug Court handbook and this order including the addendum below, you understand that you are giving up your right to insist that the judge not hear anything about your case unless you or your attorney are present, and you acknowledge that failure to comply with any condition identified in this order may result in discipline including termination from the Franklin County Substance Abuse Intervention Program (Drug Court) and, after hearing imposition of different terms of probation or incarceration.

Defendant

Defendant's Attorney

Date: _____

Justice

ADDENDUM TO ORDER OF SPECIAL CONDITIONS

1. The judge, probation officers, and treatment consultants or providers will meet to review your progress in the Drug Court program. Those drug court team review meetings may also be attended by defense attorneys, prosecutors, police officers, and the sheriff or the sheriff's representative. By agreeing to participate in this program, you agree to waive your right to be present and your right to be represented by an attorney at these meetings.

2. Your progress and the appropriateness of assigning rewards and sanctions may be discussed at drug court team review meetings. No sanction will be imposed until you are before the judge at which time you have a right to be represented by an attorney. If you request an attorney but cannot afford to hire one, an attorney will be assigned to represent you. Your attorney will be informed of any information provided to the judge ex parte or discussed at the review meeting which may affect the judge's decision. You may request that a different judge handle your probation violation hearing

3. To participate in the Drug Court, you must sign a release of confidential information which will permit those who participate in the review meetings to share information about your identity, diagnosis, urinalysis results, treatment attendance or non-attendance, cooperation with treatment, progress in treatment, and prognosis. If you refuse to consent or withdraw your consent, you may be terminated from Drug Court.

4. If you move your residence to a location that falls under the jurisdiction of a different drug court, your entire case may be transferred to that court. For example, if you live in Greenfield when sentenced, but then move to Orange, your entire case may be transferred to the Orange District Court. Your probation order from the original court will continue to be in effect.

Appendix F: Medical Drug Disclosure

I am a participant in the Orange District Court Drug Court. I am required to submit to random screens for drugs and alcohol.

If you believe I should be prescribed a narcotic for my condition, please prescribe the least addictive drug available and prescribe it in the smallest quantity reasonable in the circumstances.

Please file this disclosure with my medical record and sign a copy for me to submit to my probation officer.

(Patient's printed name)

(Patient's Signature)

(Signature of Medical Provider)

(Date)

(Address)

(City/Town & State)

(Telephone)

HIPAA ORDER

For The Limited Release Of Specific Substance Abuse Treatment Records

This matter is before the Court for consideration of the limited release of specific substance abuse treatment records. The Court makes the following findings:

1. On _____, the defendant was referred to or accepted into the Franklin County Substance Abuse Intervention Project (“Drug Court”).
2. As a condition of participation in the drug court program, the defendant must attend substance abuse treatment and the drug court team must monitor the defendant’s progress in substance abuse treatment including mental health and medical treatment.
3. The defendant has voluntarily and knowingly signed a HIPAA and 42 C.F.R. Part 2 compliant release.
4. The information necessary to monitor the defendant’s progress in substance abuse treatment includes: defendant’s identity, defendant’s diagnosis, defendant’s urinalysis results, defendant’s treatment attendance or non-attendance, defendant’s cooperation with treatment, defendant’s progress in treatment, and defendant’s prognosis. This treatment information is the minimum necessary to carry out the purpose of the disclosure. See 45 C.F.R. § 165.502(b)(11) and 42 C.F.R. § 2.13(a). Any potential injury from disclosure to the defendant, the defendant’s physician-patient relationship, or treatment is outweighed by the public interest in the defendant’s success in the drug court program.

IT IS THEREFORE ORDERED THAT:

1. Any provider of substance abuse treatment including mental health and medical treatment shall provide to the drug court team (as reflected in the HIPAA/42 C.F.R. Part Consent to Release Form or team member replacements) the following information: defendant’s identity, defendant’s diagnosis, defendant’s urinalysis results, defendant’s treatment attendance or non-attendance, defendant’s cooperation with treatment, defendant’s progress in treatment, and defendant’s prognosis. The drug court team is comprised of individuals responsible for monitoring the defendant’s progress.
2. The treatment provider shall continue to provide the treatment information until defendant’s successful completion of the term of probation or termination from the drug court program or further court order, whichever shall first occur.

3. The drug court team shall not re-disclose the information received pursuant to this Order, except as may be provided by law or to carry out official duties in accordance with the drug court program.

SO ORDERED this ____ day of _____, 20__.

David S. Ross
Associate Justice of the District Court

Appendix H: HIPAA and CFR Release

CONSENT FOR THE RELEASE OF CONFIDENTIAL PROTECTED HEALTH INFORMATION:

I, _____, authorize the _____ Drug Court, the _____ Court Probation Department employees supervising my case(s), those serving as Drug Court coordinators and case managers, and those participating in Drug Court case management conferences and their supervisors including treatment providers and law enforcement representatives, to communicate with, share, and disclose to one another all of my substance abuse treatment information including my identifying information, my mental health, psychiatric, and medical information, my diagnoses, my urinalysis and other substance testing results, my attendance or lack of attendance at treatment sessions and appointments, my cooperation with treatment, my progress in treatment, and opinions concerning my prognosis. The purposes of the disclosure are to inform the above of my attendance and progress in treatment and to assist them in evaluating and managing my recovery from substance abuse. I am willing to have information relating to drug or alcohol use, AIDS or HIV status disclosed to the above-identified parties.

I understand that my non-identifiable information will be used for evaluation purposes of Massachusetts Drug Courts.

I understand that my alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, 45 C.F.R. Parts. 160 & 164. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically at the end of my term of probation or upon further court order, whichever shall first occur. Any revocation must be in writing.

I understand that I might be denied services if I refuse to consent to the disclosure for purposes of treatment, payment, or health care operations, if permitted by state law. I will not be denied services if I refuse to consent to a disclosure for other purposes.

I recognize that hearings are held in an open and public courtroom and it is possible that an observer could connect my identity with the fact that I am in treatment as a condition

of participation in Drug Court. I specifically consent to this potential disclosure to third persons.

I understand that if I refuse to consent to the disclosure or attempt to revoke my consent prior to the expiration of this consent, that such action is grounds for immediate termination from the Drug Court.

I acknowledge that I have been advised of my rights, have received a copy of this form and have had the benefit of legal counsel or have voluntarily waived my right to an attorney. I am not under the influence of drugs or alcohol. I fully understand my rights and I am signing this consent voluntarily.

My consent to disclosure specifically includes the following and those who assist them in their work:

- : Judges who preside over Drug Court including _____, _____;
- : Probation Department employees including _____, _____;
- : Law enforcement employees including _____;
- : Treatment employees including _____, group leaders, and individual counselors;
- : Treatment providers and employees including group leaders and individual counselors;
- : My medical care providers _____
- 9 _____

Defendant: _____

Date: _____

Witness: _____

Position: _____

PROHIBITION OF RE-DISCLOSURE OF CONFIDENTIAL INFORMATION

This notice accompanies a disclosure of information concerning a client in alcohol/drug treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is **NOT** sufficient for this purpose. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

Massachusetts Drug Courts Contact

Executive Office of the Trial Court
One Pemberton Square, Boston, MA 02108