

III. ROLES AND RESPONSIBILITIES OF THE JUDGE

The Drug Court judge stays abreast of current law and research on best practices in Drug Courts, participates regularly in team meetings, interacts frequently and respectfully with participants, and gives due consideration to the input of other team members.⁹

- A. Professional Training**
- B. Length of Term**
- C. Consistent Docket**
- D. Participation in Pre-Court Staff Meetings**
- E. Frequency of Status Hearings**
- F. Length of Court Interactions**
- G. Judicial Demeanor**
- H. Judicial Decision Making**

A. Professional Training

The Drug Court judge attends current training events on legal and constitutional issues in Drug Courts, judicial ethics, evidence-based substance use disorder and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensures contemporary knowledge about advances in the Drug Court field.

B. Length of Term

The judge presides over the Drug Court for no less than two consecutive years to maintain the continuity of the program and ensure the judge is knowledgeable about Drug Court policies and procedures.

C. Consistent Docket

Participants ordinarily appear before the same judge throughout their enrollment in the Drug Court.

⁹ Studies in Drug Courts have not compared outcomes between judges and other judicial officers such as magistrates or commissioners. Barring evidence to the contrary, the standards contained herein are assumed to apply to all judicial officers working in Drug Courts.

D. Participation in Pre-Court Staff Meetings

The judge regularly attends pre-court staff meetings during which each participant's progress is reviewed and potential consequences for performance are discussed by the Drug Court team.

E. Frequency of Status Hearings

Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program.¹⁰ The frequency of status hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs¹¹ and are regularly engaged in treatment. Status hearings are scheduled no less frequently than every four weeks until participants are in the last phase of the program.

F. Length of Court Interactions

The judge spends sufficient time during status hearings to review each participant's progress in the program. Evidence suggests judges should spend a minimum of approximately three minutes interacting with each participant in court.

G. Judicial Demeanor

The judge offers supportive comments to participants, stresses the importance of their commitment to treatment and other program requirements, and expresses optimism about their abilities to improve their health and behavior. The judge does not humiliate participants or subject them to foul or abusive language. The judge allows participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of sanctions, incentives, and therapeutic adjustments [see also Standard IV].

H. Judicial Decision Making

The judge is the ultimate arbiter of factual controversies and makes the final decision concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty. The judge makes these decisions after taking into consideration the input of other Drug Court team members and discussing the matter in court with the participant or the participant's legal representative. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.

¹⁰ This assumes the Drug Court is treating the appropriate target population of high-risk and high-need participants [see Standard I, Target Population].

¹¹ Illicit drugs include addictive or intoxicating prescription medications taken for a nonprescribed or nonmedically indicated purpose.

COMMENTARY

A. Professional Training

All team members in Drug Courts should attend annual training workshops on best practices in Drug Courts. The importance of training is emphasized specifically for judges because research indicates the judge exerts a unique and substantial impact on outcomes in Drug Courts (Carey et al., 2012; Jones, 2013; Jones & Kemp, 2013; Marlowe et al., 2006; Zweig et al., 2012).

Judges in Drug Courts have a professional obligation to remain abreast of legal, ethical and constitutional requirements related to Drug Court practices (Meyer, 2011; Meyer & Tauber, 2011). In addition, outcomes are significantly better when the Drug Court judge attends annual training conferences on evidence-based practices in substance use disorder and mental health treatment and community supervision (Carey et al., 2008, 2012; Shaffer, 2010). A national study of twenty-three adult Drug Courts, called the Multisite Adult Drug Court Evaluation (MADCE), found that Drug Courts produced significantly greater reductions in crime and substance use when the judges were rated by independent observers as being knowledgeable about substance use disorder treatment (Zweig et al., 2012). Similarly, a statewide study in New York reported significantly better outcomes when Drug Court judges were perceived by the participants as being open to learning about the disease of addiction (Farole & Cissner, 2007).

The increasing availability of webinars and other distance-learning programs has made it considerably more affordable and feasible for judges to stay abreast of evidence-based practices. Organizations including the NDCI, Center for Court Innovation, National Center for State Courts, and American University offer, free of charge, live and videotaped webinars on various topics related to best practices in Drug Courts. Appendix B provides further information about these webinars.

B. Length of Term

A study of approximately seventy Drug Courts found nearly three times greater cost savings and significantly lower recidivism when the judges presided over the Drug Courts for at least two consecutive years (Carey et al., 2008, 2012). Significantly greater reductions in crime were also found when the judges were assigned to the Drug Courts on a voluntary basis and their term on the Drug Court bench was indefinite in duration (Carey et al., 2012). Evidence suggests many Drug Court judges are significantly less effective at reducing crime during their first year on the Drug Court bench than during ensuing years (Finigan et al., 2007). Presumably, this is because judges, like most professionals, require time and experience to learn how to perform their jobs effectively. For this reason, annually rotating assignments appear to be contraindicated for judges in Drug Courts.

C. Consistent Docket

Drug Courts that rotated their judicial assignments or required participants to appear before alternating judges had the poorest outcomes in several research studies (Finigan et al., 2007; National Institute of Justice, 2006). Participants in Drug Courts commonly lead chaotic lives, and they often require substantial structure and consistency in order to change their maladaptive behaviors. Unstable staffing patterns, especially when they involve the central figure of the judge, are apt to exacerbate rather than ameliorate the disorganization in participants' lives.

D. Participation in Pre-Court Staff Meetings

Studies have found that outcomes were significantly better in Drug Courts where the judges regularly attended pre-court staff meetings (Carey et al., 2008, 2012). Pre-court staff meetings are where team members share their observations and impressions about each participant's performance in the program and propose consequences for the judge to consider (McPherson & Sauder, 2013). The judge's presence at the staff meetings ensures that each team member's perspective is taken into consideration when important decisions are made in the case. Observational studies suggest that when judges do not attend pre-court staff meetings,

they are less likely to be adequately informed or prepared when they interact with the participants during court hearings (Baker, 2012; Portillo et al., 2013).

E. Frequency of Status Hearings

A substantial body of experimental and quasi-experimental research establishes the importance of scheduling status hearings no less frequently than every two weeks (biweekly) during the first phase of a Drug Court. In a series of experiments, researchers randomly assigned Drug Court participants to either appear before the judge every two weeks for status hearings or to be supervised by their clinical case managers and brought into court only in response to repetitive rule violations. The results revealed that high-risk participants¹² had significantly better counseling attendance, drug abstinence, and graduation rates when they were required to appear before the judge every two weeks (Festinger et al., 2002). This finding was replicated in misdemeanor and felony Drug Courts serving urban and rural communities (Jones, 2013; Marlowe et al., 2004a, 2004b). It was subsequently confirmed in prospective matching studies in which the participants were assigned at entry to biweekly hearings if they were determined to be high risk (Marlowe et al., 2006, 2007, 2008, 2009, 2012).

Similarly, a meta-analysis involving ninety-two adult Drug Courts (Mitchell et al., 2012) and another study of nearly seventy Drug Courts (Carey et al., 2012) found significantly better outcomes for Drug Courts that scheduled status hearings every two weeks during the first phase of the program. Scheduling status hearings at least once per month until the last phase of the program was also associated with significantly better outcomes and nearly three times greater cost savings (Carey et al., 2008, 2012).

F. Length of Court Interactions

In a study of nearly seventy adult Drug Courts, outcomes were significantly better when the judges spent an average of at least three minutes, and as much as seven minutes, interacting with the participants during court sessions (Carey et al., 2008, 2012). Shorter interactions may not allow the judge sufficient time to gauge each participant's performance in the program, intervene on the participant's behalf, impress upon the participant the importance of compliance with treatment, or communicate that the participant's efforts are recognized and valued by staff.

G. Judicial Demeanor

Studies have consistently found that Drug Court participants perceived the quality of their interactions with the judge to be among the most influential factors for success in the program (Farole & Cissner, 2007; Goldkamp et al., 2002; Jones & Kemp, 2013; National Institute of Justice, 2006; Satel, 1998; Saum et al., 2002; Turner et al., 1999). The MADCE study found that significantly greater reductions in crime and substance use were produced by judges who were rated by independent observers as being more respectful, fair, attentive, enthusiastic, consistent and caring in their interactions with the participants in court (Zweig et al., 2012). Similarly, a statewide study in New York reported significantly better outcomes for judges who were perceived by the participants as being fair, sympathetic, caring, concerned, understanding and open to learning about the disease of addiction (Farole & Cissner, 2007). In contrast, outcomes were significantly poorer for judges who were perceived as being arbitrary, jumping to conclusions, or not giving participants an opportunity to explain their sides of the controversies (Farole & Cissner, 2007; Zweig et al., 2012). Program evaluations have similarly reported that supportive comments from the judge were associated with significantly better outcomes in Drug Courts (Senjo & Leip, 2001) whereas stigmatizing, hostile, or shaming comments from the judge were associated with significantly poorer outcomes (Miethe et al., 2000).

These findings are consistent with a body of research on procedural fairness or procedural justice. The results of those studies indicated that criminal defendants and other litigants were more likely to have successful outcomes and favorable attitudes towards the court system when they were treated with respect by the judge, given an opportunity to explain their sides of the controversies, and perceived the judge as being unbiased and benevolent in intent (Burke, 2010; Burke & Leben, 2007; Frazer, 2006). This in no way prevents judges from holding participants accountable for their actions, or from issuing stern warnings or punitive sanctions

¹² See Standard I indicating that high-risk offenders are the appropriate target population for a Drug Court.

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when they are called for. The dispositive issue is not the outcome of the judge's decision, but rather how the decision was reached and how the participant was treated during the interaction.

H. Judicial Decision Making

Due process and judicial ethics require judges to exercise independent discretion when resolving factual controversies, administering sanctions or incentives that affect a participant's fundamental liberty interests, or ordering the conditions of supervision (Meyer, 2011). A Drug Court judge may not delegate these responsibilities to other members of the Drug Court team. For example, it is not permissible for a Drug Court team to vote on what consequences to impose on a participant unless the judge considers the results of the vote to be merely advisory. Judges are, however, required to consider probative evidence or relevant information when making these determinations. Because judges are not trained to make clinical diagnoses or select treatment interventions, they ordinarily require expert input from treatment professionals to make treatment-related decisions. The collaborative nature of the Drug Court model brings together experts from several professional disciplines, including substance use disorder treatment, to share their knowledge and observations with the judge, thus enabling the judge to make rational and informed decisions (Hora & Stalcup, 2008).

REFERENCES

- Baker, K.M. (2012). Decision making in a hybrid organization: A case study of a southwestern drug court treatment program. *Law & Social Inquiry*, 38(1), 27–54.
- Burke, K.S. (2010). Just what made drug courts successful? *New England Journal on Criminal & Civil Confinement*, 36(1), 39–58.
- Burke, K., & Leben, S. (2007). Procedural fairness: A key ingredient in public satisfaction [White paper]. *Court Review*, 44, 4–24.
- Carey, S.M., Finigan, M.W., & Pukstas, K. (2008). *Exploring the key components of drug courts: A comparative study of 18 adult drug courts on practices, outcomes and costs*. Portland, OR: NPC Research. Available at http://www.npcresearch.com/Files/NIJ_Cross-site_Final_Report_0308.pdf.
- Carey, S.M., Mackin, J.R., & Finigan, M.W. (2012). What works? The ten key components of drug court: Research-based best practices. *Drug Court Review*, 8(1), 6–42.
- Farole, D.J., & Cissner, A.B. (2007). Seeing eye to eye: Participant and staff perspectives on drug courts. In G. Berman, M. Rempel & R.V. Wolf (Eds.), *Documenting Results: Research on Problem-Solving Justice* (pp. 51–73). New York: Center for Court Innovation.
- Festinger, D.S., Marlowe, D.B., Lee, P.A., Kirby, K.C., Bovasso, G., & McLellan, A.T. (2002). Status hearings in drug court: When more is less and less is more. *Drug & Alcohol Dependence*, 68(2), 151–157.
- Finigan, M., Carey, S.M., & Cox, A. (2007). *The impact of a mature drug court over 10 years of operation: Recidivism and costs*. Portland, OR: NPC Research. Available at http://www.npcresearch.com/Files/10yr_STOP_Court_Analysis_Final_Report.pdf.
- Frazer, M.S. (2006). *The impact of the community court model on defendant perceptions of fairness: A case study at the Red Hook Community Justice Center*. New York: Center for Court Innovation. Available at http://www.courtinnovation.org/sites/default/files/Procedural_Fairness.pdf.
- Goldkamp, J.S., White, M.D., & Robinson, J.B. (2002). An honest chance: Perspectives on drug courts. *Federal Sentencing Reporter*, 14(6), 369–372.
- Hora, P.F., & Stalcup, T. (2008). Drug Treatment Courts in the twenty-first century: The evolution of the revolution in problem-solving courts. *Georgia Law Review*, 42(3), 717–811.
- Jones, C. G. (2013). Early-phase outcomes from a randomized trial of intensive judicial supervision in an Australian drug court. *Criminal Justice & Behavior*, 40, 453–468.
- Jones, C.G., & Kemp, R.I. (2013). The strength of the participant-judge relationship predicts better drug court outcomes. *Psychiatry, Psychology and Law* (Online). doi: 10.1080/13218719.2013.798392
- Marlowe, D.B. (2006). Judicial supervision of drug-abusing offenders. *Journal of Psychoactive Drugs*, 38(Suppl. 3), 323–331.

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- Marlowe, D.B., Festinger, D.S., Arabia, P.L., Dugosh, K.L., Benasutti, K.M., & Croft, J.R. (2009). Adaptive interventions may optimize outcomes in drug courts: A pilot study. *Current Psychiatry Reports*, 11(5), 370–376.
- Marlowe, D.B., Festinger, D.S., Arabia, P.L., Dugosh, K.L., Benasutti, K.M., Croft, J.R., & McKay, J.R. (2008). Adaptive interventions in drug court: A pilot experiment. *Criminal Justice Review*, 33(3), 343–360.
- Marlowe, D.B., Festinger, D.S., Dugosh, K.L., Benasutti, K.M., Fox, G. & Croft, J.R. (2012). Adaptive programming improves outcomes in drug court: An experimental trial. *Criminal Justice & Behavior*, 39(4), 514–532.
- Marlowe, D.B., Festinger, D.S., Dugosh, K.L., Lee, P.A., & Benasutti, K.M. (2007). Adapting judicial supervision to the risk level of drug offenders: Discharge and six-month outcomes from a prospective matching study. *Drug & Alcohol Dependence*, 88(Suppl. 2), S4–S13.
- Marlowe, D.B., Festinger, D.S., & Lee, P.A. (2004a). The judge is a key component of drug court. *Drug Court Review*, 4(2), 1–34.
- Marlowe, D.B., Festinger, D.S., & Lee, P.A. (2004b). The role of judicial status hearings in drug court. In K. Knight & D. Farabee (Eds.), *Treating addicted offenders: A continuum of effective practices* (pp. 11-1–11-8). Kingston, NJ: Civic Research Institute.
- Marlowe, D.B., Festinger, D.S., Lee, P.A., Dugosh, K.L., & Benasutti, K.M. (2006). Matching judicial supervision to clients' risk status in drug court. *Crime & Delinquency*, 52(1), 52–76.
- McPherson, C. M., & Sauder, M. (2013). Logics in action: Managing institutional complexity in a drug court. *Administrative Science Quarterly*, 58(2), 165-196.
- Meyer, W.G. (2011). Ethical obligations of judges in drug courts. In D.B. Marlowe & W.G. Meyer (Eds.), *The drug court judicial benchbook* (pp. 195–215). Alexandria, VA: National Drug Court Institute. Available at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>.
- Meyer, W.G., & Tauber, J. (2011). The roles and responsibilities of the drug court judge. In D.B. Marlowe & W.G. Meyer (Eds.), *The drug court judicial benchbook* (pp. 45–61). Alexandria, VA: National Drug Court Institute. Available at <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>.
- Miethe, T.D., Lu, H., & Reese, E. (2000). Reintegrative shaming and recidivism risks in Drug Court: Explanations for some unexpected findings. *Crime & Delinquency*, 46(4), 522–541.
- Mitchell, O., Wilson, D.B., Eggers, A., & MacKenzie, D.L. (2012). Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and nontraditional drug courts. *Journal of Criminal Justice*, 40(1), 60–71.
- National Institute of Justice. (2006, June). *Drug courts: The second decade* [Special report, NCJ 211081]. Washington, DC: Office of Justice Programs, U.S. Dept. of Justice.
- Portillo, S., Rudes, D.S., Viglione, J., & Nelson, M. (2013). Front-stage stars and backstage producers: The role of judges in problem-solving courts. *Victims & Offenders*, 8 (1), 1–22.
- Satel, S. (1998). Observational study of courtroom dynamics in selected drug courts. *National Drug Court Institute Review*, 1(1), 43–72.
- Saum, C.A., Scarpitti, F.R., Butzin, C.A., Perez, V.W., Jennings, D., & Gray, A.R. (2002). Drug court participants' satisfaction with treatment and the court experience. *Drug Court Review*, 4(1), 39–83.
- Senjo, S.R., & Leip, L.A. (2001). Testing and developing theory in drug court: A four-part logit model to predict program completion. *Criminal Justice Policy Review*, 12(1), 66–87.
- Shaffer, D.K. (2010). Looking inside the black box of drug courts: A meta-analytic review. *Justice Quarterly*, 28(3), 493–521.
- Turner, S., Greenwood, P. Fain, T., & Deschenes, E. (1999). Perceptions of drug court: How offenders view ease of program completion, strengths and weaknesses, and the impact on their lives. *National Drug Court Institute Review*, 2(1), 61–85.
- Zweig, J.M., Lindquist, C., Downey, P.M., Roman, J., & Rossman, S.B. (2012). Drug court policies and practices: How program implementation affects offender substance use and criminal behavior outcomes. *Drug Court Review*, 8(1), 43–79.