

Clay/Becker Drug Court



POLICIES AND PROCEDURES MANUAL

November 2023

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COMMITTEE

- Tammy Merkins & Jade Rosenfeldt – District Judges Clay
- Gretchen Thilmony & Michelle Lawson – District Judges Becker
- Kristal Kadrie – Drug Court Coordinator Clay/Becker
- Brian Melton – Clay County Attorney
- Brian McDonald – Becker County Attorney
- Caitlin Hurlock & Molly Doda – Assistant Clay County Attorneys
- Braden Sczepanski – Assistant Becker County Attorney
- Brian Rubenstein – Minnesota Dept. of Corrections
- Janelle Cheney – Minnesota Dept. of Corrections
- Andria Livingstone – Minnesota Dept. of Corrections
- Jodi Kulik – Minnesota Dept. of Corrections
- Brad Penas – Moorhead Police Dept.
- Adam Torgerson – Moorhead Police Dept.
- Lt. Stephen Landsem – Clay County Sheriff's Dept.
- Rhonda Porter – Clay County Social Services
- Nick Biermeier – Becker County Human Services
- Mark Empting – Clay County Sheriff
- Shannon Monroe – Moorhead Chief of Police.
- Kevin Campbell – Clay County Commissioner
- Barry Nelson – Becker County Commissioner
- Renelle Fenno – Clay/Becker County Court Administrator

PLANNING TEAM

Clay County

Becker County

Judge Tammy Merkins	Judge Gretchen Thilmony
Coordinator Kristal Kadrie	Coordinator Kristal Kadrie
Prosecutor Caitlin Hurlock	Prosecutor Braden Szczepanski
Treatment Providers: Clay County Social Services	Treatment Providers: Becker County Human Services
Probation Supervision: Andria Livingstone	Probation Supervision: Jodi Kulik
Compliance Agent: Kristy Johnson	Compliance Agent Nicole Strand
Law Enforcement: Adam Torgerson	

MISSION STATEMENT

The mission of the Clay/Becker Drug Court is to strengthen our community through court team supervision of chemically dependent offenders by providing accountability, evidence-based treatment, and motivation for positive change, resulting in successful family and community contribution.

GOALS AND OBJECTIVES

1. Reduce substance abuse among criminal offenders.

To meet these goals, we will strive for:

- a. 100% of possible participants assessed for chemical dependency within 2 business days of referral to Drug Court.
- b. 85% referred to a treatment program within 5 business days of the assessment. 70% of this group will be in treatment within a week of the referral.
- c. 100% will complete primary treatment while in phase II of the program.
- d. 95% of all participants will obtain a sponsor within the first phase of the program.
- e. 80% of all urine analysis tests will be negative for drug use.
- f. 75% graduation rate of all offenders admitted to the Drug Court program within 18 months of admission.
- g. 100% of all graduates will have been drug free for 12 months at graduation.

2. Enhance public safety by reducing criminal recidivism.

To meet these goals, we will strive for:

- a. 80% will not be convicted of another offense while in the program.
- b. 80% will be employed, in school, or volunteering while in phase III.
- c. 80% will have a significant reduction of at least 6 points in risk and/or needs between initial entry assessment and the discharge assessment as measured by the LSCMI.
- d. 70% of all participants will not be convicted of another offense 1 year after graduation.

3. Assist Offenders in developing personal, family, and social skills and relationships to become more productive citizens.

To meet these goals, we will strive for:

- a. 80% of those in need will be referred for education and/or employment services while in phase II of the program.
- b. 80% of participants will report improvements in their familial and personal relationships.
- c. 70% of all participants in need of therapy or mental health services will obtain the services while in the program.
- d. 90% will have obtained employment or be enrolled in school at the time of graduation.

4. Reduce financial impact of drug use on taxpayers.

5. Reduce the number of drug offenders in the jail population.

The expected outcomes will show improvement in the participants' ability to function in all areas of their lives, increase public safety and break substance abuse patterns that result in criminal activity. The evaluation component of the program will measure whether these goals and objectives are achieved.

STRUCTURE/MODEL

Individuals can be referred for screening for Drug Court by the Defense Attorney, Prosecuting Attorney, Probation Officer, Drug Court Coordinator, or Judge. “Drug Court Team” or “Team” includes but is not limited to: Prosecuting Attorney, Probation Officer, Drug Court Coordinator, Treatment Professionals, and Judge.¹

Mandatory Provisional Admission: Upon agreement of the Team, individuals will be required to begin the pre-Drug Court process with mandatory PROVISIONAL admission to Drug Court. The participant must take part in the drug court process for up to 6 weeks on a PROVISIONAL admission (excluding in-patient treatment time). After the 6 weeks have been completed, the Team will determine if the participant is eligible for admission into Drug Court. If the participant is deemed eligible, the participant must voluntarily agree to enter the Drug Court programming. If the participant chooses not to enter Drug Court, they will not be required to participate and prosecution or sentencing per the Minnesota Sentencing Guidelines will resume.

Voluntary Admission: After successful completion of the Mandatory Provisional stage, the participant will decide whether to enter Drug Court or decline and continue the criminal case in the traditional justice system.

Pre-Plea Admission: Individuals will be screened by the Team and upon approval, can be admitted into drug court. Pre-plea individuals admit the facts of the charged offense. In the event the participant is terminated in Drug Court, the factual basis and admission may be used against the individual when prosecution is resumed.

Post-Plea Admission: Individuals will be screened by the Team and upon approval, will be admitted into Drug Court. Post-plea individuals must be adjudicated guilty, and the pronounced sentence may include a stayed amount of incarceration and a provision for successful completion of Drug Court. In the event the participant is failed out of Drug Court, the stayed sentence may be executed.

Probation Violators: Probation violators will be screened by the Team and upon approval, will be admitted into Drug Court. Probation violators admit the facts of the probation violation. A finding of a violation will be stayed subject to successful completion of Drug Court. In the event the participant is failed out of Drug Court, the violation may be found, and the stayed time may be executed.

¹ More information about “Teams” can be found on page 19.

TARGET POPULATION

Non-violent (first time or repeat offenders) determined to need treatment after a comprehensive assessment and are considered high risk to reoffend with heightened needs requiring a higher level of supervision.

ELIGIBILITY CRITERIA

To qualify for Drug Court, the person must meet the following eligibility standards:

Qualifying Factors for Candidate:

1. All candidates must be chemically dependent adults with a high risk to re-offend. Candidates must have the ability to comply with the supervision requirements of the Drug Court.
2. Candidates must be, in the opinion of the Drug Court probation staff, “amenable to probation.”
3. Candidates must be residents of Minnesota and live within Clay or Becker County.

Qualifying Factors for Offenses:

1. All controlled-substance crimes.
2. Any offenses arising out of or motivated by chemical dependency.

Notwithstanding any other provision, the Drug Court may accept, *upon joint motion of the prosecuting and defense attorneys*, persons who do not initially qualify for Drug Court under these eligibility criteria.

DISQUALIFICATION CRITERIA

The Drug Court **may** accept persons who do not initially qualify for Drug Court because of disqualification criteria (except that they must live in Clay or Becker County while in Drug Court Programming). Prosecution does have veto power.

Disqualifying Factors for Candidate:

1. A person who does not live in Clay or Becker County.
2. Candidates with prior sex offenses.
3. Candidates with prior felony convictions for crimes against a person.
4. Anyone required to register as a predatory offender.
5. Candidates who have a prior involuntary discharge from another Drug Court.
6. Candidates who have a Criminal History Score of Three (3) or more.
7. Candidates with a history of crimes to benefit a gang.

Disqualifying Factors for Offenses

1. Weapons charges, or charges in which any dangerous weapon was used to facilitate the crime.
2. Crimes of violence against a person.
3. Charges of drug manufacturing.
4. Any predatory offenses.

ENTRY PROCESS

Chemically dependent defendants, who are not violent offenders as defined in 28 C.F.R. 93.3(d), may enter Drug Court by any one of the following tracks:

- A. **Pre-Plea:** Arrest for any crime motivated by chemical dependency. In all cases a comprehensive assessment, treatment and random testing will be ordered as conditions of release.
- B. **Post-Plea:** Arrest for any crime motivated by chemical dependency. Entry into Drug Court will not occur until plea or finding of guilty. Chemical dependency treatment will not begin until a plea agreement including entry into Drug Court is on the record.
- C. **Probation Revocation:** Revocation of standard probation in cases where the defendant was convicted of a felony crime but not initially placed on Drug Court probation.

Entry into the Drug Court can occur in one of two ways:

Type 1: After Negotiations

A case file will be brought to the Drug Court Team for review. The defendant will be ordered to contact the Drug Court staff to set up appointments for a comprehensive assessment and probation screening. After the screening and assessment, the results of the screening will be conveyed to the assigned judge for approval of the transfer to Drug Court. Upon approval, the defendant will appear in Court and will be ordered to treatment (either in-patient or out-patient). The case will set for further hearing (bi-weekly if out-patient or at the approximate time of completion of in-patient treatment) and the participant will be admitted into the Provisional stage of Drug Court.

Type 2: Revocation

Probation agents who intend to seek a revocation may suggest screening the defendant for entry to the Drug Court. The agent, defense attorney or prosecution should verify that the defendant has violated probation and likely needs a higher level of supervision, struggles with Chemical Dependency issues, that the underlying offense is a qualifying felony, that the defendant otherwise qualifies.

Court Administration is to fast track the 1st appearance on the revocation hearing with the supervising judge. If the defendant admits to the violation, the judge may order the Drug Court screening and a comprehensive assessment. The re-sentencing should be set with the Drug Court Judge on a fast-track basis. If the defendant is eligible, the defendant should be sentenced to Drug Court and to begin Drug Court review hearings.

PARTICIPATION FEE

In accordance with Minnesota Statute 357.42 Treatment Court Fees, the Clay/Becker Drug Court shall assess a **\$170.00 fee** for participation in an adult treatment court program to offset the cost of the program. All treatment court fees are to be paid in full prior to successful completion of the program. Revenue Recapture may be utilized for any outstanding fees due to termination from the treatment court program.

All treatment court participation fees will be collected by Court Administration in the District counties or Court Payment Center and deposited into a separate account for exclusive use by the program. Funds will be used in accordance with MJB Policy 511.2(a) Treatment Court Expenditures and may be used to pay for program costs, incentives, local training needs, and drug testing.

PHASES

- Provisional Admission:** Mandatory admission, not voluntary
Obtain a Comprehensive Assessment and follow all recommendations
Maintain six (6) weeks of sanctionless participation
Curfew required
No overnight stays away from primary residence
Report all whereabouts to probation agent
Active Participation in Primary Chemical Dependency Treatment
Criminal case must be resolved by plea
If not in residential treatment:
Minimum of Twice Weekly UA/PBT testing
Minimum of Twice Weekly meetings with probation staff
Drug Court Review Hearings at least twice a month
- Phase I “CHOICE”:** Minimum of Twice Weekly UA/PBT testing
Minimum of Twice Weekly meetings with probation staff
Drug Court Review Hearings at least twice a month
Maintain three (3) months of sanctionless participation
Curfew required
Obtain a recovery mentor
Request permission for overnight stays away from primary residence
Report all whereabouts to probation agent
Completion of Primary Chemical Dependency Treatment
- Phase II “CHALLENGE”:** Minimum of Twice Weekly UA/PBT testing
Minimum of Once Weekly meetings with probation staff
Drug Court Review Hearings at least twice a month
Maintain 3 months sanctionless participation
Less Restrictive Curfew
Maintain a recovery mentor
Request Permission for overnight stays from Agent – max of three (3) overnight stays per month are allowed
Report all whereabouts to probation agent
Participate in education, employment, or volunteer services
Comply with all Aftercare Treatment Requirements
- Phase III “CHANGE”:** Minimum of Twice Monthly UA/PBT testing
Minimum of Twice Monthly meetings with probation staff
Drug Court Review Hearings at least once a month
Maintain 3 months sanctionless participation
Maintain a recovery mentor
Report all whereabouts to probation agent

Request Permission for overnight stays from Agent – max of five (5) overnight stays per month are allowed
Be employed, in school or volunteering (at least 20 hours a week)
Submit Approved Graduation Project

Phase IV “CHANGE -2”: Minimum of Twice Monthly UA/PBT testing
Minimum of Twice Monthly meetings with probation staff
Drug Court Review Hearings at least once a month
Maintain of 3 months sanctionless time
Maintain a recovery mentor
Report all whereabouts to probation agent
Request Permission for overnight stays from Agent – max of five (5) overnight stays per month are allowed
Be employed, in school or volunteering
Complete Approved Graduation Project

GRADUATION CRITERIA

1. 6 consecutive months of sanctionless participation.
2. Earn GED or High School Diploma (where appropriate).
3. Complete Approved Graduation Project.
4. Have a job or be actively searching for a job.
5. Driver’s License to be acquired (where appropriate).
6. All Fines, restitution payments, and program fees must be paid in full or up to date.

TERMINATION CRITERIA

1. Repeated Program Violations over an extended period.
2. Failure to make reasonable progress in program and/or treatment.
3. Absconded — on warrant status for 60 days. If on warrant status for less than 60 days, the participant can request to be re-evaluated upon arrest, and may be readmitted subject to program availability, upon approval of the Drug Court team.
4. Violations of law while in the program which would have made the participant ineligible upon initial screening.

5. Overt offensive behavior toward staff.

SANCTIONS AND INCENTIVES

Incentives are positive reinforcement to participants for continuing to find success and progress in their recovery. Every incentive will be

Praise/Recognition
Less Restrictive Curfews
Decreased Office Visits or Court review hearings
Reduction in Fines, program fees, and/or CSW hours
Receipt of Certificates and Area Business Coupons
Fewer restrictions on travel

FISHBOWL MILESTONE OPTIONS:

1 month (30 days) testing clean
2 months (60 days) testing clean
3 months (90 days) testing clean
6 months (180 days) testing clean
9 months (270 days) testing clean
12 months (365 days) testing clean
18 months (545 days) testing clean
24 months (730 days) testing clean + every six months following
Completed primary treatment
Completed aftercare treatment
Completed / engaged in other identified individual treatment such as (CBT, cog skills, etc.)
Obtained a sponsor and home group
Completed a step from the 12 steps and shares it in court
Obtains employment and maintains for a minimum of 30 days
Obtains safe and approved housing
Obtains a driver's license with or without ignition interlock
Complete a self-improvement class (parenting, anger management, community education class, Victim Impact Panel, etc.)
Enrolled in school
Obtained GED / Diploma
Volunteering in the community and shared experience in court
Completed Graduation project
Completion of phase 1, 2, & 3

INCENTIVE MILESTONES FOR FISHBOWL DRAWINGS
3 months/90 days sober
First time employment
Completion of Phase 1, 2 & 3

Obtain Housing
Complete GED
6 months/180 days sober
Obtain Valid DL
1 year sober
18 months sober
Demonstrating good recovery achievements per Drug Court Team (noted below)
Graduation (cake, certificate, medallion)

1. Sobriety Achievements (90-180-1 year-18 months)
2. Treatment Achievements (includes mental health and substance use – activities like phase completion, finishing treatment, assignment work)
3. Recovery Achievements (getting a sponsor, attending support group or pro-social events, disassociation with negative peers, re-establishing family relationships)
4. Personal/Lifestyle Achievements (obtaining stable housing, education accomplishments, classes, obtaining Drivers Licenses, employment, paying off debts, addressing medical issues)
5. Giving Back: (volunteering, giving rides, community service, public speaking, etc)
6. Transportation: (to assist with participant attendance at treatment)

Sanctions are consequences to participants as a direct result of prohibited activity and failure to progress in their recovery.

Verbal or written warnings
 Increased AA or NA attendance
 Require client to submit written summaries of support meetings to the Court
 Increased curfew
 Increase office visits with probation or review hearings
 Re-set in current Phase or return to prior Phase
 Community Service Work
 Increase in relapse or aftercare treatment
 Fines
 Electronic House Arrest or home monitoring at client expense
 Jail
 Travel Restrictions
 Pay for all positive drug tests
 Termination from Drug Court/execution of sentence

GIFT CARD POLICY

Participant program fees will be used to purchase gift card incentives. Gift cards will be given to participants when they move to **Phase 1, 2, 3 and 4**. The gift cards will be for a value of \$10 dollars and will be purchased by the coordinator from local stores. The coordinator will be reimbursed for the purchase. The coordinator will maintain a log of gift card purchases and distributions, and the court administrator will review the log to check for accuracy each time new cards are purchased.

TEAMS

The presiding judge and a multi-disciplinary team of professionals work collaboratively to address criminal behavior and treat existing mental health, chemical health, and/or behavioral problems by facilitating access to eligible services throughout the community. Each adult treatment court team should include, at minimum, a representative from each of the following disciplines:

- Judge
- Treatment Court Coordinator
- Prosecutor
- Probation
- Compliance Agent
- Social Services Representative

Additional team member may include:

- Law Enforcement
- Treatment Provider
- Defense Counsel
- Licensed Alcohol and Drug Counselor “LADC”
- Peer Recovery Support Specialist
- Ancillary Service Representatives

New team members will receive orientation to the program from the coordinator and provided sufficient training resources through online webinars and formal team member training sessions. Team members should attend continuing education opportunities to gain up-to-date knowledge about best practices. Opportunities to attend state and national trainings will be offered as funding and resources allow.

Team composition and consistency is associated with significantly better outcomes for participants. All team members will consistently attend pre-court staff meetings to review participant progress, determine appropriate actions to improve outcomes, prepare for review hearings, and attend status hearings as a unified entity. Team members share information as necessary to determine participant progress in treatment and compliance with the conditions of the treatment court program.

Participants shall provide voluntary and informed consent about what information will be shared between team members through a written consent or release of information form. Refusal to sign consent forms or withdrawal of consent permitting essential communications to occur can result in exclusion from the specific treatment program and may be grounds for termination from the treatment court program.

(MJB Policy 511.1(I); NADCP/BPS, Vol. 2, Standard VIII)

TREATMENT PROTOCOL

Assessment:

Clay County Social Services and Becker County Human Services are responsible for coordinating Comprehensive Assessments. The assessment follows MN Statute and the American Society of Addiction Medicine criteria model. The assessment addresses levels of risk description, type of services and modalities needed, and intensity of services setting. As directed by MN Department of Human Services, the focus is on timely access to treatment. If County Human Services are not able to provide an assessment in a timely manner, additional resources for other providers will be given. The LADC uses personal interviews, screening tools, and collateral contacts to determine risk factors and identify appropriate services and intensity of service setting.

Substance abuse treatment services:

The Clay/Becker Drug Court has access to multiple state licensed treatment providers in the area to include high intensity residential, low intensity residential, and outpatient. These providers employ a variety of treatment modalities including faith-based, 12-step based, cognitive/behavioral and motivational enhancement technique based. Many use a variety of strategies to enhance recovery. The providers must offer their clients a service agreement describing the terms of services offered by their agency.

The Drug Court team monitors the success and effectiveness of each provider through constant communication. All initial treatment plan and treatment plan reviews are forwarded to the Drug Court team. They must provide information to include client's attendance, participation, drug screen results, and determine the level of care needed.

Aftercare/Continuing Care Services:

Aftercare/Continuing care plans are developed with the client during primary treatment. Services include continuing education and support through a treatment provider, halfway house, individual counseling, and psychiatric services. These services range in duration to be determined by the provider. Participants are referred locally for aftercare/continuing care regardless of where the primary treatment took place. All participants are expected to attend AA/NA or an alternative support group approved by the Drug Court team.

Primary and Mental Health Care Services:

At the time of the Comprehensive Assessment or throughout the duration of treatment services, it may be determined that there are physical health or mental health needs. The Clay/Becker Drug Court can require a formal assessment and intervention to address these concerns.

SUPERVISION PROTOCOL

Case Management:

Each participant will be referred to a probation officer specifically assigned to Drug Court for case planning, monitoring, accountability, and direct services. This agent will meet the potential participant prior to being accepted into Drug Court to conduct a Risks and Needs Triage (RANT) to determine if the participant is a part of our target population of high risk/high need. After sentencing, the probation officer will conduct an LSI-R (Level of Service Inventory-Revised, a prescreening and risk/needs assessment tool) and a Pre-Sentence Investigation on each program participant.

Probation agents work closely with treatment providers, family members, employers, and social service agencies to implement the team approach to participants' recovery. In addition to drug and alcohol use, the treatment court program considers underlying issues which would impair an individual's success in treatment and may compromise compliance with program requirements. It is the probation agent's role to advocate for, refer to, and monitor the services and resources participants need to reach their goals, including:

- Housing assistance
- Vocational or educational services
- Medical or dental services
- Life skills classes
- Public assistance/Medicaid

Cognitive-behavioral criminal-thinking skills programming is an evidence-based practice that has been incorporated into programming for the offender population. The treatment court probation agent will refer participants to and may facilitate cognitive-behavioral criminal- thinking skills programming for treatment court participants.

Field supervision or making home visits is an important element. It is constructive to visit participants in their home situations to assess lifestyles, living arrangements, and recovery. In the early phases of the program, it is optimal if the agent has at least two contacts per week with participants. Random drug testing can also be conducted during field visits.
(MJB Policy 511.1(VII); NADCP/BPS, Vol. II, Standard VI and Standard VII)

Drug Testing:

The Clay/Becker County Drug Court philosophy is that frequent staff-administered random tests for drug or alcohol use are imperative in assisting the participant to obtain abstinence. Provisional Phase and Phase I participants are tested at least twice weekly, Phase II at least twice weekly, Phase III and Phase IV at least twice monthly. Probation contacts the participants and has them report for testing. In addition to drug testing, participants are also given a preliminary breath test to screen for alcohol use. All participants will be informed about drug testing policies and procedures when they meet with probation. They will also be informed that all tests are

observed, and then reported to the team during staffing. Tests results are also supplied to the treatment provider.

EVALUATION DESIGN

The team believes that strong evaluation is fundamental to effective operations and that the means to an optimal outcome evaluation is strong planning, well-defined program goals, and the flexibility necessary to modify the program as required by changing circumstances. The steering committee will dedicate the resources necessary to develop a comprehensive monitoring system and a strong evaluation element to the program. To implement the crucial, professional evaluation of the program, the steering committee will build into the plan design the necessary data elements, management information system, surveys for participants and practitioners, and cost/benefit analysis. The committee will collaborate with representatives of the State Court Administrator's Office to develop the process and outcome design and to identify all data that must be collected to comply with the plan.

Tracking System:

The team understands that exponential growth of the Drug Court movement requires that all operational Drug Courts develop tracking systems that provide strong statistical information to perform valid process and outcome evaluations. The current tracking system of all statistical information requested by the State is provided in MNCIS through a separate module that was prepared in 2020. This tracking system is the responsibility of the coordinator. Any relevant information regarding testing, statistics, and progress in the program is stored here. The coordinator, probation agent and the treatment providers will comply with all local, state, and federal confidentiality when transferring information from agency to agency.

Process Evaluation:

The process evaluation is a crucial component in effectively evaluating the Drug Court program for its strengths and weaknesses. The purpose of the process evaluation is to determine whether the program is meeting administrative and procedural goals, and to suggest avenues for program improvement.

Qualitative data will be collected and analyzed using surveys and interviews of Drug Court staff, participants, treatment providers, and community stakeholders. Information will be collected on the coordination and collaboration of all participating agencies prior to and after the Drug Court implementation and on the services available to the Drug Court from each agency. The quantitative data collected will include demographic information on each Drug Court participant's age, race/ethnicity, education, employment status, housing status, and criminal history. Data will also be collected on the number of participants screened and accepted (and rejected and why); number and type of treatment services provided; time from arrest to time of evaluation; time from evaluation to first Drug Court appearance; time from arrest to entry to treatment access; treatment completion rates; length of time in each phase of Drug Court program; UA results; re-arrests while in program; number of terminations and reasons why; and changes in employment status, family status, and housing status while in program. Collection of this data will assist the team in analysis of target population characteristics, program

implementation, retention rates and completion and termination. In addition, the process evaluation will assist the team and steering committee in decision making on the future direction and management of the program. The process evaluation will also provide summary information on the impact of the program on the participants' lives.

Outcome Evaluation:

Recidivism rates will be collected for the participants, including failure and dropout rates, for all program participants one, two and three years after completion or termination from the program. Recidivism will be monitored through local law enforcement, the Statewide Supervision System, and the Bureau of Criminal Apprehension, each of which reports data on an individual basis. We will use a follow-up survey to measure other post-program measures such as health, substance abuse, family status and education. The team will administer the LSR-I at intake, mid-way through program phases and immediately prior to completion. We will compare intake and exit scores. Development of the outcome evaluation is ongoing. Recidivism includes new felony or gross misdemeanor charges.

ETHICS AND CONFIDENTIALITY

CONFIDENTIALITY ISSUES PERTAINING TO DRUG COURT

Any program that specializes, in whole or in part, in providing treatment counseling, or assessment and referral services for offenders with AOD (Alcohol or Drug) problems must comply with the Federal confidentiality regulations (42 C.F.S.s2.12(e)). The Federal regulations apply to programs that receive Federal funding and Federal law will prevail if there is a conflict with state laws.

Two Federal laws and a set of regulations guarantee the strict confidentiality of information about persons -including offenders- receiving alcohol and drug abuse assessment and treatment services. The legal citation for these laws and regulations is 42 U.S. C. SS 290dd-3 and ee-3 and 42 C.F.R. Part 2.

Confidentiality of participants is governed under 42 USC §290dd which encourages treatment and is applicable to most problem-solving court programs. Section 290dd applies if the Court orders screening, assessments, referrals, treatment, and diagnosis.

These laws and regulations are designed to protect patients' privacy rights to attract people into treatment. The regulations restrict communications more tightly in many instances than, for example, either the doctor-patient or the attorney-client privilege. Violation of the regulations is punishable by a fine of up to \$500 for a first offense or up to \$5,000 for each subsequent offense.

The General Rule

Federal confidentiality laws and regulations protect any information about an offender if the offender has applied for or received any AOD-related services from a program that is covered under the law. Services applied for or received can include assessment, diagnosis, individual counseling, group counseling, treatment, or referral for treatment. The restrictions on disclosure apply to any information that would identify the offender as an alcoholic or other drug abuser, either directly or by implication. The general rule applies from the time the offender makes an appointment. It applies to offenders who are mandated into treatment as well as those who enter treatment voluntarily. It also applies to former clients or patients. The rule applies whether the person making an inquiry already has the information, has other ways of getting it, has some form of official status, is authorized by State law, or comes armed with a subpoena or search warrant.

Sharing Confidential Information

Information that is protected by Federal confidentiality regulations may always be disclosed after the offender has signed a proper consent form. The regulations also permit disclosure without the offender's consent in several situations, including medical emergencies, program evaluations and communications among program staff. Participants who refuse to sign consent forms permitting essential communications can be excluded from treatment or provided treatment temporarily in the hope that resistance to signing the consent forms will evaporate as treatment proceeds.

Most disclosures are permissible if an offender has signed a valid consent form that has not expired or has not been revoked (s2.31). A proper consent form must be in writing and must contain each of the items contained in s2.31, including:

- The name or general description of the program(s) making the disclosure.
- The name or title of the individual or organization that will receive the disclosures.
- The name of the client who is the subject of the disclosure.
- The purpose or need for the disclosure.
- How much and what kind of information will be disclosed.
- A statement that the client may revoke the consent at any time, except to the extent that the Program has already acted upon it.
- The date, event, or condition upon which the consent expires if not previously revoked.
- The signature of the client; and
- The date the consent is signed.

A general medical release form, or any consent form that does not contain all the elements listed above and herein, is not acceptable.