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NoraV Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE NMI JUDICIARY
DRUG COURT POLICIES & PROCEDURES

SUPREME COURT NO. 2020-ADM-0008-RUL

ORDER ADOPTING AMENDED DRUG COURT POLICIES & PROCEDURES

¶ 1 This matter comes before the Court on our own motion to adopt the *Northern Marianas Islands Judiciary Drug Court Policies and Procedures*, attached as Exhibit A. The Court adopted the interim Drug Court Program Policies and Procedures on May 26, 2017 pending further review. These Policies and Procedures have undergone further review and revision by the Drug Court staff and team accordingly and are complete.

¶ 2 Pursuant to the Court's inherent and supervisory powers encompassed in Article IV of the NMI Constitution, it is HEREBY ORDERED that the Policies and Procedures are adopted effective forthwith.

ENTERED this 16th day of April, 2020.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice



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NORTHERN MARIANA ISLANDS JUDICIARY
DRUG COURT PROGRAM
POLICIES AND PROCEDURES



Effective April 16, 2020

EXHIBIT A

Table of Contents

INTRODUCTION	4
SECTION 1. GENERAL PROVISIONS	5
(a) Effective Date	5
(b) Purpose	5
(c) Construction.....	5
(d) Conflict	5
(e) Definitions	5
SECTION 2. GUIDING PRINCIPLES	8
(a) Target Principles	8
(b) Key Components of Drug Court	9
(c) Target Population.....	10
(d) Initial Assessment	10
SECTION 3. ELIGIBILITY AND ENTRANCE PROTOCOL	10
(a) Eligibility Chart	10
(b) Eligibility Process	11
(c) Legal Eligibility.....	11
(d) Clinical Eligibility.....	14
(e) Suitability	15
(f) Initial Staffing.....	16
(g) Initial Drug Court Hearing.....	17
SECTION 4. PROGRAM DURATION	17
SECTION 5. PROGRAM COMPONENTS.....	17
(a) Staffing and Judicial Interaction at Review Hearings	17
(b) Treatment Plan	18
(c) Alternative Tracks and Phases in Drug Court.....	19
(d) Case Management	19
(e) Community Supervision.....	20
(f) Testing and Accountability	20
(g) Incentives and Sanctions.....	21
SECTION 6. TERMINATION FROM DRUG COURT.....	22
(a) Types of Termination	22
(b) Grounds for Court Termination	22
(c) Termination Procedure.....	23
(d) Re-Entry into Drug Court	24
SECTION 7. SUCCESSFUL COMPLETION OF DRUG COURT	24

(a) Commencement Ceremonies	24
(b) Graduation Requirements	25
(c) Substantial Completion	25
SECTION 8. DRUG COURT FEES	26
SECTION 9. CONFIDENTIALITY	26
SECTION 10. FORMS	27

Introduction

The Drug Court Act of 2015, codified at 1 CMC §3207, was enacted on October 28, 2015. The Act created the Drug Court Program (“Drug Court” or “Program”) which operates as a collaborative, non-adversarial system effectuating the rehabilitation and recovery of drug offenders through continuous court monitoring, regular drug testing, and holistic drug dependency treatment.

Drug Court is staffed with persons who assist with day-to-day operations and who also serve as liaison with other Drug Court Team agencies and community programs. The staff handle data collection and analysis, grant writing, resource development, and public outreach and information. Under the leadership of the Presiding Judge and the assigned Drug Court Judge, the Drug Court Manager ensures the successful implementation of the Program.

Mission Statement

The mission of Drug Court is to improve the lives of individuals affected by drugs and alcohol and their families by providing a multidisciplinary approach, integrating evidence-based and culturally sensitive treatment services and promoting sobriety and positive behaviors.

Drug Court aims to accomplish its mission by:

- Establishing effective and sustainable drug court programs that reduce drug use, crime, recidivism, incarceration rates, and criminal justice costs in the Commonwealth;
- Providing judicially supervised treatment as an alternative to incarceration;
- Providing rigorous case management to ensure that each participant complies with the treatment mandate;
- Helping all participants learn how to control their addictions so they can maintain long-term recovery and sobriety;
- Utilizing health education to reduce high-risk behaviors among offenders;
- Identifying and treating the health problems of high-risk offenders; and
- Linking participants to housing, vocational, educational, and employment services.

Vision Statement

The vision of Drug Court is to improve the quality of life for individuals and families affected by drugs and alcohol.

Drug Court aims to accomplish its vision by:

- Promoting rehabilitation by linking participants who suffer from serious substance abuse to treatment services in the CNMI;
- Ensuring community safety and reducing recidivism through appropriate substance abuse treatment and intensive community supervision; and
- Increasing collaboration between the court, counsel, law enforcement agencies, and community substance abuse and other treatment services.

Section 1. General Provisions

- (a) **Effective Date.** These policies and procedures are deemed effective as of December 15, 2016, as amended on April 16, 2020.
- (b) **Purpose.** These policies and procedures are intended to establish proper procedures, ensure timeliness regarding Drug Court cases, and reflect the best practices established by national organizations, including the National Association of Drug Court Professionals and the National Drug Court Institute.
- (c) **Construction.** These policies and procedures shall be construed to ensure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.
- (d) **Conflict.** Nothing in these policies and procedures is meant to contravene established Commonwealth and federal laws or regulations, or other court policies and procedures.
- (e) **Definitions.** Unless defined below, any word found within these policies and procedures shall retain its commonly understood meaning. The following terms are defined as follows:
 - (1) **Caseworkers.** Caseworkers are Drug Court staff who refer participants to specific services based on the participant's needs, the service's ability to comply with the Court's reporting requirements, and the service's capacity to provide appropriate care (e.g., mental or physical health, language, etcetera). Caseworkers work in collaboration with clinicians, Drug Court Team members, and other service providers for the benefit of the

participant. This aids in forming treatment strategies and identifying issues currently affecting the participant's recovery

- (2) **Community Supervision Officer(s); Compliance Officer(s).** Community Supervision Officer(s) and Compliance Officer(s) are law enforcement officers under 1 CMC § 3207 who ensure adherence to the terms and conditions of Drug Court, including maintaining public safety, monitoring and enforcing curfew, carrying out community supervision, documenting each Drug Court participant's requirements after each Court appearance, establishing contact with victims about fees and/or fines, and providing such information to the Court.
- (3) **Drug Court.** Drug Court is a non-adversarial system within the Superior Court that effects the rehabilitation and recovery of drug offenders through continuous court monitoring, regular drug testing, and holistic drug dependency treatment.
- (4) **Drug Court Hearings.** There are multiple types of hearings including:
 - (i) Change-of-Plea Hearing, which is the first hearing where a potential participant submits a guilty plea to be held in abeyance;
 - (ii) Review hearing, which is conducted weekly or as mandated by the Drug Court;
 - (iii) Order-to-Show-Cause Hearing, which is held for a participant who wants to contest their violation; and
 - (iv) Termination hearing, which is held to determine whether a participant should be terminated from the program.
- (5) **Drug Court Judge.** The Drug Court Judge ("Judge") heads the collaborative treatment Drug Court Team. In this capacity, the Judge regularly reviews case status reports detailing each participant's compliance with the treatment plan. During regular court appearances, the Judge administers graduated sanctions and incentives to increase each participant's accountability and to enhance the likelihood of long-term treatment compliance.
- (6) **Drug Court Manager.** The Drug Court Manager ("Manager") oversees the daily operations, including case

flow, treatment planning, referrals to suitable treatment providers, and participant progress.

- (7) **Drug Court Team.** The Drug Court Team (“Team”) is a collaborative treatment team which includes the Drug Court Judge, Drug Court staff, Drug Court Manager, Caseworkers, Compliance Officer(s) and Community Supervision Officer(s), representatives from the Office of the Attorney General, Office of the Public Defender or Defense Counsel, Department of Public Safety, Department of Corrections, and designated, non-exclusive treatment providers. Any mention of the above-stated agencies in these policies and procedures is made in reference to the agency’s representation on the Team.
- (8) **Drug Court Treatment Providers.** Drug Court Treatment Providers are public, private, and community-based treatment providers who work closely with the Team to coordinate and provide addiction treatment as well as physical and mental healthcare. This approach is an evidence-based practice designed to assist participants in avoiding criminal recidivism, reducing harm from substance abuse while in recovery, and treating other mental and physical illness.
- (9) **Law Enforcement Officers.** Law enforcement officers are Department of Public Safety (“DPS”) and Department of Corrections (“DOC”) officers who are detailed to Drug Court. Law enforcement officers work closely with the Compliance Officers and Community Supervision Officers. Law enforcement officers work closely with the Team to enhance the likelihood of positive outcomes for each participant.
- (10) **Office of the Attorney General and Prosecutor (“OAG”).** The Office of the Attorney General assigns a prosecutor to Drug Court to act as a representative on the Team. The role of the OAG in Drug Court differs from its role in the traditional adjudication process. In Drug Court, all parties and counsel share the common goal of helping participants successfully comply with treatment in a community setting. The assigned prosecutor reviews new cases for eligibility pursuant to the guidelines herein. In conjunction with the Judge, the assigned prosecutor, defense attorney, and clinical staff members monitor the progress of participants. These persons can make recommendations regarding incentives and sanctions. If a

participant is arrested on a new charge, the prosecutor reviews the new case and assesses the appropriateness of the participant's continued participation. The prosecutor is also responsible for assisting the Team's law enforcement members with ensuring participants' continued coordination and the appropriateness of their ongoing participation in the Program.

- (11) **Office of the Public Defender ("PDO") or Defense Counsel.** The Office of the Public Defender or Defense Counsel acts as a representative on the Team. Defense Counsel represents and advises the participant in Drug Court proceedings. Defense Counsel also seeks to find treatment solutions for the participant which minimize the participant's exposure to incarceration, reduce the risk of recidivism, and limit the consequence of a criminal conviction.
- (12) **Participant.** A participant is an offender who has been accepted to the Program after entering a guilty plea held in abeyance.
- (13) **Potential Participant.** A potential participant is an offender who is either being assessed for eligibility or is undergoing the entrance protocol but has not yet been accepted into the Program.
- (14) **Staffing.** Staffing is a confidential Team meeting. The initial staffing is to discuss and report on a potential participant's eligibility and suitability. The weekly staffing is to discuss a participant's progress and compliance.

Section 2. Guiding Principles

- (a) **Target Principles.** Drug Court engages participants in a plea held in abeyance model and a structure supportive of success in recovery. The Program utilizes alternative treatment tracks appropriate for individualized interventions, taking into consideration the participant's addiction, mental and physical health, and other factors which may prevent successful recovery. The Program utilizes incentives and strategic, graduated sanctions to encourage the success of participants. Drug Court makes every effort to identify all reasonably appropriate treatment options and encourages participants to continue their engagement in the treatment plan.

(b) Key Components of Drug Court.

- (1) Drug Court integrates alcohol and drug treatment services with justice system case processing. The Program integrates treatment services with the criminal justice system.
- (2) Using a non-adversarial approach, the Prosecutor and Defense Counsel promote public safety while protecting participants' due process rights.
- (3) Eligible participants are identified early and promptly placed in the Program. Potential participants are referred to Drug Court for immediate assessment and, if accepted, placed in treatment programs.
- (4) Drug Court provides access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. Participants engage in treatment, largely provided by the state substance abuse agency, for physical and mental health and substance abuse services. Drug Court coordinates with other providers to facilitate complimentary services.
- (5) Abstinence is monitored by frequent alcohol and drug testing. Participants undergo random and frequent testing. A series of timely progress reports coupled with court appearances encourage compliance with treatment protocols and judicial mandates.
- (6) A coordinated strategy governs Drug Court responses to participant compliance. Positive performance results in incentives including reduced supervision, moving phases, and the eventual successful completion of the Program. Sanctions, when needed, are imposed based on their therapeutic value.
- (7) Ongoing judicial interaction with each participant is essential. Depending on the participant's treatment stage and level of compliance, participants appear before the court weekly, bi-weekly, or monthly. Participants may be required to appear before members of the Team more frequently.
- (8) Monitoring and evaluation measure the achievement of Program goals and gauge effectiveness. Drug Court uses information technology to manage and analyze data and client referral needs. Process evaluation is a continual procedure assessed quarterly.

- (9) Drug Court promotes training and education for effective planning, implementation, and operation. The Team and staff meet benchmarks by continuing to educate themselves through regional and national training conferences, studies, and research efforts.
 - (10) Forging partnerships among the Drug Court, public agencies, and community-based organizations generates local support and enhances Program effectiveness. The collaborative structure of Drug Court requires constant communication among the Team and other collaborative stakeholders to share information and to enhance Program effectiveness.
- (c) **Target Population.** Drug Court targets non-violent adult offenders where there is a reasonable assumption that the offender’s criminal activity is connected directly to the ongoing, chronic, and habitual use of substances. Generally, the Program does not accept participants who are charged with violent or domestic violence offenses. On a case-by-case basis, the Program may accept participants who would otherwise be rejected if a significant period has elapsed since the aforementioned charge was filed. Under no circumstance, however, will an individual charged with a sexual crime be admitted into the Program. Admission is subject to limited availability and resources. If necessary, the Manager maintains a waiting list of referrals and potential participants.
- (d) **Initial Assessment.** An intake interview, a full assessment of substance use disorder, criminogenic and treatment need, and biopsychosocial and drug testing are conducted for all potential participants deemed legally eligible to enter Drug Court.

Section 3. Eligibility and Entrance Protocol

(a) **Eligibility Chart**

Eligibility	1. Legal Eligibility	A. PDO or Defense Counsel submits written request to OAG for Legal Determination.
		B. OAG submits a Referral Form to Drug Court Manager with OAG’s

		determination of legal eligibility.
	2. Clinical Eligibility	C. Drug Court Staff completes intake, screening, and assessment of potential participant.
		<p>D. The potential participant is referred to the designated treatment provider, who conducts a bio-psychosocial assessment and reviews the Team's screening and assessment results.</p> <p>E. If the treatment provider agrees that the potential participant is clinically eligible, the treatment provider recommends a treatment track.</p> <p>F. After receiving the treatment provider's report, the Drug Court Manager assigns the potential participant a Caseworker to present a summary of findings to the Team.</p> <p>G. After reviewing the legal and clinical eligibility determination and receiving recommendations from the Team, the Drug Court Judge determines whether the potential participant is suitable.</p>

(b) **Eligibility Process.** A potential participant must be deemed legally eligible before being assessed for clinical eligibility. A potential participant must be deemed legally and clinically eligible to be suitable for the Program.

(c) **Legal Eligibility** is a legal determination based on the nature and type of charges filed against a potential participant as well as the

potential participant's criminal history. The OAG makes the initial legal eligibility decision. The most significant components of eligibility are a demonstrated substantial substance abuse problem associated with criminal conduct and a consideration of public safety.

(1) **Request for Legal Determination**

To initiate a determination of legal eligibility, a potential participant's counsel must submit a written request for legal determination to the OAG and forward a copy to the Manager. The written request should be submitted after a potential participant has expressed serious interest in entering Drug Court.

- (i) *Substance.* The written request shall contain, at least, the following information about the potential participant: (1) name; (2) case number and/or DPS case number; (3) interest in Drug Court; (4) substance use history; and (5) proposed home placement.
- (ii) *Form.* The written request to the OAG may be electronic. A copy of the letter must be attached to the referral packet that is ultimately submitted by the OAG to the Manager.
- (iii) *Timing.* Requests should be made as early in the criminal process as possible. Requests may not be submitted after the entry of a guilty plea in the criminal docket in the pending matter.
- (iv) *Good-Faith Belief.* Counsels requesting a legal eligibility determination understand that requests must be made with a good-faith belief that the potential participant is eligible.
- (v) *Required Notification.* If counsel for the potential participant, at any point after submitting a request but before the participant is accepted, finds that the potential participant is no longer interested in entering Drug Court, counsel shall promptly notify the Manager. After the Manager confirms that the potential participant is no longer interested in Drug Court, the entrance protocol ceases and any files regarding the potential participant are stored and/or destroyed in compliance with Commonwealth and federal rules. If the potential participant wishes to

withdraw after being accepted, exit protocols are followed.

- (2) **Determination of Legal Eligibility.** Legal eligibility is determined by OAG.
 - (i) *Timing.* Upon receipt of a request for legal determination, the OAG has fourteen (14) business days to determine legal eligibility.
 - (ii) *Criteria.* A potential participant is not legally eligible for Drug Court if they are: (1) currently charged with or have been convicted for murder or a sexual felony; (2) currently charged or have been convicted within the last ten (10) years of any violent felony; or (3) currently charged or have been convicted for a domestic violence assault and battery within the last ten (10) years. All other participants are reviewed on a case-by-case basis.
 - (iii) *Referral.* Once a legal eligibility determination is made, the OAG shall submit one copy of the Referral Form to the Manager and one to the requesting party (i.e., potential participant and/or counsel). The Referral Form shall include the legal eligibility determination and contain all the information necessary to identify and contact the potential participant, including the potential participant's: (1) name; (2) criminal case number and/or DPS case number; (3) interest in Drug Court; (4) substance use history; and (5) proposed home placement. The Caseworker will make all reasonable efforts to contact the potential participant within thirty (30) days of receiving the referral to complete intake. If intake is not completed due to the participant's failure within thirty (30) days and without good cause shown, the potential participant will be denied entry into the program.
 - (iv) *Federal Grant and Services Eligibility.* From time to time, Drug Court may be a recipient of Federal Grants that may limit the pool of participants who qualify for services funded by such Grants. Participants ineligible for services funded through federal grants will still receive the core services offered by Drug Court funded through other means.

- (d) **Clinical Eligibility.** The Drug Court staff and designated Drug Court Treatment Provider(s) are involved in determining clinical eligibility. Clinical Eligibility is separated into the following two criteria.
- (1) **Criteria One.** Criteria One of clinical eligibility consists of the following preliminary matters and clinical assessments made by the Staff.
 - (i) *Preliminary Matters.* Upon receipt of the Referral Form, the Manager shall contact the potential participant's attorney to determine: (1) whether Drug Court may initiate contact with potential participant directly and (2) whether the potential participant wants counsel to be present at the Intake Interview. If the participant wants counsel to be present during the Intake Interview, the Manager shall include counsel.
 - (ii) *Intake Interview.* During the Intake Interview, the Manager collects certain demographic information, orients the potential participant to the Program requirements, and assesses whether the potential participant is seriously interested in Drug Court. If the potential participant wishes to proceed, the potential participant must sign requisite forms, including but not limited to, the Consent for Disclosure/Release of Confidential Information Form. After conducting the Intake Interview, the Drug Court staff schedules a screening and assessment with the potential participant.
 - (iii) *Screening.* Following the Intake Interview, the potential participant's substance use disorder is assessed using a screening tool. To ensure the validity of the screening results, the potential participant's counsel may not be permitted to be present during the screening. Nothing from the screening process may be used against a potential participant if they are determined to be ineligible for or later terminated from Drug Court.
 - (iv) *Assessment.* During the initial case planning appointment, the potential participant's criminogenic risk and need for treatment are assessed using an assessment tool. To ensure the validity of the assessment results, the potential participant's counsel may not be permitted to be present. Nothing from the assessment process may be used against a potential

participant if they are determined to be ineligible for Drug Court, or if the participant is later terminated from the Program.

- (v) *Referral Packet.* Drug Court staff prepares and forwards a referral packet to the designated treatment provider for a review of the Drug Court staff's findings, regardless of the initial findings. The referral packet includes copies of the intake form, disclosure form, screening results, and assessment results. Drug Court staff coordinates an appointment with the treatment provider for the potential participant.
- (2) **Criterion Two.** Criteria Two of the clinical eligibility determination is performed by the designated treatment provider. To maintain accuracy of testing results, the designated treatment provider shall conduct the following tasks and assessments within seven business days from receipt of Drug Court's referral packet.
 - (i) *Bio-psychosocial Assessment.* After referral from Drug Court, the designated treatment provider shall interview the potential participant within seven (7) business days to evaluate a potential participant's mental health. This timeframe is meant to ensure the validity of assessment results.
 - (ii) *Confirmation of Screening.* After conducting the bio-psychosocial assessment, the designated treatment provider shall determine the accuracy of the participant's screening results.
 - (iii) *Treatment Plan.* Based on all the clinical information gathered, the designated Treatment Provider shall develop an individualized treatment plan for the potential participant.
 - (A) The treatment plan shall be submitted to the Manager within seven (7) business days from the time of referral.
 - (B) The Manager may contest the proposed treatment plan.
- (e) **Suitability.** The Judge, in consultation with the Team, determines suitability, which is a comprehensive assessment. Suitability measures, among other considerations, the likelihood that an offender is ready to participate in and complete the Program.

Suitability is determined based upon a person's level of addiction and treatment needs. An individual may be determined to be unsuitable for Drug Court participation when that person poses a danger to the physical or emotional well-being and recovery efforts of themselves or other participants. For good cause, the Judge may suspend or cancel a potential participant's legal or clinical assessments any time before entrance into Drug Court.

- (f) **Initial Staffing.** After determination of a participant's legal and clinical eligibility, an initial staffing is held to report the findings to the Judge.
- (1) **Summary of Findings.** The participant's assigned Caseworker shall compile the legal and clinical eligibility assessment results prior to the initial staffing and submit a Summary of Findings report to the Manager using the Summary of Findings Form. The Summary of Findings report, and all other progress reports, shall be reviewed by the Manager and submitted to the Judge at least one (1) business day prior to the initial staffing.
 - (2) **Presentation of Summary of Findings.** At the initial staffing, the assigned Caseworker shall present a Summary of Findings to the Judge. Other Team members are encouraged to contribute to the discussion.
 - (3) **Suitability; Drug Court Team and Judge's Decision.** During the initial staffing, the Judge considers the Teams findings and recommendations regarding the potential participant's suitability for Drug Court. The Judge then decides whether the potential participant is suitable.
 - (i) *Timing.* Unless good cause is shown, the Judge's decision to accept or reject a potential participant is made during the initial staffing.
 - (ii) *Form.* The Judge documents his or her decision by completing the last portion of the Summary of Findings form.
 - (iii) *Next Steps.* If the Judge finds that the potential participant is suitable for Drug Court, the Judge shall order the participant to appear at an Initial Drug Court Hearing. If the Judge finds that the potential participant is not suitable for Drug Court, the Court shall issue an Order which informs the potential participant of his/her denial of entry into the program, and returns the matter to the criminal docket.

- (g) **Initial Drug Court Hearing.** The potential participant and his or her attorney must be present at the Initial Hearing. The Initial Hearing operates similar to a “Change of Plea.” The potential participant is advised of their rights, waives said rights, and submits a guilty plea to be held in abeyance pursuant to NMI Rule of Criminal Procedure 11-1. Admission requires participants to sign and submit the Drug Court contract and Plea in Abeyance agreement. If necessary, the Drug Court Clerk prepares any Orders triggering case assignment to Drug Court, release from custody, exoneration of bail or property, sealing of documents and/or vacating hearings in the criminal matter for the Presiding Judge’s or the assigned Judge’s review and approval.

Section 4. Program Duration

Generally, participation in the Program should not exceed twenty-four (24) months. At the Court’s discretion, however, a participant may be granted an extension to remain in the Program.

Section 5. Program Components

Once a potential participant is accepted, orientation is scheduled to introduce the participant to the Program’s components. In addressing a participant’s addiction, Drug Court incorporates regular judicial interaction with substance use treatment, community supervision, and case management.

- (a) **Staffing and Judicial Interaction at Review Hearings.** Review Hearings occur regularly while a participant is in Drug Court.
 - (1) **Staffing.** Prior to a Review Hearing, the Team participates in a staffing to discuss each participant’s progress and compliance with Drug Court requirements. Staffings are confidential, closed-door meetings for the Team.
 - (2) **Participant Progress.** During the Review Hearing, the participant interacts with the Judge, as well as other Team members. The participant discusses progress, addresses any Team concerns, and shares achievements. The Judge may award incentives or impose sanctions based on therapeutic value.
 - (3) **Frequency.** Participants should refer to their Drug Court Phase or Track for Review Hearing Frequency. In the beginning of the Program, review hearings are scheduled

weekly and may be lessened or increased in frequency at the court's discretion. Typically, the number of review hearings declines based on the participant's performance in the Program. However, the Team may schedule additional hearings as needed.

- (4) **Ex Parte.** The Judge may initiate, permit, or consider ex parte communications expressly authorized by law. In this capacity, the Judge may assume a more interactive role with parties, treatment providers, law enforcement officers, and other Team members.
- (b) **Treatment Plan.** The Drug Court treatment providers are charged with creating, developing, and modifying individual treatment plans for each participant.
- (1) **Formation.** Treatment plans are flexible and adjusted based on a participant's individual needs and goals or may be altered to reflect the participant's progress. While the Team typically defers to treatment providers, the Manager reserves the right to contest and/or amend treatment plans.
 - (2) **Individualized.** Treatment plans take into account the participant's baseline functioning, individual capabilities, addiction level, and physical, mental, and emotional needs. A participant's recovery support system, such as family members, friends, employers, etc., may also be significant to the treatment plan.
 - (3) **Review.** Initial treatment needs are determined during the clinical assessment. Needs are reviewed on a weekly basis and are often adjusted during the Program. Various treatment modalities are available and Drug Court endeavors to provide a full continuum of care to participants. Both individual and group therapies are employed to treat the whole addict, not just the addiction. Caseworkers work closely with treatment providers to determine the appropriate level of care.
 - (4) **Therapeutic Adjustment.** If the treatment plan is inadequate to meet the participant's needs the Court must work to offer a better treatment plan, including a move from a community setting into a residential treatment program. If no reasonable treatment options are available to address the participant's addiction, or other personal needs, or to protect the safety of others, the court has the discretion to terminate participation and return the individual for traditional criminal court adjudication.

- (5) **Funding.** Treatment funding is provided by private insurance, welfare assistance, and Drug Court. Confidentiality is maintained by providers, except where the continuum of care principle requires that information be shared.
- (c) **Alternative Tracks and Phases in Drug Court.** No one intervention is appropriately suited for all drug-involved offenders. The most effective and cost-efficient outcomes are achieved when treatment and supervision services are tailored to the (1) prognostic risk level and (2) criminogenic needs of the participants. Drug Court participants are placed in one of four tracks based on their prognostic risk level and criminogenic needs. If there is a need to modify a track, a request from the Caseworker and treatment provider is submitted to the Team for approval. Tracks vary in length and phase requirements.
- (1) **Transition.** Drug Court participants are placed in a multi-phase treatment model that transitions the participant from alcohol and other drug use or dependence to successful recovery. Drug Court is designed to transition participants from recognition of their addiction, to active engagement in the therapeutic process based on their tracks, to sustained recovery and aftercare.
 - (2) **Program Length.** Individuals entering the Program should anticipate that they will be actively enrolled for at least eighteen (18) months. Each phase of the Program has specific elements and Program criteria that must be completed prior to moving to the next phase. In some cases, participants may be returned to a lower phase as part of a sanction for failure to comply with requirements or if the participant will benefit from further or renewed participation in the lower phase of treatment.
- (d) **Case Management.** Drug Court follows the National Association of Drug Court Professionals' generalist model for case management. In this model, the Caseworker has five key functions in case management comprised of assessment, planning, linking, monitoring, and advocacy. Caseworkers work in collaboration with clinicians, Team members, and other service providers for the benefit of the participant. This aids in forming treatment strategies and identifying issues currently affecting the participant's recovery.

- (e) **Community Supervision.** Community supervision is an integral component in ensuring compliance and accountability of participants.
 - (1) **Officer's Roles.** The Community Supervision Officer(s), Compliance Officer(s), and other Program law enforcement officers work together to monitor participants outside of court settings, promote public safety, hold participants accountable for their actions, acknowledge participant success, and follow evidence-based practices to maximize results. The officers work together to ensure a participant's compliance with the Program requirements and orders dictating curfews, restrictions, and community service. These Team members also: (1) conduct random drug testing; (2) conduct general searches of participants' homes and/or living spaces, and vehicles; (3) conduct random searches of participants' person; (4) identify environmental threats; (5) stay alert to impending signs of relapse; (6) report investigative findings conducted by assigned DCP law enforcement officers; (7) enforce community obligations; and, (8) actively participate in Drug Court Staffings and hearings.
 - (2) **Violations.** A participant's failure to comply with the terms of supervision is a violation. A violation may result in sanction or termination of a participant from Drug Court. The participant is expected to bring in his or her community meeting attendance sheets or other proof of treatment compliance.
- (f) **Testing and Accountability.** Substance abuse testing is considered a cornerstone of the Program. Participants are subject to a random and frequent testing system.
 - (1) **Reporting.** To determine whether a participant is to report for testing, the participant shall call a random testing phonenumber every day between the hours designated by the Drug Court. Upon finding they are directed to report for testing, the participant reports to an assigned location during the designated hours. All testing is observed by the Compliance Officer, Community Supervision Officer, law enforcement officer, or other certified testing agent.
 - (2) **Frequency.** The Judge may order a drug test at any time, without restriction, including during a hearing. A participant's failure to appear or submission of a diluted

sample is considered a positive test result for Program purposes. A participant may contest the results of a drug test but, if a participant wishes to contest the results, the participant bears the cost of any additional testing and confirmation of results. If the results are negative, however, the participant will be reimbursed.

- (g) **Incentives and Sanctions.** The Judge determines the appropriate incentives or sanction with recommendations from the Team.
- (1) **Incentives.** Incentives compel compliance and drive success in case outcomes. Incentives are intended to promote and reward compliance with treatment requirements, and to build trust between the Team and the participant. Accordingly, Drug Court uses incentives to assist the participant in achieving treatment goals. Incentives recognize, encourage, and promote positive behaviors. Incentives include tangible rewards, like gift certificates, and intangible rewards, like applause or words of affirmation.
 - (2) **Sanctions.** Sanctions are also used to assist the client in achieving treatment goals. Drug Court uses graduated sanctions to promote accountability and compliance. Sanctions may include loss of privileges, increased court appearances or testing frequency, or shock incarceration. Sanctions are imposed swiftly as needed.
 - (i) *Graduated Sanctions.* Graduated sanctions are a structured and incremental response to non-compliant behavior and violations. By design, the sanction should be appropriate for the behavior, the individual circumstances, and the severity of the addiction, mental health, or physical health condition of the participant. Sanctions tend to be escalated in intervention.
 - (ii) *Notice.* The Judge only imposes sanctions after hearing from the Team, and the participant. If a violation subjects the participant to a sanction, the participant is entitled to notice, and an opportunity to be heard. In most cases, the participant's contention will be heard at the weekly hearing.
 - (iii) *Time Served.* The time a participant spends incarcerated after entry into Drug Court not related to a new charge shall constitute time served.

- (iv) *Maximum Sentence.* A participant must not be subjected to a term of incarceration, either consecutively or cumulatively, which exceeds the maximum sentence for the charge to which the participant entered a plea in abeyance.

Section 6. Termination from Drug Court

(a) Types of Termination

- (1) **Self-Termination.** Participation in Drug Court is voluntary. Accordingly, a participant may self-terminate from Drug Court at any time. Participants who self-terminate are responsible for paying any outstanding fees and will return to the criminal docket.
- (2) **Court Termination.** As eligibility for Drug Court participation is not a right of the participant, Drug Court may terminate a participant at any time. The Court, at the request of a Team member, or on its own motion, may terminate a participant from the Program for good cause. A violation of treatment obligations may be grounds for termination. The seriousness of the treatment violation, repeated failures to comply, limitation of alternative treatment options, or other good cause may result in court termination.

(b) Grounds for Court Termination

- (1) **New Allegation of a Felony.** The Court may terminate a participant on motion of the OAG, or on its own motion, if the participant is arrested and charged with a new felony or a new violent or sexual felony at any time after entry into Drug Court.
- (2) **New Allegation of a Violent Misdemeanor, or Felony.** The Court may terminate a participant on motion of the OAG, or on its own motion, if the participant is arrested and charged with a violent misdemeanor.
- (3) **New Allegation of a Domestic Violence Offense.** The Court shall terminate a participant on motion of the OAG, or on its own motion, if the participant is arrested and charged with a domestic violence offense in any jurisdiction.
- (4) **Violation of a Stay Away Order.** The Court may terminate a participant on motion of the OAG, or on its

own motion, if the participant violates a stay away order. In the alternative, the Court may impose a period of incarceration, or other conditions, as a stipulation of further participation.

- (5) **Administrative Termination.** A participant who has either voluntarily left the jurisdiction or is evading local authorities shall be administratively terminated if a bench warrant remains outstanding thirty days after it is issued.
 - (6) **Other Reasons for Termination.** The Court may terminate a participant based on positive drug tests, prior failures in the treatment plan, lack of appropriate treatment services, other reasons related to the participant's compliance with treatment obligations, or for other good cause.
 - (7) **Evidentiary Standard for Termination.** The evidentiary standard for Drug Court termination shall be that the OAG must prove by a preponderance of evidence that the participant committed the alleged offense(s) necessary to trigger termination.
- (c) **Termination Procedure.** There are three types of termination:
- (1) **Termination for Accumulation of Violations of Drug Court procedures.** In the accumulation of violations-based termination, the participant will first be given a termination plan. A termination plan is an agreement between a participant and the Program that is entered into when a participant has exceeded an acceptable amount of violations or commits an egregious violation.
 - (i) *Length of Time.* The termination plan will last sixty (60) days or longer. Terms and conditions of the termination plan will be approved by the Judge. If the participant is unable to comply with the terms and conditions of the termination plan, then a termination hearing will be scheduled.
 - (ii) *Conditions.* If a termination plan is ordered, certain immediate conditions will be imposed, including, but not limited to: curfew restrictions, and increase in drug testing.
 - (iii) *Violations.* Any violation committed after a termination plan is ordered will immediately lead to a termination hearing.

- (2) **Criminal Charges.** When a participant is charged with a crime while in Drug Court, a termination hearing will be scheduled and heard within thirty (30) days unless stipulated by the parties or for good cause shown.
 - (3) **Violations while on Extension.** If a participant violates Drug Court policy while on an extension and cannot meet graduation requirements, and cannot meet graduation requirements, then a termination hearing will be scheduled and held within thirty (30) days of the review hearing addressing the violation. The participant may elect to waive his or her right to a hearing, however such waiver should occur only after a participant has had the opportunity to discuss options with counsel. If a hearing occurs, the participant and counsel must be present at the termination hearing. If terminated, the Judge accepts the plea held in abeyance and the case proceeds to sentencing.
 - (4) **Sentencing Judge Post-Termination.** The Judge shall preside over the sentencing of a former participant who has either self-terminated or has been terminated by the Court from the Program unless the former participant requests to be sentenced by another judge.
- (d) **Re-Entry into Drug Court.** If a participant who has been terminated wishes to re-enter Drug Court, such re-entry requires a new suitability assessment. The Judge may, at the Judge's discretion, refuse re-entry to any participant. At the Judge's discretion and with advice from the Team, the Judge may establish conditions for re-entry. Any re-entry conditions must be clearly noted in the case file and forwarded to the participant, OAG, and any counsel for the participant. Re-entry may be barred for up to ten (10) years if a terminated participant is convicted of domestic violence or other violent crime. Re-entry may be permanently barred if a terminated participant is convicted of a sexual crime. A Drug Court graduate is not eligible for re-entry into Drug Court.

Section 7. Successful Completion of Drug Court

- (a) **Commencement Ceremonies.** Commencement ceremonies are held to commemorate participants who have met the graduation requirements. Before graduation, the Team begins working with the participant to fully integrate him or her into the community. This includes the preparation of a long-term recovery plan (what was learned, plans to avoid relapse, and future goals), attendance at the exit seminar, and participation in a relapse prevention

program. The goal for each participant is to have in place a relapse prevention plan, stable housing, and a steady source of income.

(b) **Graduation Requirements.** A participant must meet all of the following criteria to graduate:

- (1) Successful completion of all Program requirements and payment of all fines, fees, and/or costs;
- (2) Satisfactory completion of community service and other Program assignments;
- (3) Six (6) consecutive months of sobriety;
- (4) Sixty (60) consecutive days sanction-free (exceptions may be made for minor violations);
- (5) Completion of an approved community-based project;
- (6) Completion of long-term Recovery Plan Application and Exit Seminar;
- (7) Completion of an aftercare plan with the Caseworker and Counselor;
- (8) Enrollment into a Relapse Prevention Program;
- (9) Completion of an Exit Survey;
- (10) A positive recommendation for graduation by the Team; and
- (11) The approval of the Judge.

(c) **Substantial Completion.** The Judge, with the recommendation of the Team, may grant a successful completion of the Program without a formal commencement ceremony under the following circumstances:

- (1) A participant's terminal illness has caused his or her health to deteriorate so severely that continued treatment compliance is impossible and there is no likelihood of future criminal conduct.
- (2) A participant has maintained at least six (6) months of continued sobriety, successfully fulfilled commencement requirements, and demonstrates a compelling reason for early dismissal.
- (3) A participant diagnosed with a mental illness after entry, or whose pre-existing mental illness has significantly worsened, who represents no public safety risk and no likelihood for further criminal conduct, if the mental

illness precludes further treatment compliance. The participant must have successfully engaged in treatment for at least one-hundred-twenty (120) non-custody days at some time prior to dismissal.

Section 8. Drug Court Fees

Drug Court assesses and collects fees to cover court services. Services may include: screening for eligibility and other appropriate services, clinical assessment, substance abuse education, referral and case management, and service coordination. This fee may be in addition to any other fee, fine, or cost that the court is authorized (or required) to assess and collect (such as treatment fees, community corrections fees, fines, costs, etcetera). Any additional fees, fines, and costs are dictated by offense or status. Payment of fees, and/or restitution is an important part of a participant's treatment, but no one who is otherwise eligible should be denied participation solely based on inability to pay. Fees may be broken up into weekly or monthly payments.

Ideally the participant is expected to pay all fees in full prior to graduation. Fees may be broken down into monetary benchmarks a participant must achieve prior to promotion from one phase to another, or may be assessed monthly. Fees are paid at the Judiciary Cashier's Office.

Restitution and prior court fines associated with the criminal case that brought the participant into the Program must be paid prior to graduation. If necessary, payment plans are available.

Should a participant not pay all restitution prior to graduation, the participant is subject to the issuance of a civil judgment for any outstanding balance. A participant may not receive the full benefit of completing the Program, which may include reduction and/or dismissal of his or her criminal charge. The Judge may also order a payment plan for any remaining restitution. If a participant is indigent at the time of program completion, the Judge may suspend or forgive any outstanding court fines and/or fees. If a participant is terminated from the Program, all outstanding fees must still be paid.

Section 9. Confidentiality

Federal and Commonwealth laws of confidentiality govern the Drug Court and its treatment programs. Disclosure of information received in the course of treatment is strictly prohibited unless a court order "for good cause" is issued. Participants must authorize the disclosure of information regarding their diagnosis, attendance, scope of treatment, treatment

progress, quality of participation, and termination or completion of treatment. Participants consent will be documented in a consent form and shall include authorization to conduct research of treatment success, costs, and recidivism rates for participants. All parties and counsel attending the staffing are obligated to sign and abide by a confidentiality form. At the discretion of the Judge, anyone outside of the Program can attend Drug Court hearings but attendees are obligated to sign and abide by a confidentiality form.

Section 10. Forms

Drug Court is authorized to prepare applicable forms as necessary. Forms must be approved by the Presiding Judge or designee. Forms are available on the Judiciary's website at www.nmijudiciary.com.