



NEW MEXICO DRUG COURT STANDARDS

Approved October 26, 2016

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 courts consistent with the definition stated herein.

The New Mexico Drug Court Standards provide guidance to best practices and are founded upon the Ten Key Components of Drug Courts and consistent with the Adult Drug Court Best Practice Standards, Volume 1 & 2, developed by the National Association of Drug Court Professionals.¹ The Ten Key Components are applicable to all specialty courts regardless of type (e.g., adult, mental health, family, juvenile, dwi, veteran, etc.). These standards will evolve over time to include additional research and specific guidance for those specialty courts that serve juveniles, families, veterans, and so forth.

These standards and best practices are based upon numerous program evaluations and years of research findings. These standards are intended to serve as ideal expectations. Exceptions to these standards may be necessary due to individual circumstances, local challenges, and the specific needs of the target population. Caution should be exercised when deviating from the standards to avoid drifting from best practice, and any questions regarding the need to deviate from these standards should be addressed to the Drug Court Advisory Committee through the Statewide Drug Court Coordinator. Each section of the New Mexico Drug Court Standards corresponds with one of the Ten Key Components of drug court. The standards provide greater detail about each key component and include best practices recognized through research.

The main purpose for the best practice standards is to maintain a level of not only consistency of practice throughout the state of New Mexico, but to assure a level of quality that each court applies as it serves in this function for those receiving services. The New Mexico Drug Court Advisory Committee is always striving to assist courts in the most up to date practices and processes to enhance the work done by drug court practitioners.

¹ National Association of Drug Court Professionals, 1997; <http://www.nadcp.org/Standards>

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Key component #1: Drug courts will integrate alcohol and other drug treatment services with justice system case processing.

1-1 All participating agencies shall cooperate with efforts to establish drug courts which meet the minimum standards of the judicial branch.

1-2 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 drug court participants as defined later in this document.

1-3 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 drug court, interpersonal skills, motivation and professional abilities, within their job description.

1-4 Wherever feasible, agencies will make full or part-time staff assignments to the drug court for a minimum of 2 years to ensure stability and continuity of day-to-day operations and to strengthen collaborative relationships between the key professionals.

1-5 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, drug court program manager, treatment staff, probation/parole, law enforcement, judge/special master, and court staff who support the drug court.

1-6 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.

1-7 The drug court team shall include the following roles/agencies: judge, prosecuting and defense attorneys, treatment provider, court coordinator, case manager, probation/surveillance, and law enforcement. Depending on local program design, other appropriate key stakeholders should be added to the team (e.g., child welfare, housing providers, etc...).

1-8 Each drug court shall designate a program manager.

1-9 Each court shall adopt written policies and procedures for staff (either court or contract) responsible for probation/surveillance duties. Nothing in this section, 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.

1-10 The sponsoring court and participating agencies will, where appropriate and feasible, support qualified drug courts by making appropriate adjustments to internal policies, practices and procedures to ensure successful day-to-day operation of the drug court.

1-11 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) to ensure the continuity of all legal policies, including confidentiality and other standards necessary to the operation of each drug court.

1-12 The drug court team shall collaboratively develop, review, and agree upon all aspects of drug court operations (mission, goals, eligibility criteria, operating procedures, performance measures, orientation, drug testing, and drug court structure guidelines). The team shall create a policy manual and update it annually.

1-13 All drug court team members are expected to attend and participate at each scheduled pre-court staff meeting and status hearing. At a minimum, pre-court staff meetings shall occur at the same frequency as, and in advance of, scheduled status hearings.

1-14 Treatment providers shall communicate in advance of status hearings and via email between status hearings with the drug court team and report on participant progress and/or concerns in treatment.

1-15 The drug court ensures that participants from groups that have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive equal access, retention, treatment, dispositions and incentives/sanctions.

1-16 Drug courts will follow confidentiality laws and practices as described in Appendix D.

1-17 The drug court has a written consent or release of information form; participants provide voluntary and informed consent about what information will be shared between team members.

1-18 Drug court information and records shall remain confidential, except as authorized for disclosure under these standards or by state law, or authorized for the purposes of research or evaluation, as allowed for in federal law including HIPAA and CFR 42 Part 2.

1-19 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. (See, Public Health Service Act, 42 U.S.C. 290dd-2 and 290ee-3; and federal regulations at 42 C.F.R. Part 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.

1-20 Drug courts should receive training on federal and New Mexico confidentiality requirements and how they affect drug court practitioners and contractors.

1-21 Rules of professional conduct and evidentiary privileges shall still apply unless expressly waived by the participant.

Key Component #2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

2-1 Prosecution (District Attorney) and defense counsel shall be members of the drug court team and shall participate in the design, implementation and enforcement of the drug court's screening, eligibility and case-processing policies and procedures.

2-2 The prosecutor and defense counsel shall work to create a sense of stability, cooperation, and collaboration in pursuit of the drug court's goals. The pursuit of justice, due process and protection of public safety, as well as the preservation of the constitutional rights of drug court participants will be ensured by both attorneys.

2-3 The prosecutor and defense counsel should consistently attend team meetings (pre-court staff meetings and status hearings).

2-4 The prosecutor shall: review cases and determine whether a defendant is legally eligible for entry to the drug court; file all required legal documents; agree that a positive drug test or open court admission of drug use will not result in the filing of additional drug charges based on that drug test or admission; and work collaboratively with the team to decide on a team response to participant behavior, including incentives, sanctions, and when or whether termination from the drug court is warranted.

2-5 The defense counsel shall: review the police reports, arrest warrant, charging document, all drug court documents, and other relevant information; advise the defendant as to the nature and purpose of the drug court, the rules governing participation, the merits of the drug court, the consequences of failing to abide by the drug court rules, and how participation or non-participation will affect his/her interests; provide a list of and explain all of the rights that the defendant will temporarily or permanently relinquish;¹ advise the participants on alternative options; explain that the prosecution has agreed that a positive drug test or admission to drug use in open court will not lead to additional charges, and therefore encourage truthfulness with the judge and treatment staff; and, inform the participant that they will be expected to take an active role in status hearings, including speaking directly to the judge as opposed to doing so through an attorney, and work collaboratively with the team to decide on team response to participant behavior including incentives, sanctions and when or whether termination from the drug court is warranted.

¹ Each right that will be temporarily or permanently relinquished as a condition of participation in drug court shall be distinguished and explained separately to ensure the defendants fully understands what they are waiving.

2-6 Both the prosecution and the defense attorney shall perform their tasks as part of the drug court eligibility and admission process as swiftly as possible, including working with stakeholders in the legal system to shorten the time to entry into the drug court.

2-7 All participants shall receive a Participant Handbook upon accepting the terms of participation and entering the drug court. Receipt of the Participant Handbook shall be acknowledged through a signed form and documented in the drug court file.

Key Component #3: Eligible participants are identified early and promptly placed into the drug court program.

3-1 Consideration for admission to the drug court 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;
- 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; or
- 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.

3-2 A potential participant with a prior misdemeanor conviction or adjudication of a delinquent act involving violence may be admitted to a drug court.

3-3 A violent offender, pursuant to 42 U.S.C.A. 3797u-2, will not be admitted into federally funded drug courts. Admission into drug courts not receiving federal funds shall be governed by that organization's rules and regulations not inconsistent with these standards. *(For definitions and additional details, see Appendix E.)*

3-4 Participant eligibility requirements/criteria and intake and referral standards shall be defined objectively, agreed upon by all members of the drug court team, included in writing as part of the drug court's policies and procedures, and communicated to potential referral sources.

3-5 Drug courts may be designed to admit eligible participants pre-plea, post-plea, or may operate as a combination of both pre- and post-plea participants.

3-6 When operating a drug court, the program should target individuals classified as moderate to high risk and high need. Drug courts choosing to serve low risk low need individuals, as a small percentage of the overall participants population, should develop separate service tracks or “phase” requirements for the low risk low need offenders so that services for participants are appropriate for their assessed need and risk level.

3-7 Drug courts shall use standardized, objective, validated risk and need screening and assessment tools to assess the risk and need of the potential drug court candidate (e.g., RANT, GAIN, etc.). Screening and assessment results should be used for both drug court eligibility and to determine level and type of care and supervision. Adult drug courts shall use validated clinical assessments for service planning, to address treatment and complementary service needs. When working with members of historically disadvantaged groups, drug courts have a responsibility to use tools validated for those members, where available.

3-8 Drug courts choosing to serve a mixed population of low risk and moderate to high risk offenders should provide separate tracks, including separate group treatment services to ensure low risk offenders are not attending group sessions with moderate and high risk offenders, and that their specific needs are met.

3-9 Participants are screened for drug court eligibility as soon as possible by designated members of the drug court team as identified by drug court policies and procedures.

3-10 Participants being considered for drug court shall be promptly advised about the program, including the requirements, scope and potential benefits and effects on their case.

3-11 Drug courts should strive to have participants begin the program within 50 days of the arrest or incident that resulted in their being considered for entry into the drug court. For the family dependency court, assessments should be done within 10 business days of initial interview with the family dependency court contact.

3-12 Assessment for substance abuse and other treatment needs shall be conducted by appropriately trained and qualified professional staff.

3-13 If appropriate services are available, drug courts may accept individuals with serious mental health disorders/co-occurring disorders and medical conditions. Drug courts gather information from trained medical professionals and may consider accepting individuals with valid prescriptions for psychotropic or addictive medication, including narcotics for pain.

3-14 Drug courts shall maintain an appropriate caseload/census based on its capacity to effectively serve all participants in compliance with these standards. Drug courts serving more than 125 participants with a single judge shall ensure they have the capacity (both services and staff time available) to adhere to these standards.

3-15 Except as specifically authorized by court order, no drug court may knowingly employ, or enroll as a participant, any undercover agent or informant.

3-16 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.

Key Component #4: Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

4-1 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."

4-2 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.

4-3 The drug court treatment program's services shall be provided in a gender appropriate and culturally competent manner.

4-4 Drug courts should provide a continuum of services through partnership with a primary treatment provider, including detoxification, outpatient, intensive outpatient, day treatment, and residential services. The drug court team will clearly identify the treatment staff overseeing case management services who will coordinate other ancillary services, and make referrals as necessary.

4-5 A single treatment agency shall provide the primary treatment services and/or oversee and coordinate the treatment provided from other agencies, unless local circumstances prevent this.

4-6 Drug courts shall offer a comprehensive range of treatment services based on the specific court type. The drug court shall adopt guidelines directing the frequency of each service that a participant must receive based on assessed need. The standards for the treatment program for a drug court are listed in detail in Appendix F, but shall include, at a minimum:

- a. Gender-specific services
- b. Mental health treatment
- c. Parenting classes
- d. Family/domestic relations counseling
- e. Residential treatment
- f. Health care
- g. Dental care
- h. Housing
- i. Trauma-informed services
- j. Criminal thinking intervention

- k. Brief evidence-based educational curriculum to prevent health-risk behavior (e.g., STIs and other diseases)
- l. Brief evidence-based educational curriculum to prevent or reverse drug overdose
- m. And may include medication-assisted treatment (MAT)

4-7 When possible, drug courts should implement treatment readiness programs for participants who are on waiting lists for comprehensive treatment services (e.g., Curriculum-Based Motivational Group, Motivational Enhancement Therapy, Motivational Interviewing, etc.).

4-8 Overall duration and dosage of treatment for participants shall be based on the individual's risk and needs as determined from validated standardized assessments, which for high need participants is likely to be 6-10 hours per week during the initial phase and 200 hours of counseling over 9-12 months. The minimal length of the drug court 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 policies and procedures.

4-9 Drug courts should incorporate a phase/level system including, ideally, 5 phases, with aftercare being emphasized as the last phase/level.²

4-10 Drug courts shall include a focus on relapse prevention and aftercare services. This may include establishment of alumni groups, peer mentors, and/or peer support groups, that encourage participation in other community supports.

4-11 The drug court uses standardized, manualized, behavioral or cognitive-behavioral, evidence-based treatment programming, implemented with fidelity, to ensure quality and effectiveness of services and to guide practice. Drug courts serving high risk/high need participants should strive for treatment groups of no more than 12 participants and at least 2 facilitators/leaders. Examples of evidence-based treatment programming can be found at the SAMHSA's National Registry of Evidence-based Programs and Practices' (NREPP) website.³

4-12 Drug court participants shall be matched to services according to their specific needs. Guidelines for placement at various levels (e.g., residential, detoxification, day treatment, outpatient, sober living residences, etc.) should be developed by the drug court team incorporating the expertise of the treatment provider.

² <http://www.nadcp.org/sites/default/files/2014/CG-31.pdf>

³ NREPP website is <http://www.nrepp.samhsa.gov>

4-13 Drug court participants shall meet weekly with a clinical case manager or treatment provider during the first phase.

4-14 When feasible, at least one reliable and prosocial family member, friend, or daily acquaintance is enlisted to provide firsthand observations to staff about participants' conduct outside of the drug court, to help participants arrive on time for appointments, and to help participants satisfy other reporting obligations in the drug court.

4-15 Treatment/case management plans shall be individualized for each participant based on the results of the initial assessment and ongoing assessments. Participants should be reassessed at a frequency determined by the drug court, and treatment plans may be modified or adjusted based on results.

4-16 Participants are not incarcerated to achieve clinical or social service objectives such as obtaining access to detoxification services or sober living quarters, unless the participant is believed to be a danger to self or others.

4-17 Advancement within, and graduation from, the drug court 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.

4-18 Discharge or termination from the drug court shall occur with the approval of the drug court judge in collaboration with the drug court team.

4-19 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.

4-20 Drug courts should ensure the accountability of the treatment provider to incorporate services and training consistent with the drug court model and treatment best practices (such as using evidence-based practices, culturally appropriate approaches, cognitive behavioral therapy, manualized treatment, and trained/licensed professionals; maintaining fidelity to their treatment models, and appropriately matching individuals to services based on assessed needs).

4-21 Treatment providers are licensed or certified to deliver substance abuse treatment, have substantial experience working with criminal justice populations, and are supervised regularly to ensure fidelity to treatment models.

- a. The drug court 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.I. Substance Abuse Counselors, Requirements for Licensure; and section 61-9A-21.I, Licensure without Examination.

- b. All other clinical providers must be appropriately licensed.
- c. Providers shall provide the drug court with copies of all clinical staff licenses.

4-22 In a program that allows the use of MAT, participants may be prescribed psychotropic or addiction medicine as needed but only by an appropriately licensed medical professional.

4-23 Participants attend self-help or peer support groups as indicated based on treatment provider assessment and court approval. Drug court should check the quality of the groups when possible.

4-24 Caseloads for probation officers or other professionals providing community supervision for the drug court should not exceed 30 active participants. (Caseloads should not exceed 50 if staff has a mix of low risk and no other caseloads or responsibilities.)

4-25 Caseloads for clinicians providing case management and treatment should not exceed 30 active participants. (Caseloads should not exceed 50 if providing counseling OR case management but not both, AND if the clinician has no other responsibilities, including assessments.)

Treatment Provider Standards

4-26 Treatment providers shall comply with all drug court and treatment standards.

4-27 Judicial agencies providing treatment services internally with their own staff members may meet the requirements of the treatment standards through their own policies, procedures and practices in lieu of the requirements herein so long as they are substantially equivalent.

4-28 The treatment provider shall provide services in accordance with the established scope of services and standards of the drug court.

4-29 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 of work, performs drug tests on the drug court participants).

4-30 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, as described in these standards.

4-31 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.

4-32 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.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

5-1 Results of drug testing may be used in drug court to determine:

- a. If the participant is progressing satisfactorily
- b. If the case plan needs modifying
- c. Appropriate sanctions
- d. Appropriate treatment level of care
- e. Therapeutic responses or incentives
- f. Whether the individual should be terminated or graduated from the drug court

5-2 Evidence of a drug test result shall not be used as evidence of a new crime or as the sole basis for probation violations.

5-3 Each drug court shall adopt written policies and procedures that document its drug testing protocols and that follow the standards as described in this document and in Appendix H.

5-4 The drug court shall implement a standardized system in which participants will participate in drug testing. Testing shall be administered randomly/unpredictably, but occur no less than twice per week. Testing should occur on weekdays, weekends and holidays. As treatment dosage and supervision is reduced, drug testing should be maintained until the participant has shown significant progress in meeting target behaviors including relapse prevention skills.

5-5 Drug courts shall utilize urinalysis as the primary method of drug testing; a variety of alternative methods may be used to supplement urinalysis, including breath, hair, and saliva testing, patch, and electronic monitoring.

5-6 Drug testing sample collection shall be directly observed by an authorized, trained same sex member of the drug court team or other approved official of the same sex as the participant. Trans-gender or trans-sexual participants should be given the opportunity to choose the gender of the official collecting the samples. In rare cases, if the program is unable to observe sample collection, conduct the test and ask the participant to return for another (observed) test when the observer is available, within 24 hours.

5-7 Results of drug testing should be provided to the drug court within 48 hours.

5-8 All urine test samples should be examined for dilution and adulteration. In the event the participant provides a diluted, altered or positive sample, or fails to submit a sample, this information will be communicated with the drug court team immediately and should be responded to as a participant falsehood or tampering with evidence.

5-9 The Drug Court shall use scientifically valid and reliable testing procedures and establish a chain of custody for each specimen.

Key Component #6: A coordinated strategy governs drug court responses to participants' compliance.

6-1 The drug court shall have a formal system of responses to participant behavior, including therapeutic responses, incentives/rewards and sanctions, established in writing and included in the drug court's policies and procedures manual. The drug court provides these guidelines to team members for use in pre-court staff meetings.

6-2 Drug court participants shall be required to comply with the standards, practices and client rules of the drug court treatment program.

6-3 The adult drug court places as much emphasis on incentivizing productive behaviors as it does on reducing crime, substance abuse, and other infractions. Criteria for phase advancement and graduation include objective evidence that participants are engaged in productive activities such as employment, education, or attendance in peer support groups.

6-4 Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen and remaining drug-abstinent for a specified period of time. Sanctions and incentives may change over time as participants advance through the phases of the drug court. The frequency of drug and alcohol testing is not reduced until after other treatment and supervisory services have been reduced without a resulting relapse.

6-5 If a participant is terminated from the adult drug court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the drug court.

6-6 Before entering the drug court and throughout their involvement, participants are informed in writing about the types of incentives and sanctions used in the drug court and the types of behaviors that result in a range of incentives, sanctions, or therapeutic responses. Participants should not be provided with a "grid" that specifies a particular response for each type of behavior. The drug court will allow participants to communicate with defense attorney prior to the imposition of a jail sanction.

6-7 The formal system of responses to participant behavior (incentives/rewards, sanctions, and therapeutic responses) shall be organized on a gradually escalating scale, offering a range of options, applied in a consistent and appropriate manner to match individual participants' conduct, level of compliance and risk and need level. The team should consider proximal and distal goals in determining the appropriate response to participant behavior.

6-8 No single set of responses (incentives, sanctions, therapeutic responses) is effective for everyone. Incentives/rewards, sanctions, and therapeutic responses should be tailored to the individual participant by obtaining information on the participant during the assessment process and through conversations in pre-court staff meetings, and with the participant in court and case management meetings.

6-9 Information regarding incidents of participant noncompliance shall be communicated as soon as possible between court staffings to all members of the drug court team to coordinate an appropriate response to the noncompliance incident.

6-10 Responses to participant noncompliance should come as close in time as possible to the targeted behavior, but at most within one week.

6-11 Responses to behavior (incentives, sanctions, and therapeutic responses) must be certain, fair, and of the appropriate intensity. All responses should focus on specific behaviors and be administered with a clear direction for the desired behavior change.

6-12 Consequences are imposed for the nonmedically indicated use of intoxicating or addictive substances including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance. The adult drug court team relies on medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether nonaddictive, nonintoxicating, and medically safe alternative treatments are available.

6-13 Therapeutic adjustments (NOT sanctions) are used when a participant is not responding to treatment interventions but is otherwise in compliance with drug court requirements. Participants may be terminated from the Drug Court if they no longer can be managed safely in the community or if they fail repeatedly to comply with treatment or supervision requirements. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are nonamenable to the treatments that are reasonably available in their community. If a participant is terminated from the Drug Court because adequate treatment is not available, that information is provided to the sentencing judge upon remand.

6-14 Sanctions should be implemented in a way for the participant to understand the consequence of noncompliance with drug court rules without being viewed simply as punitive. Participants should be told what behavior the team expects of them and offered help to accomplish it, rather than just being told the behavior they should not engage in. Sanctions are delivered without expression of anger, ridicule, foul or abusive language, or shame.

6-15 Drug court teams should come to a mutual agreement on incentives/rewards, sanctions, and therapeutic responses to prevent conflict between team members. Pre-court staff meetings can help the team coordinate on the appropriateness of a sanction based on the participant's resources and ability (proximal and distal considerations⁴).

6-16 Adult participants are expected to pay fees (distinct from restitution owed) as part of their drug court involvement. Fees may be reduced as an incentive for positive behavior, or paid through community service credits. Drug court fee requirements may be satisfied by community service at the federal minimum wage. Drug courts must work with each individual to establish a payment plan and monitor progress to ensure lack of payment does not become a barrier to phase advancement or graduation. 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. Participants are encouraged to have paid all required program fees prior to graduation. The judge has authority to waive drug court fee requirements (see Appendix J).

6-17 Juvenile drug courts shall not collect program fees.

6-18 Adult drug courts 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.

6-19 Drug courts must use jail/detention sanctions sparingly and with the intention of modifying participant behavior in a positive manner. Jail/detention sanctions longer than 5 continuous days are outside of best practices.

6-20 To graduate, participants must have a job, be in school or involved in some qualifying positive activity.

6-21 To graduate, participants must have a sober and sustainable housing environment that is conducive to recovery.

6-22 A period greater than 90 continuous days of negative drug test results shall be required before a participant is eligible to graduate from the drug court.

⁴ For additional information, please see <http://www.ndcrc.org/sites/default/files/sibehmodtalk4.ppt>

Key Component #7: Ongoing judicial interaction with each drug court participant is essential.

7-1 The focus and direction of a drug court are provided through effective leadership of drug court judges in partnership with the drug court team. The judge is in a unique position to exert effective leadership in the promotion of coordinated drug control efforts. To encourage full commitment to the success of a drug court, the drug court judge should allow the drug court team to participate fully in the design and implementation of the drug court. 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. 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.

7-2 The drug court judge and the drug court team serve as drug court advocates. They represent the drug court in the community, before the federal, state, and local governments, criminal justice agencies, and other public forums.

7-3 The drug court judge should serve a term of at least 2 years. Longer terms are better.⁵ Consistency of the judge for participants correlates with better outcomes. Rotating/alternating judges should be avoided. The drug court team should include one primary judge and a second judge trained in the drug court philosophy and protocols to cover any status hearings during the absence of the primary judge. It is recommended the second judge rotate through the drug court for a term of at least 2 years to ensure better outcomes.

7-4 The drug court judge shall be knowledgeable about the drug court model, addiction, treatment methods, drug screening, and other related issues.

7-5 The adult drug court judge offers supportive comments to participants, stresses the importance of their commitment to treatment and other drug court 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.

⁵ Finigan, M. W., Carey, S. M., & Cox, A. A. (April 2007). The Impact of a Mature Specialty Court Over 10 Years of Operation: Recidivism and Costs: Final Report. NPC Research: Portland, OR.

7-6 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).

7-7 The drug court judge makes final decisions concerning the imposition of incentives or sanctions that affect a participant's legal status or liberty, after taking into consideration the input of the 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 trained treatment professionals when imposing treatment-related conditions.

7-8 The drug court judge shall attend all pre-court staff meetings. At a minimum, pre-court staff meetings shall occur at the same frequency as, and in advance of, scheduled status hearings.

7-9 A regular schedule of status hearings shall be used to monitor participant progress.

7-10 Participants shall attend weekly or every other week status hearings while in the first phase of the drug court depending on the participant's risk and need. This schedule may continue through additional phases. Frequency of status hearings may vary based on participant needs and/or judicial resources.

7-11 Status hearings should be held no less than once per month during the last phase of the drug court.

7-12 At status hearings, the judge shall speak with each participant individually.

7-13 The drug court judge should strive to spend at least 3 minutes with each participant during status hearings, especially those participants who are doing well.

7-14 The drug court judge should be assigned to the drug court on a voluntary basis.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

8-1 Data needed for drug court monitoring and management should be kept in electronic data systems, be easily obtainable and maintained in useful formats for regular review by drug court teams and management.

8-2 Each drug court shall use the electronic database specified by the AOC for collection of participant demographic and program activity data. Programs are responsible for collecting all information necessary to calculate the approved performance measures, along with as much information identified by the data elements listed in Appendix K as the AOC database and local resources allow.

8-3 The statewide drug court coordinator should work with a qualified, independent evaluator to conduct appropriate evaluations of drug courts, given available funding. 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.

8-4 An outcome evaluation should be conducted by an independent evaluator within 3 years of implementation of a drug court, and in regular intervals of at least 5 years thereafter.

8-5 Each drug court shall collect in the court's drug court automated database a minimum required set of data elements. These data elements are listed in Appendix K.

8-6 Staff members are required to record information concerning the provision of services and in-program outcomes within 48 hours of the respective events. Timely and reliable data entry is required of each staff member and is a basis for evaluating staff job performance.

8-7 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 courts are meeting their mission, goals, and service definitions which measure strengths and weaknesses in every drug court 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.

8-8 Participant satisfaction should be monitored on a regular basis (including at drug court entry and graduation) through the use of surveys, including exit surveys at the time of graduation or termination.

8-9 Monitoring of participant progress, success, and satisfaction should include a comparison of historically disadvantaged groups to the other participants, to identify—and work to address—any areas of inequity in drug court access, treatment, responses to behavior, and dispositions.

8-10 A program check related to drug court best practices should be conducted at least annually.

8-11 Feedback from participant surveys, review of participant data, and findings from evaluations should be used to make modifications to drug court operations, procedures and practices.

8-12 The drug court will work collaboratively with the state to conduct cost-benefit analysis of the drug court.

8-13 Drug courts will participate in a peer review process once every 3 years.

Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.

9-1 Each drug court agrees to provide orientation and training for staff. 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.

9-2 The New Mexico Association of Drug Court Professionals in conjunction with the AOC should provide training for drug court staff on drug court concepts and day-to-day operations at least once per year.

9-3 Drug courts shall address staff training requirements and continuing education in their policy manual. Recommended training shall align with state and national standards and practices endorsed by the National Association of Drug Court Professionals (NADCP) and the National Drug Court Institute (NDCI). Treatment practices must be evidence-based practices endorsed by NREPP, SAMSHA or culturally based practices deemed effective and appropriate.

- a. 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. 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.

9-4 Drug court staff members are educated across disciplines for professional development, cultural responsiveness, and team building. Training and education should include topics such as the drug court model, best practices, substance abuse and addiction, drug and alcohol and mental health treatment, co-occurring disorders, sanctions and incentives, drug testing standards and protocols, confidentiality and ethics, recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups, and proficiency in dealing with participants' race, culture, ethnicity, gender and sexual orientation, and trauma.

9-5 Drug court teams, to the extent possible, should attend comprehensive training yearly or every other year as provided by state or national drug court organizations, e.g., the National Association of Drug Court Professionals, National Drug Court Institute, New Mexico Association of Drug Court Professionals, etc.

9-6 New drug court team members shall receive formal orientation and training administered by previously trained drug court team members within 60 days of joining the team. Formal training can be supplemented with online webinars, drug court trainings and conferences.

9-7 The judge receives specialized training in legal and constitutional issues, judicial ethics, behavior modification, and community supervision. The judge attends annual training conferences and workshops.

Key Component #10: Forging partnerships among drug courts, public agencies and community-based organizations generates local support and enhances drug court program effectiveness.

10-1 Drug courts are encouraged to utilize other community-based services and treatment providers who may be able to augment drug court services.

10-2 The drug court should establish a Policy Committee (see definition in Appendix B) to oversee the operations of the court and to establish a written plan. The plan should address sustainability of the court's operation, resources, information management, and evaluation needs. The written plan shall include implementation tasks and timeframes to ensure compliance with the Drug Court Standards. The plan should incorporate the goals of participant abstinence from alcohol and illicit drugs and the promotion of law-abiding behavior in the interest of public safety. The Policy Committee should meet quarterly. Members of the Policy Committee are to be drawn from the participating agencies. Recommended membership includes: prosecuting attorney, defense attorney, community corrections agency or juvenile probation department, the court, law enforcement, child welfare, and treatment.

10-3 The drug court should organize an Advisory Committee (see definition in Appendix B) consisting of representatives from the court, community organizations, law enforcement, treatment providers, health providers, social service agencies, the business community, media, faith community and other community groups. The Advisory Committee should meet at least yearly to provide guidance to the policy committee and drug court team. Advisory Committees should be looked to for program guidance, fundraising, resource development to meet unmet needs of participants and other program challenges. Drug courts should consider whether the Advisory Committee members might form an independent 501(c)(3) organization for fundraising purposes.

10-4 Drug courts shall cooperate with the Supreme Court and the AOC to ensure compliance with these standards. The Supreme Court will enforce compliance with these standards.

Appendix A: Performance Measure Definitions and Business Rules

3-Year Recidivism Rate of Drug Court Participants:

This measure determines if drug court participants who have exited the drug court during last 3 fiscal years are reentering the justice system. The measure is determined by the number of drug court exits during a 3-year reporting period who reoffend (as defined in the applicable business rule below) divided by the total number of drug court exits for that same time period.

Applicable Business Rules:

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

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 drug court.

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

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

Number of Graduates:

This measure counts the number of participants who have successfully completed the drug court 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 drug court into the number of graduates.

Applicable Business Rule:

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

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 drug court 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 (equivalent to one 8-hour day per 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 drug court (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 drug court).

Retention Rate:

This measure determines the percentage of participants who remain in the drug court.

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.

Appendix B: Definitions

Advisory Committee/Board: A group that meets at least annually and brings in people representing the community, including business community, faith community, social services/nonprofits, other stakeholders or other people who may be able to promote sustainability, political support, and generate resources to meet participant needs. This group does not make program policies.

An advisory committee may serve many purposes, but one of the most important is sustainability. Thinking in terms of linking community resources, community partnerships will allow teams to access more services. Establishing relationships with potential stakeholders (such as employers) can be a great way to establish buy-in from the community as well as encourage their involvement. The team should also explore any potential stakeholders in childcare, transportation, education or the business or faith communities. Meeting at least annually allows committee members to learn about the needs of the program and its participants and discuss ways that resources can be generated to meet those needs. Meeting regularly can keep partners engaged and able to respond to changing political or community contexts. Including community members could result in expanded community understanding and support of the program, as well as additional services, facilities, and rewards for the program.

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 drug court but may not be suitable for placement.

Incentives: A reward for compliance with drug court rules and progress in treatment. Incentives may be in the form of less restrictive reporting standards, recognition for progress and successes, donated gifts from the business community or private citizens, etc.

Qualified drug court: Qualified drug courts 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.

Risk Factors: Risk assessment factors contributing to admission to the drug court 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, 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.

Steering Committee or Policy Committee: A group that meets separately from regular drug court team meetings to discuss program-level policies or practices. Membership ideally includes leadership (someone with decision-making authority) from the partner agencies in addition to the regular team members.

Every program needs a dedicated time for the important decision-makers from the partner agencies to get together and discuss policies and procedures, review data, and make changes that help the program improve. The policy committee may be the same group as the team, but it must include the individuals from each agency who have the authority to make decisions affecting their agency. The group can also meet during regular team meeting times, but there must be some distinction between the regular team meeting topics and policy committee topics, which are program-level rather than participant level discussions and actions.

Appendix C: Probation/Surveillance Officer Policies and Procedures (KC 1)

C-1 The court's probation/surveillance officer policies and procedures will address, at a minimum:

- a. Officer compliance monitoring responsibilities, including, but not limited to:
 1. Involvement with electronic monitoring devices;
 2. Drug testing duties;
 3. Verification of community service, employment, or educational components of the drug court;
 4. 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
 5. 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:
 1. 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 drug court dictates by performing drug tests, verifying curfew, etc.);
 2. A clear statement that field work should ideally be conducted in teams of two or more (see Practice 1 below);
 3. 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;
 4. 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.).
 - i. 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;
 - ii. 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
 - 1. 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. 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;
 - 2. The Policy must make clear what restrictions the training or certification place on the probation/surveillance officers. In all cases, the Policy shall provide:
 - i. Probation/Surveillance Officers shall not make an arrest;
 - ii. Probation/Surveillance Officers shall not seize evidence to be used in a new criminal prosecution;
 - iii. 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 drug court 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).

Appendix D: Confidentiality (KC 1)

D-1 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 should 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 and reviewed annually. This agreement shall include the roles and responsibilities of all parties, as well as what information will be shared.

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 drug court or non-compliance with the drug court (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.

D-2 Confidentiality continues to apply to drug court information and records even when the participant has voluntarily or involuntarily left the drug court.

D-3 Except as authorized by court order, 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.

Confidentiality - Security and Retention of Written and Electronic Records

D-4 Written records which are subject to these standards must be maintained in a secure location and access to these records limited to authorized individuals. The drug court judge, in consultation with the drug court team members, should determine access authorization to secure written records.

D-5 Electronic data which are 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. *(See Key Component #8.)*

D-6 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.

D-7 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.

D-8 Retention of and destruction of drug court records following graduation or exclusion from a drug court should follow the record retention and destruction schedules defined by Judicial Rules.

Confidentiality - Limited Authorized Disclosures

D-9 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 ensure 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 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.

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.

D-10 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 drug court or against drug court 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, drug court oversights, program evaluations, and reporting to the AOC's Statewide Drug Court Coordinator.
 6. To protect against the threat to life or serious bodily injury.

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

- 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

D-11 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 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.

Appendix E: Violent Offenders (KC 3)

E-1 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 drug court.

- 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.*

Appendix F: Minimum Standards for Treatment (KC 4)

F-1 The minimum standards for the 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. Substance abuse treatment
- e. Individual, family and group counseling
- f. Gender-specific counseling
- g. Domestic violence counseling
- h. Anger Management
- i. Criminal Thinking interventions
- j. Health screening
- k. Brief evidence-based educational curriculum to prevent health-risk behavior (e.g., STIs and other diseases)
- l. Brief evidence-based educational curriculum to prevent or reverse drug overdose
- m. Trauma-informed care
- n. Evaluation for suitability for group interventions
- o. Residential treatment
- p. Ancillary, adjunctive, and other services (services may be provided by the drug court or by arrangements with other agencies or providers), such as
 - Occupational (employment counseling and assistance; beginning in later phase of drug court)
 - Rehabilitative
 - Educational
 - Mental health assessment and counseling
 - Parenting education and child care
 - Medical and dental care
 - Transportation
 - Housing
 - Mentoring and alumni groups
- q. Minimum requirements of each phase
- r. Minimum requirements of self-help participation (for adult high risk/high need participants at a minimum)
- s. System of ongoing individualized reassessment and treatment planning,
- t. System of random alcohol and other drug testing (see KC 5)
- u. Transitional or aftercare counseling,
- v. 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.*

Appendix G: Legal Criteria for Drug Court Treatment Providers (KC 4)

G-1 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.

G-2 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.

G-3 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.

G-4 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.

G-5 The treatment provider shall develop written policies and procedures that will ensure compliance with these standards, the drug court requirements and the scope of services. The treatment provider shall provide services in accordance with the written policies and procedures.

G-6 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.

G-7 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.

G-8 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.

G-9 The treatment provider shall assure that participants meet the clinical criteria for admission to the program as established in conjunction with the drug court.

G-10 In support of comprehensive treatment for drug court participants, the treatment provider may establish a localized network of public and private agencies through memoranda of understanding or other formal agreements to provide supportive services as appropriate.

G-11 The treatment provider shall maintain fiscal records in accordance with generally accepted accounting principles, State requirements and any contractual specifications.

G-12 The treatment provider shall participate in fiscal, operational or other audits as required by the court or other authorized agency.

Appendix H: Drug Testing Protocols (KC 5)

H-1 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, 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 drug court program manager;
- f. Descriptions of what will be considered a "positive" test result (e.g., abnormal pH levels, flushing, etc.).

H-2 In addition, each drug court shall document its UA collection protocols in keeping with the following guidelines:

- a. All urine collection shall be observed except as described in subsection c;
- b. 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);
- c. 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 rare case of unobserved urine specimens, procedures must be documented that would minimize ability of defendant/participant to adulterate the specimen (e.g., verifying appropriate temperature of specimen through the use of temperature strips), and call the participant to be tested again (and observed) within 24 hours.
- d. Collectors shall be trained in collection and testing (and chain of custody procedures if appropriate for that drug court);
- e. Training, staffing levels, and testing location must minimize risk of sexual or physical harassment between collector and defendant/participant.
 1. Maintain a clinical, professional demeanor that is detached and impersonal
 2. Conduct the testing the same way every time for every participant
 3. Remember that some participants are fragile or have been through trauma (be sensitive to the reality that the testing process may be embarrassing to the client)
 4. There is a risk that participants in this population will accuse you of

mistreatment

5. There is a legal need for a chain of evidence, so it is crucial to follow protocols
6. Always ask three questions (to give the participant an opportunity to admit to use):
 - i. Have you used since the last time you were tested?
 - ii. Is there anything I should know about this sample?
 - iii. Will your test come back clean?

Practice 1: When staffing resources (either of the drug court or its treatment provider) make it difficult to collect urine specimens observed by a collector of the same sex as the defendant, the drug court 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.

Appendix I: Sanctions and Incentives (KC 6)

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

- a. Praise*
- b. Applause*
- c. Decreased frequency of court appearances*
- d. Decreased reporting*
- e. 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: The drug court judge may employ graduated sanctions to assist participants in complying with the drug court. Sanctions may include but are not limited to:

- a. Increased frequency of court appearances before the drug court judge*
- b. Appropriate terms of detention according to the terms of individual drug courts*
- c. Assignment to community service*
- d. Written assignments*
- e. Increased required meetings with case manager or probation*
- f. House arrest, curfews, and electronic monitoring*
- g. Extension of time in drug court*

Practice 4: Therapeutic interventions may be used as appropriate in conjunction with sanctions such as:

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

Practice 5: 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*

Appendix J: Fees (KC 6)

J-1 Fees can be charged for services, such as:

- 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 drug court
- i. Interpreter's fees
- j. Temporary housing assistance

J-2 Any proposed expenditures not included on the above list (e.g., emergency living expenses; drug court 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.

Appendix K: Data Elements (KC 8)

K-1 This is the list of preferred data elements for programs to collect:

- 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)
 - i. Misdemeanor
 - ii. Juvenile
 - iii. Felony
 - iv. Traffic
 4. Client Referral Type (drop down menu of the following)
 - i. Pre-adjudication (e.g., conditions of release)
 - ii. Post-adjudication (pre-sentence)
 - iii. Probation
 - iv. Parole
 - v. Probation violator
 - vi. Dual supervision (probation and parole)
 - vii. Child Welfare/Dependency

- 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 drug court Y/N
 - 5. Employed on exit from drug court 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. Drug court Activity (Taken in Progress)
 - 1. Referral date
 - 2. Intake date
 - 3. Current drug court phase
 - 4. Sanctions ordered
 - 5. Detention ordered
 - 6. Inactivation date
 - 7. Reactivation date

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

- j. Exit
 - 1. Termination from drug court (drop down menu of the following):
 - i. Voluntary Termination (no fault)

- ii. Involuntary Termination (at fault)
- iii. Transfer to another New Mexico drug court
- iv. Death
- v. Graduation to Aftercare Program
- vi. Graduation from drug court
- 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.

l. Program Costs

- 1. Treatment Costs
 - i. Start date (for cost data)
 - ii. End date (for cost data)
 - iii. Drug testing
 - iv. Client treatment
 - v. Client family treatment
- 2. Other Costs
 - i. Start date (for cost data)
 - ii. End date (for cost data)
 - iii. Direct staff (include pro-rated cost of part-time staff)
 - iv. Service costs (outside vendor costs billed to drug court not included in Treatment Costs)
 - v. Indirect staff (those providing services not directly paid by drug court)
 - vi. 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

K-2 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). These 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 above. 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 drug court. 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 on a semiannual basis and the total number of voluntary and involuntary terminations to determine the drug court 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. These 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. These data will be reported by each drug court and statewide.

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

K-3 The Administrative Office of the Courts shall be responsible for providing aggregate reporting on Performance Measures as defined above. The AOC shall be responsive to all reporting requests made by the LFC and DFA.

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 and compiled by the AOC's Statewide Drug Court Coordinator on a timely basis.