



## Minnesota Judicial Branch Policy

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### Minnesota Offender Drug Court Standards

FOR ALL JUVENILE, HYBRID<sup>1</sup>, DWI, AND ADULT DRUG COURTS

#### PURPOSE

Drug courts promote recovery through a coordinated response to participants who are dependent on alcohol and other drugs (AOD). A team approach is required, including the collaboration of judges, drug court coordinators, prosecutors, defense counsel, probation authorities, law enforcement, treatment providers, and evaluators. Drug courts employ a multi-phased treatment process. The goal of drug courts is to engage individuals in treatment long enough to experience the benefits of treatment in order to end the cycle of recidivism and successfully intervene on the addiction.

The Judicial Council, comprised of the leadership of the Minnesota Judicial Branch, has convened the multi-disciplinary, cross-branch Drug Court Initiative Advisory Committee (DCI) to oversee implementation and funding distribution for drug courts in Minnesota. The goal of the Drug Court Initiative is to improve outcomes for alcohol and other drug addicted individuals in the courts through justice system collaboration, thereby:

1. Enhancing public safety
2. Ensuring participant accountability; and
3. Reducing costs to society

Successful drug court initiatives will also improve the quality of life for addicted offenders, their families, and communities through recovery and lead to greater system collaboration and ongoing analysis to ensure effective and fair case outcomes.

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<sup>1</sup> Hybrid drug courts combine one or more of the models taking multiple case types. E.g., many adult drug courts that focus on controlled substance and other felony-level crimes also include DWI cases in the court.

DWI and Hybrid DWI courts have a variety of elements that set them apart from the Adult drug court model. While public safety is a priority among all models of drug courts, drinking and driving is a major public safety issue for our communities and our criminal justice system. The main goal of DWI and Hybrid DWI courts is to reduce or eliminate repeat DWI offenses; thereby creating safer roads and saving lives. The detection of alcohol is difficult, requiring more sophisticated testing. Transportation issues tend to be one of the most difficult obstacles for offenders to overcome. To effectively manage these issues and to best treat this population, DWI and Hybrid DWI courts utilize increased supervision, frequent alcohol and other drug testing, including scientifically validated technology to detect ethyl alcohol, and driver's license reinstatement plans.

Juvenile drug courts focus on a younger population and have many characteristics and needs specific to the model. Most important is the fact that many of the young people in these courts are still living at home and are under the supervision of caregivers. Juveniles are negatively affected by any criminal or addictive issues in the home. Because the court does not have jurisdiction over the caregivers, it is more difficult to effectively intervene in the youth's problematic use of alcohol and other drugs and support the young person in their recovery. Due to their age and the relatively short period of time using alcohol and other drugs, providing a definitive diagnosis of dependence for juveniles regarding their use of alcohol and other drugs is sometimes difficult and some traditional treatment and recovery supports may not be appropriate. Issues such as school performance, teenage pregnancy, gang involvement, transportation, and appropriate housing greatly impact a juvenile drug court's ability to support the young person in changing their life.

The following document provides standards to guide the planning and implementation of all offender drug courts in Minnesota's state trial courts. The Ten Key Components, as published by the U.S. Department of Justice, Office of Justice Programs, are the core structure for these standards. Definitions of each model of drug court – adult, juvenile, and DWI – can be found in Appendix A. The standards are written from the perspective of adult drug courts. Whenever there is a specific standard or practice unique to a juvenile or DWI model of drug court that standard or practice is identified in the appropriate section.

These standards were approved by the Judicial Council on July 20, 2007 and are minimum requirements for the approval and operation of all drug courts in Minnesota. Accompanying each standard are recommended practices that each drug court is encouraged to follow.

The standards are based upon almost twenty years of evaluation and lessons learned from drug courts all across the country, as well as Minnesota's oldest drug courts. While these standards seek to create a minimum level of uniform practices for drug courts there is much room for innovation and for local drug courts to tailor their courts to meet their needs.

## I. STANDARD ONE

*Drug courts must utilize a comprehensive and inclusive collaborative planning process, including:*

- 1.1 Completion of the federal Drug Court Planning Initiative (DCPI) training or the Minnesota equivalent for the specific approved drug court model before becoming operational. Hybrid drug court teams that seek to combine multiple models of drug court must complete team-based drug court training for all relevant models.
- 1.2 Development of a written agreement setting forth the terms of collaboration among the prosecutor's office, the public defender's office, probation department, the court, law enforcement agency(ies), and county human services.
- 1.3 Creation of a steering committee comprised of key officials and policymakers to provide oversight for drug court policies and operations, including development and review of the drug court budget, and to communicate regularly with the county board and/or city council.
- 1.4 Establishment of written policies and procedures which reflect shared goals and objectives for a drug court; at a minimum, the goals of the drug court shall be those of the DCI: enhancing public safety, ensuring participant accountability, and reducing costs to society. (An outline example for a local policies and procedures manual is found in Appendix B.)
- 1.5 Provision of written roles and responsibilities of each of the core team members including, but not limited to, an emphasis on core team members attendance at staffings and hearings. The core team members are as follows:
  - A. Judge
  - B. Drug Court Coordinator
  - C. Prosecutor
  - D. Public Defender
  - E. Probation/Case Manager
  - F. Law Enforcement Representative
  - G. Chemical Dependency Expert (Provider, Rule 25 assessor, etc.)
  - H. Tribal Representative (when appropriate)

### DWI

- All of the above and a victim's representative

Juvenile Drug Court  
- All of the above and a school official

Recommended Practices

1. Drug court teams should take a minimum of six months to plan and prepare for implementation. This amount of time allows for a cohesive team to form; one that has effectively and collaboratively reached consensus on the variety of issues inherent in the implementation of a drug court.
2. When developing a written agreement, teams should include a tribal entity when appropriate.
3. Other possible members of the team, may include, but are not limited to:
  - a. Mental Health Professional
  - b. Rule 25 Assessor
  - c. Social Service Representative<sup>2</sup>
  - d. Recovery Community Representatives
  - e. Other Community-Based Stakeholders
4. All drug court teams should work with their local community members when planning, implementing, and operating a drug court to ensure that the best interests of the community are considered. Drug court team members should engage in community outreach activities to build partnerships that will improve outcomes and support self-sustainability.
5. A written sustainability plan should be developed and reviewed on an annual basis.
6. A community outreach and education plan should be developed and reviewed regularly.

**II. STANDARD TWO**

***Drug courts must incorporate a non-adversarial approach while recognizing:***

- 2.1 Retention of prosecution's distinct role in pursuing justice and protecting public safety.
- 2.2 Retention of defense counsel's distinct role in preserving the constitutional rights of drug court participants.
- 2.3 Preservation of due process fostered through judicial leadership.
- 2.4 Provision of detailed materials outlining the process of the drug court to private legal counsel representing a drug court participant; counsel shall also be invited to attend post-admission drug court staffings (for their client(s) only).

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<sup>2</sup> Specifically these representatives could come from public health, housing, employment, etc.

### Recommended Practice

1. For consistency and stability in drug court operations, the drug court team members should be assigned to the drug court for a minimum of one year.

### **III. STANDARD THREE**

*Drug courts must have published eligibility and termination criteria that have been collaboratively developed, reviewed, and agreed upon by members of the drug court team, including the following elements:*

- 3.1 Offense eligibility screening based on established written criteria, which cannot be changed without the full agreement of the drug court team.
- 3.2 Only individuals with a finding of substance use disorder, moderate or severe, consistent with the most current DSM (Diagnostic and Statistical Manual) diagnostic criteria shall be considered appropriate for drug court. Additionally, the offender must also have a diagnosis of dependency consistent with the most current ICD (International Classification of Diseases) to be eligible for drug court.

#### **For Juveniles:**

Only individuals with a finding of substance use disorder, moderate or severe, consistent with the most current DSM (Diagnostic and Statistical Manual) diagnostic criteria shall be considered appropriate for drug court.

- 3.3 Individuals are assessed to determine the level of risk. High-risk individuals are appropriate for admission into drug court. Low-risk individuals may be admitted but only if placed on an alternative track separate from the high-risk individuals and structured according to evidence-based practices. All drug courts must use a validated risk tool<sup>3</sup> to determine risk for inclusion in drug court.
- 3.4 Participants who have a significant history of crimes against persons, crimes to benefit a gang, or who are an integral part of a drug distribution or manufacturing network are excluded from the drug court. If the drug court

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<sup>3</sup> There are a number of validated assessments to determine the level of risk of offenders. Historically, the use of a variety of assessments has been problematic for drug courts in determining a unified definition of high risk. Only one validated tool, the "Risk and Needs Triage (RANT)", is designed to determine risk into two categories; high and low. Therefore, drug courts shall use the RANT when available for appropriate offender populations. The RANT is a screening tool; therefore, not intended to replace any assessments used by other agencies

team intends to use information other than a conviction to determine whether the participant has a criminal history that would exclude the participant from participating in drug court, local drug court team members must determine as part of their written procedures what additional information may be considered by the drug court team in making a determination as to the participant's criminal history. Drug courts may consider decaying factors (e.g., how long ago the crime was committed, the offender was a juvenile, etc.) of a potential participant's criminal history to determine eligibility.

- 3.5 The local drug court team members must determine, in writing, what constitutes a violent or gang-related crime for purposes of disqualification from the drug court. Other disqualifying crimes or disqualifying factors are as determined in writing by the local drug court team.

#### Recommended Practices

1. Drug courts should have clear policies regarding bench warrant status as part of written termination criteria.
2. Participants should not be accepted to or excluded from drug court solely on the basis of a Rule 25 assessment.
3. In developing eligibility criteria drug court teams should take into consideration the following factors:
  - a. Inclusion of non-drug offenses, especially those related to fostering the offender's addiction.
  - b. A process to consider the inclusion of serious and repeat (i.e., 1<sup>st</sup> and 2<sup>nd</sup> degree controlled substance offense) non-violent offenders.
  - c. A provision to evaluate mitigating and aggravating circumstances of the current or prior offenses
  - d. Should the mental health capacity of the individual be in question, a mental health assessment should be administered to deem the individual mentally stable enough to participate in the drug court. Additionally, if a co-occurring disorder exists, the drug court should be able to advocate for and access adequate services.
4. Determining eligibility by risk and need rather than specific offenses.
5. The drug court team should limit subjective criteria or personal impressions to determine eligibility.
6. Individuals administering risk assessments should be appropriately trained.

#### **IV. STANDARD FOUR**

***A coordinated strategy shall govern responses of the drug court team to each participant's performance and progress, and include:***

- 4.1 Regular drug court team meetings for pre-court staffings and court reviews at least twice monthly during the initial phase to monitor each participant's performance.

- 4.2 Ongoing communication among the court, probation officer and/or case manager, and treatment providers, including frequent exchanges of timely and accurate information about the individual participant's overall performance.
- 4.3 Progression by participants through the drug court based upon the individual's progress in the treatment plan and compliance with court requirements; drug court phases and an individual's progress through those phases are not to be based solely upon pre-set court timelines.
- 4.4 Responses to compliance and noncompliance (including criteria for termination) explained orally and provided in writing to drug court participants during their orientation.
- 4.5 The standard Consent Form must be completed by all parties – team members, observers, and adjunct team members - to provide communication about confidentiality, participation/progress in treatment, and compliance with the provisions of 42 CFR, Part 2 and HIPAA.

#### Recommended Practices

1. Having a significant number of drug court participants appear at a single session gives the opportunity to educate both the participant at the bench and those waiting as to the benefits of court compliance and consequences for noncompliance.
2. Mechanisms for sharing decision-making and resolving conflicts among drug court team members should be established, emphasizing professional integrity and accountability.

## **V. STANDARD FIVE**

***Drug courts must promptly assess individuals and refer them to the appropriate services, including the following strategies:***

- 5.1 Initial appearances before the drug court judge do not exceed:
  - 14 days after arrest, charging, or initial appearance in court for those drug courts which are pre-conviction or pre-adjudication for Juvenile drug courts.
  - 14 days after conviction for those drug courts which are post-conviction or 14 days after adjudication for all post-adjudication Juvenile drug courts.
  - 14 days after first appearance on a violation of probation
- 5.2 All chemical dependency and mental health assessments include collateral information to ensure the accuracy of the assessment.

- 5.3 Defense counsel must review the standard form for entry into the drug court as well as potential sanctions and incentives with the participant, informing them of their basic due process rights.
- 5.4 Once accepted for admission into the drug court, the participant must participate as soon as possible in chemical dependency treatment services and be placed under supervision to monitor their compliance with court expectations.

#### Recommended Practices

1. Individuals providing screening for substance use disorders and suitability for treatment should be appropriately trained.
2. The drug court team should have the option to accept or reject a chemical dependency assessment without adequate collateral information.

### **VI. STANDARD SIX**

***A drug court must incorporate ongoing judicial interaction with each participant as an essential component of the court.***

- 6.1 At a minimum, drug court participants must appear before the drug court judge at least twice monthly during the initial phase of the court. Frequent status hearings during the initial phases of the court establish and reinforce the drug court's policies and ensure effective supervision of each drug court participant.

#### Recommended Practices

1. The drug court judge receives training and is knowledgeable about chemical and mental health treatment methods and their limitations.
2. Hearings should be before the same judge for the length of each participant's time in the drug court.
3. Research supports that outcomes significantly improve if the drug court judge is engaged in significant dialogue with each participant for a minimum of three minutes during the hearing. Team members are responsible for providing the judge with the necessary information during staffing to assist in the dialogue.
4. A back-up or assisting judge should be appropriately trained.
5. Length of term for drug court judges should be a minimum of two years.

### **VII. STANDARD SEVEN**

***Abstinence must be monitored by random, frequent, and observed alcohol and other drug testing protocols which include:***

- 7.1 Written policies and procedures for sample collection, sample analysis, and result reporting. The testing policies and procedures address elements that contribute to the reliability and validity of the testing process.

- 7.2 Individualized drug testing plans; all testing must be random, frequent, and observed.
- 7.3 Plans for addressing participants who test positive at intake or who relapse must be clearly established with outlined treatment guidelines and sanctions, when appropriate, that are enforced and reinforced by the judge.
- 7.4 Notification to the court within 48 hours when a participant tests positive, has failed to submit to testing, has submitted the sample of another, diluted the sample, or has adulterated a sample. Failure to submit to testing, submitting the sample test of another, and adulterated samples must be treated as positive tests and receive an immediate response.
- 7.5 Testing sufficient to include each participant's primary substance of dependence, as well as a sufficient range of other common substances.

#### Recommended Practices

1. Participants should be tested a minimum of twice weekly throughout the duration of drug court.
2. When testing for alcohol, drug courts should strongly consider devices worn by the participant, portable breath tests (PBTs), saliva tests, and the use of scientifically validated technology used to detect ethyl alcohol.
3. Testing protocols should take into consideration the ability to monitor compliance with valid prescriptions/medication-assisted treatment and differentiate positive tests between prescribed drugs and drugs of abuse.

### **VIII. STANDARD EIGHT**

***Drug courts must provide prompt access to a continuum of approved AOD and other related treatment and rehabilitation services, particularly ongoing mental health assessments, based on a standardized assessment of the individual's treatment needs.***

- 8.1 All participants have an up-to-date treatment plan and record of activities.
- 8.2 All chemical dependency and mental health treatment services are provided by programs or persons who are appropriately licensed and trained to deliver evidence-based interventions according to the standards of their profession.
- 8.3 Medication-assisted treatment is considered when appropriate and based upon expert consultation. Reasonable efforts must be made to provide the service to participants.

- 8.4 Treatment professionals provide accurate and timely information to the court in regard to a participant's progress in treatment.

#### Recommended Practices

1. Each participant should contribute to the cost of the treatment he/she receives while participating in the drug court, taking into account the participant's, and when appropriate the guardian's, financial ability.
2. Drug court teams should make reasonable efforts to observe drug court treatment programs to gain confidence in the services being provided and to better understand the treatment process.
3. Drug court treatment providers should understand criminal justice populations and have separate tracks for drug court participants/criminal justice clients.
4. Drug court teams should seek expert consultation regarding addiction and psychotropic medication.

### **IX. STANDARD NINE**

***The drug court must have a plan to provide services that are individualized to meet the needs of each participant and incorporate evidence-based strategies for the participant population. Such plans must take into consideration services that are gender-responsive and culturally appropriate and that effectively address co-occurring disorders while promoting public safety.***

- 9.1 At minimum, each plan includes the following components:
- a. Steps to become employed and/or to pursue further education.
  - b. All participants with suspended, canceled or revoked driver's licenses must have a license reinstatement plan.

#### Recommended Practices

1. Services should be trauma-informed<sup>4</sup> when appropriate and clinically necessary to the degree that available resources allow this.
2. Drug court teams should identify local resources, gaps in services, and work to build relationships to provide quality service-delivery and fill the gaps in services where possible.
3. Ancillary services that should also be considered may include but are not limited to:
  - Education
  - Transportation

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<sup>4</sup> Trauma-informed services are designed to provide appropriate interactions tailored to the special needs of trauma survivors. The focus is on screening for trauma and designing the drug court program to reduce or eliminate triggers of trauma for the survivor. This is particularly important because research shows that occurrence of trauma is a significant factor in most offender populations. This concept is further discussed in the Minnesota Supreme Court's Chemical Dependency Task Force's second report (pp. 44-47). <http://www.mncourts.gov/?page=631>

- Housing
- Domestic Violence Education Programming
- Health Related
- Employment
- Peer support mentors
- Parenting classes

## **X. STANDARD TEN**

***Immediate, graduated, and individualized sanctions and incentives must govern the responses of the drug court to each participant's compliance or noncompliance.***

- 10.1 Team members consider proximal and distal behaviors in conjunction with program status when responding to behavior.
- 10.2 When behavior is attributed to the disease of addiction or mental health issue, a treatment response takes precedent as the primary response.
- 10.3 Unless a threat to public safety is evident, jail is used sparingly, and in short duration when other sanctions are ineffective.
- 10.4 Notice of the administration of incentives, sanctions and treatment responses is provided in writing and explained verbally to the individual prior to program entry.

### Recommended Practices

1. Adjustment in treatment services, as well as participation in community-based mutual support meetings, should only be based upon the clinically-informed interests of the participant.
2. Time between status hearings should be increased or decreased, based upon compliance with treatment protocols and progress observed.
3. Responses to behavior are consistent with research and philosophies of changing/supporting behavior and are:
  - a. Certain;
  - b. Timely;
  - c. Appropriate in magnitude;
  - d. Escalate or de-escalate as appropriate;
  - e. Perceived as fair; and,
  - f. Target the specific behavior.
4. Incentivizing positive behavior is regarded as more important and successful than sanctioning undesired behavior.
5. Research shows that the effectiveness of jail as a sanction diminishes or is even negated when an individual is jailed for more than six days.

6. Termination should not occur for continued substance use unless it is in conjunction with non-compliance in treatment and/or supervision, or the participant is considered non-amendable to treatment.

## **XI. STANDARD ELEVEN**

*Drug courts must assure continuing interdisciplinary education of its team members to promote effective drug court planning, implementation, and ongoing operations, by:*

- 11.1 Establishing and maintaining a viable continuing education plan for drug court team members.
- 11.2 Each drug court plans for the transition of a team member and provides sufficient orientation and training for new team members.

### Recommended Practices

1. At a minimum of once every two years, drug court teams should work with outside experts to assess team functionality, review all policies and procedures, and assess the overall functionality of the court.
2. Each court should identify and build a relationship with a mentor court of its specific model.
3. Drug courts should regularly observe other drug courts.
4. The operating procedures should define requirements for the continuing education of each drug court staff member.
5. Interdisciplinary education may include:
  - a. Roles of team members in and out of drug court;
  - b. Information regarding individual agency policies and procedures;
  - c. National, state, and local legislation, statutes, policies, resolutions, etc. pertinent to drug court; and,
  - d. Review of drug court policies and procedures.

## **XII. STANDARD TWELVE**

*Drug courts must evaluate effectiveness by:*

- 12.1 Reporting outcome and other data as required by the DCI including information to assess compliance with the Standards.
- 12.2 Collecting and analyzing data and modifying policies and procedures based upon the results.

Recommended Practices

1. Conduct a formal evaluation with a third-party and modify policies and procedures based upon the results.
2. Drug courts should have a written evaluation plan which includes (at minimum) measurable and attainable goals and objectives.

## **APPENDIX A:**

### **Definition of Drug Court Models (adapted from the National Drug Court Institute)**

**Adult Drug Court** is a specially designed court calendar, the purposes of which are to achieve a reduction in recidivism and alcohol and other drug (AOD) use among nonviolent addicted offenders and to increase the offenders' likelihood of successful habilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, community supervision and the use of appropriate sanctions and incentives. The drug court judge maintains close oversight of each case through regular status hearings with the parties involved. The judge both leads and works as a member of a team that comprises representatives from treatment, law enforcement, probation, the prosecution, and the defense.

**DWI Court** is a distinct court dedicated to changing the behavior of the alcohol and other drug dependant offenders arrested for Driving While Impaired (DWI). The goal of DWI court is to protect public safety by using the drug court model to address the root cause of impaired driving, alcohol and other drug problems. With the repeat offender as its primary target population, DWI courts follow the Ten Key Components of Drug Courts and Ten Guiding Principles of DWI Courts, as established by the National Association of Drug Court Professionals and the National Drug Court Institute.

**Hybrid Drug Court** is a drug court that combines multiple models. The drug court team has had appropriate training for each of the combined models. E.g., when an Adult drug court decides to also take DWI offenders, the court is structured to support the needs of DWI offenders, in particular the use of alcohol monitoring and the presence of victim's representatives at staffings, to protect public safety.

**Juvenile Drug Court** is a court calendar within a juvenile court to which selected delinquency cases are referred for handling by a designated judge. The youth referred to this docket are identified as having problems with alcohol and/or other drugs. The juvenile drug court judge maintains close oversight of each case through regular status hearings with the parties involved. The judge both leads and works as a member of a team that comprises representatives from treatment, juvenile justice, social and mental health services, school and vocational training programs, law enforcement, probation, the prosecution, and the defense.

***APPENDIX B:  
Policy and Procedures Manual Outline***

**COURT OVERVIEW**

Introduction  
Mission Statement  
Goals and Objectives

**COURT PLAN**

Model  
Target Population  
Eligibility Criteria  
Referral Process  
Screening and Intake Process  
Entry Process  
Incentives & Sanctions  
Graduation Requirements  
Termination Criteria  
Staffing (frequency, team operating norms, times)  
Court Session (frequency, times)

**ROLES AND RESPONSIBILITIES OF THE KEY PLAYERS OF THE OPERATIONS TEAM**

**CONFIDENTIALITY**

**CHEMICAL DEPENDENCY TREATMENT**

Provider Network  
Protocols  
Phases and Duration  
Long Term Recovery Supports/Continuing Care

**ANCILLARY SERVICES**

**CULTURAL AWARENESS & INCLUSION POLICY**

**COURT OVERSIGHT AND SUSTAINABILITY PLAN**

Marketing and Community Awareness  
Cross Training  
Management Information System  
Evaluation Design  
Budget

***APPENDICES***

Appendix A Examples of Incentives & Sanctions

- Appendix B Forms
- Appendix C Orders
- Appendix D Participant Handbook
- Appendix E Phase Description
- Appendix F Team Meeting Ground Rules
- Appendix G Memoranda of Understanding (Enter a brief policy statement followed by necessary MOU's to maintain for the effective functioning of the court. An appendix section should contain all MOU's)
- Appendix H Life Plan Packet – this document delineates how the prospective graduate will maintain sobriety and continue law-abiding behavior.
- Appendix I Road Map – monthly review of all case plans so that all cases are prioritized on a regular basis
- Appendix J Steering Committee
- Appendix K Planning Team
- Appendix L Operations Team
- Appendix M Referral & Screening Flow Chart