

# New Mexico Judiciary

## Drug Court Standards

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PREAMBLE

All drug courts established and operating at any level of the New Mexico Judicial System shall comply with these standards and operate as qualified drug court programs consistent with the definition stated herein.

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## A. CURRENT ELIGIBILITY STANDARDS

- Standard A.1 Consideration for admission to the drug court program shall be limited to those potential participants who:
- a. Have been arrested or convicted of drug offenses or drug related crimes having to do with alcohol or other drugs as defined in New Mexico Criminal Code and New Mexico Children's Code;
  - b. Have non-drug related offenses that were committed while under the influence, or committed to support addiction or dependency, or are substantially related to the use or abuse of alcohol or drugs;
  - c. Committed distribution or trafficking of illegal substances to support participant's dependency or addiction to alcohol or drugs (AOD);
  - d. Have been arrested for drug offenses or drug related crimes and have qualified for a pre-prosecution or court-ordered AOD diversion program; or
  - e. Have violated probation by commission of a drug offense, drug related crime, or drug use.
  - f. Have substantiated child abuse and/or neglect findings where alcohol or other drug use is a factor.
  - g. Have a severe alcohol or other drug abuse problem, which has put their children at risk of child abuse and/or neglect that could result in removal upon the filing of a petition.
- Standard A.2 A potential participant with a prior misdemeanor conviction or adjudication of a delinquent act involving violence may be admitted to a drug court program.
- Standard A.3 A violent offender, pursuant to 42 U.S.C. § 3796 et seq. 1994, will not be admitted into federally funded drug court programs. Admission into drug courts not receiving federal funds shall be governed by that organization's rules and regulations not inconsistent with these standards.
- A violent offender is defined as a person
- a. Currently charged with or convicted of an offense during the course of which
    1. The person carried, possessed, or used a firearm or other dangerous weapon;
    2. The person used force against another person; or
    3. Death, or serious bodily injury, occurred to any person, without regard to whether any of the circumstances described above is an element of the offense or conduct of which or for which the person is charged or convicted.

- b. Has one or more prior convictions of a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

*Practice 1: In the event there is no provision to the contrary, the following factors will be considered in determining if a potential participant with a prior conviction or adjudication involving an act of violence may be admitted to the program.*

- a. *The nature and character of the prior conviction.*
  - 1. *The nature, seriousness, and circumstances of the prior violent conduct.*
  - 2. *Whether the prior crime was committed because of an unusual circumstance which is unlikely to recur.*
  - 3. *The motivation for the prior criminal activity.*
  - 4. *The extent of the potential participant's involvement in the prior criminal activity.*
  - 5. *The age of the prior conviction.*
  - 6. *The potential participant's acknowledgment of wrongdoing.*
  - 7. *Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.*
- b. *The potential participant's criminal history.*
- c. *The potential participant's background and life history.*
  - 1. *The age of the potential participant.*
  - 2. *The potential participant's mental or physical condition.*
  - 3. *The family and/or community support available to the potential participant.*
  - 4. *The effect of the prior conviction on the potential participant and his or her dependents.*
- d. *The potential participant's acknowledgment of a need for treatment.*
- e. *Any equities or circumstances in the potential participant's background that would encourage inclusion of the participant into a drug court program.*

## B. SUITABILITY STANDARDS

Standard B.1 Procedures established by the drug court team shall assist the drug court judge, drug court team, or other designated authority in determining the preliminary suitability of potential participants for the program by interviewing eligible participants and summarizing any background and/or drug history information which may bear on the individual's appropriateness for the program.

Standard B.2 A screening committee(s) or process shall be established to assist the judge, drug court team, or other designated authority in determining the overall suitability of potential participants for the programs.

*Practice 1: Risk assessment factors contributing to admission to the drug court program include family and community ties, employment status, a summary of the potential participant's prior history for offenses other than those which would "automatically" exclude him/her but which may be helpful in determining suitability for the drug court program, previous treatment outcomes, and other factors as deemed appropriate. Consideration of risk and need factors shall be used by the drug court judge, drug court team, or other designated authority on a case-by-case basis.*

## C. OPERATIONAL STANDARDS

- Standard C.1 All participating agencies shall cooperate with efforts to establish drug court programs which meet the minimum standards of the judicial branch.
- Standard C.2 Each participating agency shall, if funding is available, assign staff, and alternates, to be designated to the drug court based on personal interest in the program, interpersonal skills, motivation and professional abilities, within their job description.
- Standard C.3 Each drug court agrees to provide orientation and training for staff.
- Practice 1: Wherever feasible, agencies will make full or part-time staff assignments to the drug court for a minimum of one year to ensure stability and continuity of day-to-day operations and to strengthen collaborative relationships between the key professionals.*
- Practice 2: The New Mexico Association of Drug Court Professionals in conjunction with the AOC should, whenever possible, provide training for drug court staff on drug court concepts and day-to-day operations.*
- Practice 3: Drug court team members' base budgets should include funding for training of drug court staff. Each drug court should act as soon as practicable to provide appropriate training for new staff and team members.*
- Standard C.4: The sponsoring court and participating agencies will, where appropriate and feasible, support qualified drug court programs by making appropriate adjustments to internal policies, practices and procedures to ensure successful day-to-day operation of the program.
- Practice 1: The sponsoring court and participating agencies will, where appropriate:*
- a. Encourage agency-wide communication and cooperation among dedicated drug court personnel*
  - b. Cooperate with the collection and maintenance of statistical and evaluation information based on statewide standards*
  - c. Establish Memoranda of Understanding (MOU) as necessary to ensure the continuity of all legal policies, including confidentiality and other standards necessary to the operation of each drug court.*

### Intake / Referral

- Standard C.5 Each drug court shall adopt written policies and procedures that will address intake and referral standards.
- Standard C.6 Individuals referred to drug court will be assessed for eligibility and suitability as soon as possible. For the family dependency court, assessments should be done within ten business days of initial interview with the family dependency court contact.



## Drug Testing Policies

Standard C.7 Each drug court shall adopt written policies and procedures that document its drug testing protocols. The program's drug testing policies and procedures will address, at a minimum:

- a. The types of drug testing to be performed (e.g., breathalyzer, 5-panel UA drug screen, oral swabs, etc.);
- b. Drug testing frequency, including description of random drug-test component;
- c. What if any steps will be taken in handling disputed results;
- d. If the court's drug testing procedures necessitate preservation of the drug testing samples, the court's drug testing policies should document the steps necessary to maintain proper chain of custody of test specimens and results;
- e. Means and speed with which test results are communicated to the program manager;
- f. Descriptions of what will be considered a "positive" test result (e.g., abnormal ph levels, flushing, etc.).

In addition, each drug court shall document its UA collection protocols in keeping with the following guidelines:

- g. All urine collection shall be observed except as described in subsection i;
- h. Collectors must have an unobstructed view of the specimen flow and must be of the same sex as the defendant/participant providing the specimen (no exceptions);
- i. Take unobserved specimens **only** when the defendant/participant and the collector are not of the same gender or it is virtually impossible to collect an observed specimen (i.e., where circumstances beyond the control of the collector preclude the collection of an observed specimen);
  1. In the case of unobserved urine specimens, procedures must be documented that would minimize ability of defendant/participant to adulterize the specimen (e.g., verifying appropriate temperature of specimen through the use of temperature strips);
- j. Collectors shall be trained in collection and testing (and chain of custody procedures if appropriate for that drug court program);
- k. Training, staffing levels, and testing location must minimize risk of sexual or physical harassment between collector and defendant/participant.

*Practice 1: When staffing resources (either of the program or its treatment provider) make it difficult to collect urine specimens observed by a collector of the same sex as the defendant, the program should explore the possibility of collaborating with other community resources, such as county compliance programs or local law enforcement. Testing can also be scheduled in such a way to ensure that appropriate staff are available for the defendants/participants who require testing (i.e., female defendants can be scheduled for drug testing at times to coincide with the availability of a female collector).*

*Practice 2: Collectors should have undergone a criminal background check before being allowed to collect or test specimens.*

## Probation / Surveillance Officer Policies

Standard C.8 Each court shall adopt written policies and procedures for staff (either court or contract) responsible for probation/surveillance duties. Nothing in this section (Standard C.8), or in a court's policies and procedures created in response to this section, shall be construed to limit the statutorily allowed powers (e.g., ability to arrest and carry a firearm) of certified officers (i.e., certified law enforcement or adult probation officers) who are fulfilling probation/surveillance duties on behalf of a drug court program. The court's probation/surveillance officer policies and procedures will address, at a minimum:

- a. Officer compliance monitoring responsibilities, including, but not limited to:
  - i. Involvement with electronic monitoring devices;
  - ii. Drug testing duties;
  - iii. Verification of community service, employment, or educational components of the program;
  - iv. Nature, content, and periodicity of all reports required to document probation/surveillance activities (ALL field visits will be reported). The Policy must require reporting of observation of contraband (and any action taken regarding contraband) as well as any threat of physical confrontation; and
  - v. Whether their duties are to include field work and home visits (see part b, below), or will be conducted solely from the court setting via phone and computer workstation.
  
- b. If such duties are to include field work and home visits, the following elements must be included in the court's policies and procedures:
  - i. A clear definition of what is meant by "field work" and/or a "home visit" (e.g., field officers should never attempt to provide counseling, but should instead verify compliance with program dictates by performing drug tests, verifying curfew, etc.);
  - ii. A clear statement that field work should ideally be conducted in teams of two or more (see Practice 1 below);
  - iii. Any safety equipment (e.g., identification badge; body armor; mobile phone, hand-held radio, and/or other device for emergency communication; etc.) that will be provided by the court, and identify the circumstances in which it shall be used;
  - iv. Safety procedures covering what the field officers should and should not do in all situations they may face in the field (e.g., what actions to take if a compliance or law violation is observed; when to suspend a field activity, such as a home visit, due to threatening or suspicious circumstances; what communication protocols to follow in all circumstances, such as when law enforcement should be immediately contacted; etc.).
    1. If any self-defense tools (such as pepper spray) are authorized, the Policy must provide for appropriate training in when and how to use, as well as first-aid steps taken upon use;
    2. The Policy shall prohibit the carrying and use of weapons capable of

inflicting deadly force or great bodily harm – Probation Officers and Surveillance Officers shall not be armed.

- c. Level of training or certification necessary for probation/surveillance officers, and mechanism by which such training or certification will be provided
  - i. All Probation and Surveillance Officers shall complete an approved training program (contact the AOC’s Statewide Drug Court Coordinator for approved trainings) before conducting field work in a home or bar check situation. All current Probation/Surveillance Officers must complete the training within 6 months of the Supreme Court’s approval of these Standards; a Probation/Surveillance Officer who has not yet been trained may accompany a trained officer for such activities, but must complete the training within 6 months of initial hire;
  - ii. The Policy must make clear what restrictions the training or certification place on the probation/surveillance officers. In all cases, the Policy shall provide:
    - 1. Probation/Surveillance Officers shall not make an arrest;
    - 2. Probation/Surveillance Officers shall not seize evidence to be used in a new criminal prosecution;
    - 3. Whether transportation and/or restraint of a client is permitted by the Probation/Surveillance Officer and, if so, under what circumstances.
- d. The court staff attorney or the General Counsel of the Administrative Office of the Courts shall review the Probation/Surveillance Officer Policy of every judicial entity. A Policy shall not be put into effect until approved in writing after legal review. Upon adoption of a Policy, each court shall provide a copy to the Statewide Drug Court Coordinator at the Administrative Office of the Courts.

*Practice 1: When staffing resources make it difficult to perform field work in teams of two or more Probation/Surveillance Officers who have completed the required training, the program shall explore the possibility of collaborating with other probation/surveillance resources, such as through county compliance programs, the Juvenile Probation Parole Officer’s or Adult Probation Officer’s office, or local law enforcement. The Policy must set forth what activities are permitted if field work is necessary but a partner is not available (e.g., no home visits or bar checks conducted alone).*

#### D. COURTROOM STANDARDS:

- Standard D.1: Courts recognize the drug court calendar as a priority and will establish a specialized, separate drug court, on a part or full-time basis, dedicated to the evaluation, diagnosis, treatment and supervision of eligible and suitable drug court participants.
- Standard D.2 Results of drug testing may be used in drug court to:
- a. Determine if the participant is progressing satisfactorily
  - b. Determine if the plan needs modifying
  - c. Determine appropriate sanctions
  - d. Determine appropriate treatment level of care.
- Standard D.3 Evidence of a drug test result shall not be used as evidence of a new crime or as the sole basis for probation violations.

*Practice 1: Drug test results may be used as a basis for sanctions, incentives, or determining whether the individual should be terminated or graduated from the program. Drug test results may be used to support a separate violation of probation upon termination consistent with similar disclosures as if the participant had been on regular probation supervision.*

## E. PROGRAM FEES AND DRUG COURT BUDGETS

### Program Fees

- Standard E.1 Juvenile drug courts shall not collect program fees.
- Standard E.2 Adult drug court programs may assess, collect and expend program fees consistent with state law. All drug courts that elect to assess fees shall submit that written fee policy to the AOC. Fees may be expended to offset client service costs of the drug court program. Client services may include:
- a. Treatment costs
  - b. Drug and alcohol testing
  - c. Training for drug court team members
  - d. Childcare
  - e. Monitoring and compliance services and equipment
  - f. Psychological screening and assessments
  - g. Medical screening and assessments
  - h. Assistance with transportation costs to the program
  - i. Interpreter's fees
  - j. Temporary housing assistance
- Any proposed expenditures not included on the above list (e.g., emergency living expenses; program incentives for participants, such as medallions; or refreshments for graduation ceremonies) must first be approved by the Supreme Court. If approved by the Supreme Court, applicable DFA guidelines must be followed in relation to the proposed expenditure.
- Standard E.3 Subject to state law, a drug court may assess fees on a flat fee basis. A drug court may assess fees on a sliding scale basis only with statutory authority.
- Standard E.4 The judge has authority to waive program fee requirements.
- Standard E.5 Program fee requirements may be satisfied by community service at the federal minimum wage.
- Standard E.6 Drug courts should not apply sanctions to prevent graduation or phase advancement based solely upon the documented indigency of a participant.

### Budgets

- Standard E.7 Drug court budgets shall consider the staffing needs of the required stakeholders, and each court shall review funding and attempt to support, to whatever extent possible, the following personnel: public defender, prosecution, program manager, treatment staff, probation/parole, law enforcement, judge/special master, and court staff who support the drug court program.

- Standard E.8 For internal court operations, each court shall prepare a separate budget for family dependency courts, juvenile drug courts, adult drug courts, and any other drug courts that may exist.
- Standard E.9 The AOC should request funding to conduct regular, qualified independent evaluations of drug courts. Evaluations may be used to track performance and to assist drug courts to improve services.
- Standard E.10 Each drug court shall designate a program manager.
- Standard E.11 Drug court programs are encouraged to utilize other community-based services and treatment providers who may be able to augment drug court services.

## F. SANCTIONS AND INCENTIVES

Standard F.1 The drug court program must include a plan for graduated sanctions which may be applied as an immediate and direct consequence of program non-compliance.

*Practice 1: The drug court judge may employ graduated sanctions to assist participants in complying with the program. Sanctions may include but are not limited to:*

- a. *Increased drug testing*
- b. *Increased frequency of court appearances before the drug court judge*
- c. *Appropriate terms of detention according to the terms of individual drug court programs*
- d. *Assignment to community service*
- e. *Written assignments*
- f. *Increased reporting*
- g. *House arrest, curfews, and electronic monitoring*
- h. *Extension of time in program*

*Practice 2: Therapeutic interventions may be used as appropriate in conjunction with sanctions such as:*

- a. *Increased participation in outpatient individual and/or group sessions*
- b. *Commitment to community residential treatment for a specified period of time.*

Standard F.2 Drug courts are encouraged to establish incentives for positive behavior.

*Practice 1: The drug court judge may employ incentives to reward participants in complying with the program. Incentives may include but are not limited to:*

- a. *Decreased drug testing*
- b. *Decreased frequency of court appearances*
- c. *Decreased reporting*
- d. *Decreased supervision*

*Practice 2: The drug court judge may also employ incentives that have been provided by non-judiciary entities (such as community agencies, or local businesses) in compliance with the judiciary's code of conduct. Such incentives may include but are not limited to:*

- a. *Coupons to restaurants/stores*
- b. *Tickets to movies/family outings*

*Practice 3: Therapeutic interventions may be used as appropriate in conjunction with incentives, such as:*

- a. *Movement to a less restrictive treatment setting*
- b. *Reduction in frequency of treatment sessions*

## G. CONFIDENTIALITY - GENERAL

Standard G.1 Drug court information and records shall remain confidential, except as authorized for disclosure under these standards or by state law.

Standard G.2 Recognizing that as a practical matter most, if not all, drug courts or related agencies or treatment providers receive direct or indirect federal funding or assistance, drug courts shall comply with federal confidentiality laws.

Note: See, Public Health Service Act, 42 U.S.C. 290dd-2 and 290ee-3; and federal regulations at 42 C.F.R. Part 2.

*Practice 1: Drug courts should receive training on federal confidentiality requirements and how they affect drug court practitioners and contractors.*

*Practice 2: The drug court judge, in conjunction with the drug court program manager, shall supervise the application of confidentiality laws and standards in the drug court program.*

Standard G.3 Confidential drug court information and records include the participant's identity, diagnosis, evaluation, prognosis and treatment.

*Practice 1: For purposes of evaluation, audit, and reporting, drug court participants should be assigned and identified by a participant number.*

*Practice 2: Drug courts are encouraged to establish Memorandum of Understanding on confidentiality and to have all team members sign and agree to follow confidentiality procedures. These MOU's should be re-signed by replacement team members.*

*Practice 3: Confidential drug court information and records do not include standard court orders and those documents critical to court functions, including, but not limited to the following: Judgment and Sentence, Order Deferring Sentence, Judgment and Final Disposition, Report on Drug Court Violations, Remand Order, referrals and reference to referrals in any of the above mentioned documents.*

*Practice 4: To avoid prohibited disclosure in court proceedings and court documents of confidential information covered by the federal law or these standards, drug courts are encouraged to provide language in the participant's release of information consent form that information as to the participant's identity, entry into the program or non-compliance with the program (e.g., positive urinalysis, failure to attend therapeutic sessions) may be disclosed--and become a part of the public record--to the extent necessary and pertinent in a probation revocation, initial disposition or sentencing proceeding.*

Standard G.4 Confidentiality continues to apply to drug court information and records even when the participant has voluntarily or involuntarily left the drug court program.



- Standard G.5 Except as authorized by court order under G.14.b, confidential drug court information and records may not be used to initiate or to substantiate any criminal charges against a participant or to conduct any investigation of a participant.
- Standard G.6 Except as specifically authorized by court order under G.14.b, no drug court program may knowingly employ, or enroll as a participant, any undercover agent or informant.
- Standard G.7 No information obtained by an informant or undercover agent, whether or not that agent or informant is placed in a program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any participant.

#### Confidentiality - Security and Retention of Written and Electronic Records

- Standard G.8 Written records which are subject to these standards must be maintained in a secure location and access to these records limited to authorized individuals.

*Practice 1: The drug court judge, in consultation with the drug court team members, should determine access authorization to secure written records.*

- Standard G.9 Electronic data which is subject to these standards must be protected by security walls and security codes. Access shall be limited and disclosure/re-disclosure shall be subject to approval by the drug court judge and team.  
Note: See Standard H.3.

- Standard G.10 Drug courts shall adopt written procedures and/or policies which regulate and control access to and use of written and electronic records which are subject to these standards.

*Practice 1: These standards apply to written and electronic records that may be in the possession of or accessible to the court and court staff, designated team members, drug court contractors, and any other entity identified by the drug court team.*

- Standard G.11 Once authorized access is obtained and initial disclosure permitted, the redistribution of confidential information and records is not permitted, unless it, too, is authorized on a limited, known basis.

*Practice 1: Drug courts must not only limit disclosure to authorized parties, but they must also limit the re-disclosure of confidential information and records.*

- Standard G.12 Retention of and destruction of drug court records following graduation or exclusion from a drug court program should follow the record retention and destruction schedules defined by Judicial Rules.

#### Confidentiality - Limited Authorized Disclosures

- Standard G.13 Disclosure by Written Consent of Participant

- a. A drug court participant may consent to the disclosure and re-disclosure of confidential records and information. Such consent must be in written form and it must contain the following elements:
  1. Specific name or general designation of the program or person permitted to make the disclosure.
  2. Name of the participant permitting disclosure; if a minor, add parent/guardian/custodian.
  3. Name or title of the individual(s) or the name of the organization to which (re)disclosure is to be made.
  4. The purpose of the (re)disclosure.
  5. How much and what kind of information is to be disclosed.
  6. Signature of participant; if a minor, the parent, guardian, or custodian must also sign.
  7. Date on which consent signed.
  8. Date, event, or condition upon which the consent will expire. The date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

*Practice 1: The consent form should list the drug court program team members to whom disclosure is authorized.*

*Practice 2: The written consent for disclosure should be knowing and voluntary, and the participant should have ample opportunity to review the consent form prior to signing.*

*Practice 3: If a participant cannot understand or read the English language, the consent form shall be translated to assist the participant with language and/or comprehension.*

*Practice 4: An adult drug court participant does not have the right to revoke a written consent to disclose confidential information and/or records. A juvenile drug court participant or family dependency court participant may revoke such a written consent, but, in doing so, may face expulsion from the drug court program.*

*Practice 5: Drug court team members and contractors may use and disclose confidential information and records only to the extent necessary to carry out their drug court duties and job assignments.*

*Practice 6: At the time of admission, or as soon thereafter as the participant is capable of rational communication, the participant shall be given a summary orally and in writing of the federal confidentiality laws and regulations.*

#### Standard G.14 Disclosure Without Prior Participant Consent

- a. Confidential participant information and records may be disclosed without the participant's prior written consent under the following circumstances:

1. To report under state law an incident(s) of suspected child abuse and neglect to appropriate state or local authorities.
2. To report to law enforcement the participant's commission of a crime on the premises of the program or against program personnel or of a threat to commit such a crime. Communications are limited to the circumstances of the incident, including the participant's status, as the individual committing or threatening the crime, the name, address, and last known whereabouts.
3. To convey information to medical personnel to the extent necessary to meet a bona fide medical emergency.
4. To convey information related to the cause of death.
5. To qualified personnel for the purposes of conducting scientific research, management audits, financial audits, program oversights, program evaluations, and reporting to the AOC drug court coordinator.
6. To protect against the threat to life or serious bodily injury.

*Practice 1: Such personnel as identified in G.14.a.5. should not identify, directly or indirectly, any individual participant in any report of such research, audit, oversight, evaluations or report.*

*Practice 2: The Judicial Information Division (JID) of the Administrative Office of the Courts (AOC) shall create and maintain a secure central drug court information/data repository to assist the AOC drug court coordinator in producing reports for the courts, legislature, and executive branches of state government and for other authorized purposes.*

- b. Disclosure by Court Order. Drug court judges may issue a court order for (re)disclosure or use of confidential information and records, but must do so in accordance with the due process and procedures established under 42 C.F.R., Part 2, Subpart E, of the federal regulations.

### Confidentiality and Accountability

Standard G.15 Confidentiality disclosure violations, problems, concerns and issues should be brought to the immediate attention of the drug court judge who shall resolve these matters in a manner that protects the integrity of the drug court program and privacy rights of the participant.

*Practice 1: Whenever possible, the drug court team members should participate with the judge in mutually resolving issues of confidentiality, disclosure and re-disclosure.*

### Other Applicable Disclosure Restrictions

Standard G.16 Rules of professional conduct and evidentiary privileges shall still apply unless expressly waived by the participant.

## H. DATA COLLECTION

### Automated Data Collection Systems and Evaluations

- Standard H.1 Each drug court shall establish and maintain an automated data collection system to collect each drug court participant's personal and treatment information and program progress. The data collection system shall be physically located where it can be properly secured and controlled by the drug court. Each data collection system shall include information sufficient to calculate the approved performance measures. Any drug court established after July 1, 2003, shall use the standard database format established by the Judicial Information Division.
- Standard H.2 Each drug court will maintain a current inventory of computer hardware and system software used for drug court program purposes.
- Standard H.3 Each drug court shall establish written security procedures to protect participant data entered into each drug court database.
- Standard H.4 The Administrative Office of the Courts (AOC) will maintain a statewide central repository to collect every drug court programs' data in a secure location at the Judicial Information Division (JID) in Santa Fe. JID will install and maintain a dedicated drug court server and central repository behind its firewall to prevent unauthorized access to any New Mexico drug court data. JID technology staff will provide systems administration on an ongoing basis. JID will create programming to allow the AOC Drug Court Coordinator to produce reports from all New Mexico drug court data for continual statewide program reporting and to respond to Legislative Finance Council (LFC) and Department of Finance Administration (DFA) with annual aggregate drug court information.

*Practice 1: The central data repository will not retain any personal identification information.*

*Practice 2: The AOC shall provide individual drug courts with the necessary technical support to establish and maintain required databases, given available funding.*

- Standard H.5 The statewide drug court coordinator should work with a qualified, independent evaluator to conduct appropriate evaluations of drug court programs, given available funding.
- Standard H.6 All drug courts through their court administration will be responsible for maintaining proper fiscal records and fiscal accountability in accordance with state laws.

### Minimum Data Collected in Each Drug Court

- Standard H.7 Each drug court shall collect in the court's drug court automated database, at a minimum, the following information:
- a. Personal Information (Taken at Intake)
    1. Name
    2. Social Security Number

3. Date of birth
  4. Place of birth
  5. Gender
  6. Race
  7. Current marital status
  8. Number of children in family
  9. Number of participant's dependents
  10. Mother's name (juvenile drug court only)
  11. Father's name (juvenile drug court only)
- b. Pre-Program Criminal History (Taken at Intake)
1. Previous criminal conviction record/chronological offense
  2. Current case charge(s) or petitions, or referring offense
  3. Current Case Type (drop down menu of the following)
    - a.) Misdemeanor
    - b.) Juvenile
    - c.) Felony
    - d.) Traffic
  4. Client Referral Type (drop down menu of the following)
    - a.) Pre-adjudication (e.g., conditions of release)
    - b.) Post-adjudication (pre-sentence)
    - c.) Probation
    - d.) Parole
    - e.) Probation violator
    - f.) Dual supervision (probation and parole)
- c. Pre-Program Substance Abuse Treatment History (Taken at Intake)
1. Substance abuse history Y/N
  2. Primary substance of abuse (drop down menu)
  3. Secondary substance of abuse (drop down menu)
  4. Nicotine dependence Y/N
  5. Alcohol dependence Y/N
  6. Inpatient treatment history Y/N
  7. Outpatient treatment history Y/N
  8. Substance abuse test results at intake (drop down menu)
- d. Mental Health Treatment (Taken at Intake, and at Exit)
1. Inpatient Y/N
  2. Outpatient Y/N
  3. Mental Health Prescription Medications Y/N
- e. Employment (Items 1-3 are Taken at Intake, in Progress, and at Exit; 4 is Taken at Intake; 5 is Taken at Exit)
1. Currently employed/unemployed (optional for juveniles)
  2. Employer name and address (optional for juveniles)
  3. Type of work or profession (optional for juveniles)
  4. Employed on entrance into program Y/N

5. Employed on exit from program Y/N
- f. Financial Information (Taken at Intake, and at Exit; for only those Adult and DWI programs that collect fees)
  1. Ability to Pay Fees (drop down menu: Able to Pay, Fees Waived, or Community Service)
  2. Receiving public assistance Y/N
- g. Education (Taken at Intake, in Progress, and at Exit)
  1. Highest level completed at Intake (drop down menu: grade 1- 17)
  2. Current enrollment and level (optional for adult)
  3. Highest level completed at Exit (drop down menu – same as for #1)
- h. Community Service (Taken at Exit)
  1. Number of hours completed
- i. Program Activity (Taken in Progress)
  1. Referral date
  2. Intake date
  3. Current program phase
  4. Sanctions ordered
  5. Detention ordered
  6. Inactivation date
  7. Reactivation date

*Practice 1: Participation in program activities, including substance abuse testing, shall be tracked, but each drug court can choose whether to track activities through the automated database or by other secure means.*

- j. Exit
  1. Termination from program (drop down menu of the following):
    - a.) Voluntary Termination (no fault)
    - b.) Involuntary Termination (at fault)
    - c.) Transfer to another New Mexico drug court program
    - d.) Death
    - e.) Graduation to Aftercare Program
    - f.) Graduation from program
  2. Completion of Aftercare Program (Date)
- k. Recidivism
  1. One-year review and re-arrest/re-offense/new petitions information
  2. Two-year review and re-arrest/re-offense/new petitions information
  3. Three-year review and re-arrest/re-offense/new petitions information

*Practice 1: In collecting data for calculation and reporting of the recidivism rate, each drug court shall only include participants who have graduated within the last three fiscal years from the date of the report.*

1. Program Costs
  1. Treatment Costs
    - a.) Start date (for cost data)
    - b.) End date (for cost data)
    - c.) Drug testing
    - d.) Client treatment
    - e.) Client family treatment
  2. Other Costs
    - a.) Start date (for cost data)
    - b.) End date (for cost data)
    - c.) Direct staff (include pro-rated cost of part-time staff)
    - d.) Service costs (outside vendor costs billed to drug court not included in Treatment Costs)
    - e.) Indirect staff (those providing services not directly paid by drug court)
    - f.) Miscellaneous costs (such as office and client supplies, printing costs, staff training, etc.)

*Practice 1: Data shall be maintained in a secure fashion and access to this data governed by confidentiality rules and regulations.*

#### Performance Measures for New Mexico Drug Courts as They Relate to Data Collection

- Standard H.8 For every fiscal year, the AOC will provide to the New Mexico Legislature drug court information defined as performance measures for all New Mexico drug courts. The data shall be collected in two categories: all information to determine whether drug court programs are meeting their mission, goals, and service definitions which measure strengths and weaknesses in every drug court program as established by the Drug Court Advisory Committee for all New Mexico drug courts; and recidivism and graduation rate, among other measures, which will be used for legislative budgeting purposes.
- Standard H.9 Specifically, drug court performance measures are defined as the following (applicable business rules and calculation mechanisms are set forth in Appendix A):
- a. For purposes of the drug court performance measures only, “recidivism” is defined as a re-arrest or re-offense as set forth in the business rules adopted by the AOC (see Appendix A). This data will be reported for every fiscal year cumulatively and historically for each drug court and statewide.
  - b. Each drug court shall electronically record on a semiannual basis the number of drug court graduates as well as the graduation rate for all adult, juvenile, family dependency, and DWI drug courts in the state. The graduation rate shall be calculated based on the business rules adopted by the AOC (see Appendix A).
  - c. Each drug court shall electronically record on a semiannual basis the costs for a participant per day, as set forth in the business rules adopted by the AOC (see Appendix A).

- d. Each drug court shall electronically record all data elements required by the minimum data set as defined in Standard H.7. A court may electronically record further information beyond that defined by the minimum data set, but at least the minimum data set must be collected and transmitted on a semiannual basis to the AOC.
- e. Each drug court shall electronically record on a semiannual basis the number of days from a participant's referral for screening to intake into the program. This time period will be adjusted in keeping with the business rules adopted by the AOC (see Appendix A).
- f. Each drug court shall electronically record the active participants in each drug court program on a semiannual basis and the total number of voluntary and involuntary terminations to determine the program retention rate of current drug court participants. This performance measure will collect data for all adult, juvenile, family dependency, and DWI drug courts in the state and is calculated as set forth in the business rules adopted by the AOC (see Appendix A).
- g. Each adult, family dependency, and DWI drug court shall electronically record on a semiannual basis the percentage of drug court graduates who are employed, or full-time students, retired, or disabled (for reasons other than drug use) upon graduation. This data will be reported by each drug court and statewide.
- h. Each juvenile drug court shall electronically record on a semiannual basis the percentage of drug court graduates who have received high school diplomas, GEDs, or are currently enrolled in school following drug court graduation. This data will be reported by each drug court and statewide.

#### Administrative Office of the Court's Electronic Data Monitoring and Reporting Responsibility

- Standard H.10 The Administrative Office of the Courts shall be responsible for providing aggregate reporting on Performance Measures as defined in Standard H. 9. The AOC shall be responsive to all reporting requests made by the LFC and DFA.
- Standard H.11 The AOC shall work with drug courts statewide to ensure the data necessary for capturing all information required to produce reports for the Legislature is received into the Drug Court Central Repository (central repository) on a timely basis.
- Standard H.12 The AOC/JID shall ensure the secure access network and central repository for all statewide drug court data is maintained and updated on a timely basis.



## I. TREATMENT STANDARDS

- Standard I.1 Drug court participants shall be required to participate in a comprehensive and integrated program of alcohol, drug and other related treatment and rehabilitation services as approved by the drug court, herein referred to as the “drug court treatment program.”
- Standard I.2 The primary goal of the program must be abstinence from alcohol, drugs, and other mind-altering substances consistent with the judicial requirements of the program.
- Standard I.3 The drug court treatment program’s services shall be integrated and coordinated with the drug court team under the direction of the drug court judge.
- Standard I.4 The drug court treatment program’s services shall be provided in a gender appropriate and culturally competent manner.
- Standard I.5: Drug court participants shall be required to comply with the standards, practices and client rules of the drug court treatment program.
- Standard I.6: The minimum standards of the drug court treatment program, which may include treatment, rehabilitation, other related services, phases, and other requirements shall be established in writing by the drug court. These requirements shall be approved by the drug court judge and incorporated in the drug court policies and procedures.
- Standard I.7: The minimum standards of the drug court treatment program for a drug court shall include, but not be limited to:
- a. Screening,
  - b. Admission criteria,
  - c. Assessment and initial treatment planning,
  - d. Individual, family and group counseling,
  - e. Ancillary, adjunctive, and other services such as occupational, rehabilitative, educational and/or mental health counseling (services may be provided by the program or by arrangements with other agencies or providers),
  - f. Minimum requirements of each phase (if phases utilized),
  - g. Minimum requirements of self-help participation (if required),
  - h. System of ongoing individualized reassessment and treatment planning,
  - i. System of random alcohol and other drug testing
  - j. Transitional or aftercare counseling,
  - k. Discharge criteria

*Practice 1: In the Family Dependency Court, individual, family and group counseling should include individual treatment for children and/or family members as determined by diagnostic testing and/or assessments, for example: “Well Family/ Psycho-Social Evaluation”, or similar assessment. Assessment should include evaluation of identified client, all dependents, significant others and/or support person with whom the participant is residing or dependent upon for financial or family support.*

- Standard I.8 Advancement within the drug court and graduation from the program shall be determined by the drug court judge in collaboration with the drug court team and on the condition that the participant has satisfied the established minimum criteria.
- Standard I.9 The minimal length of the drug court treatment program for successful completion shall be approved by the drug court judge in collaboration with the drug court team and incorporated in writing in the drug court program policies and procedures.
- Standard I.10 Discharge or termination from the drug court treatment program shall occur with the approval of the drug court judge in collaboration with the drug court team.

## J. TREATMENT PROVIDER STANDARDS

- Standard J.1 Treatment providers shall comply with these standards, those established in the treatment program standards and as applicable throughout the drug court standards.
- Standard J.2 Judicial agencies providing treatment services internally with their own staff members may meet the requirements of these standards through their own policies, procedures and practices in lieu of the requirements herein so long as they are substantially equivalent.
- Standard J.3 The drug court program shall only utilize providers in accordance with the State of New Mexico Substance Abuse Counselor Act, chapter 61, Laws of 1996, HB 790: Article 9A of the New Mexico Counseling Therapy Practice Board: section 61-9A-14.1. Substance Abuse Counselors, Requirements for Licensure; and section 61-9A-21.1, Licensure without Examination.
- Standard J.4 The drug court program shall only utilize providers of other clinical services in accordance with their respective licensure requirements when appropriate.
- Standard J.5 The treatment provider shall provide the drug court with copies of all clinical staff licenses.
- Standard J.6 The treatment provider must provide the drug court with copies of all applicable business licenses and their State of New Mexico Taxation and Revenue Department Certificate.
- Standard J.7 The treatment provider shall maintain in force general and professional liability insurance coverage in an amount determined by the drug court. Evidence of coverage or verification of immunities and limitations of the New Mexico Tort Claims Act Section 41-4-1, et. Seq, 1978, must be provided by the treatment provider.
- Standard J.8 The treatment provider's facilities shall comply with the applicable fire and safety standards established by the State Fire Marshal and health, safety and occupational codes enforced at the local level.
- Standard J.9 The treatment provider's services and facilities must meet all requirements of the Americans with Disabilities Act of 1990, and all applicable state and local rules and regulations.
- Standard J.10 The treatment provider shall develop written policies and procedures that will ensure compliance with these standards, the drug court program requirements and the scope of services. The treatment provider shall provide services in accordance with the written policies and procedures.
- Standard J.11 The treatment provider shall establish written rules governing the rights and conduct of clients. The client, and significant others, if applicable, shall be informed of the rules regarding admission, discharge, expulsion, and program expectation for clients admitted to treatment. Each client, and where required significant other, parent and/or legal guardian shall sign these rules prior to or at the time of admission.

- Standard J.12 The treatment provider shall maintain a record on each client, maintain client records and client identifying information in a confidential manner, maintain an up-to-date consent for release of client information in accordance with State and Federal Regulations (Title 42, Code of Federal Regulations, Part 2), and these standards. Client records shall be kept secure from unauthorized access.
- Standard J.13 The treatment provider shall obtain and have on file a consent for treatment signed by each individual and where required by the parent or legal guardian.
- Standard J.14 The treatment provider shall assure that participants meet the clinical criteria for admission to the program as established in conjunction with the drug court program.
- Standard J.15 The treatment provider shall provide services in accordance with the established scope of services and standards of the drug court program.
- Standard J.16 The treatment provider shall maintain for each participant documentation including but not limited to assessments and treatment plans, progress notes, services provided, attendance records and drug test results (if the treatment provider, as part of their scope or work, performs drug tests on the program participants).
- Standard J.17 When testing is provided by the treatment provider, they shall develop and implement a plan for random alcohol and drug testing of participants in accordance with the established scope of services and standards of the drug court program, as described in Section C.7 of these Standards.
- Standard J.18 The treatment provider shall designate a staff member(s) who shall be present at all drug court sessions to report on clients' progress, compliance, etc. The staff member shall be adequately aware of the clients' status to report accurately to the drug court judge.
- Standard J.19 The treatment provider shall provide written reports of clients' assessments, attendance at treatment sessions, progress on a monthly basis, incident reports, treatment plans, and a discharge summary at a minimum.
- Standard J.20 In support of comprehensive treatment for program participants, the treatment provider may establish a localized network of public and private agencies through memoranda of understanding or other formal agreements to provide support of services as appropriate.
- Standard J.21 The treatment provider shall maintain fiscal records in accordance with generally accepted accounting principles, State requirements and any contractual specifications.
- Standard J.22 To ensure adequate client safety and care, every treatment provider shall have a quality assurance program designed to evaluate the quality of care provided and promote efficient and effective services.
- Standard J.23 The treatment provider shall participate in fiscal, operational or other audits as required by the court or other authorized agency.

## K. ROLE OF THE DRUG COURT JUDGE

Standard K.1 The focus and direction of a drug court program are provided through effective leadership of drug court judges in partnership with the drug court team.

- Practice 1: The judge is in a unique position to exert effective leadership in the promotion of coordinated drug control efforts.*
- Practice 2: To encourage full commitment to the success of a drug court program, the drug court judge should allow the drug court team to participate fully in the design -and implementation of the program.*
- Practice 3: Partnerships should be formed among the judge, all affected criminal justice and child welfare agencies, and the treatment provider which will allow collaboration in decision-making, sharing of resources and coordination of efforts.*
- Practice 4: The judge is responsible for maintaining a non-adversarial atmosphere in the drug court. All staff must see their job as the facilitation of the participant's rehabilitation.*
- Practice 5: The judge is one of the key motivational factors for the participant to seek rehabilitation. Less formal and more frequent court appearances must be scheduled to allow the judge to motivate and monitor the participants.*
- Practice 6: The judge should conduct court so all participants benefit by observation of others as they progress (or fail to progress) in treatment (see treatment standards).*
- Practice 7: The drug court judge and the drug court team serve as program advocates. They represent the program in the community, before the federal, state, and local governments, criminal justice agencies, and other public forums.*

## L. OVERSIGHT AND ACCOUNTABILITY FUNCTION

Standard L.1 The Supreme Court will enforce compliance with these standards.

Standard L.2 Drug courts shall cooperate with the Supreme Court and the AOC to ensure compliance with these standards.

*Practice 1: It is recommended that drug courts conduct internal program audits as to compliance with these standards every six months.*

## Appendix A:

### Performance Measure Definitions and Business Rules

#### **3-Year Recidivism Rate of Program Participants:**

This measure determines if program participants who have exited the program during last three fiscal years are reentering the justice system. The measure is determined by the number of program exits during a three-year reporting period who reoffend (as defined in the applicable business rule below) divided by the total number of program exits for that same time period.

##### **Applicable Business Rules:**

Adult: Determine if participant has had a New Mexico felony arrest after exiting the program.

Juvenile: Determine if participant has a new petition (including petitions to modify or revoke probation) filed by the DA, or a New Mexico felony arrest for participants who have reached majority, after exiting the program.

DWI: Determine if participant has had a rearrest for DWI in New Mexico after exiting the program.

Family dependency court: Determine if participant has had a new substantiated report of abuse and/or neglect after exiting the program.

#### **Number of Graduates:**

This measure counts the number of participants who have successfully completed the drug court program at the end of each fiscal year.

#### **Graduation Rate:**

This measure calculates the percentage of graduates at the end of each fiscal year by dividing the number of participants who exit the program into the number of graduates.

##### **Applicable Business Rule:**

The number of participants who exit the program would require a preliminary calculation: the total number who exited the program minus the volunteer terminations, transfers to another program, and those who died while in the program.

#### **Cost-per-Client-per-Day:**

This measure determines the cost per participant per day excluding judge costs or indirect administrative costs but including costs of Special Masters. The measure is determined by taking the total number of days in the program per client per reporting period and dividing the amount of expenditures by the number of days for an average cost per day for the reporting period. (Take the total amount of expenditures and divide by the total number of client days.)

##### **Applicable Business Rules:**

Total Program Costs include:

1. Treatment Costs: Including drug testing and treatment for clients and family members of participants.
2. Support Personnel Costs: Paid staff essential to the drug court team and the drug court's operation, including those not billed to the drug court (e.g., a public defender's services, JPPO's, surveillance officers). Include all those providing more than 20% of their work week

in direct support of the drug court program (equivalent to one 8-hour day a week, on average).

3. **Operational Costs:** Costs include services that are essential to the drug court team and drug court's operation. Examples of such essential costs include travel/training, gas/oil/maintenance of vehicles, printing charges, equipment rental, telephone charges, and advertising. Do not include non-essential services that are provided free of charge to the drug court (such as GED training).

**Percent of Automated Drug Court Records that Meet Minimum Data Set:**

The Drug Court Standards specify a minimum data set for each participant, and this measure will evaluate how comprehensively that minimum data set was adhered to. This will tie to the Judiciary's Strategic Plan goal of timely case flow management, as well as the goal of using technology to process cases and manage resources.

**Number of Days to Process Referrals to Drug Court:**

This will measure the number of days from referral for screening to intake into the program (see Applicable Business Rules for clarification). This will tie to the Judiciary's Strategic Plan goal of timely case flow management.

**Applicable Business Rules:**

The number of days from referral for screening to intake must be adjusted for any days that the participant was not available for intake (e.g., time spent absconding or on a waiting list for entry into the program).

**Retention Rate:**

This measure determines the percentage of participants who remain in the program.

**Applicable Business Rules:**

The total number of terminations (voluntary and involuntary) are divided by the total number of participants who were active at any time during the reporting period. That percentage is subtracted from 100% to obtain the retention rate percentage.



## Definitions

- Agency:** Any participating for-profit, non-profit or government agency that is involved with a drug court.
- AOC:** Administrative Office of the Courts
- AOD:** Alcohol or other drugs
- Drug Court:** A drug court is a specially designed court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse and to increase the participants' likelihood of successful rehabilitation through early, continuous, and intense judicial oversight, treatment, mandatory periodic drug testing, and use of appropriate sanctions, incentives, and other community-based rehabilitation services.
- Eligibility:** Participants are eligible according to policies and procedures established in each drug court and the statewide drug court standards. An individual may be eligible for a program but may not be suitable for placement.
- Incentives:** A reward for compliance with program rules and progress in treatment. Incentives may be in the form of less restrictive reporting standards, donated gifts from the business community or private citizens, etc.
- Qualified drug court program:** Qualified drug court programs meet all criteria in maintaining a drug court according to the drug court standards. Qualified drug courts are those that are fully operational through federal, state or private funding, have an assigned drug court judge or judges, and have a drug court advisory panel.
- Suitability:** An individual who is deemed suitable by the drug court judge or reviewing committee and is one amenable to treatment and program requirements.