

# New York State Family Treatment Courts



## **EFFECTIVE PRACTICES**

## **ACKNOWLEDGMENTS**

In 2007, the Hon. Judy Harris Kluger, Chief of Policy and Planning for New York Courts, created a multi-disciplinary advisory committee, chaired by Judge Nicolette Pach (ret.), to identify the most effective and promising practices for New York's 55 family treatment courts. *New York State Family Treatment Courts: Effective Practices* is the culmination of the committee's work, which included literature reviews, extensive site visits to nine family treatment courts in and outside of New York State, a comprehensive survey of all New York family treatment courts, and of course, wide ranging and in-depth analysis of family treatment court policies and practices by the committee members. The document represents much of what the field knows about effective practices in family treatment courts and other promising approaches to the challenge of successfully maintaining or reuniting children with parents who struggle with addiction.

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At the Center for Court Innovation, Aaron Arnold spent countless hours editing the document. Lindsay Smith and Phillip Zielinski delivered critical administrative support.

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## Introduction

### *The Family Treatment Court Concept*

In New York, Family Treatment Courts handle child neglect cases under Article 10 of the Family Court Act when parental substance abuse is a factor. (Note that Family Treatment Courts rarely accept cases where the respondent is charged with abuse.) These courts are designed to provide parents with court-supervised substance abuse treatment and an opportunity to keep their families intact or, in cases where children have already been removed from their parents' care, to promptly reunite parents and children. The Family Treatment Court (FTC) mission is to achieve safe and timely permanency for children who have a parent in recovery. FTCs seeks to reunite or maintain children with the recovering parent as long as the parent can sustain a safe, stable, and nurturing permanent home for her family.

Family Treatment Courts seek to resolve the tension that often results when a child's development and a parent's treatment operate on different, and conflicting, timelines. Drug treatment and recovery are typically a long-term process complicated by the possibility of relapse. Child development and permanency placement, however, cannot be put on hold indefinitely. By overseeing the parent's treatment and recovery, FTCs attempt to achieve permanency for the child, preferably with the recovering parent, in a timely manner that is consistent both with the law and the child's developmental needs.

As in traditional family court proceedings, participants in the FTC are subject to the specific time limitations set forth in the federal Adoption and Safe Families Act (ASFA). The ASFA provides that a permanency hearing must be held within 8 months of a child's removal from her parents, and every six months thereafter, until permanency is achieved. The ASFA also requires the filing of a petition for the termination of parental rights if a child has been in foster care for 15 of the preceding 22 months. The statute elevates timely permanency for the child over all other considerations. If reunification is not possible within the time period prescribed by the ASFA, the FTC must make alternative permanent plans to assure that children are protected in safe and stable homes.

Given the strict time limitations imposed by the ASFA, FTCs should be structured to engage parents in sustained recovery while there is still sufficient time for reunification. Sustained recovery and timely reunification are best accomplished through the collaborative efforts of the Family Court, the local child protective services agency, substance abuse treatment providers, and other public and private agencies that can provide needed services to participating families. To help parents achieve and sustain recovery, FTCs should develop protocols for early identification of cases, prompt access to services, close monitoring of families, and the active participation and support of the entire FTC team.

FTC practitioners are encouraged to see themselves as part of a team effort to support parents in recovery. Although practitioners maintain their own professional obligations, they are expected to embrace a common goal. They are expected to deemphasize the adversarial nature of child neglect cases and replace it with a collaborative system of support for recovery. The FTC program is enhanced, and families ultimately benefit, when practitioners understand each other's obligations, appreciate the challenges of the recovery process, and learn to respect and trust each other's expertise.

Developing and maintaining an effective FTC requires the inclusion of all key stakeholders in an ongoing process of dialogue and consensus regarding roles and responsibilities. It requires protocols for effective, timely, and ongoing communication across the various stakeholder systems. And most importantly, it requires ongoing training and cross-training of practitioners, including the Judge, court personnel, attorneys, child protective services, treatment providers, and the many public and private agencies whose work touches the lives of participating families. All stakeholders must share a common understanding of the law as it pertains to families involved in FTC cases, the duties and obligations of the child protection system, the dynamics of addiction and recovery, and the philosophy and operation of the FTC.

Although a well-designed FTC can improve outcomes in child neglect cases, courts cannot solve this pervasive problem alone. Between 40-80% of child protection cases involve parental alcohol or other drug (AOD) abuse. In order to maximize the potential for recovery and reunification, communities must create facilitated access to AOD treatment from the inception of a child protective case all the way through the end of the court process. A community-wide approach offers the greatest potential to serve the many families in need of assistance, while saving the scarce resources of the FTC for families who are not willing or able to engage in recovery without court involvement.

### *Using this Document*

Today, most counties in New York State have established family treatment courts. Drawing on the collective experience of these courts, this document seeks to set out the philosophical underpinnings of FTCs and begin the process of identifying effective practices for courts to use, modify, or consider. This project was guided by an Advisory Committee composed of state and national leaders in the FTC field. The Advisory Panel met three times over 18 months to review and comment on this document.

This document is set out in two parts: (1) Guiding Principles for Family Treatment Courts, and (2) Effective Practices for Family Treatment Courts. The Guiding Principles draw upon the Advisory's Panel collective expertise. They represent overarching principles that should guide the operational practices of FTCs and should be reflected in most, if not all, the effective practices recommended in this document. The Effective Practices were derived from a combination of structured court visits within and outside New York State, information compiled from a statewide FTC survey, and a detailed literature review. Because no rigorous evaluation of New York State's FTCs has been

conducted to date, it cannot be said with scientific certainty that any particular practice or set of practices yields the optimal result. What is offered in this document are the practices that practitioners have found most promising or effective.

The practices outlined in this document are presented within a continuum that reflects the different stages of FTC development. Basic practices for courts in the early stages of development are listed in the “Starting Up” column. Practices that FTCs might add as they progress and gain experience are listed in the “Progressing” column. Finally, the “Advanced Practices” column lists practices that are enriched by experience and often require resources that may not be available to all courts. It is anticipated that most courts will find that they are using start up practices in some areas and more advanced practices in some others. This document is intended as a resource for assisting local FTCs to progress along the continuum of recommended practices.

Each section of this document begins with a statement of purpose. Next, recommended practices are set out in three columns as described above. Finally, narrative descriptions of the recommended practices explain the rationale for each practice and include concrete examples gleaned from surveys and court visits. It is hoped that, as courts review their practices, they can refer to the applicable sections in this document and use them as a starting point for enhancing their Family Treatment Court programs.

## **GUIDING PRINCIPLES FOR FAMILY TREATMENT COURTS**

- 1. Children come first in Family Treatment Court. Although Family Treatment Courts promote family unification by supporting parents in recovery, child safety and timely permanency take priority.***

The Family Treatment Court (FTC) model is designed to achieve safe and timely permanency for children who have a parent in recovery. FTCs seeks to reunite or maintain children with the recovering parent as long as the parent can sustain a safe, stable, and nurturing permanent home for her family. FTCs achieve positive outcomes by simultaneously embracing two objectives: (1) the respondent's recovery from alcohol and other drug (AOD) abuse; and (2) a permanent home for the children in a developmentally appropriate timeframe. If both objectives cannot be achieved, the children's needs take priority.

In FTCs, "family" includes the respondent parent, the non-respondent parent, the children, and extended family members who provide homes for the children or offer other support. FTCs recognize that "[u]nless the whole of a family's situation is addressed, substance abuse treatment is unlikely to be successful – and even if a parent achieves abstinence, the other issues present may continue to pose safety problems for the child(ren)."<sup>1</sup>

The law gives priority to maintaining or reunifying families so that children may be raised by their parents. At the same time, the Adoption and Safe Families Act (ASFA) sets out specific time frames in which, if reunification is not possible, the court must make alternative permanent plans to assure that children are placed in safe and stable homes.

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<sup>1</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION, BLENDING PERSPECTIVES AND BUILDING COMMON GROUND: A REPORT TO CONGRESS ON SUBSTANCE ABUSE AND CHILD PROTECTION (1999), available at <http://www.chhs.ca.gov/initiatives/CAChildWelfareCouncil/Documents/HHSReport.pdf>

## **2. *Prompt action is a central feature of FTC practice.***

Family Treatment Courts must act quickly to ensure child safety and engage parents in sustained recovery within the statutory time limits for reunification. FTCs swiftly identify eligible families and engage them in the FTC program. FTCs respond quickly to case developments that may impact child safety or the parent's recovery. These courts provide prompt access to a range of services required by families affected by a parent's alcohol or other drug abuse.

FTCs take into account three important, and sometimes differing, timing considerations when making decisions that affect a family. First, FTCs recognize that children have needs that must be met in a timely manner for healthy development. Second, FTCs operate with the understanding that engaging parents in substance abuse treatment takes time and that sustained recovery is a lifelong process. Third, FTCs realize that children cannot wait beyond their developmental tolerance for parents to engage in sustained recovery and, therefore, set time limits consistent with existing law within which children must be placed in permanent homes.

The federal Adoption and Safe Families Act (ASFA) imposes time limitations within which parents must be ready to resume their full parental roles. Under this Act, the court is required to hold a permanency hearing within eight months of the child's removal from his or her parents. At that hearing, the court reviews the case and determines whether reunification will continue to be the goal for the family. Insufficient progress requires the court to set an alternate goal. Absent compelling circumstances, Child Protective Services must file a petition to terminate parental rights if a child is in foster care during 15 of the preceding 22 months.

The "moment of crisis" caused by state intervention in a family's life can motivate parents to accept the assistance of the FTC and enter alcohol or other drug abuse (AOD) treatment. Access to treatment and other services must be swift, as the parent's motivation to accept treatment may diminish after the immediate crisis has passed, especially if the children are with kin and still easily accessible to the parent. While acknowledging that recovery is a life-long process, FTCs use the "moment of crisis," along with the time pressures imposed by the ASFA, to motivate parents to engage in treatment and retain parents in treatment during the critical early stages of the recovery process.

**3. *FTC eligibility criteria should be as inclusive as possible and reach out to challenging populations.***

The FTC team should set eligibility criteria that are equitable and inclusive. Given that 40-80% of abuse and neglect cases involve a substance abusing parent, the FTC must set priorities for eligibility. How many cases and what types of cases does the FTC have the resources to serve? Who will benefit the most from the available services? And how will the FTC best serve the needs of the community at large? Eligibility criteria should reflect both the FTC's ability to assist individual parents as well as maximize the program's positive impact on the community.

When identifying families to be served, the FTC should not exclude "difficult" cases. FTCs should accept "chronic clients," including those parents who have previously undergone AOD treatment or had other children removed from their homes. Accepting these challenging populations serves the dual purpose of assisting individual families with serious problems and, by reducing recidivism, alleviating the drain on community resources that these clients represent. In FTCs where the court has reached capacity or where the jurisdiction's resources are limited, the FTC should put a lower priority on serving parents who are new to family court and less seriously involved with substance abuse. These parents may be able to overcome AOD abuse without the intensive intervention of the FTC.

The FTC team should agree on clear eligibility criteria and develop a formal intake procedure to enroll eligible participants in a fair and consistent manner. Standards for filing a petition should not be altered to obtain enhanced access to services through the FTC.

**4. *FTCs facilitate access to services that meet the individual and co-occurring needs of parents, children, and other family members.***

FTCs recognize that parental substance abuse is only one component of the larger challenge facing FTC families. FTCs seek to provide services to address all factors that impede family reunification or interfere with safe and timely permanency for children. FTCs provide access to a comprehensive continuum of services to ensure that the individual needs of each child and family member are addressed.

Half of maltreated children show signs of abnormal development or abnormal weight. These children may exhibit speech or motor deficits, medical conditions related to their weight, or fetal alcohol spectrum disorder. Forty percent have not received recommended immunizations. Children are also vulnerable to mental health issues such as depression, anxiety, and post-traumatic stress disorder. Finally, the FTC must consider that maltreated children have an elevated risk of AOD abuse<sup>2</sup>.

In addition to their substance abuse issues, neglectful parents frequently suffer from mental health problems ranging from depression to more serious mental illness diagnoses. Up to 80% of neglectful parents have themselves been subjected to traumatic abuse, either as children or as adult victims of domestic violence.

FTCs serve the entire family, including the respondent parent, the non-respondent parent, the children, and any other care-givers. FTCs address the whole family's panoply of needs by linking families to supports like physical and mental health services, early childhood intervention services for developmental delays, and housing. They also assist families in securing a means of support and learning the skills necessary to maintain stability.

FTCs facilitate prompt access to services by minimizing barriers and cutting red tape. These courts supply many of the same services that are offered in traditional family courts, but they seek to do more than simply direct respondents to services. Rather, FTCs collaborate with service providers to facilitate access to needed services, monitor the family's progress in court-ordered service programs, and offer concrete assistance to engage and retain parents and family members in these services.

FTCs develop strategies for identifying co-occurring problems and linking family members to services that address them. Families in FTCs require assessments that go beyond substance abuse to include other factors that may prevent reunification. To ensure that parents receive all needed services, FTCs cultivate cross-systems relationships to maximize engagement and effectiveness.

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<sup>2</sup> KELLCHER, K., M. CHAFFIN, J. HOLLENBERG, AND E. FISCHER. "ALCOHOL AND DRUG DISORDERS AMONG PHYSICALLY ABUSIVE AND NEGLECTFUL PARENTS IN A COMMUNITY BASED SAMPLE." AMERICAN JOURNAL OF PUBLIC HEALTH 84.10 (1994): 1586-590.

**5. *FTCs utilize a collaborative team approach to coordinate the efforts of key stakeholders.***

Families often bring a complex set of problems to the FTC. Teamwork is essential to ensure that services are provided to each family in a comprehensive and sensible manner. The three principle stakeholders in the FTC model (the court system, Child Protective Services (CPS)<sup>3</sup>, and treatment providers) have distinctly different roles and responsibilities. Each performs specific tasks and measures success by its own benchmarks. The challenge is to facilitate cooperation so the team can work together to develop a service plan that is comprehensive and effective.

Traditionally, the Family Court Judge determines the appropriateness of state interventions to protect children, ensures that due process is protected, and manages the timely disposition of cases. The Attorney for the Child provides legal representation for the child and advises the child in a manner consistent with the child's capabilities. The respondent's attorney zealously represents the position of the respondent parent. The county attorney presents evidence to secure findings of fact and appropriate orders of disposition. The child protective services agency assures child safety and makes reasonable efforts to promote timely permanency. Treatment agencies engage substance-abusing parents and offer them tools to engage in sustained recovery.

The FTC is a collaborative model, designed to align all of these systems with one another, ensure that these systems are not working at cross purposes, and minimize duplication of effort. The objectives of each stakeholder remain constant, but they work to achieve their objectives within a model that differs from the traditional family court model. In FTCs, all stakeholders pursue their goals through the lens of the common mission: providing a safe and stable home for children who have a parent in recovery.

To support collaboration between stakeholders, the FTC model introduces two new roles to the traditional family court model: (1) the Resource Coordinator; and (2) the Case Manager. The resource coordinator works on the systems level to promote professional collaboration among stakeholder agencies. The case manager works on the individual case level to provide support to respondents and promote stakeholder collaboration on a case-by-case basis.

Cross-systems communication is essential for coordinating the activities of all FTC stakeholders. Regular communication between stakeholders ensures that each stakeholder group understands the requirements of the others. For example, information that pertains to child safety and well-being must be reported to Child Protective Services, while information that pertains to recovery must be communicated to the appropriate treatment provider. The FTC team must develop mutually agreeable

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<sup>3</sup> Although each county in New York has a lead agency responsible for child welfare, these agencies go by different names in different counties (e.g., Department of Social Services, Child Protective Services, Administration for Children's Services, etc.). For consistency, this document refers to all government child welfare agencies as Child Protective Services.

standards for the timing and mode of cross-systems communications to achieve the best possible results.

One forum for collaboration and communication is the team meeting or “staffing” held immediately prior to court case reviews. Staffings are a hallmark of the FTC model. FTC team members exchange information about the progress of each case, and the team formulates future plans or responses. Although local practices vary, staffing sessions are generally attended by the Resource Coordinator, Case Managers, CPS representatives, treatment staff, and other service providers. If the Judge attends staffing sessions, then attorneys for the parties should also be present, unless a specific waiver is signed.

The ideal FTC team is both fluid and seamless. Team members from each stakeholder group should be assigned to participate on the team for a significant period of time. Frequent turnover on the FTC team undermines team cohesion and can negatively impact the court’s ability to achieve its goals. By ensuring that team members remain on the team for extended periods, periodic staff turnover can be accommodated and new members brought into the team in an orderly and non-disruptive manner. When one team member is replaced, other familiar faces remain to provide continuity, and the team maintains a historical perspective of the FTC program and individual cases.

The FTC team functions most effectively when all team members understand the major substantive issues that FTCs address on a daily basis, including AOD treatment, the child welfare system, and the family court system. In addition, team members should be well-versed in the FTC’s mission, policies, and procedures. To ensure that team members develop this diverse knowledge, FTCs should institute ongoing training and education programs for all levels of stakeholder participation.

**6. *FTCs create coordinated case plans that are comprehensive, concrete, time-specific, and developed with family participation.***

Each FTC stakeholder group has its own requirements for individual and family case plans. The CPS plan must identify the problems that led to the neglect and make reasonable efforts to reunify or maintain the family. The substance abuse treatment plan must demonstrate that the participant's substance abuse will be sufficiently addressed by the level of treatment prescribed. The FTC's Order of Disposition must clearly specify the obligations of the parent and stakeholder agencies in addressing the circumstances that led to the neglect. Other service providers, such as mental health and child developmental services, develop case plans that identify family challenges and set forth strategies for overcoming them.

With several stakeholders devising case plans, there is a risk that the various plans could create duplication of effort, conflicting demands, or unrealistic expectations that frustrate and overwhelm families. Families are better served if the various FTC stakeholders come together to harmonize their plans. For this reason, FTCs should facilitate the development and ongoing review of a comprehensive family service plan. Each team member should share its plan with other team members. In this way, team members can reconcile conflicts, and prioritize and sequence tasks in a logical and manageable way. Ultimately, the FTC should create a single case plan that is individualized to meet the unique circumstances of each family.

FTCs should include families in the case planning process in a meaningful way. Family inclusion ensures that the comprehensive case plan is workable for the family and that the family feels invested in it. The FTC team should sit down with the respondent parent and appropriate family members to draft a plan that addresses the issues facing the family and is practical for the family to carry out.

**7. *FTCs monitor respondents and their families and respond promptly to issues that affect the family's progress toward permanency.***

FTCs differ from traditional family courts in the manner and intensity with which they monitor respondents and their families. FTCs review cases on a regular basis, sometimes weekly. The court has authority to review a broad range of matters, including the child's health, education, and early childhood intervention services, vocational services, independent living skills, and visitation with parents and siblings. The court also monitors the status of the respondent parent's recovery and the reasonable efforts of the court's involved agencies to achieve family reunification. These reviews enable the FTC team to update the court concerning the child's status and parent's compliance. The court, in turn, can use this information to promptly adjust case plans and court orders as individual family circumstances require.\*

\* The power to review cases falls within the inherent power of the Family Court and is further delineated in the Family Court Act: "If a child is placed...the case shall remain on the court's calendar and the court shall maintain jurisdiction over the case until the child is discharged from placement and all orders regarding supervision, protection or services have expired. The court shall rehear the matter whenever it deems necessary or desirable...." N.Y. FAM. CT. ACT § 1088.

The FTC measures participant progress against benchmarks set out in phases through which participants must advance. Expectations for phase advancement are made clear to participants upon admission to the FTC program. A system of timely responses to participant behavior holds participants accountable, helps keep parents in treatment, supports improved parenting, and fosters a safe and stable lifestyle. Responses, which include both "sanctions" and "rewards," are tailored to fit the individual circumstances of each participant and each case.

FTCs deliver three major types of responses to participant behavior: clinical, child protective, and motivational. Clinical responses adjust participants' treatment modalities to promote sustained recovery. Child protective responses safeguard child welfare and are employed when a parent's behavior is dangerous to a child. Motivational responses are designed to encourage parents to change their behavior by applying positive or negative incentives. They are strength-based and focused on teaching skills that support reunification, recovery, and a stable lifestyle.

Positive responses fit comfortably within the Family Court's objectives. FTCs develop responses to non-compliance that are designed to change behavior, not simply punish the parents. Parents are motivated by a predictable system of rewards for achieving milestones. Positive re-enforcement of behavior that is consistent with recovery and reunification encourages compliance. Personal responses from the bench and team members are meaningful to participants, as are token incentives given in a manner consistent with judicial ethical standards.

FTCs may respond to parental behavior in ways that are not considered "sanctions" or "rewards." For instance, a protective response may be required if a parent has relapsed,

rendering unsupervised contact with the child unsafe. As a consequence of (not a punishment for) the relapse, parent-child contact may revert to supervised rather than unsupervised visits. Conversely, increased contact with children, and ultimately reunification, is a consequence of (not a reward for) compliance.

Unlike criminal drug courts, FTCs do not ordinarily use incarceration as a sanction for noncompliance. The focus of FTC intervention is safeguarding the child, not punishing the parent. If incarceration for contempt is used as a sanction, it should be calculated to secure compliance with court orders so that the opportunity for reunification is optimized. When the balance has been tipped away from reunification to an alternate permanent plan, further punitive responses to parental behavior may not be justified.

FTC participants are parents struggling with AOD abuse. Therefore, drug testing is a central component of the court's monitoring function.\* Drug testing enables the court to track participants' recovery and detect relapses. Drug testing may also serve as motivation for the parent to remain abstinent. While FTCs use frequent, random, and observed drug testing as one tool in determining compliance, such testing is not conclusive proof of abstinence. Close monitoring of the parent's progress with all aspects of the family service plan provides a more complete picture.

\* FTCs are authorized to conduct drug testing under three circumstances. First, the court may, upon probable cause, order drug testing prior to the filing of a Family Court petition pursuant to Family Court Act § 1038(a). Second, a participant may agree to drug testing as part of the contract signed upon entering the FTC program. Third, the court may order drug testing after fact finding, as a condition of an Order of Disposition.

Although parental substance abuse is the common factor in all FTC cases, it is almost never the only concern that led to intervention by Child Protective Services and the court system. FTC families have a high prevalence of other factors that affect their functionality and stability. Any challenge left unaddressed can undermine family stability, reunification, and abstinence. To effectively address these complex problems, FTCs actively monitor case progress and compliance with case plans and respond swiftly to noncompliance.

**8. *FTC Judges encourage individual participants, hold FTC agencies accountable, and provide community leadership.***

A committed and enthusiastic Judge is critical for the creation and long-term health of any FTC program. The Judge should be willing to take a new approach to interaction with litigants, stakeholders, local agencies, and the community. The Judge plays a central role in the ongoing development and maintenance of the FTC program. Although others are responsible for the day-to-day court administration, the Judge's leadership can promote buy-in from necessary stakeholders and from team members as well.

In the FTC model, the Judge becomes an integral part of participants' recovery by presiding over frequent court reviews and engaging in direct interaction with respondents. The Judge praises steps toward success, encourages participants who are struggling, and responds firmly to non-compliance. Frequent interaction with the Judge provides participants with opportunities to measure their own progress toward reunification. Adherence to the one family/one Judge standard ensures continuity in expectations and decision-making.<sup>4</sup>

The FTC Judge also monitors whether stakeholders are meeting their commitments. At court reviews, the Judge has the opportunity to ensure that Child Protective Services is making reasonable efforts to assist families and that other services are being provided to families as required.

FTC effectiveness depends on the availability of appropriate remedial services for parents, children, and families. Although Judges may not solicit funds to support the provision of services, they may exercise their leadership role by educating the community and governmental bodies on the efficacy and importance of the FTC, thereby encouraging support for the services and resources needed to assist individuals and families in the FTC program.

The Judge also serves as the timekeeper for the Adoption and Safe Families Act. This statute requires the court to conduct permanency hearings on a schedule designed to prevent a child from lingering in foster care. If sufficient progress has not been made by the parent in accordance with ASFA time limits, the Judge must designate an alternate plan to secure a safe and stable home for the child.

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<sup>4</sup> See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES (1995), available at <http://www.ncjrs.gov/pdffiles/resguid.pdf>

**9. *FTCs collect, analyze, and use data on child permanency and family recovery goals to improve both family outcomes and the FTC program.***

Self-evaluation is critical to FTC program success. By collecting, measuring, and analyzing program results, FTCs can improve their operation and demonstrate to the community the impact of the program on the children and families they serve. Successful evaluation requires a disciplined approach, but it does not necessarily require a large scale and expensive outside evaluator.<sup>5</sup>

Stakeholders should take time to consider what kind of information is important for demonstrating the program's value to court administration, policy-makers, and the community. Stakeholders should determine what measures will help them evaluate the impact of the FTC program on parents, children, families, and the community at large, as well as the efficiency of program operations. The FTC should identify any agencies that are already collecting relevant data.<sup>6</sup> If critical data are still missing, FTC should explore opportunities to collect the data itself or through another source.

Exit interviews are one cost-effective method for gathering information on program performance and are included in the Universal Treatment Application, which is used to record FTC data. By conducting interviews with FTC graduates and, if possible, with participants who leave the program without graduating, the court can obtain valuable feedback to help identify effective and detrimental practices.

Periodic interviews with team members can also provide insight into gaps in services and other program inefficiencies that require attention.

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<sup>5</sup> See MICHAEL REMPEL, ACTION RESEARCH: USING INFORMATION TO IMPROVE YOUR DRUG COURT (2005), available at <http://www.courtinnovation.org/uploads/documents/Action%20Research.pdf>

<sup>6</sup> FTCs may obtain relevant data from the Family Court's Universal Treatment Application, the Uniform Case Management System, the New York State Office of Alcoholism and Substance Abuse Services (OASAS), and the jurisdiction's Department of Social Services.

**10. *FTC practices comport with due process, state and federal laws, and the purposes of Family Court practice.***

FTCs offer parents the opportunity to engage in long-term recovery for the purpose of maintaining or reunifying their families. However, the FTC's efforts to unite parents and children must be tempered with the protection that the law affords to individuals involved in child neglect proceedings.

Although the FTC model has created new and innovative approaches to achieving parental sobriety and unifying families in safe and stable homes, these courts are subject to the same limitations and regulations as other Family Court parts. FTCs operate within a dense legal framework governing neglect proceedings, including Articles 10 and 10-A of the Family Court Act, state and federal laws respecting confidentiality, and other statutory, regulatory, and ethical requirements applicable to the members of the FTC team by virtue of their status as legal, medical, and social work professionals.

FTCs must observe and protect the rights of children whose parents are involved in neglect proceedings. Children have the right to ongoing family contact, and this contact is essential to their well-being and development. FTCs must take care to promote frequent contact between children and parents as well as children and other family members, as long as family contact serves the child's best interest, safety, and well-being.

FTCs typically require parents to waive substantive rights in order to enter the program. The court must ensure that waivers are knowing and intelligent and that the process of securing these waivers is not coercive. Parents should be represented by counsel, who can assist the court in determining if the parent is competent to execute a waiver. Counsel and the court should consider the impact of drug and alcohol use on a parent's ability to understand his or her rights. The substantive content of waivers must comport with state and federal law and due process.

Communication between the Judge and team members is central to an effective FTC program. Nonetheless, communication must respect the prohibition against *ex parte* communications. Likewise, communication among team members should adhere stringently to professional ethical standards and state and federal law. Confidential information must not be shared in open court or in contexts prohibited by law.

FTCs impose sanctions for participant non-compliance. These sanctions, although not punitive in nature, are important for motivating participants and holding participants accountable for their behavior. In imposing sanction, FTCs must observe due process and all applicable legal requirements afforded in Article 10 and 10-A of the Family Court Act. The purpose of neglect proceedings is to remedy the difficulties that brought the family before the court, not to punish the respondent parent. Sanctions should be calculated to achieve the court's goals of parental sobriety and family unification.

## **EFFECTIVE PRACTICES**

### **I. ADMINISTRATIVE STRUCTURE**

#### **A. OFFICE OF COURT DRUG TREATMENT PROGRAMS (OCDTP)**

Under the direction of the Chief of Policy and Planning for New York State Courts, this office is responsible for the statewide implementation, expansion and support of drug treatment courts. The OCDTP works with the County / District Administrative Judges Office in each Judicial District to provide support and on-going assistance to New York's drug treatment courts. The Office also works with other agencies in the Unified Court System (UCS) to provide drug courts with coordination and operational assistance. Some of the Office's roles and responsibilities are:

##### **Leadership**

The OCDTP is under the umbrella of the Office of Court Administration (OCA) and seeks to implement the Chief Judge's goals. To this extent, the Office establishes and maintains relationships with state and national agencies and associations involved with treatment courts; participates in a number of projects with other State agencies, including drug court research; and provides technical assistance on issues related to drug treatment courts.

##### **Operations**

The OCDTP has regional project managers who respond to requests for technical assistance and work with each district office to implement and support the operation of each treatment court. Collaboratively, the Offices identify and implement best practices and innovative procedures, and develop and implement statewide treatment court policy and procedures. The district office may reach out to the OCDTP to discuss and problem-solve issues concerning the operation of their drug treatment courts.

##### **Human Resources**

Treatment Courts are supported by the dedicated work of Unified Court System (UCS) staff, including case managers and coordinators. The OCDTP participates on interview panels for available positions in the drug treatment courts; makes recommendations on Requests for Reclassification; participates in the development of Personnel Title Standards; and makes recommendations on appropriate work volume by title.

##### **Fiscal**

The UCS Budget Office handles all financial matters for the court system. The OCDTP submits budget proposals to support statewide drug treatment court initiatives, such as trainings, opening new courts, or requests for new positions.

**Technology**

The use of technology is a critical component in New York's treatment courts. New York's utilizes a statewide management information system called the Universal Treatment Application (UTA). Among many other uses, the data received is used to provide national statistics and assist in research. The OCDTP provides training for users of the UTA and incorporates user feedback to develop enhancements and modifications to meet state and local needs. The Office also establishes and maintains the Problem-Solving Section of the UCS Intranet website, and participates in the development of new computer programs and applications.

**Training**

The OCDTP recognizes that ongoing training is important to the development and operation of treatment courts. The Office works with the Center for Court Innovation and national training experts to conduct statewide training sessions for new UCS employees and non UCS team members of drug treatment court teams, and for entire drug court teams. The Office also works with individual courts to develop and implement forums to speak to the community about treatment courts, and upon request, conducts special on-site trainings on a variety of topics.

## B. FAMILY TREATMENT COURT STEERING COMMITTEE

FTCs typically require stakeholder groups to make a substantial commitment of time and resources. Moreover, FTCs can impact the way that stakeholder entities conduct their business, sometimes requiring high-level approval of new policies and practices. For these reasons, FTCs should be guided by a Steering Committee made up of stakeholder leaders. A Steering Committee can help to sustain the FTC and support it both financially and with in-kind contributions. A Steering Committee can help ensure the availability of services necessary to support the recovery of the FTC population. Furthermore, a Steering Committee can serve to reinforce the message to Operational Team members (section B below) that their collaboration in the FTC effort is expected and within their job requirements.

<b>Starting-up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p>The Steering Committee includes leaders from key stakeholder groups, including:</p> <ul style="list-style-type: none"> <li>• Judge and court administration</li> <li>• AOD treatment providers</li> <li>• Child Protective Services</li> <li>• Department of Mental Health</li> <li>• other community-based agencies</li> </ul>	<p>The Steering Committee adds additional service providers and agencies that serve the FTC population</p>	<p>The Steering Committee adds representatives of the participant population</p>
<p>The Steering Committee meets at regular intervals</p>		<p>The Steering Committee schedules meetings to ensure that FTC concerns and needs are accounted for in the county planning/budget calendar</p>
<p>The Steering Committee receives regular reports on FTC functioning</p>		<p>The Steering Committee advocates for service providers to respond to the specific needs of the FTC population</p>

The Steering Committee reviews the need for resources and financial support	The Steering Committee works to commit member agency resources to support FTC grant applications	The Steering Committee works to ensure that the FTC is included in the county planning and budget process
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**Recommended Practice:** The Steering Committee should include the leadership from:

- court staff (including the Judge and court administration);
- Child Protective Services (CPS);
- the Department of Mental Health; and
- substance abuse treatment providers.

Additionally, the Steering Committee should add representatives of other community-based agencies whose work is impacted by the operations of the FTC or whose clients include the FTC population.

**Rationale:** Many FTC Steering Committees begin with representatives from the court, CPS, and substance abuse treatment providers. Experience shows, however, that the county Department of Mental Health is also an essential stakeholder, as FTC families are so frequently afflicted with mental health issues. Additionally, FTC families often require assistance from other service providers. For optimum support, the FTC steering committee should reflect the full range of services that these families require.

**Recommended Practice:** Consider including more than one representative from each stakeholder, depending on the size of the jurisdiction and the complexity of the stakeholder groups involved.

For example, court representation may include:

- the District Administrative Judge;
- the FTC Judge;
- the Chief Clerk of the Family Court;
- a Court Officer representative;
- the FTC Resource Coordinator;
- a respondent’s attorney representative; and,
- an Attorney for the Child representative.

**New York Experience:** In less populous communities, Steering Committee membership often overlaps Operational Team membership (see Section B below). In large urban communities, by contrast, top stakeholder executives may not be available to participate on the Steering Committee, choosing instead to designate lower-level representatives with sufficient authority to speak for their agencies, address policy issues, and offer both the financial and in-kind programmatic support necessary to support the FTC.

Child Protective Services representation may include:

- the Commissioner of Social Services;
- the Director of Child Protective Services;
- an investigator representative;
- a Preventive Services representative;

- a Foster Care Services representative; and
- a County Attorney/Corporation Counsel representative.

Department of Health representation may include:

- the Commissioner of Health;
- the Director of Mental Health;
- the Director of Substance Abuse Services; and
- the Director of Public Health Nursing.

**Rationale:** In larger counties with more complex stakeholder structures, one representative may not be aware of the impact of FTC operations on other parts of their agency.

**Recommended Practice:** Consider including a representative of the participant population on the steering committee.

**Rationale:** An FTC graduate, or a person in recovery who has experienced the intervention of the Family Court, CPS, and AOD treatment, can help the Steering Committee understand the experiences and perspective of the FTC population.

**Recommended Practice:** As the FTC Steering Committee develops institutional knowledge and identifies gaps in services for FTC families, it may evolve into a Community Service Board that works more broadly to address unmet community needs and improve the local delivery of services. If the county has a pre-existing Community Service Board that includes key stakeholders from the FTC, consider incorporating the FTC Steering Committee into the Community Service Board rather than creating another committee.

**Rationale:** Folding the FTC Steering Committee into a Community Service Board is practical, saves time and energy, and provides a broader base of support for the program.

**Recommended Practice:** The Steering Committee should meet a minimum of one time per year. Meetings should be scheduled in coordination with county budget and planning deadlines.

**New York Experience:** In Erie County, the Court Improvement Project Steering Committee serves as the Steering Committee for the FTC. A subcommittee of that group serves as an advisory board to the FTC.

**Rationale:** The Steering Committee should meet frequently enough to remain connected to and well-informed about the FTC. However, given that Steering Committee members typically have other high-level responsibilities, the members' time should be respected and used sparingly. To maximize effectiveness, Steering Committee meetings should be scheduled around county budget and planning deadlines to ensure that FTC concerns are accounted for in the county planning and budget process.

**Recommended Practice:** The Steering Committee should use memoranda of understanding (MOUs) and internal stakeholder policy pronouncements to demonstrate its support for the FTC model and the FTC’s specific policies and procedures.

**Rationale:** By signing a memorandum of understanding or issuing policy statements, Steering Committee members encourage the cooperation of the community and their own employees, supervisors, and line workers.

**Recommended practice:** The Resource Coordinator and the Judge should keep the Steering Committee informed of:

- the FTC’s successes and challenges in meeting process and outcome goals;
- the documented needs of FTC participants and families;
- gaps in services; and
- the FTC’s current budget and anticipated future budget requirements.

**Rationale:** A well-informed Steering Committee is essential for maintaining institutional commitment to the FTC model and enhancing the FTC’s support for families in recovery. The Steering Committee requires detailed information about FTC performance to fulfill its role in securing resources for the FTC. Moreover, thorough information will enable Steering Committee members to create and support the services needed by the FTC population by: (1) working within their own agencies to deliver needed services; and (2) approaching other community-based service agencies to enlist their collaboration in meeting the needs of the FTC population.

**Recommended Practice:** From the outset, grant funded courts should plan for sustaining the FTC beyond the initial grant period and authorize appropriate action. Given the lead time required to secure alternate funding or in-kind services, sustainability must be an early and recurring agenda item.

**Rationale:** It is essential to plan for post-grant sustainability long before grant money runs out, especially for FTCs that were created with implementation grants from the federal government after participating in the Bureau of Justice Assistance Family Dependency Treatment Court Training Program.

**Recommended Practice:**

Steering Committee members should commit in-kind resources and assign existing staff to co-locate at the FTC. In addition, the Steering Committee should encourage other service providers and the community at large to be responsive to the needs of the FTC population.

**New York Experience:** Experience demonstrates that attorneys, particularly respondents’ attorneys, should be included in the FTC planning process from the outset and throughout the court’s development. Attorneys are in a position to recommend or discourage FTC participation by their clients, and their input can ensure that the court provides meaningful benefits to parents while protecting parents’ rights.

**Rationale:** In-kind contributions can help sustain the FTC going forward and significantly lessen the FTC's impact on local budgets.

**Recommended Practice:** Steering Committee members should ensure that their agencies pursue grants to support FTC operations or fund services necessary for FTC families.

**Rationale:** Grants can be used to support not only FTC program operations, but also to fill gaps in services for FTC participants, including child care, domestic violence services, expanded parent-child contact, evidence-based parenting programs, and other supportive programs.

**Recommended Practice:** Steering Committee members should integrate the needs of the FTC population into their agencies' annual planning processes and budgets.

**Rationale:** Most county agencies and courts engage in multi-year planning. Funding for FTC staff and operations is likely to be excluded from the relevant budgets unless FTC representatives are involved in the budget planning process. Although all stakeholders share responsibility for funding the FTC, it is expected that different stakeholders will take responsibility for the aspects of the program that fit within their area of expertise.

### C. FAMILY TREATMENT COURT OPERATIONAL TEAM

The FTC's Operational Team consists of the personnel who work directly with FTC participants on a day-to-day basis. An effective Operational Team should work toward consensus on policy and procedure enhancements and resolve any challenges that impede smooth operation of the FTC program. The Operational Team can avoid duplication of effort, working at cross-purposes, and making conflicting demands on participants. The Operational Team should engage in collaborative case planning and strategies to support families in recovery. Operational Team members continue to be supervised by their respective agencies' normal chain of command, but they also consult with other Operational Team members to ensure that a consistent message is presented to FTC participants. The Operational Team is also responsible for providing recommendations and reports to the Steering Committee.

Starting-up Practice	Progressing Practice	Advanced Practice
Operational Team members understand the structure and philosophy of the FTC model	Operational Team members integrate FTC policies and procedures into their daily practices	The Operational Team works with community-based service providers to address gaps in services for FTC participants
Operational Team members respect the experience and expertise of each stakeholder agency	The Operational Team makes FTC practices consistent with the requirements of each stakeholder	Operational Team members actively seek out and utilize the expertise of other stakeholder agencies
<p>Each stakeholder agency selects a representative to become part of the Operational Team</p> <p>Stakeholders support consistent participation of Operational Team members</p> <p>Stakeholders inform the Operational Team in advance of transition in team representative</p>	<p>Operational Team members should be assigned to the FTC for a minimum of 12-18 months</p> <p>Membership turnover is anticipated and planned for</p> <p>The Operational Team ensures the prompt orientation and training of new team members</p>	

<p>The Operational Team meets periodically to discuss management issues, including:</p> <ul style="list-style-type: none"> <li>• trouble-shooting</li> <li>• reviewing day-to-day operations</li> <li>• amending policies and procedures</li> </ul>		<p>The Operational Team conducts annual program reviews, which evaluate:</p> <ul style="list-style-type: none"> <li>• program operations</li> <li>• case outcomes</li> <li>• policies &amp; procedures</li> </ul>
	<p>Operational Team members encourage their stakeholder agency colleagues to utilize the FTC program</p>	<p>Operational Team members assist their stakeholder agency colleagues in assessing the FTC program</p>
<p>Respondent attorneys and the Attorneys for Children serve as members of the Operational Team</p> <p>The Operational Team appreciates the professional and ethical obligations of attorney members</p>		
<p>The Operational Team coordinates cross- training and team-building activities</p>	<p>The Operational Team schedules regular cross-training and team-building activities</p> <p>The Operational Team trains new members of the Operational Team</p>	
<p>The Operational Team periodically reports to the FTC Steering Committee</p>		

**Recommended Practice:** Operational Team members should understand and implement the policies and procedures of the FTC. New team members should attend orientation and training and familiarize themselves with the court’s Policies & Procedures Manual and Participant Handbook.

**Rationale:** For most Operational Team members, working within the FTC is a collaborative effort that differs significantly from working independently within their own respective disciplines. FTC protocols should help Operational Team members appreciate the work of other team members as well as the demands that the FTC program places on participants. Operational Team members should progress rapidly from basic familiarity with the FTC program to integrating FTC policies and procedures into their daily practice.

**Recommended Practice:** Stakeholders should assign specific individuals to serve on the Operational Team for a minimum of 12-18 months and should promote Operational Team consistency. Operational Team members should be expected to fulfill their individual roles while also becoming familiar with the types of expertise practiced by their Operational Team colleagues. Over time, Operational Team members should learn to recognize when the expertise of other team members is needed. In such cases, team members should give and seek assistance freely.

**The New York Experience:** In some jurisdictions, each stakeholder agency assigns more than one staff person to the Operational Team. Some stakeholder agencies also designate an FTC liaison, who is responsible for monitoring Operational Team activities and ensuring that the agency's team members are providing the Operational Team with sufficient information to enable effective monitoring of participant behavior.

**Rationale:** Effective Operational Teams have stable membership. Team functioning will improve over time as team members gain insight into the roles and expertise of others and trust among team members increases.

**Recommended Practice:** The Operational Team should identify gaps in services experienced by FTC families. Where appropriate, the Operational Team should work with community-based providers to develop services that meet the needs of the FTC population. The Supervisory Team should also bring these service gaps to the attention of the Steering Committee.

**Rationale:** Operational Team members are in the best position to assess whether the services available to the FTC population are adequate and whether there are discernable service gaps.

**Recommended Practice:** Operational Team members should share information about the FTC program and its benefits with staff in their own agencies and encourage co-workers to learn about and utilize the FTC program. Operational Team members should facilitate collaboration with the FTC program.

**Rationale:** Operational Team members who recognize the benefits that the FTC program offers to participants are the natural communicators of the effectiveness of the FTC. Increased awareness of the FTC and its practices will promote appropriate referrals to the court, which in turn, will help sustain the program.

**Recommended Practice:** Stakeholders should attempt to give advance notice of any changes of staff assigned to the FTC. Sufficient lead time allows for orientation and training of new members before they are required to assume full FTC responsibilities. The FTC should develop a protocol for new team member orientation and training, making it available promptly upon the assignment of new staff.

**Rationale:** If properly anticipated, changes in Operational Team membership need not be disruptive to the operation of the FTC program. Formal protocols for integrating newly-assigned members into the Operational Team will help new members learn FTC policies and procedures and become familiar with individual FTC families. New members should be incorporated into the FTC as quickly as possible to avoid unnecessary disruption to participants' progress.

**Recommended Practice:** Periodic meetings of the Operational Team, including the Judge, should be held separately from regular staffing to facilitate the exchange of ideas for program improvement and to address working relationships, operational challenges, and any conflict.

**Rationale:** Operational Team members should work to improve collaboration and hone FTC practices. Concerns and conflicts, which are inevitable in a team setting, should receive prompt attention. Experience shows that FTC participants can easily recognize and manipulate a fractious team. For this reason, discord undermines the consistency required to hold participants accountable. The Operational Team members can resolve many problems among themselves if they have a forum to discuss these issues with each other. Often, simple clarification and discussion are sufficient to resolve ongoing issues. More serious concerns, including those involving stakeholder agency policies, should be referred to an appropriate supervisor.

**Recommended practice:** The Operational Team should conduct an annual off-site workshop with the Steering Committee to review the FTC mission, philosophy, and operation. At that meeting, goals should be set for the upcoming year. Subcommittees should be designated to carry out plans for improvement.

**Rationale:** Convening an off-site team meeting that includes the Steering Committee allows the entire group to step back and assess the long-term goals of the program, measure program outcomes, identify systemic weaknesses and brainstorm solutions. Conducting the meeting off-site diminishes the inevitable interruptions that occur in the regular work environment and tend to enhance team building and sharing of ideas.

**Recommended Practice:** The Operational Team should assess the functioning of the FTC by conducting periodic program reviews. These reviews should track the progress and outcomes of FTC cases utilizing relevant data collected in the Universal Treatment Application.

**Rationale:** Periodic review of case data will inform the Operational Team of program areas that need attention. Data analysis will alert the team to changes in referral practices, overall performance of treatment providers, failure and success patterns, etc. Program staff can then focus their attention on specific areas of concern.

**Recommended Practice:** Attorneys for FTC respondents and children should be considered critical members of the Operational Team. Institutional providers of legal services should assign attorneys to the FTC on the same consistent basis as other stakeholders. Respondents and children should continue to be represented by their own attorneys throughout the FTC process, including pre-court staffing and in-court reviews.

**Rationale:** Although FTCs generally reduce the adversarial nature of neglect proceedings, pre-court staffing and in-court reviews can raise issues that significantly impact participants' legal rights. These issues should be addressed only after each participant has had an opportunity to discuss her options with an attorney. Decisions must be based on each participant's informed understanding and consent, where appropriate. Providing a single attorney to represent the interests of all parents or children involved in FTC cases is not sufficient protection for participants' legal rights. A "generic" attorney, when faced with pressure to conform to the team consensus, may be more likely to accommodate the team's wishes than advocate zealously for each client's interests. By contrast, specifically assigned attorneys retain a clear obligation to be zealous advocates for their clients. The ethical and legal requirements of Family court practice do not change in the treatment court setting. Counsel must differentiate between the need to support recovery as a team member and the obligation to advocate for one's client.

**New York Experience:** Some courts, like the Erie County FTC, have found that using substitute counsel is unavoidable, as it is not feasible to require each participant's attorney to appear for each staffing and court review. To address this situation, Erie County FTC schedules individuals for the same day of the week, e.g. Mondays, so that each family works with the same appointed attorney each time they come to court. This system makes it possible for substitute attorneys to become familiar with their cases and better represent the interests of their clients. The substitute attorney is permitted to represent each FTC participant personally or request an adjournment to allow the participant's regular attorney to be present.

**Recommended Practice:** The Operational Team should take responsibility for coordinating cross-training and team-building activities for team members by:

- developing a cross-training and team-building plan;
- scheduling regular cross-training and team-building exercises; and
- inviting experts and training programs from each stakeholder agency to assist with training and team-building.

**Rationale:** See Section D below.

**Recommended practice:** The Operational Team should report to the Steering Committee periodically and seek the Steering Committee's assistance enhancing the FTC and implementing changes in FTC policies and procedures.

**Rationale:** The Steering Committee relies on information from the Operational Team to effectuate its obligations to the FTC. Reporting as a team rather than through each member's separate chain of command helps build consensus and collaboration.

## D. FAMILY TREATMENT COURT CROSS-TRAINING AND TEAM-BUILDING

Members of the FTC Operational Team must adjust to working collaboratively across disciplines while continuing to work within their own organizations' chains of command. Although local service agencies may have previously shared clients, these agencies are not generally well-acquainted with the requirements of each other's jobs or their professional obligations. Cross-training of FTC personnel offers these agencies and individuals an opportunity to learn about each other's skills and expertise, thereby promoting effective collaboration. Such training may also improve the team's professional skills and job satisfaction.

<b>Starting-Up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p>The FTC utilizes cross-training activities, which are attended by the Operational Team</p> <p>Cross-training topics include:</p> <ul style="list-style-type: none"> <li>• AOD addiction and recovery</li> <li>• legal issues</li> <li>• child welfare issues</li> <li>• community-based services</li> <li>• FTC operations and philosophy</li> <li>• confidentiality concerns</li> <li>• UTA and other databases</li> </ul>	<p>The FTC employs regularly-scheduled cross-training activities</p> <p>Cross-training is expanded to cover additional topics, including:</p> <ul style="list-style-type: none"> <li>• domestic violence</li> <li>• housing</li> <li>• mental health</li> <li>• child development</li> <li>• trauma-informed systems of care</li> <li>• effects of trauma</li> <li>• voc-ed</li> </ul>	<p>The FTC implements advanced training to address new developments and needs</p> <p>Cross-training is further expanded to include:</p> <ul style="list-style-type: none"> <li>• motivational interviewing</li> <li>• stages of change</li> </ul>
<p>The FTC organizes team-building events, such as presentations on the professional responsibilities of each team member</p>	<p>Team-building training reinforces FTC policies and procedures for existing and new team members</p>	<p>Team-building training addresses the impact of vicarious trauma with opportunities to engage in self care</p>

**Recommended Practice:** Operational Team members should receive ongoing training covering such topics as AOD addiction and recovery, legal issues in child neglect cases, and child welfare concerns. FTC team members should attend national or state conferences when possible. Jurisdictions should also utilize the expertise of team members or local experts to make presentations to the team. Training should be scheduled regularly and repeated periodically for all FTC team members.

**Rationale:** Team members are not often well-acquainted with the substantive knowledge that other team members apply in their daily practice. Nonetheless, each team member is asked to work collaboratively with families that are impacted by substance abuse, child welfare concerns, and legal issues. Because families are required to navigate across multiple systems to address their problems, team members must be equipped to assist them. Some appreciation of the diverse topics that families face will assist team members to support families holistically. Moreover, research continually produces new evidence-based practices, and team members come and go over time. For these reasons, training must be an ongoing endeavor.

**Recommended Practice:** Participation in training should be strongly encouraged by stakeholder management.

**Rationale:** Training enhances team members' ability to interact effectively with FTC families who are experiencing complex problems. High-level support for training activities reinforces the notion that the time spent on training is worthwhile and reflects a strong commitment to the FTC way of doing business.

**New York Experience:** Although some FTCs will be able to send their team members to state or national conferences, most probably will not. Local training opportunities are therefore critical for ongoing team education and professional development. These training opportunities may consist of formal conferences, but they can also be informal "brown bag" lunches where local experts make presentations about relevant issues. Examples of specific local programs in New York include Babies Can't Wait (Permanent Judicial Commission on Justice for Children, Court Improvement Project) and the Suffolk County Department of Health Division of Drug and Alcohol services training program.

**Recommended Practice:** FTC training should gradually be expanded to include additional issues that frequently impact FTC families, such as domestic violence, housing, mental health, and child development, as well as new developments in the field, including motivational interviewing and stages of change. Team members should also be acquainted with the range of community services available to address these issues.

**Rationale:** FTC families typically face multifaceted challenges that require services beyond AOD treatment. Comprehensive training enables team members to recognize issues that may present barriers to recovery. In order to link families to appropriate services, team members must be familiar with these services and how they operate. Training enhances team members' knowledge base, helps integrate new members into the team, and compensates for the loss of team knowledge when team transition occurs. Longer-serving team members can improve their skills and offer a higher level of support to FTC families when they learn new developments in the field and gain a more sophisticated understanding of the multiple issues facing FTC families.

**Recommended Practice:** Team training should include instruction regarding the legal confidentiality requirements and the protocols for obtaining appropriate waivers or releases from FTC participants. This training should be required of all team members upon their assignment to the FTC team.

**Rationale:** The right to confidentiality must be respected at all times in the FTC. With appropriate Consents to Release Information, the FTC team can exchange relevant information to support family recovery and hold respondents accountable. Assuring that all team members are well-informed about this topic is the first step in ensuring that confidential information is respected and will be used to benefit participants.

**Recommended Practice:** Operational Team members should inform each other about the job responsibilities and legal and ethical requirements of their own professions.

**Rationale:** As a starting point for collaboration, FTC team members must gain an appreciation of the pressures their counterparts face in carrying out their professional responsibilities, including ethical obligations, statutory requirements, professional expectations, and methods of practice. A mutual appreciation of each other's duties and responsibilities may ameliorate some of the tensions that can accompany working as part of the FTC team.

**Recommended Practice:** Team members should understand the potential for vicarious trauma when working with FTC families. This recommendation applies not only to treatment providers and case workers, but to all team members, including attorneys and judicial officers. The team should participate in a training on vicarious trauma and effective strategies for addressing this common phenomenon.

**Rationale:** Vicarious trauma, which can result from repeated exposure to the trauma of others, is known to affect individuals who work in helping professions. FTC team members, who are exposed daily to the complex problems of families facing drug addiction, are at risk of experiencing vicarious trauma. FTC team members should be taught to recognize warning signs and learn healthy ways to cope with stress in order to avoid personal consequences and burn out. Effective prevention will also mitigate against frequent team member turnover.

**Recommended Practice:** Training should be offered to appropriate team members on the use of the Universal Treatment Application (UTA) and other computer applications used by the FTC. The FTC should develop capacity for treatment providers to remotely share information with the FTC team through use of the UTA.

**Rationale:** Accurate, complete, and timely documentation of case events in the UTA is central to FTC operation and is essential to the evaluation of FTC process and outcomes.

## E. MEMORANDA OF UNDERSTANDING AMONG STAKEHOLDERS

Creating a memorandum of understanding (MOU) among key stakeholders can facilitate the process of working collaboratively across agencies. An MOU clarifies the pre-existing obligations and responsibilities of each stakeholder, incorporates the FTC mission into the work of the stakeholders, and commits the stakeholders to work together. An MOU also informs each stakeholder's employees of their employer's decision to work collaboratively within the FTC model and sets forth basic ground rules for that collaboration. The Steering Committees and Operational Team build on the MOU to develop specific policies and procedures to provide guidance to the members of the Operational Team. Note that all MOUs must be approved by the local Judicial District Office. Each District Office can inform the FTC of required administrative procedures.

Starting-Up Practice	Progressing Practice	Advanced Practice
<p>Key stakeholders create a Memorandum of Understanding to establish the basic framework for FTC collaboration</p> <p>The MOU clarifies the stakeholders' expectations by committing key concepts to writing</p> <p>The MOU includes:</p> <ul style="list-style-type: none"> <li>• goals and objectives</li> <li>• duties and expectations</li> <li>• commitment of staff time</li> <li>• services to be provided</li> </ul> <p>All stakeholders sign the MOU</p>		<p>Stakeholders review the MOU annually</p>

**Recommended Practice:** Representatives from each stakeholder entity should meet to discuss the basic FTC concept and each stakeholder's role within the FTC. This understanding should be reduced to writing and signed by each stakeholder.

**Rationale:** The MOU establishes the FTC as an entity to which all stakeholders agree to contribute and in which employees of each stakeholder are expected to work collaboratively. It forms the basis of further agreements on policy and procedure. It establishes the obligations of each stakeholder and documents each stakeholder's commitment to work together to promote the best interests, well being, and safety of children while promoting family recovery in the FTC.

**Recommended Practice:** The MOU should include the following elements:

- program goals and objectives;
- duties and expectations of participating stakeholders;
- specific statement of staff time committed by each stakeholder; and
- services to be provided by each stakeholder

**Rationale:** Although an MOU is a general statement of intent to collaborate, it should contain enough specifics to set clear expectations, bind stakeholders, and require stakeholder personnel to comply with the agreement to participate. It should set minimum requirements of each stakeholder's participation.

**Recommended Practice:** Stakeholders should review their MOUs annually.

**Rationale:** As part of the annual program review, stakeholders should determine if commitments made under the MOU have been met and if new commitments are needed. Stakeholders should also ensure that resources are available for continuing and enhancing the FTC program. These steps will serve to renew and enhance stakeholder commitment to the program.

## F. CONFIDENTIALITY AND COMMUNICATION ACROSS SYSTEMS

FTCs should promote the prompt sharing of information among team members. Information sharing enhances collaboration and accountability, promotes child safety, prevents the addicted respondent from manipulating the FTC team, avoids duplication of effort, and reinforces a unified team response. Communication, however, must occur only within the confines of the applicable confidentiality laws.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>FTC team members understand and adhere to confidentiality requirements</p> <p>FTC designates an attorney to oversee adherence to confidentiality laws</p>		
<p>FTC team develops mutually acceptable release forms and protocols</p> <p>Releases are timely executed, utilized, and incorporated into contracts and consents</p>	<p>FTC staff member designated to monitor expiration of consents and current treatment provider; execute new consents when necessary</p>	
<p>FTC establishes protocols for communication among stakeholder agencies</p> <p>FTC designates a team member to ensure timely information exchange</p>	<p>FTC Resource Coordinator serves as hub for communications</p>	
<p>Release forms facilitate information exchange between FTC team members</p>	<p>FTC generates individual and collective reports from UTA</p>	<p>Stakeholders exchange data electronically while abiding by confidentiality rules</p>
<p>Critical information is communicated promptly among team members</p>	<p>All team members are kept apprised of the comprehensive family picture</p>	<p>FTC team cross-references cases within court system</p>

**Recommended Practice:** All team members must respect the right of FTC participants and families to have their information treated confidentially. Each team member should understand the confidentiality requirements of her own profession. Attorneys should ensure adherence to confidentiality laws across all systems.

**Rationale:** Respect for confidentiality is the basis for establishing trust between participants and team members. As a starting point, team members should understand their own confidentiality obligations. CPS attorneys may be able to guide the FTC team in complying with the law, as they frequently have experience dealing with the requirements of confidentiality laws. Treatment professionals may have experience in the practical application of confidentiality requirements, including the storage of records and the use of releases.

**Recommended Practice:** The FTC team should develop mutually acceptable releases to permit the exchange of confidential information. The team should perfect the timely execution, utilization, and incorporation of releases into FTC contracts and consents.

**Rationale:** A mutually-approved release form can simplify the exchange of information among FTC team members. Simplification can be especially critical during the initial stages of a case, when state intervention has created a crisis for the family. Timely exchange of information can facilitate rapid entry into treatment and appropriate emergency placement of children.

**Recommended Practice:** Confidentiality releases should be monitored by a designated FTC staff member to ensure that the consent is timely and includes the appropriate treatment provider.

**Rationale:** Consents contain “expiration” dates or events that may need modification as the participant moves through the program. Further, a change in service providers dictate the signing of new releases to remain in compliance with confidentiality laws.

**Recommended Practice:** Initially, a specific team member should be tasked with ensuring that team members exchange information in a timely manner. As the FTC evolves, the FTC Resource Coordinator should serve as the hub for communications, ensuring a regular flow of information.

**Rationale:** The FTC depends on the timely exchange of information among team members to hold participants accountable.

**Recommended Practice:** Communication protocols and standardized report forms should be developed to facilitate the timely exchange of information among team members.

**Rationale:** Formal communication protocols enhance the efficiency and effectiveness of the FTC. These protocols can be used to ensure that emergency communications are instantaneous and that routine communications coincide with staffing and court reviews.

Standardized report forms not only assist team members in gathering necessary information, they also facilitate reviews and reduce duplicative reporting. A single treatment progress form, for example, is used to document a participant's progress in FTC and also meet CPS requirements for documenting supervision. (See *Appendix 2* for Treatment Progress Form used in New York's treatment courts.)

**Recommended Practice:** Team members should be able to recognize critical information and communicate it promptly so that appropriate team members can intervene in emergency situations. The Operational Team should develop a consensus regarding the types of information that are critical to child safety and family recovery and then work to reinforce that understanding in daily practice and ongoing training activities.

**Rationale:** Without specific discussions, team members may not know what information is considered critical to the FTC and who needs to have access to that information. For example, a treatment provider who discovers that a parent has relapsed into drug use should appreciate the importance of immediately communicating that information to a CPS case worker to ensure the safety of the children. Likewise, a CPS worker who sees signs of deterioration in the parent should share that information with the treatment counselor to avert a relapse.

**Recommended Practice:** All team members should be kept apprised of the comprehensive family picture.

**Rationale:** The FTC model is designed to enable each team member to see participants from a holistic perspective. Team members should be able to intervene in the context of the participant's entire family situation. They should not be limited by their involvement with a particular family member or by the particular focus of their profession. The FTC's objective is to utilize the entire team to keep each family whole or put the family back together when unification is in the best interest of the child.

**Recommended Practice:** Communication protocols should include electronic data exchange between agencies with appropriate confidentiality protection. FTCs should take full advantage of the opportunities that electronic data-sharing offers for facilitating prompt communication, obtaining a complete picture of individual cases, and enhancing the effectiveness of the FTC program.

**Rationale:** Electronic data storage and communication are continually improving. FTCs can improve their monitoring of participants by keeping current with technological advancements. FTCs must be able to extract and report data demonstrating improved outcomes and operational efficiency. Such data demonstrate the effectiveness of the FTC to those whose support is necessary to sustain it.

## G. RECORD-KEEPING

Good record-keeping is the foundation of accountability and timely permanency. Comprehensive records are also critical for evaluations that, in turn, help secure support and funding for the FTC. FTCs come under the ambit of federal regulations (see 42 C.F.R. § 2.1-2.67) and are subject to recording-keeping requirements that go beyond the rules that apply generally in Family Court.

Starting-up Practice	Progressing Practice	Advanced Practice
Appropriate FTC team members use the UTA to record case events	Appropriate FTC team members are proficient in using the UTA	
FTC team members continue to keep records as required by their respective disciplines		FTC team members utilize their own electronic record-keeping systems to maximum capacity
Records of case contacts, monitoring, drug testing, achievements, and other events are kept contemporaneously with occurrences		FTC team members, including treatment providers, record case events electronically in real time
Records are kept in accordance with federal and state confidentiality requirements  FTC records are kept separate from court docket files		
FTC records are maintained in accordance with the <i>Records Retention and Disposition Schedule</i>		

**Recommended Practice:** From the outset, FTC team members should begin using the Universal Treatment Application (UTA) to record case events. As team members gain experience, they should become proficient in using the UTA.

**Rationale:** The UTA is the primary tool used to track FTC participant compliance and progress. Complete and reliable data entry enables the FTC team to accurately

evaluate case progress, case outcomes, and the overall effectiveness of the FTC program.

**Recommended Practice:** Records of case contacts, monitoring, drug testing, achievements, and other events should be kept contemporaneously with occurrences whenever possible. As available technology permits, the FTC team, including treatment providers, should record case events electronically in real time.

**Rationale:** Contemporaneous data entry eliminates the need for transcribing written notes into the UTA, which is time-consuming and prone to errors. Immediate recording, especially when done electronically, promotes accuracy, encourages greater detail, and creates data that is readily-available when needed.

**Recommended Practice:** Each FTC team member should continue to keep records as required by her discipline. FTC members should utilize their own electronic record-keeping systems (e.g., UTA, UCMS, OCFS' Connections, OASAS' Client Data System, etc.\*) to their maximum capacity. To the extent permissible, copies of FTC reports or agency case records should be used for both internal agency record-keeping purposes and for use in the FTC.

**Rationale:** Team members have continuing obligations to uphold their own professional and intra-agency record-keeping requirements, even as they meet the FTC's requirements. Using the same reports and records for both purposes will save team members' time and effort.

**Recommended Practice:** Records should be kept in accordance with federal and state confidentiality requirements. FTC records should be kept separate from court docket files in a locked file cabinet. Access should be limited to those individuals and entities covered by appropriate releases. To access requirements for retention and disposition of New York State drug treatment court records, go to:  
[http://www.nycourts.gov/admin/recordsmanagement/court\\_records/DRUG-TRTMNTRCTS-SHORTVERSION.pdf](http://www.nycourts.gov/admin/recordsmanagement/court_records/DRUG-TRTMNTRCTS-SHORTVERSION.pdf)

**\*New York Experience:** Several databases offer FTCs and their stakeholder agencies the capability of recording and analyzing data relevant to FTC cases:

- Universal Treatment Application – the primary database used to track FTC participant compliance and progress; originally developed for use in criminal drug courts and later adapted for use by FTCs
- Universal Case Management System – New York's statewide Family Court database; the primary database used by traditional Family Court parts to record case events and other information
- Connections – case management database used by the New York State Office of Children & Family Services (OCFS)
- OASAS database – comprehensive database used by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) to record information pertaining to statewide substance abuse treatment

## H. POLICIES & PROCEDURES MANUAL AND PARTICIPANT HANDBOOK

The Policies & Procedures Manual and the Participant Handbook serve to provide team members and participants with clear information about the practices and expectations of the FTC.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC finalizes and publishes its Policies &amp; Procedures Manual outlining:</p> <ul style="list-style-type: none"> <li>• FTC operations</li> <li>• team members' roles and responsibilities</li> </ul>		<p>The FTC reviews its Policies &amp; Procedures Manual annually to:</p> <ul style="list-style-type: none"> <li>• assure effectiveness</li> <li>• allow for evolution of practices</li> <li>• maximize opportunities for expansion</li> </ul>

**Recommended Practice:** The FTC should create and publish a Policies & Procedures Manual to provide guidance to the FTC team. Before publishing the manual, the FTC should seek the input and approval from the Office of Court Drug Treatment Programs.

**Rationale:** A Policies & Procedures Manual establishes written guidelines for the program that provide consistency and clarity for program operation. With numerous stakeholders attempting to work together, the manual offers a readily accessible document that keeps all parties informed of the FTC practices.

**Recommended Practice:** The Policies & Procedures Manual should address operational features of the FTC as well as the roles and responsibilities of stakeholders and their representatives on the Operational Team.

**Rationale:** The FTC team's collaborative relationship is enhanced when protocols are consistent and responsibilities are clear. The ideal Policies & Procedures Manual will guide the team's practice and clarify relationships among team members.

**Recommended Practice:** The FTC should review the Policies & Procedures Manual annually and incorporate changes as appropriate.

**Rationale:** Reviewing the Policies & Procedures Manual promotes the adoption of improved practices and the elimination of ineffective practices. As stressed above, FTC practices will evolve to accommodate the reality of local conditions. For example, eligibility criteria may need adjustment to maximize participation in FTC. Frequent review of the Policies & Procedures Manual will ensure that these changes are implemented. These revisions may coincide with FTC evaluations and the annual FTC program review.

## II. SUSTAINABILITY

The entire team of FTC stakeholders and its Steering Committee are responsible for sustaining the FTC. Three areas of special focus include: (1) community support; (2) grant support; and (3) budget concerns.

Starting-up Practice	Progressing Practice	Advanced Practice
The FTC uses existing resources to support FTC operations		
Each stakeholder agency considers how it can support FTC and anticipates needs of the program	All involved county agencies and other stakeholders consider FTC program needs in their budget planning	The FTC and stakeholders ensure that FTC supportive services are developed to enhance permanency planning goals
The FTC team, in conjunction with the District Office and the Division of Grants and Program Development, manage FTC grants	All FTC stakeholders identify new grant opportunities and support grant applications, consistent with the administrative approval process	The FTC Steering Committee and Operational Team identify and support grant applications for related family/ recovery support services
The FTC holds public graduations	The FTC involves the community and county agencies  FTC team members participate in community events  FTC team members promote the FTC at speaking engagements	The local community takes a proactive role in the FTC

**Recommended Practice:** The FTC should use existing resources to support its operations whenever possible.

**Rationale:** FTC families utilize multiple services to support family recovery. Incorporating the full array of existing services into the FTC program allows service providers to work more efficiently and avoid duplication of effort.

**Recommended Practice:** The FTC should encourage involved county agencies and other stakeholders to explore specific strategies that support the FTC program and anticipate areas of need for FTC families. County agencies and other stakeholders should include the FTC in their fiscal planning processes.

**Rationale:** Coordinated support of the FTC program promotes seamless operations, avoids duplication of services and helps sustain the program. It also facilitates planning to accommodate future FTC growth and anticipates the cessation of any grant funding.

**Recommended Practice:** The entire FTC team and its stakeholders should seek out all available grant funding opportunities. FTC stakeholders should have protocols in place to identify new grant opportunities and to identify appropriate lead agencies for grant applications. FTC stakeholders should give their support for and collaborate in each other's grant applications to enhance the FTC. FTC stakeholders should encourage and support grant applications by agencies that offer family and recovery support services for FTC families. Procedures should be in place to assure proper management of FTC grants. Note that all applications by a court for grant funding must be processed in accordance with existing court administrative protocols and signed by the Chief Administrative Judge for the New York State Unified Court System.

**Rationale:** Grant funding is an important resource for starting or enhancing FTC operations and providing the services required by FTC families. A systematic approach to grant-seeking will facilitate applications and maximize the chances of success. The FTC should not only apply for its own grants, it should also lend its support to grant applications by outside agencies that provide services to the FTC population. Grant applications that emphasize the collaborative nature of the FTC model tend to attract more positive response from funding agencies. Note that all letters of support by a court are subject to the administrative approval process.

**Recommended Practice:** The FTC should publicly celebrate the success of families at regular and well-publicized ceremonies, typically graduations. Community members should be actively invited to attend, and the ceremonies should include treatment providers, community-based agencies, and government officials. The news media should be encouraged to cover FTC celebrations while exercising due caution to protect the privacy of FTC participants and their families.

**Rationale:** Community support is integral to the continuing success of the FTC. Inviting the community to FTC graduations is a simple and effective way to demonstrate the FTC's substantial benefits to individual families and the community at large. Public ceremonies familiarize the community with the FTC program and pave the way for future support. Inviting treatment providers and other community-based agencies can serve to inspire them to redouble their commitment to the FTC model. FTC graduations provide news media with the opportunity to cover a positive human interest story. Allowing the public to witness the heartwarming reunification of FTC families and the gratitude of FTC participants is an effective way to highlight the program's value and gain community support.

**Recommended Practice:** The Steering Committee and FTC stakeholders should involve the community and governmental bodies in the work and benefits of the FTC.

**Rationale:** The FTC leadership, particularly the Judge, often has the access and influence to promote the FTC model and solicit assistance from other community leaders and policymakers. By openly promoting the FTC's successes at achieving parental sobriety and reuniting families, FTC leaders can make others aware of the FTC's value and convince them to support the FTC in its important work. For example, community-based programs that have not previously collaborated with the FTC might be inclined to tailor their services to the needs of FTC families and develop collaborative protocols to link FTC families to their programs. Note that all efforts by a Judge to build support should occur within the ethical guidelines governing judicial interaction with the public.

**Recommended Practice:** The FTC Steering Committee and stakeholders should participate in community events and accept speaking engagements to educate the community about the FTC's successes. Local civic groups such as Rotary, Lions, League of Women Voters, and Junior League may be approached as possible venues for presentations. The community should be encouraged to take a proactive role in contributing to the success of FTC families.

**Rationale:** Learning about the FTC can encourage community groups to support the program (or families in recovery) in ways that the court itself may not. They may donate items such as gift certificates, school supplies, Thanksgiving dinners, and holiday gifts. These gestures help members of civic groups appreciate the struggles of families in recovery and simultaneously show FTC families that they are members of a caring community. Note that both judicial and non-judicial court personnel may not engage in the solicitation of any goods or services, nor may they participate directly in the awarding of any goods or services.

### III. PARTICIPANT ENGAGEMENT, RETENTION, AND RECOVERY

#### A. ENTRY PROCESS

##### 1. SCREENING AND IDENTIFYING FTC PARTICIPANTS

Screening is a brief, preliminary inquiry to determine if AOD use is a likely factor in a child neglect case so that appropriate families can be referred to the FTC for further assessment and participation.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>Appropriate staff review all neglect cases filed in Family Court to determine if AOD use is a likely factor</p> <p>Any AOD use is alleged in court pleadings or noted in CPS records</p> <p>Appropriate staff flag all potential FTC cases before the first court appearance</p>	<p>Family Court Judges refer eligible respondents to the FTC</p>	<p>The Family Court explores the possibility of AOD use in every neglect case</p>
<p>CPS staff are trained to identify AOD issues during investigations</p> <p>Research-based screening tools are used to identify prospective participants</p>	<p>CPS staff conduct AOD screening with all parents</p>	<p>AOD treatment experts are co-located or readily available in CPS cases before court action</p>

**Recommended Practice:** All neglect cases filed in Family Court should be reviewed by CPS staff, a CPS attorney, or court personnel to identify allegations of AOD abuse. AOD issues should be noted in the CPS record or alleged in the neglect petition. Potential FTC cases should be flagged before the first court appearance and immediately directed to the FTC for consideration. As the FTC moves toward advanced practice, AOD use should be considered as a potential factor in all neglect cases, whether or not it appears in the record, before it is affirmatively ruled out.

**Rationale:** AOD abuse is a factor in approximately 40-80% of CPS cases.<sup>1</sup> Early identification is key to engaging parents in recovery with sufficient time to permit reunification. All cases should be screened for possible AOD abuse, even when non-

AOD issues are the primary concern. Screening all cases increases the likelihood that all eligible respondents will be offered the opportunity to participate in the FTC.

**Recommended Practice:** Other Family Court Judges should be permitted and encouraged to refer cases to the FTC as soon as AOD issues are identified. Such referrals should be made using a clearly-outlined referral protocol.

**Rationale:** All eligible respondents should have the opportunity to participate in the FTC program, even if AOD is not identified until after the initial screening process. If another Family Court Judge determines that a case is eligible for FTC, the Judge should offer the respondent the opportunity to participate in the FTC program (assuming this determination is made early enough to allow for entry into the program). A clear referral protocol will help Judges avoid missteps concerning calendaring, caseloads, and eligibility determinations.

**Recommended Practice:** CPS staff should be trained to identify indicia of AOD abuse. CPS personnel should use a research-based screening tool to identify AOD issues in every child protection investigation.

**Rationale:** Parents often attempt to conceal AOD abuse during CPS investigations. CPS investigators should therefore be trained to recognize signs of AOD abuse, including the parents' appearance, the condition of the house, or remarks made by children in the household. In addition, a standardized screening tool can be used to give the CPS investigator a simple and consistent method for determining if AOD issues need further consideration. Such a tool can also make it easier for investigators to discuss possible AOD abuse with the family. Commonly used screening tools include the *DAST*, the *CAGE*, and the *MAST*. Copies of all three screening tools can be accessed online at: <http://counsellingresource.com/quizzes/drug-abuse/index.html>

**Recommended Practice:** AOD treatment experts should be co-located or readily available to CPS caseworkers for consultation before court action is taken.

**Rationale:** AOD experts can offer valuable assistance to CPS caseworkers in identifying AOD issues. Experts can also conduct in-depth AOD assessments, facilitate entry into treatment prior to the filing of a court petition, and provide insight regarding the effective use of preventive services. In some cases, preventive services may obviate the need for court intervention altogether, ensuring that FTC resources are utilized to address only the most difficult cases.

## 2. ELIGIBILITY AND TARGET POPULATION

The FTC planning process typically begins by identifying a target population. The FTC then establishes formal eligibility criteria designed to identify individuals who fall within the target population. The consistent use of standardized eligibility criteria ensures that eligibility is determined fairly, that individuals who would benefit from the program are included, and that individuals who are inappropriate for the program are screened out.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC team agrees upon written eligibility criteria</p> <p>Eligibility criteria are consistently applied</p> <p>Eligibility criteria conform to grant requirements</p>	<p>The FTC team reviews eligibility criteria periodically to broaden the eligible population</p>	
<p>Eligibility criteria are sufficiently broad to ensure that the FTC program reaches capacity</p>	<p>The FTC team adjusts services to match the eligible population</p>	<p>Eligibility is sensitive to special needs</p> <p>Eligibility includes complex cases</p>
<p>The FTC team considers ASFA timelines in setting eligibility criteria</p>	<p>Partners of addicts are invited to participate in the FTC process</p>	

**Recommended Practice:** When planning the FTC, the Steering Committee and/or Operational Team should (1) determine what segment of the population the FTC will be designed to serve, and (2) devise written eligibility criteria that match the target population. Although grant-imposed eligibility limitations must be observed during the grant period, eligibility criteria should be expanded over time to include the greatest possible number of AOD-impacted families. Periodic review of eligibility criteria should be an ongoing part of the administration of the FTC.

**Rationale:** In the event of capacity limitations, FTCs may not be able to accommodate every family in need of services. Therefore, FTCs must establish criteria for admission, and these criteria should reflect the priorities set by the stakeholders. Formal eligibility criteria ensure that similarly situated parents have an equal opportunity to

**New York Experience:** Counties in New York State employ a variety of practices for identifying AOD issues. In some counties, a CPS attorney or case worker screens cases. In others, FTC staff or a petition clerk at the courthouse handle case screening.

participate in the FTC program. Of necessity, most FTCs begin operations by admitting only a limited portion of the CPS cases in which AOD is a factor. As they gain experience, however, FTCs should seek to expand their network of resources and serve a larger number of families.

**Recommended Practice:** The FTC team should design flexible eligibility criteria to ensure that the program reaches its capacity. Where capacity and/or resources are limited, the FTC should focus on the more challenging cases, including those involving deeply entrenched AOD issues, domestic violence, or mental illness. FTCs should strive to identify service providers that are capable of working with participants in these more difficult cases.

**Rationale:** By employing broad eligibility criteria that encompass more difficult cases, FTCs can encourage less needy families to seek preventive services and resolve problems without the need for court intervention. This practice is particularly helpful in jurisdictions with limited capacity and resources.

**Recommended Practice:** The FTC team should consider ASFA timelines in setting eligibility criteria.

**Rationale:** FTCs are subject to the requirements of the Adoption and Safe Families Act. Accordingly, eligibility criteria should target parents who are in a position to complete the FTC program within ASFA timelines. For example, parents in the early stages of a neglect case are more likely to complete the FTC program and achieve timely reunification than are parents on the brink of a Termination of Parental Rights.

**Recommended Practice:** Eligibility criteria should include co-respondents of FTC participants to participate in the FTC program. Partners of respondents who are not co-respondents should be encouraged to participate in the FTC.

**Rationale:** AOD addiction is understood to be a family disease. For this reason, a family-based approach that equips partners to support the parent's recovery is recommended for ensuring child safety. In cases where the partner is a co-respondent, assigning that case to the same Judge minimizes confusion and is consistent with the "one family-one Judge" approach recommended by the National Council of Juvenile and Family Court Judges. In cases where the partner cannot be legally required to participate, the FTC should nonetheless promote that partner's involvement with the FTC process.

### 3. ADMISSION PROCESS AND PARTICIPATION CONTRACTS

Respondent parents waive substantial rights and assume significant obligations when entering the FTC. Therefore, the FTC should take special care to ensure that parents are well-informed of program expectations and potential consequences of non-compliance before entering the FTC.

<b>Starting-Up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p>Respondents are represented by counsel before being contacted by FTC staff</p> <p>Respondents' attorneys fully advise respondents concerning FTC requirements and potential consequences of non-compliance</p>	<p>The FTC expedites assignment of counsel for potential participants</p> <p>Attorneys for respondents are well-versed in FTC policies and procedures as well as AOD abuse issues</p>	
<p>Respondents meet with FTC staff early in the court process to discuss participation in FTC</p>	<p>FTC staff meet with potential participants before or upon the first court appearance</p>	
<p>Respondents enter FTC early, prior to or upon disposition</p> <p>The FTC sets a deadline for entry into the program</p>		
<p>A written FTC contract is signed by the respondent, counsel for all parties, and the FTC Judge</p> <p>FTC contracts incorporate criteria for completion, termination, graduation, and consequences of non-compliance</p>		
<p>Entry into the FTC program is voluntary and conducted in court</p>		

<p>The court clearly defines the status of each case before FTC participation</p> <p>The FTC contract is incorporated into the dispositional order</p>		
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**Recommended Practice:** Respondents should have access to counsel before any contact with FTC staff. To facilitate this access, the FTC should expedite the assignment of counsel. Prior to entering the FTC program, respondents should be fully advised by counsel regarding the requirements of the FTC program and the consequences of non-compliance. Counsel for parents should be well-versed in FTC policies and procedures as well as AOD abuse issues before advising clients about FTC participation.

**Rationale:** Ensuring that each respondent has early access to counsel eliminates the concern that a respondent’s decision to participate in the FTC program may have been coerced. Typically, a respondent makes an admission of neglect upon entering the FTC program. Therefore, the FTC must exercise caution to ensure that each respondent’s due process rights are protected and that any decision to enter the FTC program is made with full knowledge of the program’s requirements and possible consequences. Counsel who possess a detailed understanding of AOD abuse, the dynamics of addiction, AOD treatment, and recovery can more effectively advise their clients about the FTC process.

**Recommended Practice:** FTC staff should meet with each respondent early in the court process to explain the program and discuss possible participation in the FTC. Established FTCs should strive to make program staff available to meet with potential participants before the first court appearance.

**Rationale:** Research shows that early engagement in court-supervised treatment increases the chances that the respondent will successfully complete the treatment program.

**Recommended Practice:** Respondents should make an admission and enter the FTC program as early as possible in the court process.

**Rationale:** Early enrollment in treatment is critical for two primary reasons: (1) a parent whose substance abuse has created a “moment of crisis,” including CPS intervention and possible removal of children from the home, will likely experience greater motivation to address her addiction; and (2) ASFA timelines create an urgent need to get parents engaged in treatment as quickly as possible to ensure that the FTC has sufficient time to support the parent’s recovery.

**Recommended Practice:** FTC requirements should be set out in plain language in a written contract, signed by the participant, attorneys for all parties, and the FTC Judge. The FTC contract should incorporate the criteria for completion, termination, and graduation, and should inform participants of the consequences of non-compliance.

**Rationale:** A parent who commits to participate in the FTC accepts substantial obligations and the possibility of significant consequences for future non-compliance. Moreover, the parent's participation obligates FTC team member agencies to work closely with the parent and family toward recovery and reunification. A written contract can help ensure that the parent's decision to participate is knowing and voluntary, and that the parent's obligations and the consequences of non-compliance are clearly delineated before the parent enters the FTC program. Requiring counsel and team members to sign the written contract also memorializes the commitment of all key parties to support the parent in the treatment and recovery process.

**Recommended Practice:** Entry into the FTC should be voluntary, and the formal commitment to do so should be made in open court. The legal status of each case should be established on the record. The FTC contract should be incorporated into a formal court order to ensure that the terms of the contract are enforceable against all parties.

**Rationale:** FTC participation should be voluntary for two important reasons. First, treatment records may only be disclosed to the court upon consent of the respondent or by motion that comports with federal requirements, including notice to the treatment agency and a hearing before the court. In the absence of voluntary enrollment and a formal contract, it would be impractical to meet the requirements for disclosure of treatment records for every case review. Second, voluntary entry suggests that the addicted parent has some motivation to change; such motivation is a necessary first step toward recovery. FTC participation takes place in the context of a parent's neglect case. The court's statement on the record regarding case status will help the parent appreciate the potential legal consequences of FTC participation.

#### 4. AOD ASSESSMENTS

FTCs use prompt and accurate AOD assessments: (1) to ensure that each participant fits the FTC’s criteria, (2) to identify appropriate services for each participant, and (3) to design individualized treatment plans.

<b>Starting-up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p>FTC assessments are scheduled at times and places that facilitate respondent participation</p> <p>FTC assessments are conducted promptly</p>	<p>Assessments takes place at or near the courthouse</p>	
<p>Qualified personnel determine whether referral to the FTC is appropriate in each case</p> <p>FTC assessment personnel have CASAC or other AOD treatment experience</p> <p>The FTC uses the Universal Treatment Application (UTA) for initial assessments</p>		
<p>Respondents participate in the development of their individualized treatment plan prior to FTC entry</p>		
		<p>AOD assessments are available to parents from the start of CPS investigations on a voluntary and preventive basis</p>
<p>Treatment providers determine the level of care and develop comprehensive individualized treatment plans for each participant</p>		

**Recommended Practice:** The FTC should conduct an initial assessment promptly after the respondent agrees to enter the FTC. This assessment should be scheduled at a time and place that is reasonably convenient for respondent's participation, preferably at or near the courthouse. FTCs should seek to conduct the assessment on the same day that the respondent agrees to consider participation in the FTC.

**Rationale:** Respondent parents are more likely to become engaged in treatment if the initial assessment takes place promptly after the respondent considers participation. Respondent parents are less likely to show up for their assessment if they experience difficulties in scheduling or attending the appointment. For this reason, FTCs should schedule initial assessments at convenient locations and times. FTCs can reduce "no shows" by scheduling assessments immediately after court and by avoiding conflicts with other respondent obligations, including child care responsibilities and employment.

**Recommended Practice:** Initial assessments should be conducted by FTC personnel who are qualified to make appropriate treatment referrals using the Universal Treatment Application (UTA). FTC staff responsible for assessment should have Credentialed Alcoholism and Substance Abuse Counselors (CASAC) credentials or other AOD treatment experience.

**Rationale:** The UTA's psycho-social assessment assists court personnel in making referrals to the appropriate level of AOD treatment. FTC assessment personnel should have CASAC credentials or other high-level AOD treatment expertise to promote consistency in respondent assessment and to ensure that respondents are referred to the appropriate level of care.

**New York Experience:**

Level of Care for Alcohol and Drug Treatment Referral (LOCADTR) is a patient placement criteria system designed for use in making level of care decisions in New York State. Level of care determination is a clinical procedure provided by OASAS-certified alcoholism and substance abuse treatment services or by qualified health professionals as defined in OASAS chemical dependence regulation.\*

\* For a complete listing of New York State regulations governing chemical dependence outpatient services, see 14 N.Y. Comp Codes R. & Regs. tit. 14 § 822.1 – 822.13 (2008), available at <http://www.oasas.state.ny.us/regs/822.cfm>

The purpose of the level of care determination procedure is to assure that a client in need of chemical dependence services is placed in the least restrictive, but most clinically appropriate, level of care available. It is the responsibility of the treatment provider to make an appropriate placement. Note that Credentialed Alcoholism and Substance Abuse Counselors (CASAC) are authorized to conduct assessments and make referrals to treatment. They cannot, however, make the final decision on admission to a particular treatment program.

**Recommended Practice:** Respondent parents should participate in the development of their individualized treatment plan prior to entering the FTC program and understand all requirements of the final plan.

**Rationale:** Including the respondent in the design of the treatment plan engages the parent and gives them a vested interest in complying with its requirements. A complete understanding of the final plan helps the parent recognize what is expected by the FTC team. The consequences of court-mandated treatment to the participant and family members can be dramatic. Therefore, the respondent parent should enter the FTC program with complete information about the program's requirements, including the treatment that the respondent will be required to complete.

**Recommended Practice:** As a preventive strategy, AOD assessments should be available to parents on a voluntary basis from the inception of a CPS investigation, before court action is necessary. FTCs should collaborate with appropriate agencies to provide expedited assessments and facilitate entry into AOD treatment in CPS cases as a way to avoid court intervention.

**Rationale:** FTC enrollment is limited by capacity. Fortunately, not every addicted parent needs the intense, court-supervised intervention that FTCs provide. Many addicted parents can benefit from early, less-intensive intervention without court action. FTC stakeholders can expedite access to AOD treatment programs for these parents by co-locating AOD experts with CPS staff and using relationships with treatment providers to link addicted parents with appropriate services.

**Recommended Practice:** The FTC and its treatment providers should develop an understanding of each entity's unique requirements and limitations. OASAS regulations require each treatment provider to make an independent level-of-care determination and diagnosis using the OASAS LOCADTR criteria. This assessment dictates the treatment that the provider is permitted to offer.

**Rationale:** Confusion and conflict sometimes arise over who is authorized to decide the AOD treatment level of care. For example, a Judge may order a respondent into an in-patient treatment facility for a variety of reasons. However, OASAS-licensed and regulated treatment programs are only permitted to provide in-patient treatment if it is clinically indicated. To reduce the potential for conflict, treatment providers should educate the FTC team members about the levels of treatment and when they are clinically indicated.

## 5. ORIENTATION & PARTICIPANT HANDBOOK

The Participant Handbook is a tool to help parents understand what is expected of them in the FTC. It should describe the rules of the program, the roles of the various FTC team members, and include important contact information.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC publishes a Participant Handbook and makes it available to parents in accessible language(s)</p> <p>The Participant Handbook clearly sets forth program expectations and requirements</p>		<p>The FTC reviews its Participant Handbook annually and updates as needed</p>
<p>The Resource Coordinator (or other designee in larger courts) conducts a one hour orientation session where all program requirements contained in the handbook are reviewed and explained</p>	<p>Court staff periodically review the requirements for Phase advancement and graduation with the Respondents</p>	

**Recommended Practice:** The FTC should publish a Participant Handbook explaining the FTC program in plain language. The Participant Handbook should be available to parents before entry into the FTC program to help them decide whether to participate in the FTC. In cases where English is a participant’s second language, the FTC should ensure that the Handbook provisions are all understood and accepted.

**Rationale:** The Participant Handbook is meant to serve as a guide to FTC and assist parents deciding whether to participate in the FTC program. To accomplish these goals, the Participant Handbook must be easily understood by all participants.

**Recommended Practice:** The Participant Handbook should include an explanation of FTC rules, the consequences of non-compliance, the program’s phase system or other benchmarks for success, graduation requirements, and contact information for the FTC staff.

**Rationale:** The Participant Handbook is one of the FTC’s tools to hold parents accountable for their performance. The handbook should therefore contain detailed

information about the expectations of the FTC program and the consequences of non-compliance.

**Recommended Practice:** The Resource Coordinator should hold an orientation session with new participants where all program requirements contained in the Participant Handbook are reviewed and explained. In larger FTCs, this function may be carried out by a Case Manger or other appropriate staff.

**Rationale:** A review of the program requirements not only helps the participants to understand what is expected of them, it sends a message that the FTC staff also know exactly what is required and intend to hold participants accountable for compliance.

**Recommended Practice:** FTC program staff should periodically review the requirements for Phase advancement and graduation with the participants.

**Rationale:** Ongoing review reminds participants of the specific achievements required for Phase advancement. Typically, participants are cognitively impaired by drug and/or alcohol abuse when they enter the program. They may need to have program requirements reinforced after they have achieved a period of abstinence. Additionally, research suggests that frequent reminders of a participant's obligations and consequences for non-compliance can support compliance.<sup>2</sup>

## B. TREATMENT AND OTHER SUPPORT FOR FAMILIES

### 1. REFERRAL TO AOD TREATMENT

Timely recovery from AOD addiction requires a prompt and secure connection between the parent and the treatment program.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC develops formal memoranda of understanding with involved agencies</p> <p>The FTC facilitates prompt respondent enrollment by:</p> <ul style="list-style-type: none"> <li>• designating a contact person at each of its treatment providers</li> <li>• requesting that treatment providers set aside time for intake appointments with FTC referrals</li> <li>• assisting with documents</li> <li>• ensuring the availability of treatment slots</li> </ul>	<p>A designated FTC staff member periodically reviews memoranda of understanding to ensure that new expectations are reflected in the agreements</p>	
<p>The FTC staff provide participants with concrete assistance with paperwork</p> <p>The FTC works with insurance providers to ensure maximum coverage for participants</p>		

**Recommended Practice:** The FTC and its treatment providers should agree on a standardized referral process and a strategy to ensure prompt enrollment of FTC participants. Each treatment provider should identify a contact person to work with the FTC Resource Coordinator and case managers. Likewise, treatment providers should set aside specific times for FTC intake appointments and allot slots for FTC participants.

**Rationale:** Because prompt engagement in treatment is critical to ultimate treatment success, the FTC should develop a clear and speedy path to enroll potential participants in treatment programs. Too often, the respondent must make repeated phone calls to secure an intake appointment, and treatment is postponed by long

waiting lists. Because FTC participants are under strict time constraints, they must be given priority in engaging in treatment. In return for this priority status, the FTC reciprocates by holding participants accountable for their treatment compliance. FTC participants enter treatment sooner and stay in treatment longer, reducing the likelihood of unexcused absences and the corresponding loss of revenue to treatment providers.

**Recommended Practice:** Written memoranda of understanding should clarify protocols, roles, and responsibilities so that both FTC staff and treatment agency staff have a clear and consistent understanding of the referral process and expectations for timely communication.

**Rationale:** Memoranda of understanding promote consistency in the relationship between the FTC and treatment agencies, especially when the FTC or involved agencies experience personnel changes.

**Recommended Practice:** The FTC should designate staff to offer reasonable assistance to participants in obtaining documents required for entry into treatment programs. Designated FTC staff should also work with insurance providers to ensure that treatment is covered appropriately.

**Rationale:** Document preparation and insurance coverage assistance increase the likelihood that participants will arrive at the treatment program ready to enroll. Addicted parents often have difficulty fulfilling these obligations as they struggle to enter the early stages of recovery. Insurance entitlements are particularly difficult to navigate. A case manager versed in the insurance process can overcome obstacles to coverage and expedite entry into treatment.

## 2. IDENTIFYING & ASSESSING ADDITIONAL SERVICE NEEDS

AOD issues impact the entire family system, and FTC families often face difficulties beyond parental substance abuse. These other issues must be addressed to adequately support family reunification.

Starting-up Practice	Progressing Practice	Advanced Practice
The FTC team identifies non-AOD concerns	FTC collaborating agencies assess non-AOD concerns	The FTC institutes an ongoing system of comprehensive family assessments beginning at the inception of each case
	Every child of an FTC participant is given a developmental screening or educational assessment	
	The FTC compiles a list of all supportive services available to participants, including a description of services, locations, and hours of operation	

**Recommended Practice:** FTC team members should identify non-AOD issues facing the family, including physical and mental health concerns, developmental/vocational needs, and housing issues. Established FTCs should collaborate with community-based services to offer formal assessments of FTC families. If possible, comprehensive family assessments should be provided at the inception of each case and updated periodically.

**Rationale:** Parental substance abuse is rarely the only obstacle to child well-being and safe reunification. A comprehensive assessment helps the FTC team understand and address the multitude of difficulties that often threaten the family unit. Case assessments should be updated periodically, as families will often make progress on some issues while new ones emerge over the life of a case.

**National Experience:** In Billings, Montana, the FTC collaborates with Arrowhead Psychological and Behavioral Sciences to conduct in-depth neuro-psychosocial assessments of each participant at the outset of each case. These assessments, which the court updates periodically throughout the life of the case, provide the court with a comprehensive picture of the family's issues and permit the court to evaluate the family's progress over time.

**Recommended Practice:** Every child of an FTC participant should receive developmental screening for early intervention services or receive appropriate educational assessments. FTCs should encourage parental involvement to facilitate this process.

**Rationale:** Children raised by AOD-addicted parents are at an increased risk for developmental or educational challenges.<sup>3</sup> Many communities already have appropriate services in place to provide developmental screening and services for these children. School districts, for example, engage in educational assessments and offer special education services. In most cases, however, the parent's participation and consent are required for these services, and AOD-addicted parents may have neglected to engage in this process. The FTC can serve as an important vehicle for identifying children who should participate in these services.

**Recommended Practice:** The FTC should conduct a survey of all relevant supportive services that are available to participants. Respondents should be given a complete list of these services, including a description of the services, location and hours of operation.

**Rationale:** A resource list facilitates access to services and communicates to participants that the court cares about helping them get the support they need.

### 3. SERVICE LINKAGES FOR PARENTS, CHILDREN, AND FAMILIES

FTC staff may not be fully aware of the range of community-based services available in their jurisdiction. Likewise, local service providers may be unaware of the FTC or unfamiliar with how the program works. The FTC should actively identify and enlist the support of community-based service providers to address the needs of the FTC population.

Starting-up Practice	Progressing Practice	Advanced practice
The FTC team takes affirmative steps to educate local service providers about the FTC program	The FTC and community-based service providers develop memoranda of understanding	The FTC and community-based service providers execute formal MOUs to guide their collaboration
The FTC refers family members to appropriate community-based services	FTC family members are granted expedited entry into community-based services	The FTC works with community-based service providers to develop specific services for FTC population

**Recommended Practice:** The FTC team should actively seek out and educate local service providers about the FTC program and the needs of FTC families. For example, FTC team members should visit local service programs and offer to train service providers on the mission, policies, and procedures of the FTC. The FTC should build linkages with community-based service providers to get families engaged in the services that these providers offer. As the FTC progresses, it should enter into formal Memoranda of Understanding (MOUs) with service providers to make relationships durable.

**Rationale:** Using their status as part of the court system, FTCs can build networks of service providers to enhance opportunities for families in need of supportive services. Such relationships can enhance the FTC’s ability to monitor participants’ progress, as service providers typically maintain contact with participants and are in a good position to assess and report on their progress. In building a service network, the FTC must consider that each stakeholder has its own mission, goals, and priorities that may conflict with the needs of FTC participants. MOUs anticipate and address these potential conflicts by creating shared expectations and clarifying the respective roles of the FTC stakeholders.

**Recommended Practice:** FTCs should refer participants and families to community-based service providers for additional assistance. FTC participants should be afforded expedited evaluations and entry into service programs in the community. FTCs should enlist local providers to fill gaps in services that are required by FTC participants.

**Rationale:** The assistance of outside service providers is essential to the overall success of the FTC. These agencies can offer their services to FTC participants and families, and they can also develop new programming to address the unmet needs of this population. For example, a community may not currently offer a parenting program that is suitable for AOD-impacted families. In this situation, the FTC can encourage local service providers to adopt available evidenced-based practices to fill this gap. The strict time constraints imposed by ASFA necessitate swift assessment and entry into services.

#### 4. SERVICE PLANNING ACROSS STAKEHOLDER SYSTEMS

FTC families often utilize multiple community-based services in addition to AOD treatment and CPS supervision. In order to avoid duplicating effort, creating conflicting expectations, and overwhelming participants and families, the FTC should coordinate service plans and ensure that participants and families receive services in a logical sequence and on a schedule that is realistic and attainable.

Starting-up Practice	Progressing Practice	Advanced Practice
The FTC shares case plans among CPS, treatment providers, and other service agencies	The FTC strategically coordinates case plans among all involved agencies	The FTC and its stakeholders jointly develop unified service plans for participants and families
Case plans focus on parents and children	Case plans address: <ul style="list-style-type: none"> <li>• the comprehensive needs of all family members</li> <li>• the requirements of each key stakeholder group</li> </ul>	
The FTC invites and encourages respondents to participate in service planning	The FTC actively includes respondents in developing the case plan  The FTC invites and encourages other family members to participate in the case planning process	The FTC uses group meetings to empower parents to drive their own case plans
Case plans and ancillary services are monitored in pre-court staffing and court reviews	All service providers participate on the FTC team and provide timely information  The FTC reviews case plans periodically	Comprehensive case plan reviews are regularly scheduled separate from pre-court staffing
Service plans are set forth early, clarifying expectations from the outset and anticipating changes over time	The FTC's Order of Disposition reflects the case plan	

**Recommended Practice:** FTCs should promote strategic coordination of the case planning process. At a minimum, CPS, treatment providers, and other involved agencies should distribute case planning information to all FTC team members. Team member agencies should coordinate their plans with each other. As an advanced practice goal, the FTC team should develop single unified case planning, coordinating, and sequencing services.

**Rationale:** Traditionally, each service provider has developed its own independent case plan for AOD-addicted clients. In the FTC, service providers are able to bring these various plans together to create a collaborative case plan that eliminates duplication of effort and avoids overwhelming participants with conflicting demands. Service providers in the FTC can also collaborate to promote appropriate sequencing of services, compatible expectations, and service goals that are calculated to meet ASFA guidelines.

**Recommended Practice:** Case plans should address the comprehensive needs of all family members and the requirements of each stakeholder group.

**Rationale:** FTCs are designed with a dual focus: treating the respondent parent's AOD addiction while also supporting the family in working toward reunification and permanency. Consistent with this dual focus, FTCs should include children's needs in all case plans. FTCs were created to address the underlying problems that bring families to court, not simply to process neglect cases. To meet this goal, FTCs must conduct a thorough assessment of the family's ongoing issues, develop a plan to address those issues, and use reasonable efforts to effectuate that plan.

**Recommended Practice:** FTCs should invite and encourage parents and other family members to participate in the service planning process. FTCs should make parental and family involvement a high priority by arranging for parents and family to meet in person with service providers. Parents should be empowered, through a group meeting process, to drive the development of a case plan that meets the family's needs.

**Rationale:** Although the FTC is designed to address a family's underlying problems, the family is ultimately responsible for solving its own problems. An inclusive service planning process allows the parents and family members to point out duplicative requirements and indicate whether the proposed service plan is realistic and feasible. Moreover, participants who are involved in developing their own service plans have a better understanding of their responsibilities and are more invested in achieving the plan's goals.

**Recommended practice:** The FTC team should, at a minimum, monitor case plan progress during pre-court staffing and in-court reviews. The monitoring process should not be limited to AOD treatment compliance and sobriety. Rather, the FTC team should review participants' progress in meeting all aspects of the case plan. Moreover, the team should periodically discuss the suitability of the plan itself. Advanced practice should include comprehensive case plan reviews, both regularly scheduled and as needed. Comprehensive reviews should be held separately from pre-court staffing.

These comprehensive reviews should include the CPS worker, treatment provider and Resource Coordinator. The Judge and participant should probably not attend these reviews.

**Rationale:** In some cases, the FTC team may determine that a family is not making sufficient progress toward meeting the requirements of its case plan. When this occurs, the source of the problem may be the case plan itself. The family may need additional services, or the requirements of the case plan may be unreasonable under the current circumstances. By reviewing and adjusting case plans as needed, the FTC supports case plans that are appropriate and feasible, even as circumstances change over time.

**Recommended Practice:** The FTC should set clear service plan goals and requirements and communicate these goals and requirements to parents and families as early as possible. Service plans should reflect a sequence of expanding expectations as parents' capacity to comply improves with time. Service plan requirements should be incorporated into court orders.

**Rationale:** In traditional practice, the complaint is often heard that treatment goals or requirements are constantly changing, even as the parent is approaching the finish line. To address this concern, FTCs should state service plan requirements at the outset of the case and avoid imposing additional requirements as each goal is met. However, the FTC should prepare parents for the fact that that expectations will increase as parents engage and progress in recovery. For example, parents may meet initial expectations simply by getting themselves to treatment. Later, however, parents should be expected to accept increasing parental responsibility and stability, including meeting with teachers, taking their children to health providers, obtaining stable housing, and securing a reliable means of support.

## 5. SUPPORTING THE PARENT, CHILD, AND FAMILY RELATIONSHIP

The goal of FTCs is safe and timely permanency for children who have a parent in recovery. While understanding the legal goal, FTCs seek, where possible, the safe reunification of children with sober parents. To reach this goal, FTCs work to nurture and strengthen the parent-child relationship. In many cases, addicted parents abdicate their parental role or may not understand the responsibilities of parenthood. FTCs frequently face the task of re-establishing the parent-child bond.

<b>Starting-up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p>The FTC facilitates frequent parent-child contact at developmentally appropriate intervals</p> <p>Parent-child contact is consistent and conducted in a safe and appropriate setting</p>	<p>FTC agencies enhance programming to include support of parent-child contact</p>	<p>The FTC and the community develop an enhanced parent-child visitation program</p>
<p>The FTC team discusses parent-child interaction regularly in pre-court staffing and in-court reviews</p> <p>Parent-child contact is driven by the child's safety and best interests – withholding of contact is not used as a sanction for a parent's non-compliance</p> <p>Families have safety plans for episodes of relapse</p>	<p>The FTC uses evidence-based practices to evaluate parent-child contact</p>	<p>Parent-child contact is driven by evidence-based assessments</p>
<p>The FTC engages parents in parenting skills training</p>	<p>Parent-child contact is purposefully structured to support an eventual move toward reunification</p>	<p>Parenting skills training includes preparation for resuming the parental role upon reunification</p>
<p>Children are engaged in services specifically tailored to their individual risk of AOD use and at an appropriate age, are themselves screened for AOD use</p>	<p>Children are engaged in programs specific to children of addicted parents</p>	<p>The needs of AOD-impacted families are addressed through a comprehensive therapeutic approach</p>

**Recommended Practice:** Parent-child contact should be frequent, consistent, and occur at developmentally appropriate intervals. The setting should be conducive to normal parent-child interaction appropriate to the child's age and development.

**Rationale:** Children at different developmental stages require different amounts of parent-child contact to create and nurture familial bonds. A newborn separated from its mother will not recognize her as a parent if contact is only weekly. Teenagers, on the other hand, have their own schedules revolving around school, extra-curricular activities, and other obligations and can maintain the familial bond with less frequent contact. In all cases, parent-child contact must be sufficient to permit resumption of the parental role. Consistent visits at predictable intervals reassure children that the parent has not abandoned them and that it is safe to invest in the relationship. The quality of parent-child contact is also affected by the setting in which this contact occurs. Family-friendly locations with opportunities for age-appropriate interaction allow for the development of healthy family interaction.

**Recommended Practice:** FTC agencies should enhance programming to include support of parent-child contact. FTC stakeholders should strategically integrate parenting programs with other services (e.g., AOD, domestic violence, mental health). AOD treatment and other services should address the parent-child relationship as they address the needs of the entire family.

**Rationale:** Resources for visitation are consistently scarce. Nonetheless, families should be viewed in their totality and not as a series of individuals to be dealt with separately. Integrating family contact and family support into existing programming enables the FTC to offer more comprehensive family support.

**Recommended Practice:** Decisions about parent-child contact should be driven solely by the child's safety and best interests. Restrictions on parent-child contact should not be used as sanctions for the parent's non-compliance with program requirements.

**Rationale:** It is the child's right to have contact with their parent. That right should not be abrogated absent compelling reasons to do so. Although a parent's active AOD use certainly impacts child safety and well-being, a relapse reported and addressed in the course of FTC treatment should not preclude contact.

**Recommended Practice:** Parents and families should develop safety plans to address actual or imminent relapse. Treatment providers and CPS should assist with these safety plans.

**Rationale:** The FTC and participating families must address the risk of relapse forthrightly. Relapse is not an unexpected event during the recovery process. Planning for the possibility of relapse does not constitute an endorsement or a prediction of relapse. Rather, planning for relapse is an important part of understanding the disease and the treatment process.

**Recommended Practice:** Parent-child contact should be discussed regularly in pre-court staffing and in-court reviews. Evaluation of parent-child contact should be informed by an understanding of typical visiting dynamics, including parental guilt, children's confusion, and conflicted feelings and ambivalence. In advanced practice, parent-child contact decisions should be made using evidence-based assessment methods.

**Rationale:** The FTC should regard family status as the starting point in every review of FTC cases. The FTC should employ professionally accepted tools to assess whether the family is ready for reunification and to assist in identifying the family's strengths and weaknesses. It should be noted that assessing the quality of a parent-child visit accurately can be difficult. For instance, a child may be emotional after a visit because she is worried about when she will be able to see her parent again, not because seeing the parent is upsetting to her. Similarly, a parent's difficulty in interacting with her children may result from not being aware of developmental expectations.

**Recommended Practice:** Every parent in the FTC should be engaged in parenting skills training once they have become sufficiently stabilized. Parenting skills training should include sessions where parents and children can practice family interaction skills together. Trained parent educators should be present and give constructive feedback in a manner that does not undermine the parent. Parenting support should include preparing the respondent parent to resume the parental role upon reunification.

**Rationale:** Parents in the FTC have been brought to court for neglecting their children, a fundamental failure to meet basic parenting responsibilities. Parenting programs should therefore be designed along a continuum of sophistication that reflects the parent's increasing capacity for assuming the parental role. Initially, some program is better than none, and early programs may focus on basic skills and written instruction. However, learning parenting from a book is far less effective than structured time when children and parents can learn together. Structured parent-child time permits parents to improve their interaction skills and raises parents' confidence. These skills are critical because the dynamics of the family after reunification will be significantly different from those that led to court intervention. Families must be prepared for the likelihood that the recovering parent's efforts to nurture the family and exercise authority may be challenged, particularly by older children or children who largely cared for themselves during their parents' AOD abuse.

**Recommended Practice:** The needs of families affected by substance abuse should be addressed through a comprehensive therapeutic approach. Evidence-based designs for therapeutic parent-child programs have shown great promise in establishing and restoring healthy families.

**Rationale:** In a few locations across the country FTC's have joined with universities or other highly regarded family specialists to provide comprehensive therapeutic programs to raise family functioning. They include educational and therapeutic sessions for

parents and children separately and then together on various aspects of family living. Often, they include shared family meals on a periodic basis at the program. Some even have services which provide in home sessions.

**National Experience:** The Miami-Dade County Family Dependency Drug Court utilizes the services of the Linda Ray Intervention Center, which provides opportunities for parents and children to work together to improve parent-child interaction. Parents and children meet separately and together to learn and practice new skills under expert guidance. The program provides a shared meal as part of its protocol.

**Recommended Practice:** The FTC should engage children in services specific to AOD issues. Such programming should explicitly address problems that confront children of addicted parents.

**Rationale:** Children of addicts should be informed that they themselves are at an elevated risk for AOD abuse, and they should be taught how to minimize those risks. Children must also learn to deal with the often traumatic impact of their experiences. These children may benefit from one-on-one counseling that specifically addresses these issues and from group sessions with similarly-situated peers.

**Recommended Practice:** FTCs should acknowledge that relapses may occur during parent-child visits, extended parent-child contact, and reunification. Parents should be made aware of this risk and should be required to establish a safety plan specifically designed to protect children from relapse during parent-child contact. This safety plan should include concrete actions that both the parent and child should take if relapse occurs or appears imminent, e.g. what to do, where to go, whom to call, etc. The plan should be developed in collaboration with AOD treatment counselors and shared with case managers and CPS caseworkers.

**Rationale:** Just like other emotional events, parent-child visits raise the risk of relapse. Child safety is best protected by confronting this risk and planning for it. By gaining a deeper insight into their recovery and the possibility of relapse, parents are better able to recognize the danger and take steps to shield their children.

### C. RECOVERY SUPPORT SERVICES

Recovery from AOD addiction is a complex process that involves more than mere abstinence. FTCs are designed to help participants find the supportive services needed to sustain recovery and develop a lasting, healthy lifestyle.

Starting-up Practice	Progressing Practice	Advanced Practice
The FTC engages participants in peer support networks	The FTC employs a recovery specialist, mentors, and community service workers to assist participants	
The FTC links with vocational and educational programs		
The FTC facilitates referrals to local housing programs	The FTC identifies transitional housing for participants  Housing programs collaborate directly with the FTC	
The FTC maintains contact with participants post-graduation	An FTC alumni group is formed	The FTC establishes formal linkages to community-based services to provide additional support for graduates

**Recommended Practice:** FTCs should encourage regular and frequent attendance at peer support groups from the outset of participants' involvement in the program. Each participant should obtain a sponsor as soon as it is appropriate. As the FTC progresses, it should engage outside organizations to assist parents and families in overcoming obstacles to recovery.

**Rationale:** A peer support network is an important part of the ongoing recovery process after FTC participants have graduated from FTC. Support networks offer a perspective that treatment court professionals generally do not possess. FTC participants should be encouraged to build their network of sober support from the outset. Group norms should help participants be honest with themselves about their disease and their progress in treatment.<sup>4</sup> Alcoholics Anonymous and Narcotics Anonymous are the most

frequently used support groups, but there are also secular programs available for individuals who object to the religious overtones of AA or NA. FTCs have also found that recruiting volunteers to offer assistance and mentoring to FTC participants can be very beneficial. These mentors can help identify alternative means of transportation where no public system is available, accompany parents to parent-child visits, and model appropriate interaction with children. Mentors fill the gaps in the FTC program and provide another set of eyes and ears to help monitor and interpret participant behavior and family interaction.

**Recommended Practice:** Vocational and educational programs should be available to every FTC participant who is not steadily employed or whose job skills need improvement.

**Rationale:** The FTC participant's ability to maintain a stable lifestyle is critical to maintaining or reunifying the family; regular employment is a major component of this stability. Many treatment agencies include vocational programs in their treatment plans.

**New York Experience:** The Suffolk County Health Department assigns a vocational counselor to assist FTC participants one half-day per week. This practice permits parents to evaluate their job readiness and affords parents the opportunity to seek training to improve their skill level and job qualifications.

**Recommended Practice:** FTC case managers should be familiar with local housing resources and facilitate referrals to these programs. As the FTC progresses, it should build formal relationships with local housing programs. Because housing is chronically in short supply, the FTC should work with non-profit agencies and housing programs to seek grants for transitional housing for FTC participants.

**Rationale:** Reliable housing is a key element of a stable lifestyle for FTC families. Finding or creating housing opportunities for FTC families not only offers them security but may help them feel that they can provide a home for their children.

**Recommended Practice:** Although the court does not maintain legal jurisdiction over participants once the neglect petition is closed, FTCs should try to maintain contact with alumni after graduation. Ongoing contact provides a safety net and a resource for continued assistance. FTCs should facilitate the formation of alumni groups and lend assistance to these groups. The FTC should develop formal linkages with community-based service providers to offer ongoing support to graduates.

**Rationale:** When families graduate from the FTC, the support system they have come to rely on is removed. The FTC can help graduates maintain supportive connections by continuing CPS supervision, requiring case managers to conduct periodic follow-up checks, or inviting participants to return to court following graduation. Alumni groups can offer continued support and provide FTC graduates an opportunity to "give back." Community-based services that maintain contact with FTC graduates can provide an additional safety net.

#### IV. FTC MONITORING & SUPERVISION

##### A. COURT-SUPERVISED CASE MANAGEMENT

##### 1. PRE-COURT CASE REVIEWS & COMPREHENSIVE CASE REVIEWS

Pre-court case reviews (also called “staffings”) are designed to enable team members to present updated information to the team, discuss participant progress, and develop recommendations before formal in-court case reviews with the FTC Judge and participants. Staffings permit the team to present a united front to participants in court and, therefore, constitute an essential component of FTC practice. Comprehensive case reviews are more intensive and are held separately to address complex case issues.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC team conducts staffings to discuss case status and next steps</p> <p>Staffings are led by the Resource Coordinator or Project Director</p>	<p>Staffing is divided into specific time slots so treatment and caseworkers can participate only in the cases they manage</p> <p>Comprehensive case reviews are scheduled periodically to review case plans in greater depth</p>	
<p>Staffings include:</p> <ul style="list-style-type: none"> <li>• Resource Coordinator or Project Director</li> <li>• Case managers</li> <li>• CPS representatives</li> <li>• treatment providers</li> </ul> <p>If FTC Judge attends staffing, attorneys are present or provide waivers for specific meetings</p>	<p>Case-specific CPS caseworkers and AOD treatment providers participate in staffings in person or by telephone</p> <p>Other service providers participate in staffings as appropriate</p>	
<p>During staffings, the FTC team discusses:</p> <ul style="list-style-type: none"> <li>• current case status</li> <li>• AOD treatment progress and compliance</li> <li>• time in recovery</li> <li>• children and family</li> </ul>	<p>The FTC team reviews:</p> <ul style="list-style-type: none"> <li>• the appropriateness of treatment and other services</li> <li>• the quality of treatment and other services</li> <li>• service gaps that</li> </ul>	

<p>issues, including time in foster care</p> <ul style="list-style-type: none"> <li>• compliance and progress with CPS case plan</li> </ul> <p>For each case discussed during staffings, the FTC team:</p> <ul style="list-style-type: none"> <li>• provides a UTA summary for attorneys, other team members and the Judge, if part of the staffing</li> <li>• seeks consensus regarding next steps</li> <li>• recommends a judicial response</li> <li>• recommends appropriate phase advancement or graduation</li> <li>• abides by confidentiality requirements</li> </ul>	<p>should be filled to meet participants' needs</p>	
<p>Following staffings, the FTC team:</p> <ul style="list-style-type: none"> <li>• enters new information into the UTA</li> <li>• provides a UTA summary for attorneys, the Judge, and team members</li> <li>• abides by confidentiality requirements</li> </ul>		<p>Up-to-date written summaries are available for use by FTC team at staffing</p>

**Recommended Practice:** At staffings, team members should present a brief overview of each case to update the team regarding participant progress in AOD treatment and related services. The team should also discuss any other pertinent child and family issues. Because staffings typically involve reviewing multiple cases under time constraints, more detailed, comprehensive reviews should be held separately.

**Rationale:** A staffing is intended to prepare the team for the upcoming court session. Therefore, the team should discuss case status, participant progress, and other central issues that are critical to the formal, in-court reviews with the FTC Judge and participants. More complex issues should be discussed in detail during comprehensive case reviews that are held periodically or on an as-needed basis.

**Recommended Practice:** Each FTC team should decide which team member is best suited to lead the staffings. Staffing should be conducted as close as possible to the in-court review.

**Rationale:** New York State Unified Court System title standards give the Resource Coordinator or Project Director responsibility for carrying out important administrative duties, including the collection and dissemination of pertinent case information. Therefore, the Resource Coordinator or Project Director is the most appropriate person to lead the staffing. Conducting a staffing immediately prior to court allows the entire FTC team to approach the in-court reviews fully apprised of each case and prepared to provide the court with appropriate information.

**Recommended Practice:** During staffing, the FTC team should schedule individual case reviews for specific time slots and circulate the staffing schedule to team members in advance. To promote efficiency and conserve time, the FTC team should attempt to group together cases handled by a particular case worker, service provider, or attorney.

**New York Experience:** In Rockland County, cases are scheduled to accommodate CPS case-workers' busy schedules – all cases assigned to an individual caseworker are scheduled together so that the caseworker need not be present for the entire meeting.

**Rationale:** A formal schedule permits busy attorneys, case workers, and service providers to attend only the portions of the staffing that pertain to their clients. Careful scheduling promotes team member attendance at staffings.

**Recommended Practice:** At a minimum, the FTC Resource Coordinator or Project Director, case managers, and CPS caseworkers should attend the staffing. Ideally, all team members, including attorneys and representatives of all agencies assisting FTC families, should participate in the pre-court staffing.

**Rationale:** The staffing is designed to prepare the FTC team for the upcoming court session and allow the team to reach consensus regarding case status and next steps. To achieve these goals, pre-court case reviews should include all of the team members listed above. Full participation ensures that everyone on the team is working from the same comprehensive knowledge base. Some FTCs experience difficulty in securing the appearance of treatment representatives at staffings, as treatment personnel generally cannot bill time spent at FTC meetings to the participant's medical insurance. Nonetheless, it is essential that pre-court case reviews include a person with treatment expertise who can place case events in the context of the dynamics of addiction and recovery.

**Recommended Practice:** If the FTC Judge attends pre-court staffing, attorneys for all parties must be present unless a specific waiver of appearance has been submitted in advance.

**Rationale:** FTCs are bound by ethical prohibitions against *ex parte* communications. The Judge may not receive case information in the absence of attorneys for all the parties. This practice comports with ethical standards, court rules, and Administrative Orders issued by New York's Deputy-Chief Administrative Judge. (See *Appendix 4* for Administrative Order 142/03 regarding Ex Parte Communications at Drug Court Staffings and Court Appearances)

**Recommended Practice:** Case-specific CPS caseworkers, AOD treatment personnel, and other service providers (e.g., CASAs, public health nurses, and mental health counselors) should participate in review of their specific cases(s) at the pre-court staffing.

**Rationale:** Caseworkers, treatment personnel, and service providers who work personally with FTC participants and families are in the best position to provide nuanced information to the FTC team, engage in collaborative service planning, and promptly respond to case events. However, they should participate only during the discussion of their respective cases to comply with confidentiality laws and regulations.

**Recommended Practice:** The FTC team should conduct comprehensive case reviews for individual cases periodically or as needed to discuss changes in case plans, upcoming permanency reviews, and other complex case issues. These reviews should be scheduled separate from regular pre-court staffing and should be attended by all team members providing services to the family, supervisors of team members, FTC participants, and appropriate family members.

**Rationale:** Families often encounter new and complex obstacles that demand a coordinated response from the FTC team. Comprehensive case reviews dedicated to individual families permit the FTC team to explore each family's difficulties and discuss possible adjustments to the family's case plan. Because these reviews typically require a significant amount of time and attention, they should not be held in the fast-paced and time-sensitive environment of pre-court staffing. Whenever possible, participants and family members should be included in comprehensive case reviews, as such participation tends to increase family buy-in and compliance.

**Recommended Practice:** FTC team members should monitor the timeliness and reliability of information reported during staffings.

**Rationale:** One of the principle benefits of the FTC model is that it uses collaboration and team participation to provide the court with the best possible information for well-informed decision-making. Stale information prevents the FTC from holding respondents and others accountable and can jeopardize child safety. Poor information may also lead the court to issue an inappropriate response, such as imposing a

negative consequence where sensitivity or praise would be appropriate or, conversely, offering praise when a sanction is warranted. The Resource Coordinator is responsible for overseeing this process. Although the Resource Coordinator is not the formal supervisor of most team members, she is the operational eyes and ears of the Operational Team and must ensure that the court is receiving accurate and timely information.

**Recommended Practice:** Case information provided at staffing should be comprehensive. Staffing should cover case status, compliance with AOD treatment, drug test results, time in recovery, and child and family issues such as time in foster care, compliance with the CPS case plan, and ASFA considerations.

**Rationale:** The FTC seeks to achieve more than parental abstinence – it is designed to address the problems affecting the entire family with the goal of reunifying the child in a safe and stable home with a parent in recovery. To achieve these broad goals, staffing reviews should address as many aspects of each case as possible within existing time constraints.

**Recommended Practice:** At pre-court staffing, the FTC team should attempt to reach consensus and formulate recommendations for appropriate judicial responses to case events.

**Rationale:** The FTC Judge depends on the Operational Team to provide the court with accurate, timely, and consistent information and to put case events in context. Team members, not the Judge, have individual contact with FTC participants and families outside court and maintain detailed records of case events. Moreover, team members alone have the professional expertise in AOD treatment and other specialized areas central to the participant's recovery and progress. For these reasons, it is important that the team reach consensus during pre-court staffing and present the court with a single, unified report and recommendation. The team should avoid debating about cases in court or in front of FTC participants. Such disorganization undermines the collaborative team approach and forces the Judge to formulate an independent response from the bench without unified input from the team.

**Recommended Practice:** The FTC team should review and address the appropriateness and quality of treatment and other services when necessary.

**Rationale:** As the Operational Team gains experience, it should assess how services are impacting participants, whether treatment providers are meeting the needs of FTC families, and which providers offer the best match for specific individuals. In some instances, changes in individual service plans may be required. In other cases, the Operational Team may take their observations to the Regional Field Office of the Office of Alcoholism and Substance Abuse Services. Protocols and contact information for this process can be accessed at <http://inside-ucs.org/courts/problemsolving/drugcourts> under the Resources/Clinical section.

**Recommended Practice:** Case information addressed at staffing should be recorded in the UTA, preferably in advance of the meeting. A summary of this information should be printed out and made available to the attorneys and the Judge prior to in-court reviews, particularly if they do not attend pre-court staffing. As the FTC hones its practice, it should develop up-to-date written case summaries for each FTC family.

**Rationale:** Written case summaries can help save time at in-court reviews and can be used to apprise the parties, attorneys, and Judge of the basis for each team recommendation. If the Judge does not attend staffing, the Judge can review these reports to prepare for in-court case reviews. Moreover, providing these reports to the Judge in advance allows the Judge to ask questions before court and determine whether the team's recommended response is appropriate. When attorneys are not present at the pre-court staffing, these reports enable them to prepare their clients for the in-court review and seek necessary clarifications before the case is called.

**Recommended Practice:** Team members should comply with confidentiality requirements during pre-court case reviews. Team members should report only what is necessary to evaluate participation and efficacy of interventions without disclosing unnecessary personal details.

**Rationale:** Although each FTC participant signs a consent form permitting the FTC team to exchange confidential information about her case, this consent is not open-ended. The FTC team should discuss only information that is necessary for the team to make an appropriate evaluation of each participant's progress. For instance, it is sufficient to report that a participant is dealing with traumatic and sensitive issues in one-on-one counseling and that these issues have impacted the participant's attendance at group meetings. There is generally no need to disclose the details of the participant's issues.

## 2. IN-COURT CASE REVIEWS

In-court case reviews are a central feature of the FTC model. The court should designate a specific time, separate from other court business, to conduct regular in-court case reviews. Requiring participants to make regular court appearances enables the court to hold parents and team members accountable. These court reviews are not designed to address legal matters, but rather to review case progress and adjust case plans and court orders as necessary.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC conducts regular in-court reviews that:</p> <ul style="list-style-type: none"> <li>• require newer participants to make frequent (e.g., weekly) appearances in court</li> <li>• gradually decrease in frequency over time</li> </ul>		
<p>In court-reviews include:</p> <ul style="list-style-type: none"> <li>• FTC Judge</li> <li>• Resource Coordinator</li> <li>• respondents</li> <li>• attorneys</li> <li>• case managers</li> <li>• CPS representatives</li> <li>• treatment providers</li> </ul>	<p>In-court reviews also include:</p> <ul style="list-style-type: none"> <li>• case-specific CPS case workers</li> <li>• case-specific treatment providers</li> <li>• other service providers as appropriate</li> </ul> <p>Children are present and permitted to speak during in-court reviews unless their presence would be detrimental to themselves or would undermine the parent-child relationship</p>	<p>In-court reviews also include:</p> <ul style="list-style-type: none"> <li>• CASAs</li> <li>• community-based service providers</li> </ul>

<p>The FTC Judge and team use in-court reviews to discuss:</p> <ul style="list-style-type: none"> <li>• service plan progress</li> <li>• compliance</li> <li>• abstinence</li> <li>• child’s well-being</li> <li>• parent-child interactions</li> <li>• ASFA time requirements</li> </ul> <p>Legal issues are not discussed at in-court case reviews</p>		
<p>The Judge engages in dialogue with respondents during in-court reviews</p> <p>The Judge is the primary spokesperson in the courtroom, where she communicates the consensus of the team</p> <p>The Judge encourages honesty from respondents</p> <p>The Judge uses in-court reviews to educate and motivate participants and the team by:</p> <ul style="list-style-type: none"> <li>• recognizing participant successes and accomplishments</li> <li>• clearly communicating the court’s expectations</li> <li>• imposing clear, predictable, and consistent consequences for non-compliance</li> <li>• demonstrating respect for confidentiality</li> </ul>		

<p>A single team member serves as the team's reporter during in-court reviews</p> <p>The FTC team develops and supports a consensus response</p>		<p>The FTC team is available after each court session to:</p> <ul style="list-style-type: none"> <li>• assist participants with follow-up issues</li> <li>• provide participants with additional support</li> </ul>
<p>In-court reviews are conducted in open courtrooms that employ safeguards to protect confidentiality</p> <p>Court sessions are closed only in compliance with N.Y. COMP. CODES R. &amp; REGS. tit. 22 § 205.04 (Access to Family Court Proceedings)</p> <p>Participant contract describes the use of in-court reviews and use of information in open court</p>		

**Recommended Practice:** In-court case reviews should be held frequently. New participants should appear as often as weekly and gradually decrease appearances over time as the participant progresses through the program. The schedule of court appearances should be varied to reflect the need for support.

**Rationale:** Regular in-court hearings are a central component of the FTC model. These hearings hold participants accountable by requiring them to appear before the FTC Judge to report on case plan compliance and face the consequences of non-compliance. New participants may require an adjustment period to acclimate to the FTC routine of treatment, court-supervised service plans, and regular court appearances. Regular monitoring and support have been shown to motivate participants and promote compliance. As participants progress through the program, the court may reduce the frequency and intensity of in-court case reviews. Likewise, the court may need to increase in-court reviews or add extra support during challenging periods (e.g., transition to less intensive treatment, return of children to parental custody).

**Recommended Practice:** At a minimum, the FTC Judge, case managers, CPS representatives, and treatment personnel should be present at each FTC court session.

**Rationale:** All of the above team members are required for an effective in-court case review. These team members are needed to provide the court with a complete and accurate picture of each participant's progress and ensure that any changes in case plans or court orders are communicated to the team. Their presence also indicates to participants that the team is unified and fully committed to supporting and monitoring each case.

**Recommended Practice:** The ideal in-court review should include all FTC team members, including attorneys, case managers, CPS representatives, treatment providers, and all other service providers who work with FTC participants and their families. All team members should show their support for family progress before, during, and after the court session.

**Rationale:** Full attendance at in-court case reviews maximizes the team's ability to provide comprehensive case updates, make clarifications on the spot, and coordinate follow-up plans. With the entire team present, team members can consult with each other and with participants and their families.

**Recommended Practice:** Children should be permitted to attend in-court reviews to share in their parents' accomplishments and to be heard as appropriate. The FTC should take steps, however, to assure that children are not permitted in court when their presence would be detrimental to them or would undermine the parent-child relationship.

**Rationale:** The children of FTC participants are usually well aware of their parents' difficulties and the fact that their parents are involved in Family Court proceedings. These children are typically concerned about the impact of the Family Court proceedings on their families and themselves. They can be reassured by witnessing their parents' success and the support that their parents are receiving from the Judge and team. Moreover, the FTC can demonstrate its respect for children's dignity by permitting them to express their opinions and participate in the court process at an age-appropriate level. Of course, care should be taken to exclude children who are too young to benefit from the experience or who might be frightened by the court process.

**Recommended Practice:** The FTC Judge and team must be careful to discuss legal issues only when each party's attorney is present at a formal court session and due notice has been provided to all required parties.

**Rationale:** Effective FTCs abide by statutory and due process requirements at all stages of the legal proceeding. The FTC is a formal Family Court part that adjudicates legal issues affecting the rights of participants, children, and families. The court must not allow the informality of the FTC model to obscure the line where family recovery meets due process. Although attorneys are responsible for guarding their client's rights, the FTC team must play a central role in protecting the due process rights of participants.

**Recommended Practice:** In-court case reviews should cover not only AOD treatment status, but also each participant's service plan compliance, the safety and well-being of each participant's children, and the status of any parent-child interactions.

**Rationale:** In-court reviews should focus attention on the ultimate issue in FTC cases - the safety, well-being, and timely permanency of children. Because the parent's recovery process receives so much attention in the FTC model, the FTC team can become preoccupied with the parent. In-court reviews can serve as an opportunity to re-direct attention toward permanency for the child.

**Recommended Practice:** Although the FTC team provides the Judge with case updates and recommendations, only the Judge should engage in dialogue with the respondent during in-court reviews.

**Rationale:** Addicts are often skilled at manipulation and can easily move a discussion away from their own accountability. By allowing only the Judge to address the parent during in-court hearings, the FTC can keep the review focused on the issues at hand and avoid disputes between the participant and team members. Pre-court staffing is the FTC team's opportunity to contribute to and guide the in-court review.

**Recommended Practice:** During in-court reviews, the FTC should emphasize and reinforce participants' strengths and successes rather than their challenges and failures.

**Rationale:** Experience demonstrates that FTC participants respond well to praise and encouragement. When a participant comes to court after missing treatment or testing positive for drugs, it is tempting to focus on the participant's misbehavior. It is more effective, however, to maintain a positive focus even while acknowledging the participant's failure. For example, an experienced Judge may address the participant as follows: "I'm not happy with your positive test, but the fact that you appeared here today tells me that you want to change and are willing to take responsibility for your actions." Such a response encourages the participant to re-commit to the program and alter her behavior.

**Recommended Practice:** The FTC should inform each participant's attorney of the results of pre-court staffing and the FTC team's recommendations prior to the participant's in-court review. With the assistance of counsel, participants should be given the opportunity to acknowledge and address difficulties on the record before the Judge determines how to respond to issues raised during staffing. Participants should be encouraged to tell the Judge about any progress or setbacks, and the Judge should commend participants for communicating with the court openly and honestly.

**Rationale:** Encouraging honesty in recovery is one of the central tenets of the FTC model. This goal is undermined when the court surprises or "ambushes" participants with negative reports and sanctions. FTCs should acknowledge participants' difficulties openly and look for solutions in a collaborative manner. Whenever possible, the court should attempt to find something to praise even in the face of transgressions.

**Recommended Practice:** Participants should be required to observe the in-court reviews of other participants, as the court recognizes others for their accomplishments or sanctions them for non-compliance. The court should encourage participants to speak to the group when they have accomplishments or lessons to share. By incorporating a group of participants into the in-court review process, the court has the opportunity to further educate participants as to expectations and opportunities.

**Rationale:** Effective FTCs use courtroom dynamics to enhance in-court reviews. Participants are often acquainted with each other through community contacts, treatment programs, or previous FTC appearances. Moreover, participants often see themselves in their fellow participants. For these reasons, participants can be motivated to change their own behavior when they observe the successes and failures of other participants. The court may even find it useful during in-court reviews to permit selected participants to speak to the group about their experiences and progress as a means of promoting mutual support and recognition.

**National experience:** In Thurston County (Olympia), Washington, FTC participants are required to report progress to the group when they have specific tasks to accomplish. For instance, a participant who needs to obtain housing in order to secure the return of her children may be required to record the steps she has taken since the last FTC review and give a “housing report” to the group. Knowing this, she is motivated to take the necessary steps, and her experiences guide other members of the group in their own efforts to obtain stable housing.

**Recommended Practice:** Each team member should support the team’s consensus recommendation during court reviews, with the exception of the respondent’s attorney who must always advocate on her client’s behalf.

**Rationale:** During pre-court staffing, team members have the opportunity to discuss each case and develop a consensus recommendation that takes into consideration all aspects of the participant’s situation. Dissent from the team’s recommendation in court reviews undermines the unified team approach to treatment and discourages participant compliance. If an individual team member disagrees with a team decision, that member should voice disagreement during staffing and work to come to consensus. At all times, however, attorneys must balance their role as team members with their professional and ethical obligations to their clients.

**Recommended Practice:** The FTC team should present a single report, either verbal or written, to the Judge in open court. If verbal, the report should be presented by a single representative of the team, most often the Resource Coordinator. If the team uses written reports, these reports should be available to all team members at every court review.

**Rationale:** Cross conversation between team members during in-court reviews undermines the team's recommendations and invites participants to exploit disagreements and the team's lack of consensus. Succinct, unified reports promote compliance and allow in-court reviews to proceed expeditiously by focusing the court's attention on the central issues. As team members become proficient at entering data into the UTA in an accurate and timely manner, the FTC Resource Coordinator should generate written summaries for review by the Judge and attorneys prior to in-court reviews.

**Recommended Practice:** FTC proceedings are open to the public and other participants. Therefore, the court must employ safeguards to protect participant confidentiality. The open exchange of information among team members at staffing should not carry over to in-court reviews or other formal court proceedings. The FTC team should discuss appropriate language to be used in the courtroom to enable the Judge to hold participants accountable without violating participants' privacy rights. In preparation for court reviews, team members should remind the Judge of particularly sensitive or confidential information and help determine how to address that information in open court in a manner consistent with confidentiality laws.

**Rationale:** FTCs by their very nature deal with sensitive and confidential information. Team members and the Judge must exercise discretion in their public comments to participants. Although FTC contracts typically provide that some sensitive information may be revealed in court sessions, there are limits to such disclosure. For example, the court may discuss a participant's positive drug test, but it may not discuss a participant's HIV status. As indicated above, in-court reviews present an excellent educational opportunity for participants. Nonetheless, the FTC must be careful to protect confidential or sensitive information in open court.

**Recommended Practice:** Upon appropriate request, FTC sessions may be closed to protect privacy pursuant to section 205.04 of the Uniform Rules for New York State Trial Courts. In cases where the Judge must discuss sensitive issues with a participant, the court should make arrangements to hear that case separately in closed court. The court should articulate valid reasons for the closure on the record.

**New York Experience:** Some courts hold cases involving sensitive information to the end of the calendar and excuse all other participants and observers before proceeding with those cases.

**Rationale:** By law, the Family Court is open to the public. The public has open access to courtrooms, lobbies, public waiting areas, and other common areas of the court. A Judge may exclude the public on a case-by-case basis only, based upon supporting evidence, considering factors such as privacy interests and the need to protect litigants from harm.

**Recommended Practice:** Participant contracts should delineate how sensitive information obtained by the FTC may be used.

**Rationale:** Statements made by FTC participants may reveal information that impacts their recovery and/or the child's well-being. Participant contracts should clearly indicate that, when child safety is implicated, the court will take action to protect children. To the extent that other information impacting participant compliance is revealed, the contract should set forth the extent to which such information may later be used against participants in a court proceeding.

### 3. JUDICIAL ROLE IN COURT

The Judge is the most important member of the FTC team. Research shows that the Judge, more than any other team member, has the ability to affect case outcomes and shape participants' behavior. The Judge can motivate participants to comply with the FTC program, achieve sobriety, and take the steps necessary to regain custody of their children. Outside the courtroom, the Judge can use her position in the community to bring together key stakeholders, overcome obstacles, and serve as a public champion of the FTC model.

Starting-up Practice	Progressing Practice	Advanced Practice
Judge prepares for in-court reviews by attending pre-court staffing or reviewing written staffing reports		
<p>Judge engages in dialogue with participants</p> <p>Judge delivers appropriate responses that:</p> <ul style="list-style-type: none"> <li>• respect confidentiality</li> <li>• employ positive reinforcement</li> <li>• respect participants</li> <li>• comply with ASFA time limits</li> </ul>	<p>Judge uses strength-based approach in interactions with participants by focusing on solutions and positive achievements</p>	<p>Judge puts information in context of each participant's case plan and personal circumstances</p> <p>Judge helps participants reflect on strategies for change</p>
<p>Judge acquires basic understanding of AOD treatment, recovery, and child development</p>	<p>Judge utilizes knowledge of addiction and recovery to guide interactions with participants</p> <p>Judge utilizes knowledge of child development to make decisions that promote child welfare</p>	

Judge publicly supports the FTC concept	Judge develops and employs a thorough understanding of the stages of change, addiction, and recovery, as well as motivational interviewing	Judge encourages team members to recommend changes in judicial practice that could enhance the supportive environment of the court room
Judge demonstrates respect for team members' professional expertise		
Judge supports families in the recovery process		
Judge oversees creation of consents to release confidential information		

**Recommended Practice:** The Judge should attend pre-court staffing, review written staffing reports prior to in-court reviews or be briefed by Resource Coordinator prior to in-court appearance by participant.

**Rationale:** The Judge is the face of the FTC and is responsible for making decisions that promote recovery and family reunification. To meet these responsibilities, the Judge should be apprised of current case information and team recommendations. Attending pre-court staffing and/or reviewing written staffing reports enables the Judge to make appropriate decisions in each case and helps the Judge avoid being manipulated by participants.

**Recommended Practice:** The Judge should engage in one-on-one dialogue with participants regarding treatment and recovery progress. The Judge should limit commentary from other team members in the courtroom.

**Rationale:** FTC graduates report that their relationship with the Judge is the most crucial factor in participant success. Participants find the Judge's encouragement and approval, often the first such approval from an authority figure in the participant's life, to be extremely motivating. Participants also value the opportunity to be heard and engage in dialogue with the Judge. Cross-conversation from other team members dilutes the impact of the Judge's response.

**Recommended Practice:** During in-court reviews, the Judge should consider case information in the context of each participant's case plan and life circumstances. In addition, the Judge should focus on the participant's positive achievements, while working to achieve solutions and assist participants to reflect on strategies for change.

**Rationale:** The Judge is uniquely positioned to communicate with participants and present information to participants in a way that they can understand. The Judge can use her position to motivate participants, remind participants how case events have consequences for ultimate case outcomes, and engage participants in meaningful dialogue about recovery.

**Recommended Practice:** The Judge should deliver appropriate responses that protect confidentiality, stress positive reinforcement, and show respect for participants. The Judge should employ a strength-based approach even when addressing challenges or non-compliance.

**Rationale:** The Judge's decisions and statements affect participant perceptions and outcomes. Behavior modification research consistently finds that excessive criticism, negativity, and disrespect is less effective in changing behavior than a strength-based approach.<sup>5</sup> A strength-based approach emphasizes open communication and respect for the individual. Under this approach, participants are recognized for what they have accomplished, however meager the accomplishment may appear. By demonstrating respect for participants, the court encourages participants to look honestly at their own successes and failures and promotes a perception of fairness. Parents who believe they have been treated fairly are more likely to surrender their parental rights voluntarily when they recognize that they are unable to meet their child's developmental needs.

**Recommended Practice:** The Judge should acquire basic knowledge of AOD treatment and recovery. The Judge should use this knowledge to make appropriate inquiries and decisions during in-court reviews.

**Rationale:** A working understanding of addiction and recovery enables the Judge to engage participants in meaningful dialogue and make appropriate decisions affecting participants' treatment and case plans.

**Recommended Practice:** The Judge should acquire basic knowledge of child development and use this knowledge to make appropriate inquiries and decisions during in-court reviews.

**Rationale:** Every FTC review should include inquiry into the status of the participant's children. A working understanding of child development enables the Judge to make appropriate inquiries and decisions that affect child welfare.

**Recommended Practice:** Over time, the Judge should be trained in the stages of change, addiction, and recovery, as well as motivational interviewing skills to engage participants in meaningful dialogue on progress and compliance.<sup>6</sup>

**Rationale:** The Judge's direct interaction with participants in the courtroom is a key component of the FTC model. To enhance the quality and effectiveness of these interactions, FTC Judges should seek to expand their base of knowledge in areas that affect the lives of FTC participants.\*

\*For more information about the Stages of Change Model, see [www.cellinteractive.com/ucla/physician\\_ed/stages\\_change.html](http://www.cellinteractive.com/ucla/physician_ed/stages_change.html)

**Recommended Practice:** The Judge should encourage the FTC team and participants to move cases expeditiously toward permanency in order to comply with ASFA time limitations.

**Rationale:** ASFA time limitations apply to FTC cases in the same manner as other Family Court cases. Ultimately, the Judge is responsible for enforcing ASFA requirements. Reminding the FTC team and participants of approaching deadlines may encourage progress and motivate team members to act promptly to facilitate case plan compliance.

**Recommended Practice:** The Judge should publicly demonstrate support for the FTC concept.

**Rationale:** The Judge's attitude toward the FTC mission can have a marked effect on case outcomes and performance. By enthusiastically embracing the FTC's way of doing business, the Judge can encourage team members, participants, and the community to buy into the FTC model.

**Recommended Practice:** The Judge should demonstrate respect for each team member's professional expertise.

**Rationale:** The Judge can demonstrate support for the team by becoming knowledgeable about team members' areas of expertise and relying on that expertise in appropriate situations. For example, treatment providers are trained to select an appropriate level of care for substance abusers. The Judge should recognize the treatment provider's expertise and work collaboratively with the treatment provider to develop an appropriate case plan. The Judge should also respect the treatment provider's recommendations for how to respond when a participant is non-compliant, even when the Judge is personally inclined to respond differently. Of course, deference to team members should never interfere with the Judge's legal obligations or the Judge's judicial discretion to make independent determinations based on all the facts.

**Recommended Practice:** The Judge should show respect for families in recovery and the struggle that participants face in their efforts to maintain or reunify their families.

**Rationale:** FTCs are most successful when the Judge demonstrates support for families in recovery. Parents, families, and the community all respond to the Judge's commitment to the FTC model and support for the recovery process. The Judge can demonstrate this support by personally overseeing and participating in FTC graduations and demonstrating confidence in the ability of FTC families to be productive members of the community. The Judge's leadership encourages others in the community to offer similar support for families in recovery.

**Recommended Practice:** The Judge should encourage team members to offer constructive criticism of the Judge's courtroom demeanor and assess whether the

Judge's personal style and practices are creating an atmosphere conducive to participant success.

**Rationale:** Most Judges come to treatment court with limited information and training in the dynamics of addiction and effective therapeutic techniques. Team members often have significantly more experience than the Judge in managing the addiction and recovery process. Therefore, the Judge should proactively seek team members' input and ask team members to identify potential problem areas in the Judge's practices. Because team members will usually be reluctant to criticize the Judge's interaction with participants, the Judge may have to invite feedback several times to open the lines of communication with the team.

**Recommended Practice:** The Judge should assume responsibility for the legal accuracy of the Consents to Release Confidential Information, which all participants are required to sign.

**Rationale:** As the ultimate legal authority in the FTC, the Judge should ensure that the Consents comply with all federal confidentiality rules contained in 42 C.F.R. Part 2 and the Health Insurance Portability and Accountability Act (HIPAA). Particular attention should be paid to the revocable nature of Consents in civil proceedings. Limiting the scope of releases and the use of confidential information in FTC reviews reassures participants that the team is using confidential information only to the extent necessary to achieve the FTC's goals.

## B. TEAM-BASED CASE SUPERVISION AND MONITORING

Collaborative, team-based supervision and monitoring are central to the FTC model. Team members join together to develop and supervise case plans, monitor participants' progress in treatment, make recommendations to the Judge, and support participant recovery and family reunification. To be effective, this collective approach requires each team member to share information, participate actively in case staffing, coordinate activities to avoid duplication of effort, and hold participants to a consistent standard based on established FTC goals.

<b>Starting-Up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p><b>Monitoring</b> The FTC team works together to monitor:</p> <ul style="list-style-type: none"> <li>• child safety and needs</li> <li>• AOD treatment</li> <li>• service plan adequacy and compliance</li> <li>• ASFA time limitations</li> </ul>	<p><b>Monitoring</b> The FTC team coordinates case monitoring activities to avoid duplication of effort and offer mutual assistance</p>	
<p><b>Communication</b> The FTC team reports routine contacts during pre-court staffing</p> <p>The FTC team reports significant case events promptly:</p> <ul style="list-style-type: none"> <li>• to the Resource Coordinator</li> <li>• to team members according to their professional obligations</li> </ul>	<p><b>Communication</b> The FTC team develops and utilizes a comprehensive and rapid communication system for use between formal case reviews</p>	
<p><b>Coordination</b> The FTC team fosters frequent contact and collaboration among team members, including:</p> <ul style="list-style-type: none"> <li>• Case managers</li> <li>• CPS case workers</li> <li>• treatment providers</li> <li>• other service providers</li> </ul>	<p><b>Coordination</b> Team members work to assist CPS personnel in meeting statutory case review requirements</p>	<p><b>Coordination</b> FTC case monitoring helps inform CPS case reviews and permanency hearings</p>

<p><b>Court Supervision</b> Court representatives meet with participants:</p> <ul style="list-style-type: none"> <li>• in accordance with each participant’s case status and level of need</li> <li>• as a bridge between court intervention and the commencement of AOD treatment</li> <li>• between court reviews</li> <li>• as set forth in each participant’s case plan</li> </ul>	<p><b>Court Supervision</b> FTC supervision includes:</p> <ul style="list-style-type: none"> <li>• identifying barriers to success</li> <li>• offering concrete assistance</li> <li>• facilitating participant compliance with case plans and treatment</li> </ul>	<p><b>Court Supervision</b> Additional service providers (e.g., public health nurses, peer mentors) collaborate with FTC personnel in the supervision and monitoring of participants</p>
<p><b>Participant and Family Role</b> The team assists participants and families to gradually develop the capacity to monitor their own progress</p> <p>Participants attend Alcoholics Anonymous, Narcotics Anonymous, other self-help groups and AOD education and prevention programs as appropriate</p>	<p><b>Participant and Family Role</b> Family members join participants at AOD education and prevention programs</p> <p>Participants obtains AOD program sponsors</p>	<p><b>Participant and Family Role</b> The FTC team includes participants and families in the development and ongoing assessment of their case plan</p>

**Recommended Practice:** Rather than focusing on a participant’s AOD treatment alone, the FTC should monitor the status of the participant’s case as a whole. The team should measure the adequacy of the participant’s entire service plan and assess the participant’s ability to meet ASFA time requirements. Team members must be alert to any threats to child safety and must be prepared to act immediately upon identifying such a threat. Moreover, the team should work to link children to appropriate services throughout the life of the case.

**Rationale:** As a division of the Family Court, the FTC has a broad mission that encompasses more than the respondent’s sobriety. The FTC is responsible for working with the entire family to maintain or reunite children in a safe and stable home. This goal is best achieved when the court not only monitors the parent’s AOD treatment, but also supports the safety and healthy development of the children and continually assesses the adequacy and effectiveness of the family’s entire case plan. The FTC should also track the respondent’s progress against ASFA time limitations and adjust case plans to promote timely reunification.

**Recommended Practice:** Team members should report significant events promptly to the Resource Coordinator and relevant team members. To facilitate timely sharing of information, the FTC team should institute a comprehensive and rapid communication system to be used between case reviews. Routine case events, such as regular treatment attendance, need not be reported immediately. These events should be reported during regularly scheduled staffing.

**Rationale:** The FTC must ensure that critical information reaches the appropriate team members without delay. For example, information pertaining to child safety must be immediately reported to CPS. Delaying communication of this information until the next staffing may impede a participant's recovery or, even worse, pose a safety risk to a child. Routine events need not be reported until the next regularly-scheduled staffing, leaving team members free to deal with more pressing issues.

**Recommended Practice:** FTC case managers, CPS caseworkers, and treatment counselors should maintain frequent contact with each other and exchange information on child safety, service plan compliance, and overall case progress. Team members should develop protocols to coordinate case monitoring activities to avoid duplication of effort, ensure consistency of approach, and offer mutual assistance.

**New York Experience:**

In Tompkins County, team members use e-mail to report significant case events to the entire team. E-mail allows the team to communicate rapidly and take prompt action to respond to problems as they arise.

**Rationale:** Over time, collaborative monitoring will help the various team members appreciate how their roles overlap and how they can most effectively reinforce each other's activities. As team members gain a clear understanding of each other's roles, they can offer mutual assistance, avoid duplicative efforts, and develop an enhanced understanding of each case.

**New York Experience:** Some jurisdictions include Court Appointed Special Advocates (CASAs) on their FTC team. By mutual agreement, a CASA may agree to track certain information about a respondent's children (e.g., educational development) with the understanding that this information will be made available to the entire team. This practice can relieve CPS caseworkers of the time-consuming responsibility of contacting individual schools and obtaining individual report cards.

**Recommended Practice:** Team members should be aware of statutory CPS case review requirements and work with CPS personnel to facilitate compliance. FTC case monitoring activities should be coordinated whenever possible with required CPS case reviews and permanency hearings.

**Rationale:** Statutes and regulations prescribe intervals at which CPS must hold case reviews. The FTC can enhance these reviews by coordinating its case monitoring activities and providing the most up-to-date information for CPS reviews. Such

coordination also allows the FTC team to keep apprised of CPS developments that may impact the case plan.

**Recommended Practice:** As part of FTC supervision, participants are expected to meet with or maintain contact with a designated court representative between court appearances. These contacts allow the FTC to facilitate entry into treatment, monitor and report on case plan compliance, and arrange additional AOD testing. The frequency of these contacts will vary in accordance with each participant's individual need. Often, the court will require more frequent contacts early in the case (when the participant is being linked with services and working through the early stages of recovery), in times of crisis, and when relapse is suspected.

**Rationale:** Court-supervised case management is one of the key innovations of the FTC model. This intensive form of case management strengthens respondents' connection to the "system", facilitates effective linkages with community support services, and leads to improved outcomes for participants and their families.

**Recommended Practice:** Team members should identify barriers to compliance and offer concrete assistance to help families overcome these barriers.

**Rationale:** Team members have frequent contact with participants and, therefore, are in a good position to recognize problems that make it difficult for participants to comply with their service plans. Team members should actively investigate these problems and offer tangible assistance in addressing them. Many simple problems, such as paperwork or documentation issues, can be solved with simple steps. More significant obstacles, like the lack of child care or health issues, may require the coordinated involvement of more than one team member.

**Recommended Practice:** Community-based programs that serve FTC families should be included in case supervision and monitoring when appropriate. Public health nurses, peer mentors, housing programs, Court Appointed Special Advocates, and counseling agencies are among those who may be included.

**Rationale:** Inviting other agencies to the table broadens the range of potential options and solutions. Outside agencies may begin by participating in the FTC process on a limited basis and expand their role as the FTC team becomes increasingly familiar with the program and its capabilities.

**Recommended Practice:** Participants and families should be included in the ongoing development of their case plans, possibly during comprehensive case reviews or Family Group Conferencing (if available).

**Rationale:** In many ways, families are the experts on themselves. They can identify their most urgent needs and most pressing issues. They know whether a case plan is realistic and achievable in light of their specific circumstances. For these reasons, families should be invited to help develop their own case plans and should be included

in the case plan review process. Families that participate in formulating their own case plans are more invested in their own success and may be more likely to accomplish the goals set out in their case plan. The family's participation also promotes plans that are culturally competent.

**Recommended Practice:** The team should assist participants and families to gradually develop the capacity to monitor themselves. Participants should be encouraged to monitor their own recovery through participation in Alcoholics Anonymous, Narcotics Anonymous, faith-based support groups or secular self-help groups. When possible, participants should also be linked with a sponsor or mentor who can help participants become more strongly engaged in their own recovery. Participants' families should also be offered the opportunity to attend AOD education or prevention sessions.

**Rationale:** When an FTC family is ultimately reunited, the children will depend on the parents to keep them safe. Working with participants and family members during the FTC process can help them recognize when action is required, what action is required, and where to access the assistance they may need. The FTC can provide families with the tools to become independent and competent members of the community. For example, encouraging participation in Alcoholics Anonymous, Narcotics Anonymous, Al-Anon, and other self-help groups during FTC begins the process of self-monitoring and encourages participants and families to continue their involvement in these groups after their time in the FTC ends.

## V. ROLES CLARIFICATION

### A. RESPONDENT'S ATTORNEY

The respondent's (parent's) attorney must maintain a delicate balance between zealously protecting the respondent's legal rights and working to promote the respondent's long-term recovery. Managing the attorney-client relationship under these circumstances can be difficult, as the respondent's long-term interest in maintaining or reunifying her family is, at times, in conflict with the respondent's short-term interest in minimizing the FTC's control over her actions. To render appropriate legal advice, the respondent's attorney must act as a "counselor" at law.

Starting-up Practice	Progressing Practice	Advanced Practice
<p><b>Relationship with client</b></p> <p>Respondent's attorney should:</p> <ul style="list-style-type: none"> <li>• establish clear outcome goals with respondent</li> <li>• distinguish privileged conversations from in-court advocacy</li> <li>• educate the respondent about ASFA timelines</li> <li>• give the respondent a realistic legal case assessment</li> </ul>	<p><b>Relationship with client</b></p> <p>Respondent's attorney should:</p> <ul style="list-style-type: none"> <li>• support the respondent's recovery</li> <li>• help the respondent face AOD abuse and relapse</li> </ul>	<p><b>Relationship with client</b></p> <p>Respondent's attorney should:</p> <ul style="list-style-type: none"> <li>• help the respondent maintain control over case outcome and permanency plan</li> <li>• support voluntary surrender of parental rights in appropriate cases</li> </ul>
<p><b>Acquiring additional skills</b></p> <p>Respondent's attorney should acquire training in:</p> <ul style="list-style-type: none"> <li>• AOD addiction</li> <li>• AOD treatment</li> <li>• recovery dynamics</li> <li>• FTC policies and procedures</li> </ul>	<p><b>Acquiring additional skills</b></p> <p>Respondent's attorney should acquire training in child development</p> <p>Respondent's attorney should understand the roles of FTC team members and educate the team about the obligations of the respondent's attorney</p>	<p><b>Acquiring additional skills</b></p> <p>Respondent's attorney should acquire training in:</p> <ul style="list-style-type: none"> <li>• the stages of change</li> <li>• motivational interviewing</li> </ul>

Team participation	Team participation	Team participation
<p>Respondent's attorney should:</p> <ul style="list-style-type: none"> <li>• introduce parents to FTC concepts</li> <li>• attend in-court reviews</li> <li>• participate in FTC planning</li> </ul>	<p>Respondent's attorney should:</p> <ul style="list-style-type: none"> <li>• explain the pros and cons of participating in the FTC</li> <li>• actively participate in pre-court staffings</li> <li>• advocate for recovery supports</li> </ul> <p>Respondent's attorney should participate in:</p> <ul style="list-style-type: none"> <li>• FTC strategic planning</li> <li>• regular reviews of FTC policies and procedures</li> </ul>	

## **RELATIONSHIP WITH CLIENT**

**Recommended Practice:** The respondent's attorney should zealously advocate for the respondent's position in formal legal proceedings, while privately counseling respondents to be honest about their status in recovery and to actively engage in treatment and other activities that support recovery and family reunification.

**Rationale:** Although the respondent almost always wants her attorney to advocate for reunification with her children, the respondent's attorney knows that achievement of this goal may require the parent to fulfill interim obligations that she is initially unwilling to acknowledge. Under these circumstances, there emerges a clear tension between the respondent's long-term and short-term goals. This is where the attorney's skills and obligations as a "counselor" are called into play. In one-on-one conversations with the respondent, the attorney may recommend engaging in treatment and other activities that serve the client's long-term goals even though these activities may cut against the client's short-term interests.

**Recommended Practice:** The respondent's attorney should educate her client about ASFA time limitations and actively encourage her to engage in recovery in a manner that permits timely family reunification.

**Rationale:** The respondent is likely to distrust her attorney if she does not believe that her attorney has her best interests at heart. The respondent's attorney should counsel the respondent in realistic terms about the challenge that FTC participation poses, as

well as the strict time limitations imposed by ASFA. The attorney should also demonstrate her willingness to support the respondent in recovery by emphasizing her experience representing others in the same position and her training on addiction and recovery.

**Recommended Practice:** The respondent's attorney should support the client's recovery in any way possible, including praising the client's accomplishments and working with the FTC team to provide adequate services and assistance to support the client's recovery.

**Rationale:** Praising the respondent's accomplishments, no matter how small, will help the respondent measure her progress and motivate her to continue. A strong attorney-client relationship will encourage the respondent to reveal obstacles to her recovery (e.g., ongoing domestic violence, unstable housing, lack of family support, interference with child visitation). The respondent's attorney has the unique ability to bring these issues to the FTC team and urge the team to provide the respondent with adequate supportive services.

**Recommended Practice:** The respondent's attorney should provide her client with a frank assessment about her recovery status. When the respondent's statements about recovery appear to conflict with appearances or other information, the attorney should advise the client of the apparent inconsistencies and discuss how the FTC team and Judge are likely to respond.

**Rationale:** The respondent's attorney can provide a private "reality check" for the participant and an opportunity for the participant to confront mistakes before facing the Judge. For example, the respondent's attorney can prepare the client to confront relapse honestly and admit mistakes to the Judge and FTC team, thereby avoiding additional problems that arise when the client conceals facts or lies to the court.

**Recommended Practice:** Where the respondent's permanency goal has been changed to something other than reunification, the respondent's attorney should advise the client of all appropriate legal challenges to the change in permanency goal, e.g., hearing on the basis for change in goal, motion to suspend judgment. If the change in permanency goal cannot be altered, the attorney should assist her client in coming to terms with the situation and maintaining as much control as possible. The attorney should help the respondent participate in the formulation of a new permanency plan. If termination of parental rights is contemplated, the attorney should advise the respondent of the possibility of voluntarily surrendering parental rights with an agreement for post-adoption contact.

**Rationale:** Although the respondent may not be able to engage in sustained recovery in time to be reunified with her children, there may be other options for maintaining a continuing relationship with the children or for exercising some control over the outcome for the children. The respondent is uniquely situated to suggest permanent alternatives, such as kinship caregivers. Where termination of parental rights appears inevitable,

some respondents may prefer a voluntary surrender. A voluntary surrender can be an act of love and generosity by the parent toward the child who is in a safe and stable pre-adoptive home. Surrender to a named individual gives the parent the assurance that the child will be raised by someone the parent trusts and may provide the opportunity to negotiate some form of post-adoption contact. Additionally, a *voluntary* surrender may prevent a motion to dispense with reasonable efforts respecting other children who may become subjects of neglect proceedings.

## **ACQUIRING ADDITIONAL SKILLS**

**Recommended Practice:** The respondent's attorney should attend trainings and review literature to become educated in AOD addiction and treatment and the dynamics of recovery.

**Rationale:** The greatest challenge that FTC participants face is addiction. An attorney who is well-versed in addiction and recovery issues can play a much more active role in advocating for the FTC client. For example, the attorney can advocate for specific programs that are appropriate for the client's circumstances. Moreover, a well-informed attorney can avoid inadvertently enabling the respondent to continue addictive behaviors.

**Recommended Practice:** The respondent's attorney should attend FTC team member training. The attorney should also obtain a copy of the FTC Policies & Procedures Manual and become familiar with the FTC process.

**Rationale:** Although FTC cases are formal family court cases, the FTC operates differently from traditional family courts. By attending FTC trainings and reviewing the court's policies and procedures manual, the respondent's attorney can enhance her ability to advise clients about the FTC process, expectations, and chances for success.

**Recommended Practice:** The respondent's attorney should learn about the roles and responsibilities of other FTC team members.

**Rationale:** Often, the respondent's attorney has some familiarity with the FTC team but does not fully understand the details of each team member's role and responsibilities. A thorough understanding of FTC team dynamics can assist the respondent's attorney in representing the client's interests and reaching appropriate solutions when problems arise.

**Recommended Practice:** The respondent's attorney should teach other FTC team members about the professional obligations and ethical responsibilities of a respondent's attorney.

**Rationale:** FTC team members sometimes misinterpret counsel's advocacy as hostility or unwillingness to participate as a "team member." When team members understand

the attorney's legal and ethical obligations, it is easier for them to accept the fact that the attorney's ability to join in consensus decisions may be limited by her responsibilities to the client. Enhanced understanding of the attorney's role can serve to improve relationships without compromising the attorney's representation of the client.

**Recommended Practice:** The respondent's attorney should learn about the *Stages of Change Model* by Prochaska and DeClemente and *Motivational Interviewing* as developed by Miller and Rollnick.

[www.cellinteractive.com/ucla/physician\\_ed/stages\\_change.html](http://www.cellinteractive.com/ucla/physician_ed/stages_change.html) and <http://www.motivationalinterview.org/clinical/interaction.html>

**Rationale:** It is important for the respondent's attorney to understand the stages of change so that the attorney can better understand the client's level of readiness to engage in sustained recovery. Moreover, understanding the stages of change will allow the attorney to communicate with team members using a common vocabulary. Learning motivational interviewing techniques can enhance the attorney's skills as "counselor at law" and improve the attorney's ability to help the client find her own path to recovery.

## **PARTICIPATING IN THE FTC TEAM**

**Recommended Practice:** The respondent's attorney should introduce the respondent to the FTC concept and discuss the advantages and disadvantages of participation.

**Rationale:** The respondent's attorney is the one member of the FTC team who has an inviolable confidential relationship with potential participants. Although respondents may be reluctant to disclose certain impediments to FTC participation with the Resource Coordinator, case manager, or other team members, they can safely discuss these matters in the context of the attorney-client relationship. A frank discussion about possible participation in the FTC enables respondents to make knowing and intelligent decisions that best suit their unique circumstances.

**Recommended Practice:** The respondent's attorney should attend in-court reviews and pre-court staffing and should participate in team decision-making about the respondent's case.

**New York Experience:** In Erie County, attorney participation in pre-court staffing has been shown to produce less punitive and more constructive responses to respondent behavior, including compliance violations.

**Rationale:** Attending in-court reviews helps the respondent's attorney stay apprised of the respondent's progress and enables the attorney to advocate for less onerous or restrictive measures where appropriate. Participating in pre-court staffing allows the respondent's attorney to help shape meaningful and appropriate responses to the respondent's behavior.

**Recommended Practice:** Respondents' attorneys should participate in strategic planning and regular reviews of FTC policies and procedures.

**Rationale:** Respondents' attorneys are in a unique position to advocate for the interests of this population and help create a program that protects respondents' rights and promotes successful recovery.

## B. ATTORNEY FOR THE CHILD

Because Attorneys for Children represent children, they must balance their obligation to zealously represent their clients with the fact that their clients are developmentally immature and not always capable of deciding what is in their own best interests. The Attorney for the Child's role may properly include supporting the parent's recovery to promote a safe and healthy home for the child. Above all, the Attorney for the Child's primary duty is to ensure that the court and the FTC team remain focused on the child's best interests.

<b>Starting-up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p><b>Relationship with client</b></p> <p>Attorney for the Child should:</p> <ul style="list-style-type: none"> <li>• work with the child to establish clear goals</li> <li>• keep the Judge and FTC team focused on the child's best interests</li> </ul>	<p><b>Relationship with client</b></p> <p>Attorney for the Child should:</p> <ul style="list-style-type: none"> <li>• show empathy for the parent while protecting the child's interests</li> <li>• include the child in FTC proceedings in an age-appropriate manner</li> </ul>	
<p><b>Acquiring additional skills</b></p> <p>Attorney for the Child should acquire training in:</p> <ul style="list-style-type: none"> <li>• child development</li> <li>• the disease model of addiction</li> <li>• the impact of AOD abuse on children</li> <li>• FTC policies and procedures</li> </ul>	<p><b>Acquiring additional skills</b></p> <p>Attorney for the Child should acquire training in:</p> <ul style="list-style-type: none"> <li>• fetal alcohol spectrum disorder</li> <li>• the impact of AOD abuse on family relationships</li> </ul> <p>Attorney for the Child should understand team roles and teach the team about the Attorney for the Child's obligations</p>	

Team participation	Team participation	Team participation
<p>Attorney for the Child should:</p> <ul style="list-style-type: none"> <li>• attend in-court reviews</li> <li>• promote frequent parent-child contact</li> <li>• advocate for responses to parental behavior that are not harmful to the child</li> <li>• participate in FTC planning</li> </ul>	<p>Attorney for the Child should:</p> <ul style="list-style-type: none"> <li>• attend pre-court staffing</li> <li>• participate in shaping the team's consensus</li> <li>• recommend child-related goals for the parent</li> <li>• advocate for services that address AOD impact on children</li> <li>• seek family preservation</li> </ul>	<p>Attorney for the Child should:</p> <ul style="list-style-type: none"> <li>• understand the effect of AOD abuse on parent-child roles</li> <li>• prepare the child for reunification</li> <li>• participate in FTC strategic planning sessions and regular reviews of FTC policies and procedures</li> </ul>

## **RELATIONSHIP WITH CLIENT**

**Recommended Practice:** The Attorney for the Child should work with the child to formulate clear goals for the outcome of the case, while accounting for the child's maturity level.

**Rationale:** In most instances, the child's goal will be family preservation or reunification. Reasonable efforts toward that goal are required unless excused upon motion. However, where another parent is available to act as a capable caretaker or where a child expresses an unwillingness to resume residing with the recovering parent, consideration of alternate goals may be appropriate.

**Recommended Practice:** The Attorney for the Child should be aware of the potential impact of parental substance abuse on the child's cognitive and social development.

**Rationale:** Parental substance abuse can have a significant impact on a child's physical, mental, and emotional development. Children of substance-abusing parents are at increased risk for AOD abuse themselves. Moreover, the chaotic home environment in which many children of AOD-addicted parents are raised may lead to social or developmental deficits.<sup>7</sup>

**Recommended Practice:** The Attorney for the Child should work to ensure that the Judge and FTC team remain focused at all times on the child's safety and best interests.

**Rationale:** In the FTC model, the recovering parent makes frequent court appearances, and the FTC team becomes well-acquainted with the recovering parent's needs and progress. The recovering parent's children, on the other hand, appear in court far less

frequently. Therefore, the team risks shifting its focus to the parent's recovery and away from the child's best interests. As the child's sole legal representative, it is critical that the Attorney for the Child represent the child's best interests throughout the life of the FTC case.

**Recommended Practice:** The Attorney for the Child should arrange for the child to make occasional court appearances in a manner consistent with the child's maturity level and best interests.

**Rationale:** The parent-child relationship can benefit when the child observes the parent doing well in the FTC program. The child, upon reaching a certain level of maturity, is aware that the parent has difficulties with substance abuse, that the court will determine the child's living situation, and that matters affecting the child are being decided by others.

### **ACQUIRING ADDITIONAL SKILLS**

**Recommended Practice:** The Attorney for the Child should acquire training in child development.

**Rationale:** A basic understanding of child development enables the Attorney for the Child to better assess the child's best interests, advocate for appropriate services for the child, and help determine the appropriate frequency and type of parent-child contact.

**Recommended Practice:** The Attorney for the Child should acquire training in addiction and recovery, the impact of parental substance abuse on children, and the physical effects of AOD abuse on children born to addicted mothers.

**Rationale:** A thorough understanding of addiction and the recovery process can enhance the Attorney for the Child's ability to assess child safety, promote a healthy parent-child relationship, and achieve permanency for the child. Likewise, Attorneys for the Children should understand that children of AOD abusers have unique risk factors for physical, developmental, and social impairments, as well as an increased risk of substance abuse themselves.

**Recommended Practice:** The Attorney for the Child should attend FTC team member training. The Attorney for the Child should also obtain a copy of the FTC Policies & Procedures Manual and become familiar with the FTC process.

**Rationale:** Although FTC cases are formal family court cases, the FTC operates differently than traditional family courts. By attending FTC trainings and reviewing the court's Policies & Procedures Manual, the Attorney for the Child enhances her ability to utilize the program to promote the child's best interests.

**Recommended Practice:** The Attorney for the Child should learn about the roles and responsibilities of other team members.

**Rationale:** Often, the Attorney for the Child has some familiarity with the FTC team but does not fully understand the details of each team member's role and responsibilities. A thorough understanding of FTC team dynamics can assist the Attorney for the Child in representing the child's interests and reaching appropriate solutions when problems arise.

**Recommended Practice:** The Attorney for the Child should teach the FTC team about the Attorney for the Child's role and ethical obligations.

**Rationale:** As a member of the FTC team, the Attorney for the Child may be expected to join in consensus responses and act as a "team player." Other team members may not fully appreciate the Attorney for the Child's unique obligations as the child's sole legal representative. By educating the team about the Attorney for the Child's proper role, the Attorney for the Child can prevent misunderstandings and reinforce the primacy of child safety and best interests.

### **PARTICIPATING IN THE FTC TEAM**

**Recommended Practice:** The Attorney for the Child should attend pre-court staffing and participate in shaping the team's consensus.

**Rationale:** Pre-court staffing provides the Attorney for the Child with an early opportunity to focus the team on the child's well-being. The Attorney for the Child can also promote family reunification by identifying the child's needs and preparing the parent to meet those needs.

**Recommended Practice:** The Attorney for the Child should be present at in-court reviews to remind participants and the team of the primacy of child safety and well-being. The Attorney for the Child should advocate for parent-child contact consistent with the child's development and best interests.

**Rationale:** In-court reviews are the Attorney for the Child's formal opportunity to ensure that the child is safe, advocate for adequate services for the child, gather up-to-date information about the parent's progress, and review the frequency of parent-child contact.

**Recommended Practice:** The Attorney for the Child should advocate for services that address the distortion of parent-child relationships caused by parental AOD abuse and prepare families for reunification through adequate supports and family counseling.

**Rationale:** Parental recovery is only one factor in successful family reunification. The parent's AOD abuse often causes family roles to become distorted. Older children may

be forced to raise themselves and care for their younger siblings. The children, in turn, may not be accustomed to having the parent act as the primary caretaker. Family counseling can address these issues and prepare the family for reunification.

**Recommended Practice:** The Attorney for the Child should participate in strategic planning and regular reviews of FTC policies and procedures.

**Rationale:** The FTC model has the potential to provide significant benefits to the child client, and the Attorney for the Child is in a unique position to advocate for the child's interests and help create a program that promotes successful recovery.

### C. COUNSEL FOR CHILD PROTECTIVE SERVICES

The attorney representing Child Protective Services (CPS) is primarily responsible for presenting evidence to support the neglect petition. In the context of the FTC, however, CPS counsel can be instrumental in structuring settlements of cases to ensure the safety of the child and to encourage parental participation in FTC as a means to reunification.

<b>Starting-up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p><b>Relationship with client</b></p> <p>CPS counsel should:</p> <ul style="list-style-type: none"> <li>• support reunification</li> <li>• practice negotiation over litigation</li> <li>• propose disposition with adequate services</li> </ul>	<p><b>Relationship with client</b></p> <p>CPS counsel should:</p> <ul style="list-style-type: none"> <li>• support the use of less restrictive court orders as parents make progress</li> <li>• encourage compliance through timely use of contempt motions</li> <li>• restrict the use of confidential information under release</li> </ul>	<p><b>Relationship with client</b></p> <p>In cases where reunification is not possible, CPS counsel should:</p> <ul style="list-style-type: none"> <li>• permit the parent to participate in the creation of a permanency plan</li> <li>• consider allowing voluntary surrender of parental rights with post-adoption contact</li> </ul>
<p><b>Acquiring additional skills</b></p> <p>CPS counsel should acquire training in:</p> <ul style="list-style-type: none"> <li>• AOD addiction</li> <li>• AOD treatment</li> <li>• recovery dynamics</li> <li>• FTC policies and procedures</li> </ul>	<p><b>Acquiring additional skills</b></p> <p>CPS counsel should:</p> <ul style="list-style-type: none"> <li>• acquire training in child development</li> <li>• understand the roles of FTC team members</li> <li>• teach the team about the CPS attorney's obligations</li> <li>• teach the team about ASFA guidelines and Family Court procedures</li> </ul>	

Team participation	Team participation	Team participation
<p>CPS counsel should:</p> <ul style="list-style-type: none"> <li>• attend in-court reviews</li> <li>• introduce CPS staff to the FTC concept</li> </ul>	<p>CPS counsel should:</p> <ul style="list-style-type: none"> <li>• attend pre-court staffing</li> <li>• participate in shaping the team’s consensus</li> <li>• informally support parents in recovery</li> </ul> <p>CPS counsel should:</p> <ul style="list-style-type: none"> <li>▪ participate in strategic planning and regular reviews of FTC policies and procedures</li> </ul>	

## **RELATIONSHIP WITH CLIENT**

**Recommended Practice:** CPS counsel should actively seek negotiated agreement at the fact-finding stage rather than protracted litigation.

**Rationale:** Parents who consent to a negotiated agreement regarding their case will be more disposed to engage in the FTC process. Although parents should never be deprived of their right to contest the removal of their children or the allegations against them, such contests consume valuable time and may impact ASFA time limitations and the parent’s successful recovery. Therefore, these contests should be avoided whenever possible. Legal options for negotiated agreement at the fact-finding stage may include:

- Adjournment in contemplation of dismissal (when children have not been placed)
- Consent to a finding without an admission
- Admission to less than all the allegations in the petition

**Recommended Practice:** CPS counsel should propose an order of disposition that contains conditions sufficient to address the parent’s challenges but is not unduly burdensome.

**Rationale:** A well-crafted order of disposition can serve to hold both the participant and CPS accountable. The order should call for a full range of appropriate services while leaving room for flexibility, as the participant’s capacity to comply with treatment should increase over time.

**Recommended Practice:** CPS counsel should propose less restrictive court orders as participants progress through the FTC program.

**Rationale:** The FTC model is designed to reduce the adversarial nature of neglect proceedings. CPS counsel need not await a motion from the respondent's attorney before suggesting less restrictive orders, particularly where parent-child contact is concerned. Formal motion practice wastes valuable ASFA time and delays the rebuilding of families.

**Recommended Practice:** CPS counsel should bring timely motions for modification or contempt to encourage compliance.

**Rationale:** CPS counsel is generally responsible for ensuring that the FTC enforces the terms of participation. Failure to promptly seek such enforcement undermines the effectiveness of FTC responses. By contrast, consistently prompt filing encourages participant compliance.

**Recommended Practice:** In cases where the permanency goal is something other than reunification, CPS counsel should encourage the compliant parent to participate in developing the permanency plan. If the parent is willing to surrender parental rights voluntarily, CPS counsel should consider whether post-adoption contact is appropriate.

**Rationale:** Some FTC participants may be able to recognize the fact they will not be able to engage a sustained recovery within ASFA guidelines and, therefore, will not be able to reunify with their children. These parents may be willing to surrender their parental rights to a known individual and may be capable of healthy post-adoption contact with their children.

## **ACQUIRING ADDITIONAL SKILLS**

**Recommended Practice:** CPS counsel should acquire training in AOD addiction, treatment, and recovery.

**Rationale:** The FTC model is designed to promote recovery and family reunification for parents with AOD abuse issues. CPS counsel, as the state's representative and the driving force behind FTC neglect allegations, has the ability to dramatically affect the outcome of each case. For this reason, it is important that CPS counsel acquire basic training in AOD addiction, treatment, and recovery issues. Such training enables the CPS attorney to more accurately assess respondents' progress and advocate responses that are consistent with the FTC mission.

**Recommended Practice:** CPS counsel should attend FTC team member training when available. In addition, CPS counsel should obtain a copy of the FTC Policies & Procedures Manual and become familiar with the FTC process.

**Rationale:** Although FTC cases are formal family court cases, the FTC operates differently than traditional family courts. By attending FTC trainings and reviewing the court's policies and procedures manual, CPS counsel enhances her ability to advise CPS regarding each respondent's suitability and progress in the program.

**Recommended Practice:** CPS counsel should learn about the roles and responsibilities of other team members.

**Rationale:** Often, the CPS attorney has some familiarity with the FTC team but does not fully understand the details of each team member's role and responsibilities. A thorough understanding of FTC team dynamics can assist CPS counsel in representing CPS interests and reaching appropriate solutions when problems arise.

### **PARTICIPATING IN THE FTC TEAM**

**Recommended Practice:** CPS counsel should participate in shaping team consensus in individual cases by attending pre-court staffings and in-court case reviews.

**Rationale:** Participating in pre-court staffing sessions enables the CPS attorney to help shape the team's consensus in individual cases and ensures that the team takes into account important issues like child safety and ASFA time limits. Attending in-court reviews permits the CPS attorney to stay apprised of respondents' progress, offer support when respondents take positive steps, and request appropriate changes in court orders when necessary.

**Recommended Practice:** CPS counsel should encourage referrals to the FTC by educating CPS case workers about the FTC model.

**Rationale:** CPS counsel can be instrumental in building the FTC's capacity by educating CPS case workers about the FTC model, services, and eligibility criteria. In addition to describing programmatic details, she can explain the benefits of working with the FTC in terms of increased job satisfaction and improved case outcomes.

**Recommended Practice:** CPS counsel should participate in strategic planning meetings and regular reviews of FTC policies and procedures.

**Rationale:** The CPS attorney is in a unique position to contribute to planning and review discussions because she observes the impact of the FTC on case outcomes, receives feedback from case workers, and understands the importance of complying with ASFA limits.

## D. AOD TREATMENT PROVIDER

The treatment provider is responsible for determining the need for substance abuse treatment, the appropriate level of care for FTC participants, developing case-specific treatment plans, and providing AOD treatment that promotes recovery and timely family reunification.

Starting-up Practice	Progressing Practice	Advanced Practice
<p><b>Relationship with client</b></p> <p>The treatment provider should:</p> <ul style="list-style-type: none"> <li>• design treatment plans to comply with ASFA time limits and court mandates</li> <li>• support improved family relationships</li> <li>• permit parent-child contact as early as appropriate in each case</li> </ul>	<p><b>Relationship with client</b></p> <p>The treatment provider should:</p> <ul style="list-style-type: none"> <li>• use ASFA time limits to motivate parents in recovery</li> <li>• include children and family members in treatment plans</li> </ul>	
<p><b>Acquiring additional skills</b></p> <p>The treatment provider should acquire training in:</p> <ul style="list-style-type: none"> <li>• ASFA time limits</li> <li>• Family Court procedures</li> <li>• FTC policies and procedures</li> <li>• CPS procedures</li> </ul>	<p><b>Acquiring additional skills</b></p> <p>The treatment provider should:</p> <ul style="list-style-type: none"> <li>• understand the roles of FTC team members</li> <li>• acquire training in child development</li> <li>• teach the team about the treatment provider role</li> <li>• teach the team about confidentiality and disclosure requirements</li> </ul>	

Team participation	Team participation	Team participation
<p>The treatment provider should participate in FTC planning</p> <p>The treatment provider should provide the FTC team with current information for staffing and report significant case events promptly using the standardized reporting form, “Drug Court Treatment Progress Form” (see <i>Appendix 2</i>)</p>	<p>The treatment provider should:</p> <ul style="list-style-type: none"> <li>• attend in-court reviews</li> <li>• attend pre-court staffing</li> <li>• participate in shaping consensus</li> <li>• respect expertise of other team members</li> </ul>	<p>The treatment provider should:</p> <ul style="list-style-type: none"> <li>• participate in strategic planning and regular reviews of FTC policies and procedures</li> </ul>

## **RELATIONSHIP WITH CLIENT**

**Recommended Practice:** AOD treatment providers should develop treatment plans that comply with ASFA time limits and court mandates. In each case, the treatment provider should obtain a copy of the FTC case plan, which will incorporate the CPS case plan, the dispositional order and performance requirements contained in the FTC contract, as well as copies of court orders that relate to the respondent’s progress in the FTC. Treatment plans should integrate court mandates and ASFA time limits and motivate parents to meet their legal obligations in a timely manner.

**Rationale:** FTC participants must engage in sustained recovery consistent with court orders and ASFA time limits or risk losing their parental rights. By the first permanency hearing (eight months after the initial removal of the children), the parent must be able to demonstrate a likelihood that she will be able to resume the care of her children within a relatively short period of time. The treatment provider should be thoroughly familiar with all court orders and ASFA time limits to adequately support participants in recovery and maximizes the chances of successful recovery and family reunification.

**Recommended Practice:** The treatment provider should work to create improved family relationships by accommodating frequent parent-child contact whenever possible.

**Rationale:** Treatment programs, especially residential treatment programs, have traditionally limited contact between clients and family members. This practice, however, conflicts with the child’s right to parental contact and undermines the parent’s ability to achieve family reunification within ASFA time limits. The parent-child bond must be nurtured and maintained throughout the parent’s AOD treatment. Treatment providers should facilitate family contact and reunification, not create obstacles that

interfere with these goals. The FTC team should be consulted about the appropriate type of parent-child contact

**Recommended Practice:** AOD treatment providers should include families in the treatment process through education programs, counseling, and assessment of family AOD concerns.

**Rationale:** If the family is to be successfully maintained or reunited, the impact of AOD abuse on all family members must be acknowledged and addressed. Family members will benefit from understanding the dynamics of substance abuse and recovery.

### **ACQUIRING ADDITIONAL SKILLS**

**Recommended Practice:** The treatment provider should learn about the Adoption and Safe Families Act, the court process, the child protective process, and FTC policies and procedures.

**Rationale:** A well-informed treatment provider has the opportunity to guide the participant through the complex FTC process and is better-equipped to advocate on the participant's behalf. For example, a treatment provider that understands ASFA time limits can put the participant's recovery in context and help the FTC team accurately assess the participant's ability to provide a safe and stable home in a timely manner.

**Recommended Practice:** The treatment provider should attend FTC team member training if and when these events occur. The treatment provider should also obtain a copy of the FTC Policies & Procedures Manual and become familiar with the FTC process.

**Rationale:** Although FTC cases are formal family court cases, the FTC operates differently than traditional family courts. By attending FTC trainings and reviewing the court's Policies & Procedures Manual, the treatment provider enhances its ability to guide participants through treatment and meet the court's expectations.

**Recommended Practice:** The treatment provider should become familiar with the roles and responsibilities of other team members and teach the team about the treatment provider's role and obligations.

**Rationale:** Often, the treatment provider has some familiarity with the FTC team but does not fully understand the details of each team member's role and responsibilities. A thorough understanding of FTC team dynamics can enable the treatment provider to better integrate treatment into the larger court context and reach consensus when problems arise.

**Recommended Practice:** The treatment provider should learn about child development.

**Rationale:** A basic understanding of child development enables the treatment provider to integrate the participant's treatment plan with the developmental needs of the participant's children.

**Recommended Practice:** The treatment provider should teach the FTC team about the confidentiality requirements applicable to treatment professionals.

**Rationale:** Some team members may assume that, because FTC participants are required to sign confidentiality releases, the team is entitled to know everything that occurs during treatment. The treatment provider should educate the team about the limits of appropriate disclosure and explain what types of information will assist the team in assessing the participant's progress in treatment. It may be appropriate, for example, to share the fact that a participant is having difficulty addressing sensitive personal issues but withhold the details of those personal issues.

## **PARTICIPATING IN THE FTC TEAM**

**Recommended Practice:** The treatment provider should supply the FTC team with current information for pre-court staffing and in-court reviews. The treatment provider should also communicate significant events to the FTC team in a timely manner.

**Rationale:** The FTC team needs current and accurate information about each participant's treatment to adequately support the participant's treatment, facilitate progress, protect children, and respond to non-compliance. Stale information undermines the FTC's effectiveness by preventing the FTC team from responding appropriately to case events.

**Recommended Practice:** When possible, the treatment provider should attend pre-court staffing and participate in developing a consensus response to case events. The treatment provider should also attend in-court reviews.

**Rationale:** The treatment provider's participation in FTC staffing and case reviews is critical because the treatment provider alone can provide the court and the team with an accurate picture of the participant's treatment progress.

**Recommended Practice:** The treatment provider should participate in strategic planning as well as regular reviews of FTC policies and procedures.

**Rationale:** Treatment providers are essential FTC stakeholders, and a treatment perspective should play a prominent role in the creation of the FTC, the development of FTC policies and procedures, and ongoing reviews of court practice.

## E. NON-JUDICIAL COURT STAFF

The size and makeup of FTC court staff can vary widely. Common job titles include: Project Director, Resource Coordinator, Case Manager and Case Technician. In courts that employ all of these positions, the Project Director is typically responsible for administrative management and oversight of the FTC. The Resource Coordinator is generally in charge of performing clinical tasks and overseeing the court's case managers. Case managers meet with individual participants, track progress on individual cases, and provide linkages to outside services. Case technicians perform drug testing, conduct orientation sessions, enter data into the UTA and provide administrative support. Larger jurisdictions may employ a Project Director, Resource Coordinator, Case Technician and several case managers. In smaller jurisdictions, all of the administrative and clinical responsibilities may be collapsed into one position, usually referred to as a Resource Coordinator. Specific job descriptions and responsibilities are delineated in Title Standards promulgated by the Office of Court Administration.

It is important to note that non-judicial staff do not engage in the provision of AOD treatment to FTC participants. This function is solely the responsibility of the treatment provider professionals who serve the FTC.

### 1. RESOURCE COORDINATOR

**Resource Coordinator:** The Resource Coordinator is the administrator of the FTC program and oversees both long term and daily operations.

Starting-up Practice	Progressing Practice	Advanced Practice
<p><b>Planning and development</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• coordinate the development and periodic review of FTC policies and procedures</li> <li>• collect relevant program data and meet applicable reporting requirements</li> </ul>	<p><b>Planning and development</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• lead periodic program reviews and stakeholder meetings</li> <li>• track FTC resource requirements</li> <li>• monitor and report on FTC goals and outcomes</li> </ul>	<p><b>Planning and development</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• coordinate needed adjustments to program policies and procedures</li> </ul>

<p><b>Program administration</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• manage program grants</li> <li>• identify grant opportunities and assist in writing of grants</li> <li>• develop ability to utilize UTA data and reporting functions to support grant applications</li> <li>• perform necessary administrative duties</li> </ul>		
<p><b>Operations management</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• oversee the day-to-day work of case managers</li> <li>• hold FTC team members accountable for meeting program expectations</li> <li>• chair pre-court staffing</li> <li>• oversee data entry</li> <li>• compile information for in-court case reviews</li> </ul>		
<p><b>Court administration</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• coordinate calendaring and case flow</li> <li>• conduct program orientation for new participants and attorneys</li> </ul>		

<ul style="list-style-type: none"> <li>• report on participant progress at court reviews</li> </ul>		
<p><b>Clinical duties</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• conduct psycho-social assessments</li> <li>• prepare evaluation reports</li> <li>• review cases to assess participant progress</li> <li>• ensure compliance with AOD testing protocols</li> </ul>	<p><b>Clinical duties</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• review the effectiveness of each participant's treatment plan</li> </ul>	<p><b>Clinical duties</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• facilitate services for participants</li> </ul>
<p><b>Training</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• coordinate team member training</li> <li>• organize team-building exercises</li> </ul>	<p><b>Training</b></p> <p>The Resource Coordinator should facilitate ongoing team member training and team-building exercises</p>	
<p><b>Community outreach</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• develop relationships with treatment programs and community-based service providers</li> <li>• organize court site visits for community members</li> <li>• make public presentations about the FTC program</li> </ul>	<p><b>Community outreach</b></p> <p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• review suitability of community-based programs for FTC participants</li> <li>• develop and advocate for needed programs and services to meet the needs of FTC participants</li> <li>• build community support for the FTC program</li> </ul>	

	<p>The Resource Coordinator should:</p> <ul style="list-style-type: none"> <li>• monitor whether the program is reaching its target population</li> <li>• recommend modifications in screening and eligibility to build capacity where needed</li> </ul>	
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**PROGRAM DEVELOPMENT, PLANNING, AND QUALITY ASSURANCE**

**Recommended Practice:** The Resource Coordinator should coordinate the development of FTC policies and procedures through the use of stakeholder meetings and planning sessions. The Resource Coordinator should also oversee team operations to ensure that FTC policies and procedures are being followed. In addition, the Resource Coordinator should lead periodic reviews of FTC policies and procedures and make changes as necessary.

**Rationale:** The Resource Coordinator is typically responsible for overall FTC program implementation. It is the Resource Coordinator’s responsibility to oversee the development of and ongoing adherence to FTC policies and procedures.

**Recommended Practice:** The Resource Coordinator should monitor resource requirements, program goals and outcomes, and the need for major policy and procedures changes. The Resource Coordinator should report this information to key stakeholder groups by convening periodic stakeholder meetings.

**Rationale:** Although the Judge is the ultimate authority in the FTC, the Resource Coordinator is its administrator. As administrator, the Resource Coordinator must keep the program running effectively and maintain the support and cooperation of key stakeholders.

**Recommended Practice:** Using the UTA, the Resource Coordinator should create monthly statistical reports detailing overall FTC program performance.

**Rationale:** Detailed data reports enable the Resource Coordinator to monitor the progress of the FTC program and determine whether program goals are being met. Using these reports, the Resource Coordinator can identify program trends and potential problem areas. Moreover, accurate data allows the Resource Coordinator to justify the allocation of program resources.

## **PROGRAM ADMINISTRATION**

**Recommended Practice:** The Resource Coordinator should assist the District Office in managing any grants awarded to the FTC by collecting required data, generating required reports, and overseeing grant-related budget activities. The Resource Coordinator should also ensure that new grant proposals and renewal applications are prepared and filed in a timely manner.

**Rationale:** The Resource Coordinator typically maintains the data and program information necessary for preparing grant applications. Therefore, the Resource Coordinator should take the lead in securing and managing all FTC-related grant activity, including actively seeking new grant opportunities. Stakeholders may assist in the grant application process, but the Resource Coordinator, working with the District Office should assume primary responsibility for all grant activities.

**Recommended Practice:** The Resource Coordinator should regularly monitor the accuracy of data entered into the UTA and become adept at using its data and reporting functions to assess FTC program effectiveness and for grant applications.

**Rationale:** Data analysis can help FTC staff identify problem areas in their program and generally measure basic program effectiveness. Data collected in the UTA can also prove useful when writing grant applications, which frequently ask for information about the program, demographic data on participants, and outcomes.

**Recommended Practice:** The Resource Coordinator's job description should include other administrative duties as needed.

**Rationale:** As the administrator of the FTC, the Resource Coordinator typically must take responsibility for regular administrative tasks, including organizing meetings, preparing meeting minutes, drafting regular correspondence, communicating with community-based agencies, and planning graduations. If clerical assistance is available, the Resource Coordinator may be able to delegate some of these responsibilities.

## **OPERATIONS MANAGEMENT**

**Recommended Practice:** The Resource Coordinator should oversee the day-to-day work of any case managers and case technicians on the FTC staff. In addition, the Resource Coordinator should ensure that the case managers receive comprehensive training, performance reviews, and ongoing feedback. Although other Operational Team members may not be under the Resource Coordinator's direct chain of command, the Resource Coordinator usually observes the day-to-day functioning of these staff members. Therefore, the Resource Coordinator should be available to provide these staff members with guidance, training, and ongoing feedback.

**Rationale:** Of all the FTC team members, the Resource Coordinator is in the best position to shape the FTC staff into a seamless and efficient team. The Resource Coordinator should take advantage of her position as FTC administrator and provide training, guidance, and feedback to staff assigned to the FTC, regardless of whether individual staff members are formally under the Resource Coordinator's supervision.

**Recommended Practice:** At the direction of the Judge, the Resource Coordinator should chair pre-court staffing meetings before each in-court review session. As chair, the Resource Coordinator should keep staffing meetings on schedule, guide the meetings, mediate conflicting viewpoints, and lead the team in developing consensus responses to case events.

**Rationale:** Because the Resource Coordinator may not have as much direct contact with FTC participants as do Operational Team members, she usually has a broader view of the FTC process. For this reason, the Resource Coordinator is in the best position to harmonize the viewpoints of the Operational Team members and guide the team toward consensus.

**Recommended Practice:** The Resource Coordinator should ensure that Operational Team members complete data entry and paperwork in an accurate and timely manner. The Resource Coordinator should also integrate information obtained from Operational Team members during staffing for use during in-court reviews.

**Rationale:** As FTC administrator, the Resource Coordinator is responsible for making sure that the FTC program runs smoothly. This includes ensuring timely and accurate communication between Operational Team members and ensuring that the court has complete and accurate case information during in-court reviews. Such information is critical for monitoring participant progress and responding appropriately to case events.

## **COURT ADMINISTRATION**

**Recommended Practice:** The Resource Coordinator should work with court staff to schedule FTC calendars, check FTC calendars for accuracy, and advise court staff of last-minute changes. The Resource Coordinator, in collaboration with court staff and the Judge, should determine the appropriate case load for each review session. The Resource Coordinator should ensure that participants and team members are prepared for these reviews.

**Rationale:** FTC calendars are separate from the normal Family Court calendar. By taking responsibility for the size and accuracy of FTC review calendars, the Resource Coordinator can keep interference with the Family Court's regular obligations to a minimum. This coordination, in turn, promotes greater support for the FTC program.

**Recommended Practice:** The Resource Coordinator should meet with respondents' attorneys as soon as possible to familiarize them with the FTC program and discuss the

suitability of individual clients for the program. With counsel present, or with the consent of counsel, the Resource Coordinator should also explain the FTC program to potential participants and answer respondents' questions.

**Rationale:** The Resource Coordinator is the FTC's chief ambassador in the courthouse. She should provide each potential participant and her attorney with sufficient information to help them make a knowing and intelligent decision regarding FTC participation.

**Recommended Practice:** The Resource Coordinator should provide the court with a brief report on each participant's progress during in-court reviews. The Resource Coordinator should be the voice of the team in the courtroom during in-court reviews.

**Rationale:** The Resource Coordinator's in-court report serves to notify the Judge, the FTC team, and the participant of the information that the court should consider in determining an appropriate response to case events. Using a single in-court reporter helps present a united front to the respondent and minimizes a respondent's opportunity to play team members off one another.

## **TREATMENT AND CLINICAL DUTIES**

**Recommended Practice:** The Resource Coordinator should use the UTA to conduct psycho-social evaluations of new participants. The Resource Coordinator should provide an evaluation report to the Judge, the FTC team, and respondent's counsel.

**Rationale:** The UTA is designed to enable program staff to collect pertinent information from potential participants and help program staff determine if a candidate is appropriate for FTC. It can also help program staff identify an appropriate level of treatment for FTC participants. The Resource Coordinator should conduct participants' initial evaluations, as the evaluation process allows the Resource Coordinator to become familiar with new participants.

**Recommended Practice:** The Resource Coordinator should facilitate group meetings or workshops for FTC participants.

**Rationale:** FTC participants may benefit from opportunities to meet in small groups to discuss their concerns and share their experiences. These small group meetings can give participants an opportunity to learn more about the FTC program, discuss their progress, and share their challenges with AOD addiction and the legal process.

**New York Experience:** Suffolk County uses three group workshops, one in each phase of the FTC program. The first workshop serves as an orientation meeting. The second workshop teaches participants how to obtain necessary life skills. The third workshop discusses the steps needed to reach graduation.

**New York Experience:** In Steuben County, non-compliant participants are required to attend a “consequence” group in which participants discuss their progress and the challenges they face in the FTC. Experience has shown that participants value this forum as an opportunity to discuss their concerns.

**Recommended Practice:** The Resource Coordinator should periodically review case files with the case manager to evaluate participant progress and adherence to case plans. She should review the effectiveness of treatment plans and discuss alternatives with the case manager if necessary. In FTCs staffed only by a Resource Coordinator, she should conduct the review of her own cases.

**Rationale:** As part of the Resource Coordinator’s supervisory responsibility, she should periodically work with the case manager to check the status of individual cases, ensure that appropriate case plans are in place, and discuss possible changes when needed. This process can support the FTC in meeting its goals in individual cases, while enhancing the case manager’s skills.

**Recommended Practice:** The Resource Coordinator should develop a thorough understanding of the court’s AOD testing protocols. She should be responsible for training appropriate court staff in sample collection procedures and ensuring that all procedures and protocols are followed.

**Rationale:** AOD testing must be reliable and conducted in a manner that will pass legal scrutiny. Unreliable tests will not be admissible as evidence in court proceedings and can undermine participants’ trust in the FTC program.

## **TRAINING**

**Recommended Practice:** The Resource Coordinator should seek training opportunities for the FTC team and facilitate team building activities. Where feasible, FTC staff should undergo intensive training upon joining the court as well as ongoing training.

**Rationale:** In consultation with the Chief Clerk, the Resource Coordinator is responsible for ensuring that program staff are properly trained and prepared to fulfill their responsibilities as FTC team members. Training may include visits to other FTCs and local social service agencies, attendance at local and national conferences, brown bag lunches, roundtable discussions, staff workshops, and staff retreats.

## **COMMUNITY OUTREACH**

**Recommended Practice:** The Resource Coordinator, with the supervision of the Chief Clerk, should build relationships with outside agencies whose collaboration and cooperation can promote participant success. The Resource Coordinator should introduce outside agencies to the FTC concept and visit these agencies to observe their operations first-hand. The Resource Coordinator should negotiate with outside agencies to provide appropriate services to FTC participants.

**Rationale:** The Resource Coordinator can promote effective community collaboration by communicating with outside agencies, making site visits, and advocating for the FTC model. This process also allows the Resource Coordinator to identify agencies that are best-suited to meeting the needs of FTC participants and build strong working relationships with these agencies.

**Recommended Practice:** When appropriate, the Resource Coordinator should make public presentations to educate the community about the FTC. The Resource Coordinator should encourage the community to support both the FTC program and the participants in recovery.

**Rationale:** Public outreach and advocacy can enhance public understanding of and support for the FTC model. Community support, in turn, strengthens the FTC program and allows the FTC to weather difficult times. Participants also benefit when the community understands the struggles of individuals in recovery.

## 2. CASE MANAGER

The case manager guides individual participants through the FTC program. As the direct contact between the FTC program and participants, the case manager is critical to maintaining program integrity and holding participants and stakeholders accountable. In FTC's staffed with only a Resource Coordinator, the team should decide who can best assume the "case manager" responsibilities.

<b>Starting-up Practice</b>	<b>Progressing Practice</b>	<b>Advanced Practice</b>
<p><b>Relationship with participants</b></p> <p>The case manager should have contact with participants at program orientation, in-court reviews, and other times as necessary</p> <p>The case manager should link participants to AOD treatment and work to remove barriers to treatment</p>	<p><b>Relationship with participants</b></p> <p>The case manager should link participants to appropriate ancillary services</p>	
<p><b>Case monitoring</b></p> <p>The case manager should monitor:</p> <ul style="list-style-type: none"> <li>• assessments</li> <li>• referrals</li> <li>• treatment progress</li> <li>• drug testing</li> <li>• program compliance</li> <li>• eligibility for graduation</li> <li>• participants' understanding of consents to release confidential information</li> </ul>		
<p><b>Communication</b></p> <p>The case manager should:</p> <ul style="list-style-type: none"> <li>• enter case data promptly</li> </ul>	<p><b>Communication</b></p> <p>The case manager should maintain ongoing contact with community-based service providers</p>	

<ul style="list-style-type: none"> <li>• maintain ongoing contact with treatment providers and CPS case workers</li> <li>• communicate critical information to the FTC team between staffing meetings</li> </ul>		
<p><b>Acquiring additional skills</b></p> <p>The case manager should acquire training in:</p> <ul style="list-style-type: none"> <li>• ASFA time limits</li> <li>• Family Court procedures</li> <li>• CPS procedures</li> <li>• FTC policies and procedures</li> </ul>	<p><b>Acquiring additional skills</b></p> <p>The case manager should acquire training in:</p> <ul style="list-style-type: none"> <li>• team member roles and responsibilities</li> <li>• child development</li> </ul> <p>The case manager should teach the team about the case manager's role</p>	
<p><b>Team participation</b></p> <p>The case manager should:</p> <ul style="list-style-type: none"> <li>• attend pre-court staffing</li> <li>• report case information to the team</li> <li>• participate in developing a consensus response</li> </ul>	<p><b>Team participation</b></p> <p>Under appropriate direction, the case manager may participate in community events</p>	<p><b>Team participation</b></p> <p>The case manager should identify service gaps and report them to the FTC team</p>

**RELATIONSHIP WITH PARTICIPANTS**

**Recommended Practice:** The case manager should maintain frequent contact with participants, including meeting with new participants to discuss program expectations and to review those expectations with participants on a regular basis. In addition, the case manager should have in-person contact with participants immediately before and after court reviews and should contact participants periodically between court reviews, either in person at the court house or by telephone.

**Rationale:** The case manager is the participant's primary contact with the FTC. Regular contact promotes trust in the FTC program and enables the case manager to monitor participant progress and render needed assistance. All contact and

consultation with participants are designed to monitor compliance with the court mandate, not the treatment provider's program.

**Recommended Practice:** The case manager should support participants' engagement in AOD treatment by facilitating intake appointments and identifying and removing barriers to engagement. The case manager may assist participants in securing necessary documents, obtaining medical insurance coverage, arranging transportation, and planning for child care. The case manager should become educated to identify relapse triggers, such as sudden changes in a participant's life situation.

**Rationale:** The FTC model is designed to facilitate access to treatment. Accordingly, one of the primary responsibilities of program staff is to work with participants to help them engage in treatment. The case manager, through direct and frequent contact with participants, can address common obstacles and build critical life skills. The case manager can assist participants in identifying local resources to support their commitment to treatment. Over time, participants will be expected to assume greater responsibility for their own treatment. Initially, however, FTC staff should take all reasonable steps to support participants' retention in treatment.

**Recommended Practice:** The case manager should link participants with appropriate ancillary services. The case manager should also synchronize treatment services and ancillary services to avoid duplication of effort and avoid overwhelming participants.

**Rationale:** Although AOD abuse is the primary problem that FTCs were designed to address, many participants face other challenges (e.g., unemployment, mental health issues, domestic violence) that can be addressed with ancillary supports. The case manager, by virtue of her frequent contact with participants, is in the best position to recognize these needs and link participants with appropriate services.

## **CASE MONITORING**

**Recommended Practice:** The case manager should monitor each participant's assessments, referrals, treatment progress, drug testing, and compliance with court orders. In most FTCs, the case manager will be required to administer random and observed drug tests.

**Rationale:** FTC holds participants accountable by tracking their behavior and progress. The case manager has primary responsibility for tracking each participant's progress through the FTC program.

**Recommended Practice:** The case manager should measure participant performance against program requirements for phase advancement and graduation.

**Rationale:** FTC policies and procedures set forth specific guidelines for phase advancement and graduation. The case manager, as the participant's primary contact

person, is responsible for monitoring the participant's progress and ensuring that the FTC issues timely and appropriate responses to participant behavior. Experience shows that both positive responses to accomplishments and negative responses to non-compliance are more effective if delivered close in time to the behavior in question.<sup>8</sup>

**Recommended Practice:** Confidentiality releases should be reviewed with each participant periodically to ensure that the FTC has the participant's knowing, voluntary, and continuing consent.

**Rationale:** New FTC participants often sign confidentiality releases during a "moment of crisis," and their judgment may still be affected by AOD use. Given these circumstances, it is prudent to review each participant's confidentiality release after 30 days to ensure that she understands her rights and gave a knowing waiver.

## **COMMUNICATION**

**Recommended Practice:** The case manager should enter case data into the UTA promptly and accurately.

**Rationale:** The UTA is the FTC's vehicle for storing and retrieving information about participants for pre-court staffing and in-court reviews. Therefore, it is important that the UTA be updated regularly with timely and accurate information.

**Recommended Practice:** The case manager should communicate regularly with treatment providers, case workers, and social service agencies. Critical case information should be communicated immediately to the Resource Coordinator and appropriate team members.

**Rationale:** Ongoing communication enhances the team's ability to address emerging issues promptly and before they worsen. It also reduces misunderstanding and builds trust and respect between team members. The case manager is often the first recipient of critical information – the team depends on the case manager to communicate this information promptly so that the team can take appropriate action.

## **ACQUIRING ADDITIONAL SKILLS**

**Recommended Practice:** The case manager should acquire training in the Adoption and Safe Families Act, the Family Court process, the child protective process, and the FTC's policies and procedures. The case manager should also participate in available FTC team member training.

**Rationale:** For FTC participants, the case manager is the face of the FTC. For this reason, the case manager will often be faced with questions about the FTC process, program policies and procedures, the child protection process, and ASFA time limits.

The case manager will be better able to guide participants and build supportive relationships if she is knowledgeable about these topics.

**Recommended Practice:** The case manager should learn the roles and responsibilities of other team members and teach the team about the case manager's role.

**Rationale:** The case manager is the primary point of contact for FTC participants and will face many questions that she may not be prepared to answer. For this reason, it is important that the case manager understand the roles of other team members and where to turn for assistance. Likewise, the case manager should ensure that other team members understand the case manager's roles and responsibilities. A clear understanding of each team member's role will help the team operate efficiently and avoid misunderstandings.

## **PARTICIPATING IN THE FTC TEAM**

**Recommended Practice:** The case manager should attend pre-court staffing and provide the team with detailed reports about the participants to whom she is assigned. The case manager should also participate in developing the team's response to case events.

**Rationale:** The case manager often possesses information that other team members do not. Accordingly, the case manager should attend staffing and provide the team with thorough and timely reports about participant progress and case developments. The case manager's input is a crucial contribution to decisions about the court's responses to progress.

**Recommended Practice:** The case manager should participate in community events by speaking about the effectiveness of the FTC program and sharing success stories (consistent with confidentiality laws and Family Court procedures).

**Rationale:** While the Judge or Resource Coordinator usually leads the public relations effort, there may be circumstances where the case manager is in a position to put a human face on the FTC program. Educating the community about the program may garner public support and encourage organizations and individuals to find ways to support individuals in recovery.

**Recommended Practice:** The case manager should identify service gaps that prevent FTC participants from receiving needed supports and report these gaps to the Resource Coordinator.

**Rationale:** Although case managers do not have administrative or management responsibilities, they have valuable front-line experience. When the case manager encounters difficulty finding appropriate services for a participant, reporting that difficulty is the first step toward improving the system.

## VI. DRUG COURT OPERATIONS

### A. BENCHMARKS AND PHASE ADVANCEMENT

FTC programs are divided into several defined phases. These phases provide a road map for successful completion of the FTC program. Completion of each phase marks the participant's progress and brings the participant one step closer to graduation. Benchmarks are the small, attainable steps within each phase that participants are required to reach before being advanced to the next phase of the program.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>FTC establishes a formal, written phase structure with specific benchmarks</p> <p>FTC sets time expectations for completion of each phase</p>	<p>FTC educates participants about phase advancement and benchmarks</p>	
<p>Benchmarks measure participants' progress in relation to their:</p> <ul style="list-style-type: none"> <li>• CPS case plans</li> <li>• treatment plans</li> <li>• court orders</li> <li>• recovery status</li> <li>• ASFA/permanency status</li> </ul> <p>Benchmarks require participants to meet their parental obligations</p>	<p>Benchmarks address all factors affecting child and family well-being</p>	
<p>The FTC establishes a phase structure and specific benchmarks that are realistic and measurable</p>	<p>Benchmarks are tailored to individual service plans and family needs</p> <p>Benchmarks are flexible enough to accommodate each participant's individual capacity and unexpected family circumstances</p>	<p>FTC has alternative phase requirements to fit circumstances of parents</p>

<p>The FTC sets clear, measurable, and realistic graduation requirements</p> <p>The FTC sets standards and protocols for unfavorable discharge</p>	<p>The FTC develops alternate protocols for exiting the FTC for parents who cannot meet graduation requirements</p> <p>The FTC establishes a protocol for case assignment when a parent is terminated from the program</p>	
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**Recommended Practice:** The FTC’s phase structure and benchmarks should be formalized as part of the court’s written policies and procedures. In addition, the FTC should conduct workshops to familiarize participants with the program structure. FTC team members should remind participants of upcoming benchmarks and ensure that participants’ accomplishments are recognized promptly.

**Rationale:** The FTC’s phase structure and benchmarks are the standard against which participants’ progress is measured. The FTC can encourage buy-in by helping participants understand the program structure and giving regular feedback about their progress. Recognition of achievements, especially by the Judge, is often cited by graduates as one of the key factors in encouraging them to persevere.

**Recommended Practice:** The FTC should establish minimum and maximum time frames within which participants are expected to complete each phase. These time limits should fit within ASFA requirements.

**Rationale:** The FTC’s phases provide the road map for successful completion of the program. Each phase marks a stage in the recovery and permanency process. Setting time limits for phase completion encourages participants to continue making progress and reminds participants that their children cannot wait indefinitely for them to resume their parental roles. The entire FTC team needs to recognize the critical importance of the ASFA timelines and place the progress of the participant within that framework.

**Recommended Practice:** FTC benchmarks should be designed to measure participant progress in all aspects of the case, not simply the participant’s compliance with treatment. For example, benchmarks should assess the participant’s case plan status, compliance with court orders, overall recovery status, and ASFA/permanency considerations. In addition, benchmarks should measure the participant’s achievements in meeting her obligations to her children and her ability to maintain a stable life style.

**Rationale:** FTCs are concerned with the entire family picture. Their goal is to reunite or maintain children with the recovering parent as long as the parent can sustain a safe, stable, and nurturing permanent home for her family. To achieve this goal, participants must make significant progress on many fronts – sobriety alone is not enough. Participants must also meet their parental obligations, which include attending all scheduled visits, providing for their children’s physical and mental health, and supporting their children’s education. Other lifestyle factors, such as educational or vocational achievements, stable employment, and suitable housing are also critical to maintaining or reunifying the family. To ensure that parents are making adequate and timely progress toward permanency, FTC benchmarks should measure all of these factors and any others that affect child and family well-being.

**Recommended Practice:** Benchmarks and phase structure should be realistic and measurable.

**Rationale:** In working toward permanency, FTC participants are not required to become perfect parents. Therefore, benchmarks should set reasonable and measurable benchmarks. Parents and team members must be able to recognize when a benchmark has been achieved. For example, a general requirement that a participant must become a “better parent” is not measurable. A better approach is to set concrete requirements that, for example, require the parent to “attend every visit” or “successfully complete a vocational program.”

**Recommended Practice:** Benchmarks should be tailored to fit each participant’s individual service plan and family needs and flexible enough to accommodate any unexpected developments.

**Rationale:** One set of benchmarks will not usually be appropriate for all FTC participants. As practice progresses, benchmarks should be individualized to account for each participant’s individual capacity and circumstances. For example, a generalized benchmark that requires a participant to have a stable means of support may have different meaning for different parents. For some, it will mean establishing TANF eligibility. For others, it will be completing a vocational/educational program or obtaining and maintaining employment.

**New York Experience:** New York State’s family treatment courts use a variety of standards for successful graduation. Some courts require reunification with a parent in recovery. Other courts will graduate a parent in recovery who has participated in formulating or effectuating a permanency plan other than reunification (e.g., permanent custody to a family member, voluntary surrender for adoption, etc). If reunification is the permanent plan, many FTCs require the parent to demonstrate the ability to maintain a stable, sober lifestyle by achieving milestones such as acquiring suitable housing, securing a reliable means of financial support, or participating regularly in self help groups.

**Recommended Practice:** The FTC should use alternative phase requirements to fit participants' unique circumstances.

**Rationale:** Each participant's unique circumstances impacts her ability to participate in the FTC program. For example, a parent with a steady job may find it difficult to attend weekly court appearances. This participant could be permitted to follow a different track at a less intensive level. In addition, many participants suffer from developmental delays or struggle with physical or mental limitations. These factors should also be taken into account when setting a participant's phase requirements.

**Recommended Practice:** Graduation requirements should be realistic, clearly defined in measurable terms, and should not exceed the standards in non-FTC child protection cases.

**Rationale:** Graduation requirements should provide an attainable and realistic target for FTC participants. Most FTCs require a set period of abstinence to graduate from the program. The participant should be required to be in recovery, and there should be a permanency plan in place for the participant's children. If reunification is planned, the FTC should set additional requirements to support the maintenance of a safe and stable home and sober lifestyle. The FTC's graduation requirements should not exceed the standards set by law or the standards normally used in non-FTC child protection cases. Such elevated standards would unfairly raise the bar for FTC participants and could prevent families who might otherwise be reunified from reaching this goal.

**New York Experience:** Some family treatment courts use Administrative Discharges or Certificates of Completion as substitutes for graduation in cases where the parent cannot meet the court's graduation requirements.

**Recommended Practice:** The FTC should formulate alternate paths for leaving the program in cases where the parent is unable to meet the criteria for successful completion but is generally in compliance with program requirements.

**Rationale:** Some parents will be unable to meet the FTC's graduation criteria but will be in general compliance with the program. In such cases, continued participation in the FTC may be fruitless or impossible. Examples of such cases may include parents who move out of the jurisdiction, parents whose physical or mental health or developmental capacity limit their ability to succeed, or parents who are in recovery but cannot secure a safe and stable home. A procedure for exiting the FTC without negative connotations can relieve these parents of the burden of participating in FTC and utilize the scarce resources of the FTC for parents who may benefit from participation.

**New York Experience:** Where a Termination of Parental Rights is filed, the FTC Judge's familiarity with the case may require the Judge to consider recusing herself from further proceedings. Even if the Judge feels that she can continue to preside over the case, she should consider offering to recuse herself even without a motion from the respondent's attorney.

**Recommended Practice:** The FTC should set standards and protocols for unsuccessful termination from the program. These standards should clearly inform participants of the FTC's expectations and advise participants of the limits of FTC tolerance.

**Rationale:** In some cases, participants demonstrate that they are simply unable or unwilling to participate meaningfully in the FTC program. When a participant does not progress despite efforts by the FTC team, the resources and the energy of the FTC should be focused on other participants who can benefit from the program.

**Recommended Practice:** The FTC should establish protocols for how the underlying child protection case will be handled once a parent leaves the FTC under unfavorable or alternate circumstances. The court should decide in advance whether the case will remain on the FTC calendar until permanency has been achieved, whether it will remain on the FTC Judge's calendar but be moved to a traditional track, or if it will be reassigned to another Judge.

**Rationale:** Deciding what should happen to a FTC case when a parent leaves the program can be a difficult process. Several factors favor keeping the case on the FTC calendar. For example, New York State favors the one family/one Judge principle. Moreover, the FTC Judge has become very familiar with the case and the parent. Shifting the case to another Judge may create the appearance that the FTC is "dumping" its hardest cases. On the other hand, the resources of the FTC are not infinite, and keeping the case on the FTC calendar may not represent an efficient use of court resources. Each FTC should consider these factors in advance and create a policy that fits its own unique circumstances and resources.

**New York Experience:** Any policy decision to transfer cases out of the FTC should be made with the input of other Family Court Judges and the approval of the Supervising Judge of the Family Court. Such a policy decision can impact the case flow management of the entire Family Court and, therefore, should not be made by the FTC alone.

## B. ALCOHOL AND OTHER DRUG (AOD) TESTING

Drug testing is a central component of the FTC program. It is the FTC’s primary means of holding participants accountable and ensuring that participants achieve sobriety. Drug testing should be scientifically valid, employing proven methods that are accepted by the scientific community. The collection of samples should be random and observed. Drug testing should be therapeutically beneficial, provide an accurate profile of participant’s drug use, and offer rapid results that enable an appropriate court response.

### 1. AOD TESTING POLICIES

Starting-up Practice	Progressing Practice	Advanced Practice
The FTC establishes written AOD testing protocols		
The FTC establishes protocols for the participant to challenge positive test results		
AOD testing requirements and protocols are included in the contract, participant handbook, or incorporated by reference		
The FTC team interprets tests as “positive” (drugs detected) or “negative” (no drugs detected); numeric levels are not considered		
The FTC establishes a policy governing the use of medication		
AOD testing is random, observed and progressive	AOD testing is performed at multiple sites	The FTC arranges for AOD testing at home visits and during evenings and weekends

**Recommended Practice:** The FTC’s AOD testing protocols should be in writing, and staff should be trained to strictly follow each step of the AOD testing process.

**Rationale:** The integrity of the FTC’s drug testing regimen is critical to the fair and effective operation of the court. The Judge must be able to rely on the accuracy of the

results. If the participants observe an erratic or casual approach to AOD testing, they may tend to either lose confidence in the FTC or become more inclined to challenge unfavorable results.

**Recommended Practice:** The FTC should establish written protocols for participants to challenge AOD test results. These protocols should address what laboratory and testing protocol will be used. In New York FTC's, the court normally pays for confirmation testing. If a contested result is confirmed as positive, the consequences of challenging the result and any associated sanctions should be clear in advance.

**Rationale:** FTC participants must have the right to challenge an AOD test when there is a question about the accuracy of a result. However, the court's policy regarding test challenges should reflect the fact that the FTC places a high value on honesty in the face of relapse. The court should establish clear consequences for unwarranted challenges or abuse of the challenge process. Gas chromatography-mass spectrometry (GCMS) testing is recommended for its scientific reliability and its potential to discourage specious challenges.

**Recommended Practice:** AOD testing requirements and protocols are included in the contract, participant handbook, or incorporated by reference.

**Rationale:** Reliable drug tests are key to effective monitoring of FTC participants. Participants must understand that random and observed AOD testing is a fundamental requirement of their contract with the court.

**Recommended Practice:** The FTC team interprets tests as "positive" (drugs detected) or "negative" (no drugs detected); numeric levels are not considered.

**Rationale:** Urine drug concentrations are of little or no interpretative value. Utilizing urine drug test levels produces interpretations that are inappropriate, factually unsupported, and without a scientific foundation. Many factors can affect drug levels, e.g., water loading, urine volume or output, age, exercise, and salt and protein intake. Moreover, drug tests are not linear and are not designed to accurately quantify drug concentrations.\*

\*For detailed discussion of common drug testing issues in the drug court setting, see: Paul L. Cary, *Urine Drug Concentrations: The Scientific Rationale for Eliminating the Use of Drug Test Levels in Drug Court Proceedings*, DRUG COURT PRACTITIONER FACT SHEET, January 2004 (publication of the National Drug Court Institute)

**Recommended Practice:** FTC should establish a policy governing the use of medication by program participants. Participants should be held responsible for what they put in their bodies. Before receiving a physician prescription, the participant should be required to disclose their substance abuse history and discuss the risks of the medication with their doctor. Upon receiving a prescription and before filling the prescription (absent an emergency), the participant should immediately notify the appropriate drug court team member (Case Manager or Resource Coordinator),

produce the written prescription, and discuss its potential impact on recovery. Before taking over-the-counter medicines, the participant should discuss them with the appropriate drug court team member to learn if the medicine can affect drug test results.

**Rationale:** Certain prescribed and over-the-counter medicines may produce a false positive result. Prescribed medications may also be abused and lead to relapse. By discussing medications in advance, the participant has the opportunity to investigate alternatives. Requiring participants to produce the written prescription verifies its legitimacy.

**Recommended Practice:** Drug testing should be random, observed and progressive. Initially, testing should be aggressive (minimum three times per week). As the participant achieves a significant period of abstinence, testing should be reduced as a reward (one time per week). In later phases, testing can be reduced further (once every two weeks). Testing schedules should always be subject to increased frequency when a positive test occurs or other relapse factors are observed.

**Rationale:** Unannounced testing will limit a participant's ability to plan ahead. Random testing is also an effective tool to motivate participants, especially younger participants, to resist using when confronted with peer pressure.

**Recommended Practice:** AOD testing should be available at multiple testing sites, including the courthouse, the treatment program, and community-based agencies. The FTC should take steps to make testing available at home visits and on evenings and weekends.

**Rationale:** Test sites should be as convenient for participants as possible. Multiple test sites allow for easier and more frequent scheduling. The option of testing in the participant's home adds another layer of accountability and safety.

## 2. AOD TESTING PROTOCOLS

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC relies primarily on urine testing to detect AOD use</p> <p>FTC staff directly observes urine collection</p> <p>FTC staff member and participant wash their hands before each urine sample collection</p> <p>The FTC employs a two-step approach to AOD testing using presumptive and confirmatory results</p> <p>The FTC establishes protocols to detect adulterated or substituted specimens</p>	<p>The FTC tests all participants for alcohol use on a regular basis</p> <p>The FTC assigns one team member to keep current with new tools or strategies to avoid detection of AOD use</p>	

**Recommended Practice:** The FTC should rely on a system of urine testing as its primary method of detecting AOD use by participants.

**Rationale:** Current technology enables FTCs to detect AOD use in a participant’s urine, breath, hair, sweat, saliva, and eyes. However, urine remains the specimen of choice because it is readily available in large quantities, contains high concentrations of drug metabolites relative to other samples, reveals both recent and past usage, and serves as a good analytical specimen. Hair analysis is effective for detection of usage in the past 90 days but will not detect very recent use. The sweat patch is generally reliable but is subject to false positives due to environmental factors.

**Recommended Practice:** Urine collections should be directly observed by an FTC staff member of the same sex every time a sample is taken.

**Rationale:** Reliability and accuracy of urinalysis testing can only be achieved through “witnessed” collection. There are numerous methods used to falsify AOD test results, and the determined addict can be expected to search for ways to deceive the FTC.

Directly observing the participant while the urine sample is being provided is the most effective method for ensuring test reliability.

**Recommended Practice:** Before collecting a urine sample, the FTC staff member “collector” and the participant should wash their hands thoroughly.

**Rationale:** A urine sample can be contaminated by foreign substances on the hands of persons who come in contact with the sample. Therefore, it is important that the collector and participant have clean hands before sample collection begins.

**Recommended Practice:** Drug testing should follow a two-step approach. Each sample should be screened to separate negative samples from “presumptively” positive samples. If a screening reveals a positive result, a confirmation test should be conducted to validate the result. In contested cases, a confirmation test should always be ordered. A confirmation test is not necessary in cases where the participant admits to use.

**Rationale:** Immunoassay testing is the most common form of drug screening used in drug courts. Gas chromatography-mass spectrometry testing is the forensic method of drug testing. Screening is a cost-effective way to detect AOD use, and its instant results encourage the participant to admit AOD use before being tested or before being confronted in court. Confirmatory testing should be used to reveal errors in screening results.

**Recommended Practice:** Participants should always be tested for alcohol use, regardless of whether alcohol is their drug of choice.

**Rationale:** Substance abusers will frequently substitute with easily accessible alcohol for their normal drug of choice because alcohol cannot always be detected on breath or observed in participant’s behavior.

**Recommended Practice:** The FTC should establish protocols to detect fraudulent AOD test results. They should include:

- Examination of each urine sample for temperature (90-100 degrees Fahrenheit), color, odor, and the presence of solids or other particles. If the sample appears suspicious, the participant should be required to produce another sample as soon as possible.
- Routine measurement of creatinine levels in their collected samples. If abnormal creatinine levels are detected, the FTC should first explore any physiological reasons that an individual may have abnormal levels without intentionally diluting the sample. The court may wish to increase frequency of the individual’s drug testing. After eliminating valid reasons for abnormal creatinine levels, the court should follow its policy for “substituted” samples.

\*For detailed discussion of common drug testing issues in the drug court setting, see: Paul L. Cary, *The Use of Creatinine-Normalized Cannabinoid Results to Determine Continued Abstinence or to Differentiate Between New Marijuana Use and Continuing Drug Excretion From Previous Exposure*, DRUG COURT REVIEW, Summer 2002, at 83-103 (publication of the National Drug Court Institute)

- Assessment of whether the individuals show other signs of drug use, e.g., missed appointments, lateness, etc.

**Rationale:** An analysis of temperature, color, odor, and particulate matter will help ensure a reliable sample. In most cases, abnormal creatinine levels indicate a substituted sample. Drug tests are one tool in identifying drug use. If all other participant behavior is signaling relapse but tests are negative, a participant may be avoiding scientific detection of use, while in reality, relapse is occurring.

**Recommended Practice:** The FTC should assign one team member to keep abreast of new tools and strategies to “beat the test”.

**Rationale:** An entire industry is dedicated to developing new and more sophisticated methods for avoiding the detection of AOD use. While not worth the investment of a significant portion of staff time, periodic review of the latest products will help keep the team aware of new developments in the “beating the test” game.

### 3. AOD TESTING: RESPONDING TO POSITIVE AND NEGATIVE RESULTS

Starting-up Practice	Progressing Practice	Advanced Practice
The FTC reports positive drug tests immediately to all team members		
Team members understand that AOD testing is only one indicator of progress and safety	Team members are trained to recognize alternate indicators of relapse	The entire FTC team takes responsibility for identifying indicators of relapse
All AOD test results are recorded in the UTA		

**Recommended Practice:** The FTC should establish a formal protocol to address child safety in the face of a positive AOD test. Positive drug tests should be reported immediately to CPS and all team members.

**Rationale:** Child safety is the FTC’s first concern. Therefore, it is critical that positive test results are reported to CPS immediately. CPS is the stakeholder in a position to take immediate emergency measures if necessary to protect the children from a parent who has relapsed. Because Consents to Release Information are in place, all team members, including treatment providers, can adhere to this protocol. Providing positive results to all team members promptly permits a unified team response and protects team members from inappropriate encounters with the participant after a positive test.

**Recommended Practice:** As part of the response to positive or negative results, FTC team members should understand that AOD testing, while important, is only one indicator of progress and safety. The FTC should utilize drug testing results as only one of many indicators of the participant’s overall program compliance. The entire team should be trained to pick up and report other signs of non-compliance.

**Rationale:** Relying too heavily on drug testing results to measure compliance can distort the court’s assessment of the participant’s progress. For example, if a participant is testing clean but missing sessions, appearing late for court, missing visits with the children, or has recently lost a job, the program staff should examine the possibility that the samples are unreliable or that other aspects of her recovery are in jeopardy. Conversely, if a participant is doing well in all other areas but tests positive once, the program may want to consider that the dirty urine is a minor lapse, meriting a response that will not disrupt the participant’s overall progress.

**Recommended Practice:** All test results, wherever they are performed, should be entered into the UTA.

**Rationale:** The UTA is the FTC's primary tool for tracking participant progress toward advancement and graduation. Therefore, all relevant information should be recorded in the UTA promptly and accurately.

#### 4. RESPONDING TO PARTICIPANT BEHAVIOR

The FTC team's primary responsibility is to work with the participant to achieve sobriety and create a safe, stable and permanent home for the participant's children. The first step in this process is to develop clear expectations for the participant by defining desirable and undesirable behavior in concrete terms. The second step is to develop a set of clear and consistent responses that the FTC team will use to encourage compliance with behavioral norms.

Starting-up Practice	Progressing Practice	Advanced Practice
<p>The FTC defines behavioral expectations for participants</p> <p>The FTC sets behavior targets for treatment/recovery, parent/child relationship, and lifestyle responsibilities</p> <p>Behavior targets mirror the recovery process by starting with small steps and progressing to complex tasks</p> <p>Behavior targets are designed to enhance child safety and security and promote compliance with ASFA time requirements</p>	<p>The FTC reviews and updates targeted behaviors as needed</p>	
<p>The FTC develops a formal list of graduated responses (sanctions and incentives) designed to promote program compliance</p> <p>The FTC's graduated responses are based on scientifically-tested behavior modification techniques</p>	<p>The FTC reviews and updates its graduated responses as needed</p>	<p>The FTC evaluates the effectiveness of its graduated responses</p>
<p>The FTC's responses to participant behavior are individualized, flexible, and reflect individual capacity</p>	<p>The FTC uses essays as a sanction in appropriate cases</p>	
<p>The FTC employs responses to participant behavior that serve specific clinical, motivational, or child protective purposes</p>	<p>The FTC takes advantage of teachable moments</p>	

<p>The FTC ensures that responses are:</p> <ul style="list-style-type: none"> <li>• strength-based</li> <li>• sensitive to child well-being</li> <li>• not unduly punitive</li> <li>• respectful of parent/child contact</li> </ul>		<p>The FTC maximizes the use of incentives and minimize punitive responses</p>
<p>The FTC terminates participants from the program only when necessary to protect program integrity or respond to extreme or persistent non-compliance</p>		
<p>The FTC team should recommend a consensus response after deliberate consideration of individual factors</p> <p>Responses should be delivered with respect for the participant</p>		
<p>Final decisions regarding FTC responses should be made solely by the Judge</p> <p>Final decision regarding treatment modalities and levels should be made by the treatment provider</p>		
<p>All FTC responses to participant relapse should be informed by the disease model of addiction</p>		
<p>The FTC should employ material incentives only as permitted by law, court rules, and ethical considerations</p>		

**Recommended practice:** The FTC should develop a written set of behavioral expectations which are given to all participants. The FTC's expectations should clearly indicate what behavior constitutes compliance and non-compliance. Behavioral expectations should be reviewed and updated periodically as the FTC gains experience.

**Rationale:** As a result of their AOD abuse, FTC participants often experience impaired judgment and reduced capacity for self control. For these reasons, it is important that the FTC establish a specific and concrete list of behavioral expectations. As the FTC gains experience with the unpredictable actions of participants, the list of behavioral expectations can be adjusted and clarified.

**Recommended Practice:** The FTC should establish behavior targets for participants as they progress through the FTC program. Targets should be set for behaviors affecting treatment and recovery, the parent/child relationship, and lifestyle responsibilities.

**Rationale:** Specific behavior targets for the various phases of the FTC program will help participants understand what is expected of them at each stage in the recovery process.

**Recommended practice:** Targeted behaviors should mirror the recovery process.

**Rationale:** Targeted behaviors should progress in concrete, achievable steps to allow the participant to gradually overcome barriers to sobriety and permanency. Initially, targets should focus on steps that help engage the participant in recovery. During the first thirty days of participation, for example, it may be sufficient for the participant to show up for court and treatment as expected. As the participant begins making progress, behavioral expectations should rise accordingly. For example, the participant can be expected to participate in parent/child activities, attend support group meetings, or complete a parenting skills program. As the parent approaches successful completion of the FTC program, targeted behaviors may include securing adequate housing and finding a job.

**Recommended practices:** Targeted behaviors should address the risks which lead to CPS intervention and take into account ASFA time requirements.

**Rationale:** The FTC seeks to address the barriers that stand in the way of permanency and assist parents to fulfill their duties to their children. Utilizing specific behavior targets, the court can enable participants take steps to enhance child safety and security and achieve permanency in a timely manner. For example, FTC may require participants to complete a parenting program to give the parent a realistic understanding of child development and help participants meet their children's needs. Likewise, setting behavior targets in a manner that accounts for ASFA time limits promotes timely permanency.

**Recommended practice:** The FTC should develop a written list of graduated responses to be employed when participants engage in desirable behavior or fail to comply with expectations. These responses should be periodically reviewed and updated as the FTC develops.

**Rationale:** The FTC's responses to case events, if carefully tailored and consistently applied, can effectively change participant behavior. Therefore, the FTC should create a formal set of behavior responses that gives the participants fair notice and allows participants to anticipate the consequences of their actions. A range of potential responses permits the court to select incentives and consequences that are sufficiently flexible to account for an individual participant's program status, abilities, and circumstances.

**Recommended practice:** The FTC should use scientifically-based behavioral modification research in developing motivational responses.

**Rationale:** The FTC's responses to participant behavior must be designed to achieve the desired effect. Research indicates that the "Ten Science-Based Principles" (see *Appendix 1*) promote permanent behavioral change by stressing the certainty and swiftness of court responses. In addition, the "Ten Science-Based Principles" suggests that the use of responses should be informed by ongoing clinical assessment, motivational strategies, cognitive-behavioral interventions, and the development of continuing care strategies.

**Recommended Practice:** Although the FTC should strive for consistency in its use of responses, it must also have flexibility to respond to the unique circumstances of individual participants. The use of a "blanket" policy that calls for identical responses in all cases involving a particular behavior is discouraged. If disparate responses are warranted for similar behavior, the Judge should offer an explanation at the FTC review in open court of the specific circumstances that support the difference in court response.

**Rationale:** No two cases or individuals are identical. For example, there are many reasons why a participant might miss a treatment appointment. A participant who fails to plan ahead for transportation and fails to call ahead to warn the team should be sanctioned more stringently than a participant who accompanies a neighbor to the emergency room and calls in advance to alert the FTC team of the unusual circumstances. By explaining the factors that lead to discrepancies in court response, while taking care not to violate confidentiality, the Judge can help to eliminate the appearance of unfairness.

**Recommended Practice:** The FTC should consider the goal of a given response in determining how to address an individual participant's behavior.

**Rationale:** Court responses to participant behavior will generally be designed to achieve a specific clinical, motivational, or child protective purpose. If the purpose of a court response is to adjust a participant's treatment plan, then the response should be preceded by a reassessment of the participant's needs, the current treatment plan, and the participant's progress and current lifestyle. When the court seeks to motivate a participant to change her behavior, the court should choose a response that encourages "intentional behavior change" through motivational strategies. If the court is concerned about a child's safety or well-being, then its response should be a child protective response that involves CPS, which is required to act when a participant's behavior threatens child safety.

**Recommended Practice:** The FTC's responses to participant behavior should be designed to teach skills that support a sober lifestyle and a safe and stable home for children.

**Rationale:** FTC participants often struggle with chaotic lives and may never have acquired basic sober living skills. Non-compliant behavior may be a reflection of the absence of these skills rather than a deliberate defiance of expectations. The FTC can improve outcomes by helping participants develop the tools and skills necessary to achieve sobriety and permanency.

**Recommended Practice:** The FTC should consider requiring participants to write essays as a sanction in appropriate cases. The court should consider participants' differing levels of literacy and avoid requiring participants to read essays in open court.

**Rationale:** Essays can promote self-reflection about negative behavior. For participants whose literacy skills are lacking, a discussion with a case manager can serve as an alternative practice. In addition, essays may reveal low literacy levels or highly personal issues. Therefore, the court should carefully consider whether to require participants to read their essays in open court, as this may produce a perception that the court seeks to humiliate the participant.

**New York Experience:** Some FTCs' supply a calendar to participants who regularly miss appointments and require participants to submit their pocket calendar to the case manager for weekly inspection. This practice helps the participant keep track of the many new demands they face in the FTC, learn to structure their day, and avoid conflicting demands on their time. Likewise, a parent who fails to obtain adequate housing can be required to keep a log of their house-seeking activities and discuss other approaches with their case manager.

**Recommended Practice:** The team should always take into account the impact of a response on the participant's children. Parent/child contact or custody should never be used as a sanction for non-compliant behavior or an incentive for compliant behavior. Visitation and custody are matters to be determined solely based on the child's best interest and safety.

**Rationale:** The FTC's responses to participant behavior can have a significant impact on parent/child relationships and child well-being. It is important that the FTC team carefully consider the full impact of its decisions on the entire family to avoid inadvertently creating negative impacts. For instance, requiring an extra court appearance on a specific day may interfere with visitation, unduly depriving the child of the right to parental contact. It should also be stressed that, as a Family Court part, the FTC is statutorily directed to seek safety and timely permanency for the children of participants, not punishment of the participant's themselves. Therefore, the FTC should never base decisions about visitation or custody on any factor other than the child's best interests and safety.

**Recommended practice:** The FTC's responses to participant behavior should employ strength-based strategies.

**Rationale:** Strength-based strategies recognize positive behavior, however minor, and avoid focusing on participants' failings. For example, a participant who comes to court and tests positive for drug use should be praised for coming to court and continuing to seek the support of the FTC, even while the court responds appropriately to the participant's drug use. Research suggests that strength-based responses motivate positive change more effectively than negative consequences for negative behavior. A strength-based response also encourages participants to use their own resources to overcome their difficulties. As the team gains experience, it will reflexively use strength-based practices whenever the opportunity arises.<sup>9</sup>

**Recommended Practice:** The FTC should avoid issuing punitive responses solely for the purpose of punishment. Incarceration should be employed infrequently, if at all, and with great discretion. When incarceration is used, all the procedural and due process safeguards must be observed, and the decision should be made only by the Judge on the basis of full information.

**Rationale:** The purpose of the Family Court, including the FTC, is to maintain or reunify the family, not to punish parents for their actions. Although it is easy to become frustrated with the participant, the team must take care to assure that their recommended responses serve a legitimate clinical, child protective, or motivational purpose. Incarceration, as stated above, should be used sparingly. Appropriate situations include securing the participant's attendance after execution of a bench warrant and securing compliance with the court's order after a contempt finding. Incarceration may be most effective early in the case, to get the parent focused on the recovery. Later in the case, it may be more appropriate to respond to continued non-compliance by changing the permanency goal to something other than reunification rather than incarcerate a parent who will not be ready for reunification within ASFA time requirements.

**Recommended Practice:** Participants should rarely be terminated from the FTC and only in cases of extreme or persistent non-compliance.

**Rationale:** The FTC should attempt to keep participants in treatment for as long as possible. Research shows that the longer a person remains engaged in treatment the longer they are able to remain in recovery. Termination from the FTC, by contrast, removes the participant's major incentive to engage in treatment. Termination should be considered if the parent's behavior is a threat to the integrity of the program or if the participant has been persistently unable or unwilling to participate in formulating a permanency plan and further efforts are unlikely to prove effective.

**Recommended practice:** The FTC team should deliberate at pre-court staffing, taking into account individual circumstances, before recommending an appropriate response to participant behavior. In FTCs where the Judge does not participate in staffings, the team should arrive at a consensus and deliver a single, unified recommendation. If the court does not intend to follow the team's recommendation, the court should confer with the team and the attorneys to confirm that there are no misunderstandings about the

need for the recommended sanction and the potential impact of the court's alternate determination. Whatever the response, it should be delivered with respect for the participant.

**Rationale:** Thoughtful team deliberation helps ensure that recommended responses take into account each participant's unique circumstances and case status. Ultimately, however, the Judge is responsible for determining the court's response. The Judge is not bound by the team's recommendation. In cases where the Judge plans to depart from the team's recommendation, a conference with the team and attorneys gives everyone the opportunity to discuss potential unintended consequences of the court's decision.

**Recommended Practice:** All final decisions regarding the participant's course of treatment, including treatment modality and intensity, must be made by the treatment provider. If the treatment provider intends to change a treatment plan or is in disagreement with other team members about a treatment plan, these issues should be aired at the pre-court team staffing with the understanding that the treatment provider is the ultimate decision maker.

**Rationale:** New York State law requires that treatment providers alone determine the appropriate level of care for FTC participants. Moreover, the treatment provider has the training and expertise to make this decision. Treatment determinations must be clinically justifiable and never made for the purpose of punishment. If a treatment provider consistently recommends treatment plans that team members find inappropriate, the Resource Coordinator should consider meeting with the provider to assess whether the FTC should continue sending participants to that provider.

**Recommended Practice:** All FTC responses to participant behavior, including relapse, should be informed by the disease model of addiction.

**Rationale:** FTCs are designed to address addiction as a chronic disease, the treatment of which usually includes relapse. This approach is supported by current research and offers participants the greatest chance of recovery and reunification. FTCs should never view addiction or relapse as a moral failing.

**Recommended Practice:** The FTC should employ material incentives only as permitted by law, court rules, and ethical considerations. The court should explore ways to utilize "contingency management" without involving the court directly in the solicitation of goods or services. Material rewards that focus on the participant's role as a parent or benefit the child are most appropriate for FTCs.

**Rationale:** Due to ethical considerations, the New York State Office of Court Drug Treatment Programs and the Advisory Committee on Judicial Ethics have advised FTC Judges and drug court staff to refrain from soliciting or distributing incentives with a monetary value. Notwithstanding this rule, research has found that a "contingency

management protocol,” in which vouchers or points are rewarded for abstinence and compliance, has produced favorable outcomes.

**New York Experience:** Child Care Centers in New York’s courts often supply children’s books to families. FTCs may consider offering participants the opportunity to visit the Children’s Center and share a book with their children. FTCs can also explore the possibility of collaborating with Reading is Fundamental sites at local libraries. In addition, CASA programs often distribute toys and food at the holidays and school supplies in the fall. FTCs may work with these programs to identify FTC families as appropriate recipients.

## End Notes

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<sup>1</sup> New York State Office of Alcoholism and Substance Abuse Services (OASAS) (August 1997). Alcohol and Other Drug Abuse Prevention Services Needs Assessment. Available at <http://www.oasas.state.ny.us/hps/datamart/dissemin.pdf>

See Also:

New York State Department of Social Services (NYS DSS) (April 1992). Families in the Child Welfare System: Foster Care and Preventive Services in the Nineties. Author: Albany, NY.

Reid, J., Macchetto P., & Foster S. (1999). No Safe Haven: Children of Substance-Abusing Parents. Center on Addiction and Substance Abuse at Columbia University.

<sup>2</sup> See D. Young & S. Belenko, Program Retention and Perceived Coercion in Three Models of Mandatory Drug Treatment. JOURNAL OF DRUG ISSUES, Winter 2002, at 297-328.

<sup>3</sup> National Association for Children of Alcoholics. *Children of Addicted Parents: Important Facts*. Available at <http://www.nacoa.net/pdfs/addicted.pdf>

See Also:

Earls, F., Reich, W., Jung, K.G., & Cloninger, C.R. (1998). *Psychopathology in Children of Alcoholic and Antisocial Parents*. Alcoholism: Clinical and Experimental Research, 12:481-487.

Moss, H.B., Vanyukov, M., Majumder, P.P., Kirisci, L., & Tarter, R.E. (1995). *Pre-pubertal Sons of Substance Abusers: Influences of Parental and Familial Substance Abuse on Behavioral Disposition, IQ, and School Achievement*. Addictive Behaviors, 20 (3), 345-358.

Egeland, B., Sroufe, L.A., & Erickson, M.F. (1983). *Developmental Consequences of Different Patterns of Maltreatment*. Child Abuse and Neglect, 7, 459-469.

Erickson, M.F., & Egeland, B. (1987). *A Developmental View of Psychological Consequences of Maltreatment*. School of Psychology Review, 16(2), 156-168.

<sup>4</sup> A recent study that tracked addicts in treatment for 16 years concluded that individuals who participate in both Alcoholics Anonymous and AOD treatment fare better than those who obtain treatment only.

See Bernice S. Moos & Rudolf H. Moos, *Paths of Entry into Alcoholics Anonymous: Consequences for Participation and Remission*, ALCOHOLISM: CLINICAL & EXPERIMENTAL RESEARCH, October 2005.

Although self-help groups can provide support for persons in recovery, they are not treatment.

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See W.R. Miller, et al., *What works? A Methodological Analysis of the Alcohol Treatment Outcome Literature*, in HANDBOOK OF ALCOHOLISM TREATMENT APPROACHES: EFFECTIVE ALTERNATIVES (2d. ed., R. K. Hester & W. R. Miller eds., 1995).

Support groups should be promoted only as an adjunct to formal substance abuse treatment. Additionally, the law prohibits ordering an individual to participate specifically in Alcoholics or Narcotics Anonymous. Courts have held that these groups are inherently religious and therefore violate constitutional principles regarding freedom of religion.

See *DeStefano v. Emergency Hous. Group, Inc.*, 247 F.3d 397 (2001); *In re Griffin v. Coughlin*, 673 N.E.2d 98 (N.Y. 1996).

<sup>5</sup> Higgins, S.T. & Silvermand, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, 330.

See Also:

Higgins, S.T., & Petry, N.M. (1999). *Contingency Management: Incentives for Sobriety.* *Alcohol Health & Research*, 23(2), 122-127.

Hawkins, D.R. (2002). *Power vs. Force: The Hidden Determinants of Human Behavior*. Sedona, AZ: Veritas Publishing.

Beck, R.J., *Encouragement as a Vehicle to Empowerment in Counseling: An Existential Perspective*. *Journal of Rehabilitation* (1994) Vol 60

Senjo, Scott and Leslie A. Leip. 2001. "Testing Therapeutic Jurisprudence Theory: An Empirical Assessment of the Drug Court Process." *Western Criminology Review* 3(1). Available at <http://wcr.sonoma.edu/v3n1/senjo.html>.

Marlowe, D.B., & Kirby, K.C., *Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.* *National Drug Court Institute Review*, II(1), 11-xxix

Clark, M.D., *Change Focused Drug Court: Examining the Critical Ingredients of Positive Behavior Change*, 3(2) *National Drug Court Institute* (Winter 2001). Available at <http://www.buildmotivation.com/images/15%20cf%20app%20for%20judges.pdf>

<sup>6</sup> Prochaska, J.O., DiClemente, C.C., Norcross, J.C. *In Search of How People Change: Applications to Addictive Behaviors*, *American Psychologist* (September 1992), Vol. 47(9) 1102-1114.

See Also:

Prochaska, J.O., DiClemente, C.C., Velicer, W.F., Rossi, J.S., *Standardized, Individualized, Interactive, and Personalized Self-Help Programs for Smoking Cessation*. *Health Psychology*, (1993) Vol. 12(5) 399-405.

Prochaska, J.O. & DiClemente, C.C., *Stages and Processes of Self-Change of Smoking: Toward an Integrative Model of Change*, *Journal of Consulting and Clinical Psychology*, (1983) Vol. 51(3) 390-395.

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Prochaska, J.O., & Velicer, W.F., *The Transtheoretical Model of Health Behavior Change*, American Journal of Health Promotion, (1997) 12(1):38-48.

Clark, M. D., *Motivational Interviewing and Mandated Interventions: Tempest in a Teapot?* (August 2005).

MINT Bulletin. Vol. 12(2) 30-31. Special Section/Virtual Symposium—Motivational Interviewing Network of Trainers (2003). Available at <http://www.buildmotivation.com/images/18%20mint%20tempest.pdf>

Miller, W.R. & Rollnick, S. (2002). *Motivational Interviewing: Preparing people for change* (2<sup>nd</sup> ed). New York: Guilford Press.

Miller, W.R. . Motivational Interviewing with Problem Drinkers. *Behavioral Psychotherapy*. 11:147-172, :1983.

Miller, W.R., and Tonigan, J.S. Assessing Drinkers' Motivation for Change: The Stages of Change Readiness and Treatment Eagerness Scale (SOCRATES). *Psychology of Addictive Behaviors*. 10(2):81-89, :1996.

Najavits, L.M., and Weiss, R.D. . Variations in Therapist Effectiveness in the Treatment of Patients with Substance Use Disorders: An Empirical Review. *Addiction* (1994) 89(6):679-688.

Hubble, M.A., Duncan, B.L., & Miller, S.D (Eds) (1999). *The Heart and Soul of Change: What Works in Therapy*. Washington, DC: American Psychological Association, 274-275.

<sup>7</sup> Cathy Spatz Widom, Timothy Ireland, Patricia J. Glynn. *Alcohol Abuse in Abused and Neglected Children Followed-up: Are They at Increased Risk?* Journal of Studies on Alcohol and Drugs, Volume 56, Issue 2, March 1995.

<sup>8</sup> Walters, R.H., & Demkow, L., *Timing of Punishment as a Determinant of Response Inhibition*, Child Development (1963) 34, 207-214.

See Also:

Cheyne, J.A., & Walters, R.H., *Intensity of Punishment, Timing of Punishment, and Cognitive Structure as Determinants of Response Inhibition*, Journal of Experimental Child Psychology (April 1969) 7(2) 231-244.

<sup>9</sup> Marlowe, D.B., & Kirby, K.C., *Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.*” National Drug Court Institute Review, II(1), 11-xxix

See Also:

Clark, M.D., *Change Focused Drug Court: Examining the Critical Ingredients of Positive Behavior Change*, 3(2) National Drug Court Institute (Winter 2001). Available at <http://www.buildmotivation.com/images/15%20cf%20app%20for%20judges.pdf>

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Hubble, M.A., Duncan, B.L., & Miller, S.D (Eds) (1999). *The Heart and Soul of Change: What Works in Therapy*. Washington, DC: American Psychological Association, 274-275.

## **APPENDIX I**

### **Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment**

Drug treatment courts utilize a scheme of graduated sanctions and rewards to change the behavior of participants. In recent years, drug court practitioners have looked to the world of behavioral research to identify the most promising approaches to achieve this goal. Based on a review of behavioral research literature, particularly in the criminal justice setting, William G. Meyer, Sr., Judicial Fellow at the National Drug Court Institute, catalogued “Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment”. Although this research was conducted in the criminal drug treatment court context, most of the principles have similar application in the family treatment court setting. They should be of great assistance as the court seeks to respond to participant behavior in creative and effective ways.

*The National Drug Court Institute has given the New York State Unified Court System permission to present the “Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment” in this document but any further dissemination or reproduction is subject to the approval of the National Drug Court Institute.*

## Ten Science-Based Principles of Changing Behavior Through the Use of Reinforcement and Punishment

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### 1. SANCTIONS SHOULD NOT BE PAINFUL, HUMILIATING OR INJURIOUS.

- a. Research on offender perceptions and specific deterrence effects on offenders subject to sanctions report that:
  1. Certainty of sanctions does exert a specific deterrent effect on future behavior.
  2. Perceived severity, if certainty is present, does not exert a deterrent effect on future behavior. Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232.
- b. While research on animals indicate that severity of punishment is directly related to behavior extinguishment, the same is not necessarily true for criminal offenders.

Research reports that controlling for age, socioeconomic status, and time of incarceration the risk that the offender would re-offend was not related to the prior sanctions imposed irrespective of whether the sanction was probation, a fine or prison. The one exception to this finding is when first and second time offenders received prison instead of a fine or probation, they were more likely to re-offend. Brennan, P and Mednick, S., "Learning Theory Approach to Deterrence of Criminal Behavior," Vol. 103 *Journal of Abnormal Psychology*, pp. 430-440 (1994).
- c. In controlled studies, participants tend to choose heavy future punishment over smaller immediate punishers. As it relates to substance abusers, they tend to discount the future consequences. The immediacy of the effect is the best predictor of whether there will be a change in the status quo. Murphy, J. G., Vuchinich, R. E., & Simpson, C. A. (2001). "Delayed Reward and Cost Discounting." *The Psychological Record*, 51, 571-588.
- d. Multi-disciplinary research posits that defiant behavior results when sanctions are perceived as unfair punish the individual not the act, imposed on individuals poorly bonded to the community and on individuals who fail to feel shame or contrition for their acts. Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction." *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.

## 2. RESPONSES ARE IN THE EYES OF THE BEHAVER.

- a. Contrary to expectations, incarceration is not necessarily viewed by the criminal offender as the harshest punishment. In a comparison of alternative sanctions to prison time, 6-24% of inmates surveyed preferred 12 months incarceration compared to sanctions ranging from a halfway house (6.7%), probation (12.4%) or day fines (24%). Those inmates desiring alternative sanctions seemed to have better connections with the community, for example children, job, etc. Wood, P. B., & Grasmick, H. G. (1995). "Inmates Rank the Severity of Ten Alternative Sanctions Compared to Prison." Oklahoma Department of Corrections: [www.doc.state.ok.us/DOCS/OCJRC/OCJRC95/950725j.htm](http://www.doc.state.ok.us/DOCS/OCJRC/OCJRC95/950725j.htm) See also Petersilla, J. and Deschanes, E., "What Punishes? Inmates Rank the Security of Prison v. Intermediate Sanctions?" *Federal Probation*, Vol. 58, No. 1 (March 1994).
- b. Research also indicates that punishment or the possibility of punishment as a sanction tends to be a greater motivator of behavior for those addicts who have a lot to lose. For those addicts who have nothing to lose, the threat or actual imposition of punishment causes them to withdraw from treatment or drop out. The use of positive reinforcement has been shown to be particularly effective in motivating abstinence in this population. See Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association; particularly Chapter 17, Crowley, T., "Clinical Implications and Future Directions," pp. 345-351.
- c. An extensive study focusing on whether criminal sanctions reduce, increase or have no effect on future crimes found the following:
  1. Similar sanctions have completely different effects depending upon the social situation and offender type.
  2. Treatment can increase or decrease criminality depending on offenders' personality type.
  3. Criminal sanctions decrease criminality in employed offenders but increase criminality in unemployed offenders.
  4. Threat of criminal sanctions deters future criminality in people who are older.
  5. People obey laws more when they believe laws are enforced fairly. See Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction." *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.
- d. The concept of the perception of fairness and its effect on the behavior may have greater importance than previously believed. Behavioral economic research suggests that people will react to perceived unfairness by engaging in activity that will "punish" the person perceived as being unfair even to the extent of punishing themselves to get back at that person. Andreoni, J., Harbaugh, W., &

Vesterlund, L. (2001). "The Carrot or the Stick? Rewards, Punishments and Cooperation." Unpublished paper, National Science Foundation Grant.

- e. Just as a sanction may be misperceived, so can a system of rewards. Providing such things as appointment books, pencils or even increasing monetary rewards as a bonus may even jeopardize continued abstinence. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association., pp. 334-335.
- f. As drug court professionals we must be particularly cognizant of the participant perception that a response of increased drug treatment imposed upon therapeutic recommendation will be perceived by the participant as a punishment. To the extent we can persuade the participant that treatment is in their best interest, we should do so. See Center for Substance Abuse Treatment, "Combining Substance Abuse Treatment with Intermediate Sanctions for Adults in the Criminal Justice System." Rockville, Maryland: Center for Substance Abuse Treatment, U.S. Department of Health and Human Services publication SMA 94-3004; 1994 d. *Treatment Improvement Protocol (TIP) Series 12*.

### 3. RESPONSES MUST BE OF SUFFICIENT INTENSITY.

- a. Animal Research has demonstrated that punishment must be of sufficient intensity to motivate the change in behavior. If the punishment is of not sufficient consequence, the behavior is not motivated to change or becomes habituated to the punishment Azrin, N. and Holz, W. "Punishment" in Honig W. (ed). *Operant Behavior: Areas of Recidivism and Application*. (Meredith Publishing 1966) pp. 381-447. Particularly p. 426 and 433. Using animal testing, authors answer whether punishment is effective in eliminating undesirable behavior and what has to be present to heighten efficacy.
- b. Research also indicates that graduated sanctions work in the drug court context. Using the DC drug court, a positive drug test sanction group was compared with a group not sanctioned for positive urine testing. The graduated sanction group had significantly fewer arrests than the non-sanctioned group. Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232.
- c. Research on graduated rewards demonstrates that participants receiving graduated reinforcement achieved greater mean levels of abstinence than participants receiving fixed reinforcement. Roll, J., Higgins, S. and Badger, G. "An Experimental Comparison of Three Different Schedules of Reinforcement of Drug Abstinence Using Cigarette Smoking as an Exemplar." *Journal of Applied Behavioral Analysis*, Vol. 29, p. 495-504 No. 4 (Winter 1996).
- d. A word of caution to practitioners: Some rewards may actually interfere with a person's intrinsic motivation. (See unintended consequences below). Deci, E. L., Koestner, R., & Ryan, R. M. (1999). "A Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation." *Psychological Bulletin*, 125 (6), 627-668.

#### 4. RESPONSES SHOULD BE DELIVERED FOR EVERY TARGET BEHAVIOR.

- a. Early animal research pointed out that punishment is only effective if it is delivered for every targeted behavior. Azrin, N. and Holz, W. "Punishment" in Honig W. (ed). *Operant Behavior: Areas of Recidivism and Application*. (Meredith Publishing 1966) pp. 381-447. Particularly p. 426 and 433.
- b. Outcomes in the criminal justice context is in line with animal-based research. In work by Brennan & Mednick, those offenders who received sanctions on a continuous schedule evidenced a significantly lower arrest rate than those offenders who received intermittent sanctions. Brennan, P. and Mednick, S. "Learning Theory Approach to the Deterrence of Criminal Recidivism." Vol. 103, *Journal of Abnormal Psychology*, pp. 430-440 (1994).
- c. Experts in contingency management suggest that reinforcers be used for every target behavior. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association. (Particularly see Kirby and Crowley pp. 334 and 349). Recent research indicates the mere opportunity to participate in getting an immediate reward can be effective in changing behavior. Participants who had clean urine tests were given an opportunity to draw paper slips from a fishbowl. Prizes indicated on the slips ranged from nothing to a dollar to a TV set. Results showed group drawing for reward was more likely to complete treatment (84% vs. 22%) and significantly more likely to be abstinent. Petry, N. M., Martin, B., Cooney, J. L., & Kranzler, H. R. (2000). "Give Them Prizes and They Will Come: Contingency Management for Treatment of Alcohol Dependence." *Journal of Consulting and Clinical Psychology*, 68 (2), 250-257. Petry, N. M. (2001). "Contingent Reinforcement for Compliance with Goal-related Activities in HIV-positive Substance Abusers." *The Behavior Analyst Today*, 2 (2), 78-85.
- d. Rewards need not be something tangible to be effective in motivating behavior, praise when delivered both immediately and continuously for achieving target behavior is very effective. Deci, E. L., Koestner, R., & Ryan, R. M. (1999). "A Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation." *Psychological Bulletin*, 125 (6), 627-668.

## 5. RESPONSES SHOULD BE DELIVERED IMMEDIATELY.

- a. In laboratory settings, a one hour delay in imposition of punishment has been demonstrated to decrease the sanctions' ability to change behavior. Delay in imposition of sanctions can allow other behaviors to interfere with the message of the sanction. Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research." *National Drug Court Institute Review*, II (1), 11-xxix.
- b. Similarly, experts in contingency management recommend that the uses of positive and negative reinforcements are more efficacious when imposed immediately. Griffith, J. D., Rowan-Szal, G. A., Roark, R. R., & Simpson, D. D. (2000). "Contingency Management in Outpatient Methadone Treatment: A Meta-analysis." *Drug and Alcohol Dependence*, 58, 55-66. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-drug Abusers*, Washington, D.C.: American Psychological Association, pp. 334. Burdon, W., et al. "Drug Courts and Contingency Management." *Journal of Drug Issues*, 31(i), pp. 73-90 (2001).
- c. What we have learned about the schedule of reinforcement from behavioral research is now being confirmed by the biomedical brain research. The effects of reinforcement appear to be exerted in the brain areas that are part of the dopamine reward system. From brain research, scientists conclude, "rewards and punishments received soon after an action are more important than rewards and punishments received later." Dayan, P., & Abbott, L. F. (2001). *Theoretical Neuroscience: Computational and Mathematical Modeling of Neural Systems*. Cambridge, MA: MIT Press.

## 6. UNDESIRABLE BEHAVIOR MUST BE RELIABLY DETECTED.

- a. Early studies by Crowley and others demonstrated in a contingency management situation, abstinence must be reliably detected. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association. (Particularly see Kirby's chapter, pp. 330-332 and Crowley's chapter, p. 339).
- b. Failure to reliably detect drug use in effect puts a person on an intermittent schedule of rewards and sanctions which is ineffectual in changing behavior. Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons From Behavioral Research." *National Drug Court Institute Review*, II (1), 11-xxix.
- c. Random and frequent scheduling of urine testing that is both quantitative and qualitative can make detection relatively foolproof. See Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, pp. 283-308.
- d. The credibility of an intermediate sanction program is dependent upon reliable drug use detection. Torres, S. (1998). "A Continuum of Sanctions for Substance-abusing Offenders." *Federal Probation*, 62 (2), 36-45.

## 7. RESPONSES MUST BE PREDICTABLE AND CONTROLLABLE.

- a. Early research in contingency management provided patients with clear, usually written agreements or contracts. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, p. 348-349.
- b. Abstinence based research indicates that perceived certainty of consequence does have a deterrent effect. Obviously, this perception is based not only on what does occur but what the participant expects will occur. See Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232.
- c. Using a contingency management protocol "requires clear articulation of behaviors that further treatment plan goals," Burdon, W., *et al.* "Drug Courts and Contingency Management.", *Journal of Drug Issues*, 31(i), pp. 73-90 (2001).
- d. Failure to specify particular behaviors that are targeted and the consequences for non-compliance can result in a behavior syndrome known as "learned helplessness where a drug court participant can become aggressive, withdrawn and/or despondent." Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.", *National Drug Court Institute Review*, II (1), 11-xxix.

## 8. RESPONSES MAY HAVE UNINTENTIONAL SIDE EFFECTS.

- a. Punishments that are too excessive or used inappropriately may cause unanticipated side effects like learned helplessness. Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.", *National Drug Court Institute Review*, II (1), 11-xxix.
- b. Applied research in behavior analysis suggests that negative side effects from punishment contingencies include behavioral supervision, fear, anger, escape and avoidance. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association p. 330.
- c. Even the application of positive reinforcements can have negative unexpected consequences – the addition of bonus payments to an escalating pay schedule actually reduced weeks of cocaine abstinence. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association p. 335.
- d. Frequency of contacts between the Judge and drug court participant can actually have a negative impact on successful program completion. However, this does not apply to ASPD participants and those participants with substantial substance abuse problems. Marlowe, D. B., Festinger, D. S., Lee, P. A., Schepise, M. M., Hazzard, J. E. R., Merrill, J. C., Mulvaney, F. D., & McClellan, A. T. In press: *Criminal Justice & Behavior*. Marlowe, D., et al. "Are Judicial Status Hearings a 'Key Component' of Drug Court; During Treatment Data From a Randomized Trial." *Criminal Justice and Behavior*, (in press 2002). See also Festinger, et al. "Court Program Matching in Drug Court" (in press 2002).
- e. Behavioral research strongly suggests that extrinsic rewards for behavior that is intrinsically motivated can actually reduce the motivation to continue that behavior. Thus, additional economic rewards for a person who intrinsically likes their work can actually reduce desire to work. Motivation by praise is the most effective way of heightening participants intrinsic motivator. Deci, E. L., Koestner, R., & Ryan, R. M. (1999). "A Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation." *Psychological Bulletin*, 125 (6), 627-668.

## 9. BEHAVIOR DOES NOT CHANGE BY PUNISHMENT ALONE.

- a. Punishment has the drawbacks pointed out under other principles (See 8(a) and (b) above.)
- b. Controlled comparisons of reinforcement and punishment report that clients in the reinforcement contingency stayed in treatment while those in the punishment contingency did not. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, p. 330.
- c. Effects of punishment are temporary and the punished behavior returns when the punishment contingency terminates. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association, p. 330.
- d. Punishment is most effective when used in combination with other behavior notification techniques such as positive reinforcement. Marlowe, D. B., & Kirby, K. C. (1999). "Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research." *National Drug Court Institute Review*, II (1), 11-xxix. Higgins, S. T., & Petry, N. M. (1999). "Contingency Management: Incentives for Sobriety." *Alcohol Health & Research*, 23 (2), 122-127.

## 10. THE METHOD OF DELIVERY OF THE RESPONSE IS AS IMPORTANT AS THE RESPONSE ITSELF.

- a. If the participant feels that the process is unfair either to him or to others, the participant will be defiant. Andreoni, J., Harbaugh, W., & Vesterlund, L. (2001)., "The Carrot or the Stick?: Rewards, Punishments and Cooperation.", Unpublished paper, National Science Foundation Grant. Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction." *Journal of Research in Crime and Delinquency*, 30 (4), 445-473. Thus, the drug court Judge must articulate the differences in two apparently similar situations where there is a different judicial response. Otherwise a perception of unfairness will be projected.
- b. Research based upon patient physician communication has demonstrated that interpersonal skills and empathic communication can improve patient satisfaction. Hubble, M. A., Duncan, B. L., & Miller, S. D. (Editors) (1999). *The Heart & Soul of Change: What Works In Therapy*. Washington, DC: American Psychological Association, p. 274-275.
- c. Psychiatrists who are enthusiastic about the effectiveness of a prescribed course of treatment and communicate same to the client obtain a significantly higher success rate (77% to 10%). Hubble, M. A., Duncan, B. L., & Miller, S. D. (Editors) (1999). *The Heart & Soul of Change: What Works In Therapy*. Washington, DC: American Psychological Association, p. 277.
- d. Research has consistently demonstrated that the psychoactive effects of a drug can vary based upon how the physician described the expected effect. Hubble, M. A., Duncan, B. L., & Miller, S. D. (Editors) (1999). *The Heart & Soul of Change: What Works In Therapy*. Washington, DC: American Psychological Association, p. 300-309.
- e. Certain styles of participant – therapist interaction result in more compliant behaviors. For instance, in parent training, confrontational and teaching oriented approaches tended to result in non-compliant responses whereas when support and facilitation were used compliant behaviors resulted. Patterson, G. A., & Forgatch, M. S. (1985). "Therapist Behavior as a Determinant for Client Noncompliance: a Paradox for the Behavior Modifier." *Journal of Consulting and Clinical Psychology*, 53, 846-851.
- f. Research involving substance abuse (alcohol) using the two styles above confrontative vs. client centered (motivational interviewing - MI) approach resulted in reduced alcohol use in MI group and less resistance to change. Lawendowski, A. L. (1998)., "Motivational Interviewing with Adolescents Presenting for Outpatient Substance Abuse Treatment.", Unpublished doctoral dissertation, University of New Mexico;. "Dissertation Abstracts International," 59-03B, 1357;. Miller, W. R., Benefield, R. G., & Tonigan, S. (1993)., "Enhancing Motivation in Problem Drinking: A Controlled Comparison of Two Therapist Styles." *Journal of Consulting and Clinical Psychology*, 61, 455-461.
- g. Motivational interviewing techniques shown to be successful include (1)

let client do talking; (2) open-ended questions; (3) no more than two playbacks of what client said per main question; (4) complex reflections (playbacks) should be used at least 50% of the time when summarizing totality of clients statements; and (5) do not move beyond clients level of readiness. Do not warn confront or give unwelcome advice. Miller, B. (1999). Kaiser. "Motivational Interviewing Newsletter for Trainees," 6 (1), 1-2; Rollnick, S., & Miller, W. R. (1995). "What is Motivational Interviewing?" *Behavioral and Cognitive Psychotherapy*, 23, 325-334.

- h. Recent research confirms that motivational interviewing techniques are effective in the drug court context. When a Judge uses positive reinforcement with a participant, the number of positive urine tests is lower than when neutral or critical comments are employed. Scott Senjo & Leslie Leip, *Testing Therapeutic Jurisprudence Theory: An Empirical Assessment of the Drug Court Process*, 3 WESTERN CRIMINOLOGY REVIEW 1-21 (2001) also available at <http://wcr.sonoma.edu/v3n1/senjo.html>



**New York State Unified Court System  
Drug Court Treatment Progress Form**

**DATE OF REPORT:** \_\_/\_\_/\_\_  
**REPORT PERIOD COVERING:**  
\_\_/\_\_/\_\_ to \_\_/\_\_/\_\_

**CLIENT INFORMATION**

Name:	Drug of Choice:	Date of Admission: __/__/__	Est Date of Completion: __/__/__	Dkt#/SCI# (Court Use Only)
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**COURT INFORMATION**

Court:	Case Manager:	Telephone:	FAX:
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**TREATMENT AGENCY**

Treatment Agency Name:	Type/Modality:	Preparer's Signature:
Program Counselor:	Program Contact:	Contact Telephone:

**RECOMMENDATION**

- Maintain Current Treatment Status
- Referral for Additional Services
- Consider for Completion
- Revise Treatment Plan
- Being Considered for Discharge

**TREATMENT SCHEDULE**

Month	# days/wk
# sessions/wk	#hrs/wk

**TREATMENT ATTENDANCE**

P = Present E= Excused / A= Absent / L= Late (Dates of attendance is not required if in residential)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

**TREATMENT AREAS**

Treatment Area	N/A	E	G	I	NI
Attitude towards Treatment	<input type="checkbox"/>				
Stability of med/psych health	<input type="checkbox"/>				
Status of Entitlements	<input type="checkbox"/>				
Family system status	<input type="checkbox"/>				
Participates in all aspects of	<input type="checkbox"/>				
Develop social support network	<input type="checkbox"/>				
Educational/Vocational/Employme	<input type="checkbox"/>				

**TOXICOLOGY (P=Positive, N=Negative, L=Lab/Pending)**

Date	THC	Her	Coc	Bez	Amp	PCP	Alc	Meth	Barb	PM	Notes
__/__/__											
__/__/__											
__/__/__											
__/__/__											
__/__/__											
__/__/__											

Key: THC=THC; Her=Heroin; Bez=Benzodiazepine; Amp=Amphetamine; PCP=PCP; Alc=Alcohol; Meth=Methadone; Barb=Barbituates; PM=Prescription Medication

**TREATMENT SUMMARY/COMMENTS**

(Please be specific and include recommendations, aftercare information, other relevant progress. Include program's response to identified problems, changes in treatment plan, achievements, and issues with which the court may be able to assist )

**ANCILLARY SERVICES (Indicate all services participant is attending)**

Type of Service	# days/wk	#absences	#attended
<input type="checkbox"/> Comm. Service			
<input type="checkbox"/> Educ./Voc. Ed.			
<input type="checkbox"/> Med./Psych.			
<input type="checkbox"/> Parenting			
<input type="checkbox"/> Probation			
<input type="checkbox"/> Support Group			
<input type="checkbox"/> Other			

Comments:

\*Include Page 2 for all Family Court Reports and Additional Comments (Page 2 is not required for Non-Family Court cases)

**UPDATE ON CHILDREN (Mandatory for Family Court)**

Comments, concerns and issues regarding children where the court may be able to assist: (Please include names of children and date of occurrence if known) (e.g., child visitation and child service issues, parent/child interaction, etc.)

CLIENT SELF REPORTED:

TREATMENT PROVIDER OBSERVED:

FAMILY SERVICES:

*\*\* Any information reported on this form does not release treatment provider from any responsibility to immediately notify the appropriate child service agency (e.g., ACS) and/or the court of any outstanding issues or concerns*

**ADDITIONAL COMMENTS (Not Required)**

Please use this space for any additional comments or to continue answers from previous sections

## **APPENDIX III**

### **Additional Resources**

1) Alcohol/Drug Webliography

2) Commonly Abused Drugs

Also available online:

[http://www.ncsconline.org/wc/publications/Res\\_JudEdu\\_SubstanceAbuseMaterial8Pub.pdf](http://www.ncsconline.org/wc/publications/Res_JudEdu_SubstanceAbuseMaterial8Pub.pdf)

3) Glossary of terms: Mental Health, Alcohol and Other Drugs

Also available online:

[http://www.ncsconline.org/wc/publications/Res\\_JudEdu\\_SubstanceAbuseMaterial3Pub.pdf](http://www.ncsconline.org/wc/publications/Res_JudEdu_SubstanceAbuseMaterial3Pub.pdf)

4) Additional publications are available at the National Center for State Courts

<http://www.ncsconline.org/>

# ALCOHOL/DRUG WEBLIOGRAPHY

Prepared by Hon. Peggy Fulton Hora  
Edited by Valerie Raine

## **AA World Services**

[www.alcoholics-anonymous.org](http://www.alcoholics-anonymous.org)

Home page of Alcoholics Anonymous General Services Office

## **Addiction Treatment Forum**

[www.atforum.com](http://www.atforum.com)

Home page of Addiction Treatment Forum, which contains information, research, and news for the addiction treatment field

## **Al-Anon and Alateen**

[www.al-anon.alateen.org](http://www.al-anon.alateen.org)

Alcoholics recovery program. Fellowship of relatives and friends of alcoholics

## **Alcohol and Drug Services**

[www.adsyes.com](http://www.adsyes.com)

Home page of Alcohol and Drug Services. Substance abuse education, prevention, and treatment services

## **Alcohol Policies Project, Center for Science in the Public Interest**

[www.cspinet.org](http://www.cspinet.org)

Home page of Center for Science in Public Interest, which promotes health by educating the public about nutrition and alcohol

## **American Academy of Addiction Psychiatry**

[www.aaap.org](http://www.aaap.org)

Information on the field of Addiction Psychiatry

## **American Council on Alcoholism**

[www.aca-usa.org](http://www.aca-usa.org)

A public education group dedicated to educating the public about the effects of alcohol, alcoholism, alcohol abuse and the need for prompt, effective, readily available and affordable treatment

## **American Council for Drug Education**

[www.acde.org](http://www.acde.org)

The American Council for Drug Education is a substance abuse prevention and education agency that develops programs and materials based on the most current scientific research on drug use and its impact on society

## **American Foundation for Addiction Research (AFAR)**

[www.addictionresearch.com](http://www.addictionresearch.com)

AFAR is dedicated to fostering scientific research, understanding the causes and nature of addictive disorders, and disseminating this information to the public

**American Medical Association**

[www.ama-assn.org](http://www.ama-assn.org)

Home page for the American Medical Association

**American University Justice Programs, Drug Court Clearinghouse**

<http://spa.american.edu/justice/drugcourts.php>

The Clearinghouse and Technical Assistance Project (DCCTAP) assists justice system officials and professionals in addressing issues relating to drug court programs in their jurisdictions

**Anonymous One**

[www.anonymousone.com/main.htm](http://www.anonymousone.com/main.htm)

“A recovery resource like no other.” 12 step meetings, sober living, club treatment, and more

**Anonymously Yours Bookstore**

<http://ay12steps.com>

Recovery bookstore and gift shop, with other recovery resources

**Bureau of Justice Assistance (BJA)**

[www.ojp.usdoj.gov/BJA](http://www.ojp.usdoj.gov/BJA)

Acting as an arm of the US Department of Justice, BJA provides leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities

**Bureau of Justice Statistics (BJS)**

[www.ojp.usdoj.gov/BJS](http://www.ojp.usdoj.gov/BJS)

Acting as an arm of the US Department of Justice, BJS collects, analyzes, publishes, and disseminates information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government

**Center for Disease Control and Prevention (CDC)**

[www.cdc.gov](http://www.cdc.gov)

The mission of the CDC is to promote health and quality of life by preventing and controlling disease, injury, and disability

**Center for Substance Abuse Prevention (CSAP)**

[www.samhsa.gov/centers/csap/csap.html](http://www.samhsa.gov/centers/csap/csap.html)

A division of the Substance Abuse and Mental Health Services Administration (SAMHSA), CSAP works with States and communities to develop comprehensive prevention systems that create healthy communities in which people enjoy a quality life

**Center for Substance Abuse Research, University of Maryland**

[www.cesar.umd.edu](http://www.cesar.umd.edu)

Home page of Center for Substance Abuse at the University of Maryland

**Center for Substance Abuse Treatment (CSAT)**

[www.csat.samhsa.gov](http://www.csat.samhsa.gov)

Home page for CSAT, a division of SAMHSA. Promotes the quality and availability of community-based substance abuse treatment services

**CSAT Technical Assistance Publications (TAPs)**

<http://tie.samhsa.gov/TAPS/index.html>

Home page for Technical Assistance Publications from the Substance Abuse and Mental Health Services Administration

**CSAT Treatment Improvement Protocols (TIPs)**

<http://tie.samhsa.gov/external/tips.html>

Home page for Treatment Improvement Exchange TIP information

**Children of Alcoholics Foundation**

[www.coaf.org](http://www.coaf.org)

National, non-profit organization that provides a range of educational materials and services on parental substance abuse

**Community Anti-Drug Coalitions of America (CADCA)**

[www.cadca.org](http://www.cadca.org)

CADCA is a membership organization of over 5,000 anti-drug coalitions

**Cornell University Medical College**

[www.med.cornell.edu/neuro](http://www.med.cornell.edu/neuro)

Neuroscience web page of Cornell Medical College

**Dana Alliance for Brain Initiatives**

[www.dana.org/brainweb](http://www.dana.org/brainweb)

The Dana Foundation is a private philanthropic organization with principal interests in brain science, immunology, and arts education

**Drug Court Technology**

[www.drugcourtech.org](http://www.drugcourtech.org)

Home page for Drug Court Technology, which provides technical staff and planners with an overview of how technology can improve courts

**Drug Strategies**

[www.drugstrategies.org](http://www.drugstrategies.org)

Non-profit research institution that promotes alternative approaches to drug problems throughout the United States

**DSM IV**

[www.behavenet.com/capsules/disorders/d4class.htm](http://www.behavenet.com/capsules/disorders/d4class.htm)

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition

**Dual Diagnosis Anonymous**

[www.ddaworldwide.org](http://www.ddaworldwide.org)

A 12-step program for people with co-occurring mental health and addiction disorders

**Dual Recovery Anonymous**

<http://draonline.org>

An independent, twelve step self-help organization for people with a dual diagnosis

**Hazelden**

[www.hazelden.org](http://www.hazelden.org)

Publisher of books on recovery, addiction, treatment, education & research

**Healthy Nations Initiative**

[www.uchsc.edu](http://www.uchsc.edu)

University of Colorado Health Science Center

**Higher Education Center for Alcohol and Other Drug Prevention**

[www.edc.org/hec](http://www.edc.org/hec)

United States Department of Education website for drug and alcohol prevention

**Institute on Behavioral Research**

[www.ibr.tcu.edu](http://www.ibr.tcu.edu)

The IBR is dedicated to evaluating and improving the effectiveness of programs dedicated to reducing drug abuse and related problems

**Johnson Institute Foundation**

[www.johnsoninstitute.com](http://www.johnsoninstitute.com)

The Johnson Institute Foundation is committed to improving the public's understanding of addiction as a treatable illness

**Join Together Online**

[www.jointogether.org](http://www.jointogether.org)

Join Together Online is a leading provider of information, strategic planning assistance, and leadership development for community-based efforts to advance effective alcohol and drug policy, prevention, and treatment

**Legal Action Center**

[www.lac.org](http://www.lac.org)

The Legal Action Center is the only non-profit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas

**LifeRing Recovery**

[www.unhooked.com/](http://www.unhooked.com/)

A secular 12-Step recovery program

**MedWeb**

[www.medweb.emory.edu/MedWeb](http://www.medweb.emory.edu/MedWeb)

Emory University MedWeb is a catalog of biomedical and health related web sites maintained by Emory University

**Methamphetamine Campaign**

[www.stopdrugs.org/methcrisis.html](http://www.stopdrugs.org/methcrisis.html)

Background information and fact sheets dedicated to methamphetamine

**Methamphetamine Treatment Project (MTP)**

[www.methamphetamine.org](http://www.methamphetamine.org)

MTP is a multi-site initiative to study the treatment of methamphetamine dependence

**Monitoring the Future Study, University of Michigan**

[www.isr.umich.edu/src/mtf](http://www.isr.umich.edu/src/mtf)

Monitoring the Future is an ongoing study of the behaviors, attitudes, and values of American secondary school students, college students, and young adults on a wide range of issues, including alcohol and substance use

**Mothers Against Drunk Driving**

[www.madd.org](http://www.madd.org)

A non-profit organization that focuses on the effects of drunk driving and underage drinking, and how they relate to victims of those crimes

**Narcotics Anonymous**

[www.na.org](http://www.na.org)

Home page for Narcotics Anonymous, an international, community-based association of recovering drug addicts

**National Addiction Technology Transfer Centers**

[www.nattc.org](http://www.nattc.org)

A nationwide, multi-disciplinary resource that draws upon the knowledge, experience, and latest work of recognized experts in the field of addiction

**National Association of Addiction Treatment Providers**

[www.naatp.org](http://www.naatp.org)

Professional organization that represents almost 200 not-for-profit and for-profit treatment providers

**National Association of Alcoholism and Drug Abuse Counselors (NAADAC)**

[www.naadac.org](http://www.naadac.org)

NAADAC's mission is to lead, unify and empower addiction focused professionals to achieve excellence through education, advocacy, knowledge, and standards of practice, ethics, professional development and research

**National Association of Drug Court Professionals (NADCP)**

[www.nadcp.org](http://www.nadcp.org)

NADCP is a voluntary membership organization that promotes and advocates for drug treatment courts and provides for collection and dissemination of information, technical assistance, and mutual support to association members

**National Association for Children of Alcoholics**

[www.nacoa.net](http://www.nacoa.net)

NACA's mission is to advocate for all children and families affected by alcoholism and other drug dependencies

**National Association of State Alcohol and Drug Abuse Directors (NASADAD)**

[www.nasadad.org](http://www.nasadad.org)

NASADAD's purpose is to foster and support the development of effective alcohol and other drug abuse prevention and treatment programs throughout the country

**National Center for State Courts (NCSC)**

[www.ncsconline.org](http://www.ncsconline.org)

The National Center is an independent, nonprofit organization dedicated to the improvement of justice

**National Center on Addiction and Substance Abuse at Columbia University (CASA)**

[www.casacolumbia.org](http://www.casacolumbia.org)

CASA's mission is to inform Americans on the economic and social costs of substance abuse and its impact on their lives

**National Clearinghouse for Alcohol and Drug Information (NCADI)**

<http://ncadi.samhsa.gov>

NCADI is the world's largest resource for current information and materials concerning substance abuse

**National Council for Community Behavioral Healthcare**

[www.nccbh.org](http://www.nccbh.org)

NCCBH is the trade association of mental health and substance abuse providers

**National Council on Alcoholism and Drug Dependence (NCADD)**

[www.ncadd.org](http://www.ncadd.org)

NCADD advocates prevention, intervention and treatment through offices in New York and Washington, and a nationwide network of affiliates

**National Criminal Justice Reference Service (NCJRS)**

[www.ncjrs.org](http://www.ncjrs.org)

NCJRS is a federally sponsored information clearinghouse for people around the country and the world involved with research, policy, and practice related to criminal and juvenile justice and drug control

**National Families in Action**

[www.nationalfamilies.org](http://www.nationalfamilies.org)

The mission of NFIA is to help families and communities prevent drug use among children by promoting policies based on science

**National Health Information Center**

[www.health.gov/nhic](http://www.health.gov/nhic)

NHIC puts health professionals and consumers who have health questions in touch with those organizations that are best able to provide answers

**National Institute on Drug Abuse (NIDA)**

[www.nida.nih.gov](http://www.nida.nih.gov)

NIDA's mission is to lead the nation in bringing the power of science to bear on drug abuse and addiction

**NIDA Club Drugs**

[www.clubdrugs.org](http://www.clubdrugs.org)

Comprehensive information on club drugs used by young adults

**NIDA Marijuana**

[www.marijuana-info.org](http://www.marijuana-info.org)

Resources regarding marijuana use, its effects and treatment

**NIDA Steroids**

[www.steroidabuse.org](http://www.steroidabuse.org)

Information on steroids and their effects

**National Institutes of Health**

[www.nih.gov](http://www.nih.gov)

NIH sponsors research to help prevent, detect, diagnose, and treat disease and disability, from the rarest genetic disorder to the common cold

**National Institute of Justice**

[www.ojp.usdoj.gov/nij](http://www.ojp.usdoj.gov/nij)

NIJ is the research and development agency of the U.S. Department of Justice and is the only federal agency solely dedicated to researching crime control and justice issues

**National Inhalants Prevention Coalition**

[www.inhalants.org](http://www.inhalants.org)

NIPC is a public-private effort to promote awareness and recognition of the under-publicized problem of inhalant use

**National Judicial College (NJC)**

[www.judges.org](http://www.judges.org)

NJC provides educational opportunities for judges on a variety of topics, including substance abuse

**National Library of Medicine (Medline)**

[www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov)

National Center for Biotechnology Information (NCBI) creates public databases, conducts research in computational biology, develops software tools for analyzing genome data, and disseminates biomedical information

**National Mental Health Association (NMHA)**

[www.nmha.org](http://www.nmha.org)

NMHA is the country's oldest and largest non-profit organization that addresses all aspects of mental health and mental illness

**National Organization on Fetal Alcohol Syndrome**

[www.nofas.org](http://www.nofas.org)

Information on Fetal Alcohol Syndrome

**National Youth Anti-Drug Media Campaign**

[www.theantidrug.com/index.html](http://www.theantidrug.com/index.html)

A multi-lingual prevention website dedicated to preventative techniques for youth

**Neuroscience for Kids**

<http://faculty.washington.edu/chudler/neurok.html>

Neuroscience for Kids is for all students and teachers who would like to learn more about the nervous system

**Neurosciences on the Internet**

[www.neuroguide.com](http://www.neuroguide.com)

A searchable index of neuroscience resources available on the Internet

**New York Office of Alcoholism and Substance Abuse Services**

[www.oasas.state.ny.us](http://www.oasas.state.ny.us)

OASAS plans, develops and regulates the state's system of chemical dependence and gambling treatment agencies. Its mission is to improve the lives of New Yorkers by leading a premiere system of addiction services through prevention, treatment, and recovery

**Partners for Substance Abuse Prevention**

<http://prevention.samhsa.gov>

A virtual meeting place for those involved in substance abuse prevention

**Partnership for a Drug-Free America**

[www.drugfreeamerica.org](http://www.drugfreeamerica.org)

The Partnership for a Drug-Free America is a non-profit coalition of professionals from the communications industry, whose mission is to help teens reject substance abuse

### **Physicians' Leadership on National Drug Policy**

[www.plndp.org](http://www.plndp.org)

Physicians' organization, responsible for producing the films "Addiction and Addiction Treatment," and "Health, Addiction Treatment, and the Criminal Justice System"

### **Quitnet (Stop Smoking)**

[www.quitnet.org](http://www.quitnet.org) and [www.quitnet.com](http://www.quitnet.com)

Information on how to quit smoking, as well as facts and statistics on tobacco use

### **Robert Wood Johnson Foundation**

[www.rwjf.org/main.html](http://www.rwjf.org/main.html)

RWJF was established as a national philanthropy in 1972. Today, it is the largest US foundation devoted to improving the health and health care of all Americans

### **Safe and Drug Free Schools Program**

[www.ed.gov/about/offices/list/osdfs](http://www.ed.gov/about/offices/list/osdfs)

Federal government's primary vehicle for reducing drug, alcohol and tobacco use, and violence, through education and prevention activities in our nation's schools

### **Smoke-Free Families**

[www.smokefreefamilies.org](http://www.smokefreefamilies.org)

A national program working to identify and disseminate evidence-based approaches to improving smoking cessation rates during pregnancy

### **Society for Neuroscience**

[www.sfn.org](http://www.sfn.org)

World's largest organization of scientists and physicians dedicated to understanding the brain, spinal cord and peripheral nervous system

### **Society for Neuroscience Brain Briefings**

[www.sfn.org/briefings](http://www.sfn.org/briefings)

Information on neuroscience for the lay audience

### **Students Against Destructive Decisions (SADD)**

[www.saddonline.com](http://www.saddonline.com)

To provide students with the best prevention and intervention tools possible to deal with the issues of underage drinking, drunk driving, drug abuse and other destructive decisions

### **Substance Abuse and Mental Health Services Administration (SAMHSA)**

[www.samhsa.gov](http://www.samhsa.gov)

SAMHSA is the federal agency charged with improving the quality and availability of prevention, treatment, and rehabilitative services in order to reduce illness, death, disability, and cost to society resulting from substance abuse and mental illnesses

**SAMHSA FAS Prevention**

<http://fascenter.samhsa.gov>

Fetal Alcohol Syndrome information and prevention materials

**SAMHSA Prevention Pathway**

<http://preventionpathways.samhsa.gov>

Information on prevention programs, program implementation, evaluation, technical assistance, online courses, and a wealth of other prevention resources

**SAMHSA Substance Abuse and Mental Health Statistics**

[www.drugabusestatistics.samhsa.gov](http://www.drugabusestatistics.samhsa.gov)

Provides the latest national data on alcohol, tobacco, and drug abuse

**SAMHSA Substance Abuse Treatment Locator**

<http://findtreatment.samhsa.gov>

Find the right drug abuse treatment program or alcohol abuse treatment program

**Sober Housing**

[www.sober.com/Directory](http://www.sober.com/Directory)

A national directory of sober housing

**Web of Addictions**

[www.well.com/user/woa](http://www.well.com/user/woa)

The Web of Addictions is dedicated to providing accurate information about alcohol and other drug addictions

**Wheeler Center on Neurobiology and Addiction**

[www.ucsf.edu/cnba/index.html](http://www.ucsf.edu/cnba/index.html)

The Wheeler Center for the Neurobiology of Addiction has brought together core faculty in cellular, molecular and systems neurosciences to explore and identify the neural circuits, molecular targets and biochemical actions that help drugs of abuse take command of the brain

**White House Office of National Drug Control Policy (ONDCP)**

[www.whitehousedrugpolicy.gov](http://www.whitehousedrugpolicy.gov)

The principal purpose of ONDCP is to establish policies, priorities, and objectives for the Nation's drug control program

**Women for Sobriety, Inc.**

[www.womenforsobriety.org](http://www.womenforsobriety.org)

A non-profit organization dedicated to helping women overcome alcoholism and other addictions

## Commonly Abused Drugs

Substance: Category and Name	Examples of <i>Commercial</i> and Street Names	<u>DEA Schedule*</u> / <u>How Administered**</u>	<i>Intoxication Effects/Potential Health Consequences</i>
<b>Cannabinoids</b>			<i>euphoria, slowed thinking and reaction time, confusion, impaired balance and coordination/cough, frequent respiratory infections; impaired memory and learning; increased heart rate, anxiety; panic attacks; tolerance, addiction</i>
hashish	boom, chronic, gangster, hash, hash oil, hemp	I/swallowed, smoked	
marijuana	blunt, dope, ganja, grass, herb, joints, Mary Jane, pot, reefer, sinsemilla, skunk, weed	I/swallowed, smoked	
<b>Depressants</b>			<i>reduced pain and anxiety; feeling of well-being; lowered inhibitions; slowed pulse and breathing; lowered blood pressure; poor concentration/confusion, fatigue; impaired coordination, memory, judgment; respiratory depression and arrest, addiction</i>
barbiturates	<i>Amytal, Nembutal, Seconal, Phenobarbital;</i> barbs, reds, red birds, phennies, tooies, yellows, yellow jackets	II, III, V/injected, swallowed	
benzodiazepines (other than flunitrazepam)	<i>Ativan, Halcion, Librium, Valium, Xanax;</i> candy, downers, sleeping pills, tranks	IV/swallowed	<i>Also, for barbiturates—sedation, drowsiness/depression, unusual excitement, fever, irritability, poor judgment, slurred speech, dizziness</i>
<u>flunitrazepam***</u>	<i>Rohypnol;</i> forget-me pill, Mexican Valium, R2, Roche, roofies, roofinol, rope, rophies	IV/swallowed, snorted	<i>for benzodiazepines—sedation, drowsiness/dizziness</i>  <i>for flunitrazepam—visual and gastrointestinal disturbances, urinary retention, memory loss for the time under the drug's effects</i>
<u>GHB***</u>	<i>gamma-hydroxybutyrate;</i> G, Georgia home boy, grievous bodily harm, liquid ecstasy	under consideration/swallowed	<i>for GHB—drowsiness, nausea/vomiting, headache, loss of consciousness, loss of reflexes, seizures, coma, death</i>
methaqualone	<i>Quaalude, Sopor, Parest;</i> ludes, mandrex, quad, quay	I/injected, swallowed	<i>for methaqualone—euphoria/depression, poor reflexes, slurred speech, coma</i>

<b>Dissociative Anesthetics</b>			
ketamine	<i>Ketalar SV</i> ; cat Valiums, K, Special K, vitamin K	III/injected, snorted, smoked	<i>increased heart rate and blood pressure, impaired motor function/memory loss; numbness; nausea/vomiting</i>
PCP and analogs	<i>phencyclidine</i> ; angel dust, boat, hog, love boat, peace pill	I, II/injected, swallowed, smoked	<i>Also, for ketamine—at high doses, delirium, depression, respiratory depression and arrest</i>  <i>for PCP and analogs—possible decrease in blood pressure and heart rate, panic, aggression, violence/loss of appetite, depression</i>
<b>Hallucinogens</b>			
LSD	<i>lysergic acid diethylamide</i> ; acid, blotter, boomers, cubes, microdot, yellow sunshines	I/swallowed, absorbed through mouth tissues	<i>altered states of perception and feeling; nausea/chronic mental disorders, persisting perception disorder (flashbacks)</i>
mescaline	buttons, cactus, mesc. peyote	I/swallowed, smoked	<i>Also, for LSD and mescaline—increased body temperature, heart rate, blood pressure; loss of appetite, sleeplessness, numbness, weakness, tremors</i>
psilocybin	magic mushroom, purple passion, shrooms	I/swallowed	<i>for psilocybin—nervousness, paranoia</i>
<b>Opioids and Morphine Derivatives</b>			
codeine	<i>Empirin with Codeine, Fiorinal with Codeine, Robitussin A-C, Tylenol with Codeine</i> ; Captain Cody, Cody, schoolboy; (with glutethimide) doors & fours, loads, pancakes and syrup	II, III, IV/injected, swallowed	<i>pain relief, euphoria, drowsiness/respiratory depression and arrest, nausea, confusion, constipation, sedation, unconsciousness, coma, tolerance, addiction</i>
fentanyl	<i>Actiq, Duragesic, Sublimaze</i> ; Apache, China girl, China white, dance fever, friend, goodfella, jackpot, murder 8, TNT, Tango and Cash	II/injected, smoked, snorted	<i>Also, for codeine—less analgesia, sedation, and respiratory depression than morphine</i>  <i>for heroin—staggering gait</i>
heroin	<i>diacetylmorphine</i> ; brown sugar, dope, H, horse, junk, skag, skunk, smack, white horse	I/injected, smoked, snorted	
morphine	<i>Roxanol, Duramorph</i> ; M, Miss Emma, monkey, white stuff	II, III/injected, swallowed, smoked	
opium	<i>laudanum, paregoric</i> ; big O, black stuff, block, gum, hop	II, III, V/swallowed, smoked	

<b>Stimulants</b>			
amphetamine	<i>Adderall, Biphedamine, Dexedrine</i> ; bennies, black beauties, crosses, hearts, LA turnaround, speed, truck drivers, uppers	II/injected, swallowed, smoked, snorted	<p><i>increased heart rate, blood pressure, metabolism; feelings of exhilaration, energy, increased mental alertness/rapid or irregular heart beat; reduced appetite, weight loss, heart failure</i></p> <p><i>Also, for amphetamine—rapid breathing; hallucinations/ tremor, loss of coordination; irritability, anxiousness, restlessness, delirium, panic, paranoia, impulsive behavior, aggressiveness, tolerance, addiction</i></p>
cocaine	<i>Cocaine hydrochloride</i> ; blow, bump, C, candy, Charlie, coke, crack, flake, rock, snow, toot	II/injected, smoked, snorted	<p><i>for cocaine—increased temperature/chest pain, respiratory failure, nausea, abdominal pain, strokes, seizures, headaches, malnutrition</i></p>
MDMA (methylenedioxy-methamphetamine)	<i>DOB, DOM, MDA</i> ; Adam, clarity, ecstasy, Eve, lover's speed, peace, STP, X, XTC	I/swallowed	<p><i>for MDMA—mild hallucinogenic effects, increased tactile sensitivity, empathic feelings, hyperthermia/impaired memory and learning</i></p>
methamphetamine	<i>Desoxy</i> n; chalk, crank, crystal, fire, glass, go fast, ice, meth, speed	II/injected, swallowed, smoked, snorted	<p><i>for methamphetamine—aggression, violence, psychotic behavior/memory loss, cardiac and neurological damage; impaired memory and learning, tolerance, addiction</i></p>
methylphenidate	<i>Ritalin</i> ; JIF, MPH, R-ball, Skippy, the smart drug, vitamin R	II/injected, swallowed, snorted	<p><i>for methylphenidate—increase or decrease in blood pressure, psychotic episodes/digestive problems, loss of appetite, weight loss</i></p>
nicotine	bidis, chew, cigars, cigarettes, smokeless tobacco, snuff, spit tobacco	not scheduled/smoked, snorted, taken in snuff and spit tobacco	<p><i>for nicotine—tolerance, addiction; additional effects attributable to tobacco exposure - adverse pregnancy outcomes, chronic lung disease, cardiovascular disease, stroke, cancer</i></p>

<b>Other Compounds</b>			
anabolic steroids	<i>Anadrol, Oxandrin, Durabolin, Depo-Testosterone, Equipoise; roids, juice</i>	III/injected, swallowed, applied to skin	<i>no intoxication effects/hypertension, blood clotting and cholesterol changes, liver cysts and cancer, kidney cancer, hostility and aggression, acne; adolescents, premature stoppage of growth; in males, prostate cancer, reduced sperm production, shrunken testicles, breast enlargement; in females, menstrual irregularities, development of beard and other masculine characteristics</i>
inhalants	<i>Solvents (paint thinners, gasoline, glues), gases (butane, propane, aerosol propellants, nitrous oxide), nitrites (isoamyl, isobutyl, cyclohexyl); laughing gas, poppers, snappers, whippets</i>	not scheduled/inhaled through nose or mouth	<i>stimulation, loss of inhibition; headache; nausea or vomiting; slurred speech, loss of motor coordination; wheezing/unconsciousness, cramps, weight loss, muscle weakness, depression, memory impairment, damage to cardiovascular and nervous systems, sudden death</i>

\*Schedule I and II drugs have a high potential for abuse. They require greater storage security and have a quota on manufacturing, among other restrictions. Schedule I drugs are available for research only and have no approved medical use; Schedule II drugs are available only by prescription (unrefillable) and require a form for ordering. Schedule III and IV drugs are available by prescription, may have five refills in 6 months, and may be ordered orally. Most Schedule V drugs are available over the counter.

\*\*Taking drugs by injection can increase the risk of infection through needle contamination with staphylococci, HIV, hepatitis, and other organisms.

\*\*\*Associated with sexual assaults.

**SOURCE:** National Institute on Drug Abuse at <http://165.112.78.61/DrugsofAbuse.html>

# MENTAL HEALTH/ALCOHOL AND OTHER DRUGS GLOSSARY<sup>1</sup>

**Addiction** A chronic, relapsing disease characterized by compulsive drug-seeking and use and by neurochemical and molecular changes in the brain.

**Adrenal glands** Glands located above each kidney that secrete hormones, e.g., adrenaline.

**Affect** A fluctuating change in emotional “weather,” as compared to **mood** which is more pervasive and sustained emotional “climate.”

**Agonist** An agent that mimics the action of a natural neurotransmitter.

**Amino acids** The building blocks of proteins some of which function as neurotransmitters.

**Analog** A chemical compound that is similar to another drug in its effects but differs slightly in its chemical structure.

**Anhedonia** The inability to experience pleasure.

**Antagonist** An agent that blocks or reverses the actions or effects of another agent.

**Antidepressants** A group of drugs used in treating depressive disorders.

**Anxiety** A strong emotional response of fear and dread accompanied by physical signs such as rapid heartbeat and perspiration.

## **Anxiety Disorders**

Panic Disorder (unprovoked panic attacks)

Agoraphobia (generalized irrational fear)

Social Phobia (irrational fear of embarrassment)

Specific Phobia (other specific irrational fears)

Obsessive-Compulsive Disorder (obsessive thoughts and compulsive rituals)

Generalized Anxiety Disorder (nonspecific anxiety)

Post-traumatic Stress Disorder (non-acute psychological consequences of previous trauma) and Acute Stress Disorder (acute psychological consequences of previous trauma)

**Attention Deficit Disorder (ADD)** A syndrome usually characterized by serious and persistent difficulties resulting in poor attention span, weak impulse control and hyperactivity in some cases. It is also linked to abnormal dopamine transmission.

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<sup>1</sup> This glossary was developed by Judge Peggy Hora, Alameda County Superior Court, Hayward, CA.

**Buprenorphine** A mixed opiate agonist-antagonist medication for the treatment of heroin addiction.

**Crack** Slang for a smokable form of cocaine.

**Craving** An emotional experience or mental state caused by a neuroadaptive change in the brain after long-term alcohol or other drug use.

**Delusion** A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary.

**Dependence** An adaptive physiological state that occurs with regular drug use and results in a withdrawal syndrome when drug use is stopped; usually occurs with tolerance.

**Depression** A sustained feeling of sadness.

**Detoxification** A process of allowing the body to rid itself of a drug while managing the symptoms of withdrawal; often the first step in a drug treatment program.

**Disorientation** Confusion about the time of day, date, or season (time); where one is (place); or who one is (person).

**Dissociation** A disruption in the usually integrated functions of consciousness, memory, identity or perception of the environment.

**Dopamine** A neurotransmitter present in regions of the brain that regulate movement, emotion, motivation, and the feeling of pleasure. Alcohol, heroin and tobacco elevate levels of dopamine. A new view says it is an aid to learning and may explain why addictive drugs can drive continued use without producing pleasure.

**Elevated** An exaggerated feeling of well-being, or euphoria or elation. A person with elevated mood may describe feeling “high,” “ecstatic,” “on top of the world,” or “up in the clouds.”

**Euthymic** Mood in the “normal” range, which implies the absence of depressed or elevated mood.

**Expansive** Lack of restraint in expressing one’s feelings, frequently with an overvaluation of one’s significance or importance.

**Fentanyl** A medically useful opioid analog that is 50 times more potent than heroin.

**Grandiosity** An inflated appraisal of one’s worth, power, knowledge, importance or identity.

**Hallucination** A sensory perception that has the compelling sense of reality of a true perception but that occurs without external stimulation of the relevant sensory organ. Hallucinations may be auditory, gustatory (involving taste, usually unpleasant), mood-congruent or -incongruent, olfactory, somatic, tactile or visual.

**Hallucinogens** A class of drugs such as LSD, PCP, and MDMA (“Ecstasy”) which effect serotonin receptors and can cause hallucinations, distort time and space and confuse reality and illusion.

**Levo-alpha-acetyl-methadol (LAAM)** An FDA-approved medication for heroin addiction that patients need to take only three to four times a week.

**Limbic System** Parts of the cerebral cortex, hippocampus, hypothalamus and other brain structures that together function in the expression of emotional behavior.

**Marijuana** The dried leaves from the hemp plant (*cannabis sativa*) whose psychoactive chemical, *tetrahydrocannabinol* (THC), can produce a variety of effects such as uncontrollable laughter, paranoia and memory loss. Marijuana use causes a sharp rise in dopamine levels.

**Methadone** A long-acting synthetic medication shown to be effective in treating heroin addiction.

**Mood** A pervasive and sustained emotion that colors the perception of the world including depression, elation, anger and anxiety.

### **Mood Disorders**

Major Depressive Disorder (major depression without mania)

Bipolar I Disorder (mania with/without major depression)

Bipolar II Disorder (hypomania with major depression)

Cyclothymic Disorder (numerous brief episodes of hypomania and minor depression)

Dysthymic Disorder (prolonged minor depression without mania/hypomania)

**Neuron** A nerve cell.

**Neurotransmitters** Chemicals in the brain allowing neurons to communicate and signal one another. They may be small molecules such as dopamine, serotonin or norepinephrine or larger protein chains called peptides. There are over 100 different neurotransmitters in the brain.

**Opiates** Natural brain chemicals such as endogenous opioids like endorphins or artificial drugs such as heroin or morphine which reduce pain and increase pleasure, relaxation and contentment.

**Panic attacks** Discrete periods of sudden onset of intense apprehension, fearfulness, or terror, often associated with feelings of impending doom.

### **Personality Disorders**

Paranoid Personality Disorder (suspicious, distrustful)

Schizoid Personality Disorder (socially distant, detached)

Schizotypal Personality Disorder (odd, eccentric)

Antisocial Personality Disorder (impulsive, aggressive, manipulative)

Borderline Personality Disorder (impulsive, self-destructive, unstable)

Histrionic Personality Disorder (emotional, dramatic, theatrical)

Narcissistic Personality Disorder (boastful, egotistical, "superiority complex")

Avoidant Personality Disorder (shy, timid, "inferiority complex")

Dependent Personality Disorder (dependent, submissive, clinging)

Obsessive-Compulsive Personality Disorder (perfectionistic, rigid, controlling)

**Pharmacokinetics** The pattern of absorption, distribution, and excretion of a drug over time.

**Phobia** A persistent, irrational fear of a specific object, activity or situation that results in a compelling desire to avoid it. This often leads either to avoidance of the phobic stimulus or to enduring it with dread.

**Physical dependence** An adaptive physiological state that occurs with regular drug use and results in a withdrawal syndrome when drug use is stopped; usually occurs with tolerance.

**Poly-drug user** An individual who uses more than one drug including alcohol.

**Post Traumatic Stress Disorder (PTSD)** A condition that is caused by repeated traumas and is experienced by combat veterans, prostitutes and battered women.

**Psychosis** Disturbances of perception and thought processes which include schizophrenia and severe mood disorders.

**Receptor** A protein usually found on the surface of a neuron or other cell that recognizes and binds to neurotransmitters or other chemical messengers.

**Rush** A surge of pleasure that rapidly follows administration of some drugs.

## Schizophrenia & Psychotic Disorders

### Schizophrenia

**Serotonin** A neurotransmitter which excites the motor neurons governing muscle activity, quiets the sensory neurons that mediate hunger and pain, and pacifies neurons in the limbic system. Drugs such as Prozac are “selective serotonin reuptake inhibitors” (SSRIs) and can help with compulsive behaviors, depression and other mood state disorders. “Low serotonin syndrome” includes behavioral characteristics for impulsivity, aggression, violence and antisocial personality disorder. Boys have a lower level of serotonin which may explain why they are more likely than girls to carry through with suicide, become alcoholics/addicts and have ADD.

**Stimulant** Illicit drugs such as cocaine or methamphetamine or a licit drug such as caffeine which cause a buildup of dopamine in the synapse between neurons and intensify feelings of pleasure.

### Substance-Related Disorders

Alcohol Dependence (alcoholism)

Amphetamine Dependence (stimulants, speed, uppers, diet pills)

Cannabis Dependence (marijuana, grass, pot, weed, reefer, hashish, bhang, ganja)

Cocaine Dependence (coke, crack, coca leaves)

Hallucinogen Dependence (psychedelics, LSD, mescaline, peyote, psilocybin, DMT)

Inhalant Dependence (sniffing: glue, gasoline, toluene, solvents)

Nicotine Dependence (tobacco)

Opioid Dependence (heroin, methadone, morphine, demerol, percodan, opium, codeine, darvon)

Phencyclidine Dependence (PCP, angel dust)

Sedative Dependence (sleeping pills, barbiturates, seconal, valium, librium, ativan, xanax, quaaludes)

**Synapse** A microscopic gap separating adjacent neurons where neurotransmitter and receptors cluster.

**Syndrome** A grouping of signs and symptoms, based on their frequent co-occurrence, that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection.

**Tolerance** A condition in which higher doses of a drug are required to produce the same effect as during initial use; often is associated with physical dependence.

**Withdrawal** A variety of symptoms that occur after use of an addictive drug is reduced or stopped.

**NEW YORK STATE RECOMMENDED PRACTICES  
FOR DRUG TREATMENT COURTS**

**ETHICAL OPINIONS, ADMINISTRATIVE ORDERS,  
STATUTES AND CASE LAW**

**A. ETHICAL OPINIONS**

**Drug Treatment Court Judges – Relationship with community and professional organizations**

1. *Opinion 88-121, October 27, 1988*  
Judge serving on board of directors of local civic group
2. *Opinion 97-83, September 11, 1997*  
Judge serving as officer of a not-for-profit organization dedicated to raising funds for a drug treatment court
3. *Opinion 98-10, March 12, 1998*  
Drug treatment court judge serving on Board of Directors for a treatment facility
4. *Opinion 02-33, April 18, 2002*  
Receipt of awards by drug treatment court judge
5. *Opinion 05-155, January 26, 2006*  
Judge serving as regional coordinator for professional association

**Rewards for drug treatment court participants**

6. *Opinion 02-77, September 12, 2002*  
Nature of rewards by drug treatment court judges to program participants
7. *Opinion 05-132, December 8, 2005*  
Use of excess campaign funds to purchase rewards for program participants

**Ex parte Communications**

8. *Opinion 04-88, March 10, 2005*  
Ex parte communications in a drug treatment court
9. *Joint Opinion 06-154 and 06-167, January 25, 2007*  
Drug treatment court judge's participation in meetings with government agencies that include discussion of substantive and procedural legal issues

**Drug Treatment Court Judges - Conflict of interest**

10. *Opinion 04-100, October 28, 2004*  
Recusal of drug treatment court judge due to conflict of interest
11. *Opinion 05-32, April 21, 2005*  
Conflict of interest for part-time drug treatment court judges

## B. ADMINISTRATIVE ORDERS AND MEMORANDA

12. *Prohibition on Mandating Individual participation in Alcoholics Anonymous, July 17, 2002, Issued by the new York State Office of Alcoholism and Substance Abuse Services*
13. *Subpoenas for Drug Court Case Records, August 8, 2002*
14. *Ex Parte Communications at Drug Court Staffings and Court Appearances [Rescission of Administrative Order 152/02], April 8, 2003*
15. *Privacy Regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and their Impact on Drug Treatment Court Operations, July 25, 2003*
16. *HIPAA and Linkage Agreements with Treatment Providers, August 5, 2003*
17. *Drug Treatment Courts and Purchase of Rewards, December 23, 2003*
18. *Records Retention and Disposition Schedule, Division of Court Operations, Office of Records Management, January 2005*
19. *Part 43 of the Rules of the Chief Judge, October 18, 2005  
Establishment of Superior Court for Drug Treatment and Transfer of Drug Cases within a County*
20. *SAMHSA EtG Advisory, October 19, 2006  
Advisory regarding the use of an EtG test in determining abstinence*
21. *Ethical Guidance For Drug Treatment Court Employees Regarding 501(c)(3) Organizations that Raise Funds for the Drug Treatment Courts, February 2, 2007*

## C. STATUTES AND CASE LAW

22. *Removal of action from one local criminal court to another – CPL, Article 170, Section 170.15*
23. *Chemical Dependence Outpatient Services, Title 14, Chapter XXI, Part 822  
Level of Care Determination and Other Admission Criteria*
24. *Daniel Torres v. J. Berbary, 340 F.3d 63,  
Due process consideration for termination of participant from drug treatment court*
25. *People v. Joseph, N.Y. Sup.,2004, 5Misc.3d 517  
Due process considerations in sentencing drug treatment court participant*

**Opinion: 88-121**

October 27, 1988

Topic: Judge serving on board of directors of civic group devoted to helping disadvantaged people develop skills necessary to secure employment.

Digest: A judge may serve as a member of the board of directors of a civic group devoted to helping disadvantaged people develop skills necessary to secure employment, provided the judge in no way allows his or her name to be used in connection with fundraising or grant applications.

Rules: 22 NYCRR 100.5 (b)(2); Code of Judicial Conduct, Canon 5B(2)

Opinion:

A judge asks whether it is proper to serve as a member of the board of directors of a civic group whose primary mission is to train disadvantaged people in the basic communication skills which are necessary and helpful to one seeking employment.

The Committee believes that such participation by a judge is proper and to be encouraged so long as the judge engages in no fundraising activities nor allows his or her name to be included on any grant applications. The judge must make sure that his or her name is excluded from any such efforts or applications. This prohibition would require that all stationery and written material used in connection with any fundraising, and grant applications, exclude any reference to the judge's membership on the board of directors.

This opinion is advisory only and does not bind either the Office of Court Administration or the Commission on Judicial Conduct.

**Opinion: 97-83**

**September 11, 1997**

**Digest:** A judge who serves as the presiding judge of a County Drug Treatment Court may not serve as an officer or director or assist in the formation of a not-for-profit corporation or foundation, the sole purpose of which would be to solicit funds and services for the benefit of the program for which the court was established.

**Rules:** Judiciary Law §212(1)(n);  
22 NYCRR 100.4(C)(3);  
100.4(C)(3)(b)(i), (iii), (iv);  
Opinions 95-88 (Vol. XIII),  
88-07 (Vol. I).

**Opinion:**

An acting County Court Judge requests an opinion on whether, as the presiding judge of the County Drug Treatment Court, the judge can be an officer or director of a proposed foundation, the sole purpose of which would be to solicit contribution/services as a form of ancillary assistance to the drug treatment program supervised by the Court. Examples of the ancillary assistance cited are: to make available certificates and mementoes to be given out upon graduation from the Court's Drug Program and also the possibility of establishing child care for those defendants in the program when they make court appearances.

Section 100.4(C)(3) of the Rules Governing Judicial Conduct states in part:

(3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. He or she may assist such an organization in raising funds and may participate in their management and investment, but shall not personally participate in public fund-raising activities. He or she may make recommendations to public and private fund-raising agencies on projects and programs concerning the law, the legal system and the administration of

justice.

There is no ethical constraint upon a judge passively accepting funds, goods or services for the court system which generally benefit the court and the public. See Judiciary Law §212(1)(n). However, the judge may not participate personally in the fund-raising. Opinion 95-88 (Vol. XIII).

While participation in community activities by judges is encouraged, there is always a prohibition against engaging in fund-raising activities or in any activity which would adversely affect his/her impartiality as a judge. Opinion 88-07 (Vol. I).

In this instance, the judge would be directly involved in forming the foundation, the sole purpose of which is to solicit funds/services which directly benefit the court in which the judge presides. This is distinguished from the community board or advisory committee for United Way or a foundation established by others for the benefit of the general public or the courthouse. See Opinion 95-88 (Vol. XIII). As the officer or director of this proposed foundation, it would be impossible to separate the presiding judge from the fund-raising activity which would benefit this judge's court directly.

The Committee therefore advises that the judge may not serve as an officer or director nor assist in the formation of the planned not-for-profit corporation/foundation.

**Opinion: 98-10**

**March 12, 1998**

**Digest:** A full-time judge who presides over a drug treatment court may not be a member of the Board of Directors of one of the drug treatment facilities that is assigned cases by the courts.

**Rules:** 22 NYCRR 100.1; 100.2.

Opinion 97-83

**Opinion:**

A full-time judge who presides over a drug treatment court has been invited to sit as an uncompensated member of the Board of Directors of one of the drug treatment facilities that is assigned cases from the courts. Defendants from the judge's court are assigned to a facility by the drug court administrator and a treatment team. The judge has no involvement in the assignment of defendants to a particular treatment facility.

Although the inquiring judge does not determine which facility any defendant attends, the judge does sit on the screening panel which initially determines whether a defendant qualifies for participation in the program. Thus, the judge's decision as a panel member may, albeit indirectly, increase the facilities' client pool.

This Committee has previously advised that a judge who serves as the presiding judge of a County Drug Treatment Court may not serve as an officer or director or otherwise assist in the formation of a not-for-profit organization, the sole purpose of which was to solicit funds and services for the drug treatment program supervised by the court. Opinion 97-83.

Given the possible perception of impropriety that might be occasioned by the relationship of the judge to a program involving the facility and the judge's role on the screening panel, it is the opinion of the Committee that the judge should not serve on the facility's board of directors. 22 NYCRR 100.1; 100.2.

## Opinion 02-33

April 18, 2002

**Digest:** A judge may attend and receive an award at an awards dinner sponsored by a local not-for-profit organization that is a member of a drug court team in the drug court over which the judge presides.

**Rules:** 22 NYCRR; 100.4(C)(3)(b)(i), (ii); Opinions 88-66 (Vol. II); 90-184 (Vol. V); 91-42 (Vol. VII); 93-128 (Vol. XI); 94-147 (Vol. XIII); 99-15 (Vol. XVII).

### Opinion:

A local organization that is a member of a drug court team in the judge's court wants to present an award during its annual dinner to the judge who presides in that court. The organization has assured the judge that dinner is not a fund-raising event. The judge asks whether it is ethically permissible to attend the dinner and accept the award.

This Committee has previously advised that a judge may attend and may be honored at non-fund-raising events sponsored a variety of not-for-profit community organizations such as the Boy Scouts [Opinion 88-66 (Vol. II)], an ethnic police association [Opinion 90-184 (Vol. V)], a charitable organization [Opinion 91-42 (Vol. VII)], civic groups [Opinion 93-128 (Vol. XI)], a local community service agency that provides services to the judge's court [Opinion 94-147 (Vol. XIII)] and a not-for-profit organization dedicated to supporting civilian participation in the New York military reserves and militia [Opinion 99-15 (Vol. XVII)].

In the present inquiry, because the judge has been assured that the annual dinner does not involve fund-raising, it is the Committee's view that the judge may attend the annual dinner and accept an award. Acceptance of an award, under these circumstances, does not violate sections 100.4(C)(3)(b)(i) and (ii) of the Rules Governing Judicial Conduct, which prohibit personal participation in fund-raising.

## Opinion 05-155

January 26, 2006

Digest: A full-time judge may serve in an uncompensated advisory position as regional coordinator of the National Association of Drug Court Professionals.

Rules: 22 NYCRR 100.4(B); 100.4 (C)(3); Opinions 90-25 [Vol. V]; 93-102 [Vol. XI].

### Opinion:

A full-time judge inquires whether it is permissible to serve on a committee of the National Association of Drug Court Professionals. The judge would serve as an uncompensated regional coordinator facilitating the dissemination of information, lecturing and providing training for drug court judges.

Section 100.4(B) of the Rules Governing Judicial Conduct provides that a judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of Part 100. Section 100.4(C)(3) states that “[a] judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice . . .”

The Committee has in prior opinions advised that judges may engage in similar activities devoted to the improvement of the law, the legal system or the administration of justice e.g., serving on the Advisory Board of a Neighborhood Crime Prevention Program (Opinion 90-25) (Vol. V); and in the planning and development of a Youth Court. Opinion 93-102 (Vol. XI).

Accordingly, it is the opinion of the Committee that the judge may serve in the capacity stated, provided that such service will not affect the performance of the inquirer’s judicial duties.

Opinion 02-77

September 12, 2002

Digest: A judge presiding in a Drug Court may consider certain ex parte communications as set forth in Administrative Order 152/02, but should not reward defendants with gifts from commercial enterprises.

Rule: 22 NYCRR 100.2(C); Administrative Order 152/02; Opinion 01-52.

Opinion:

A City Court judge who presides in a Drug Court inquires whether defendants must be accompanied by their attorneys at the weekly progress reports sessions. The judge further asks as to the propriety of providing defendants who are reported to be making progress, with incentives such as movie passes or coupons from a local fast food restaurant.

As to the communications made in the absence of defense counsel, we note that Administrative Order 152/02, of March 19, 2002, issued by the Chief Administrative Judge sets forth the procedure which permits consideration of such communications. See, Opinion 01-52.

As to providing rewards, the Committee regards it as inappropriate. In effect, the judge would be appearing to be lending the prestige of judicial office to advance the private interests of the commercial interests involved. Under section 100.2(C) of the Rules Governing Judicial Conduct, such conduct should be avoided.

## Opinion 05-132

December 8, 2005

**Digest:** A recently re-elected judge who presides over a drug treatment court may not use excess campaign funds to purchase congratulatory gifts, such as dinners or theater tickets, for graduates who have successfully completed the drug court treatment program.

**Rules:** Election Law Â§14-130; 22 NYCRR 100.5(A)(5); Opinions 04-06; 98-06 (Vol. XVI); 93-80 (Vol. XI); 93-19 (Vol. X); 90-4 (Vol. V); 89-152 (Vol. V); 87-16 (Vol. I); 87-02 (Vol. I).

### Opinion:

A recently re-elected City Court judge inquires as to the proper use of unexpended campaign funds. The judge has presided over the drug treatment court for the past three years, and asks whether a portion of the excess campaign funds may be used to buy dinners, theater tickets or other congratulatory items for those who successfully complete the drug court program. These items would be distributed at the drug court graduation ceremony.

Section 100.5(A)(5) of the Rules Governing Judicial Conduct states that "A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others." Section 14-130 of the Election Law further states, regarding campaign contributions, that "[s]uch funds shall not be converted by any person to a personal use which is unrelated to a political campaign."

Applying these provisions, the Committee has generally prohibited the use of campaign funds for private, including charitable purposes. Opinion 98-06 (Vol. XVI); See also Opinions 93-80 (Vol. XI); 90-4 (Vol. V) and 87-02 (Vol. I). The Committee has extended this prohibition to include token gifts to campaign workers. Opinion 98-06 (Vol. XVI). While the Committee has stated that such funds may be used for a modest victory celebration during the six-month post-election period (Window Period), this allowance was made because these celebrations were determined to be a "traditional part of the total election process." Opinion 87-16 (Vol. I); See also 93-19 (Vol. X); 89-152 (Vol. V).

Further, the Committee has stated that a judge, depending upon the circumstances, must either return expended campaign funds to contributors on a pro-rata basis, or may purchase chambers furniture, office equipment, or the like, which then becomes the

property of the New York State Unified Court system. Opinion 04-06. Thus, the proposed expenditures in this instance do not fall within a permitted category for the use of excess campaign funds. Accordingly, in our opinion the rules cited above prohibit the use of unexpended campaign funds for the distribution of gifts to graduates of drug treatment courts.

## Opinion 04-88

March 10, 2005

**Digest:** A judge presiding over a drug court (1) may engage in ex parte communications with court personnel pursuant to 22 NYCRR 100.3(B)(6)(c) concerning information obtained by such personnel, whether outside of or at drug court staffings or court appearances, but should give notice to and inform the defendant's attorney of the content and nature of those communications; (2) is authorized under 22 NYCRR 100.3(B)(6)(e) to consider ex parte communications at staffings and court appearances from drug court team members provided there has been consent as required under Administrative Order 142/03; (3) should consult with his/her administrative authority for the purpose of revising the current drug court participation agreement used in the judge's court so that it is in conformity with Administrative Order 142/03.

**Rule:** 22 NYCRR 100.3(B)(6)(c), (e); A/O 142/03; 152/02 (rescinded). Opinion 01-52.

### **Opinion:**

In Opinion 01-52 the Committee addressed the question of whether a judge presiding over a drug court treatment program may consider "ex parte communications which are likely to arise in the operation of the program as designed and intended to be implemented." Opinion 01-52. In concluding that under the circumstances a judge who presides over a drug treatment court may consider ex parte communications occurring at meetings of the drug court treatment team (referred to as "staffings"), we relied on the Chief Administrative Judge's Administrative Order 152/02 of March 19, 2002. That order directed that the participation agreement between a defendant and the court include a provision whereby the defendant agreed "that communications during these staffings may take place in the absence of myself or my attorney and that the judge may consider such communications," and further provided for a waiver of his or her attorney's participation at such meetings. In our view, the issuance of that order met the exception stated in section 100.3(B)(6)(e) of the Rules Governing Judicial Conduct which provides that "A judge may initiate or consider any ex parte communications when authorized by law to do so." 22 NYCRR 100.3(B)(6)(e).

Thereafter, concerns were expressed that the mandated provision was unduly burdensome in that it appeared to require defendants to waive their right to counsel at staffings as a prerequisite to participation in the program and, further, failed to

mention ex parte communications that may occur in open court immediately following the staffings. As a consequence, Administrative Order 152/02 was rescinded on April 8, 2003, and a new Administrative Order (A/O 142/03) was issued on that date. It reads as follows:

Pursuant to the authority vested in me, I hereby direct that a Judge presiding over a drug treatment court may at a drug court appearance or staffing session, initiate, permit or consider ex parte communications with treatment providers, probation officers, law enforcement officials and other members of the drug court team who are not court personnel, provided the absent party and his or her attorney have consented thereto.

Accompanying the issuance of the new directive was a detailed set of Guidelines intended to be applied at drug court staffings and court appearances concerning the handling of ex parte material. It is in light of these Guidelines, the new Administrative Order and sections 100.3(B)(6)(c) and (e) of the Rules Governing Judicial Conduct, which deal with ex parte communications, that the inquiring County Court judge who presides over a drug treatment court poses certain issues for consideration by the Committee.

In responding to those inquiries, we must first point out the special circumstances inherent in a drug court setting which are not necessarily present in an ordinary criminal proceeding in the context of a discussion about ex parte communications. A drug court proceeding is predicated upon an ongoing, interactive relationship between defendant, the drug court team and the court. That fact alone distinguishes it from the usual criminal proceeding structure of plea, trial, and sentence which often does not involve evaluation and consideration of a defendant's present activity between the proceedings' beginning and end. However, inherent in drug court relationship is the continuing exchange of information among the various participants virtually always including court personnel who are not drug court team members. It is only through such interchange that the salutary purposes of the program can be achieved. At the same time, achieving those goals can not be accomplished at the expense of the defendant's legal rights, which include the protections afforded vis a vis ex parte communications. As stated in the first sentence of section 100.3(B)(6) of the Rules Governing Judicial Conduct, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." 22 NYCRR 100.3(B)(6). It is against this background, which includes the Rules Governing Judicial Conduct, the Administrative Orders referred to herein, and the Guidelines that we consider the questions posed by the inquirer.

Essentially, the questions raised by the judge assume various scenarios where information has been conveyed to members of the judge's staff (i.e. "court personnel") who are not members of the drug court team, and who then convey that information to the judge. The judge asks, for example, whether ex parte communications engaged in by the judge's staff who are employees of the court, outside of the drug court staffing may be reported to the judge "ex parte, in drug court staffing sessions and court appearances without consent of the absent party." Reference is made to section 100.3(B)(6)(c) of the Rules which provides that as an exception to the prohibition on judicial consideration of ex parte communications, "A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges." 22 NYCRR 100.3(B)(6)(c). That section appears to permit a judge to consider the communications referred to by the inquirer since they could be deemed to constitute a "consultation" with court personnel and therefore authorized under the Rules without first obtaining the consent of a party. That is, the fact that the information was obtained by the employees outside of a staffing session or court appearance does not mean that it cannot be communicated at such sessions or appearances to the judge, without the defendant's consent.

But, that still leaves open the question of whether the defendant is entitled to know about such communications. For, the fact that a judge may be authorized to engage in ex parte communications does not mean that such communications should be kept from the parties. Indeed, given the potential significance of such material dealing with conduct of the defendant during the pendency of the actions, and its possible consequences to the defendant's liberty, we are of the opinion that in this particular situation it is important that the defendant's attorney be given notice of and informed of the content and nature of the communications.

The judge also asks whether the judge's staff who are court employees may engage in ex parte communications in staffings or court appearances with drug court team members who are not court employees and then report the communications back to the judge ex parte, in the same drug court staffing session and/or court appearances if the party did not consent to ex parte communications. Here, it appears that the judge is asking about a possible scenario where the "court personnel" exception under the section 100.3(B)(6)(c) might come into play at the staffing or appearance itself thus obviating the need for obtaining consent in order for the judge to consider the ex parte information. Yet, since Administrative Order 142/03 is intended to cover communications from drug court team members at the staffings or appearances, we do not believe that the court personnel exception should be interpreted to avoid what is required under that order at such staffings or appearances, i.e., consent of the defendant. And, yet, the court personnel exception is provided for under the Rules. Under that set of circumstances, it again seems advisable that should court personnel be the conveyors to the judge of the

communications from drug court team members, the judge should provide notice to and inform the defendant's attorney of the content and nature of the communications where consent has not been given.

In short, the court personnel exception does permit the judge to be the recipient of the communications in the situations outlined above. But, the due process rights of the defendant can best be preserved by instituting practices and procedures which assure the defendant and his or her attorney prompt and meaningful access to that information which comes to the judge from court personnel who are not part of the drug court team. Having access to that information would thus enable the defendant to properly invoke his/her right to be heard as provided by 22 NYCRR 100.3(B)(6). How that can best be accomplished is, of course, the province of the appropriate administrative authorities.

In addition, what should not be ignored, given the special nature and purposes served by the drug court is the desirability of effectuating Administrative Order 142/03. It is that provision which permits a judge to be engaged in ex parte communications "at a drug court appearance or staffing session," with members of the drug court team who are not court personnel "provided the absent party and his or her attorney have consented thereto." A/O 142/03 (emphasis added). That is the order which furnishes the authority for the judge to be engaged in the ex parte communications with certain non-court personnel, in that its promulgation constitutes authorization by law to initiate or consider such communications, and is thus an exception to what would otherwise be prohibited. 22 NYCRR 100.3(B) (6)(e).

Such consent presumably will be forthcoming in the agreement between the defendant and the court, and should be implemented in accordance with the detailed provisions of the Guidelines. This, however, does not mean that the wording of certain paragraphs of the agreement currently used in the judge's court should continue to be used. The paragraphs quoted by the judge and about which he/she inquires are virtually identical to what was required under Administrative Order 152/02. But, as noted, that directive was rescinded on April 8, 2003 and replaced by Administrative Order 142/03, which although it does not specify the language pertaining to ex parte communications to be used in a participation agreement, must be read as providing the basis for such provisions in the agreement. Retaining the present language in view of the rescission is not tenable. Accordingly, we recommend that the inquiring judge consult with his or her administrative authority for the purpose of revising the current agreement so as to reflect what is provided for in Administrative Order 142/03, and not Administrative Order 152/02.

In sum, information obtained by court personnel whether outside of or in staffings or court appearances may be communicated to the judge ex parte at staffings or court appearances under section 100.3(B)(6)(c) of the Rules Governing

Judicial Conduct regardless of whether the defendant consented, but the defendant's attorney must be informed of the nature and content of such communications. Moreover, the judge's consideration of ex parte information conveyed at staffings or court appearances which was obtained at such staffings or appearances from court drug team members is permissible under section 100.3(B)(6)(e) of the Rules in view of the issuance of Administrative Order 142/03, which order requires the consent of "the absent party and his or her attorney. . . " A/O 142/03. Any agreement between the defendant and the court concerning what occurs at staffings or court appearances should reflect and not exceed what is permissible under that directive with respect to ex parte communications.

Further, and contrary to the judge's interpretation of Opinion 01-52, that opinion does not state that a waiver by a defendant in a drug court participation agreement may by itself enable a judge to engage in ex parte communications whether in or out of drug court staffings or court appearances. The Committee made clear that the validity of a waiver was dependent upon the exception provided for in subparagraph (e) of section 100.3(B)(6) which permits a judge to initiate or consider ex parte communication "when authorized by law to do so." 22 NYCRR 100.3(B)(6)(e). That is precisely what is accomplished, in our opinion, by Administrative Order 142/03 with respect to communications from drug court team members at staffings and court appearances where the defendant is absent.

Finally, in view of the fact that Opinion 01-52 was predicated in large measure on the issuance of Administrative Order 152/02 and that directive has been rescinded, that opinion should be deemed modified to reflect the particulars dealt with herein. We note, however, that its basic premise, that in the drug court situations an administrative order of the Chief Administrative Judge may constitute a sufficient basis for concluding that consideration of certain ex parte communications have been "authorized by law," and therefore are permitted under 22 NYCRR 100.3(B) (6)(e), remains in effect. This opinion adds the proviso that where court personnel who are not members of the drug court team, are the providers of information to the judge, notice should be given to the defendant's attorney of the nature and content of the communications.

## Joint Opinion 06-154 and 06-167

January 25, 2007

**Digest:** Judges should not participate in regularly-scheduled meetings with the representatives of a government agency, which represents the interests of children and families, where the meetings involve discussion of substantive and procedural legal issues and do not include other agencies and parties representing other interests which are present in Family Court matters.

**Rules:** 22 NYCRR 100.4(A)(1); Opinion 06-108; Joint Opinion 00-54 and 00-56 (Vol. XIX); Opinion 96-96 (Vol. XV).

**Opinion:**

Two Family Court judges inquire separately about whether it is proper for judges to participate in regularly scheduled meetings with the County Department of Children, Youth and Families (hereinafter “the Department”). The judges explain that these meetings will be held in alternating months, and will include the Department’s Commissioner and other key personnel, including the Department’s legal staff.

One judge describes these meetings as a “collaborative effort” with the Department, which remains integral to the efficient daily operation of the court and to the development of successful Family Court programs and initiatives. The other inquiring judge notes, however, that these meetings will not include other county agencies, such as the Public Defender’s Office, the Conflict Defender’s Office, and the Law Guardian Panel. Further, in his/her view, these meetings will “delve into the substantive and procedural aspects of Court operations in terms of how child abuse and neglect petitions are processed, scheduled, and resolved by the Court.”

The Committee has previously noted that “a pivotal issue in all such matters is whether a judge’s participation would cast doubt on the judge’s impartiality.” 22 NYCRR 100.4(A)(1); Opinion 06-108; see also Opinion 96-96 (Vol. XV). While the discussion of issues and exchange of ideas about the operation of the court is certainly desirable, here that input would arise exclusively from regularly-scheduled meetings with only one executive agency, which represents only one set of interests before the court. Absent input from those representing other interests, these meetings may reasonably create an appearance that the Court is failing to

consider other perspectives. While avoiding such appearances is important in all courts, it is especially so in courts like family court where emotions often run high and its judges decide not only the law, but the facts as well.

It is therefore this Committee's opinion that judges' participation in these meetings, in these circumstances, may well "cast reasonable doubt" on the judiciary's impartiality, particularly where only one set of interests involved in Family Court matters is represented, and where attendees will participate in discussions of substantive and procedural legal issues. 22 NYCRR 100.4(A)(1); Opinion 06-108; Joint Opinion 00-54 and 00-56 (Vol. XIX).

We thus advise that Family Court judges only attend such meetings during consideration of purely administrative matters.

## Opinion 04-100

October 28, 2004

Digest: A judge of the drug court may not preside over a defendant's participation in the drug treatment court program, where the judge's son represented defendant in the underlying criminal case, even if the son's involvement ended at the plea and sentencing stage.

Rule: 22 NYCRR 100.3(E)(1)(e), 100.3(F); Opinion 01-07 (Vol. XIX).

### Opinion:

A drug court judge asks whether recusal is necessary in the case of a - now self-represented - defendant's participation in the drug treatment court program, where the judge's son represented the defendant in the underlying criminal case, and whose involvement ended at the plea and sentencing of the defendant to the drug court program.

Section 100.3(E)(1) of the Rules Governing Judicial Conduct provides that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. Such an instance is illustrated by subsection (e), in which "the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such person, is acting as a lawyer in the proceeding." Notwithstanding the fact that the judge's son is no longer acting as an attorney in the proceeding, the situation is such that the judge's impartiality may be questioned because of the familial relationship and, in our opinion, recusal should be exercised. Furthermore, we note that the defendant is now appearing *pro se*. Under such circumstances, it is our view that, even if the judge feels that he/she can be impartial, it would be inappropriate to impose upon a *pro se* defendant the burden of determining whether to consent to the judge's continued participation under the remittal procedures of section 100.3(F). Thus, remittal of disqualification pursuant section 100.3(F) should not be available in this situation. See Opinion 01-07 (Vol. XIX).

## Opinion 05-32

April 21, 2005

Digest: (1) A part-time judge who practices law, and is presiding in a drug treatment court must disclose, on the record, the prior legal representation of a person who appears before the judge as a participant in the drug court and may proceed, provided that the judge has taken into consideration all relevant circumstances that might bear on whether the judge's impartiality might reasonably be questioned; (2) a part-time judge who practices law and is representing a client in Family Court may preside in a drug treatment court where the participant is the pregnant girlfriend of the adversary party in the Family Court proceeding, provided that the judge believes he/she can be fair and impartial.

Rule: 22 NYCRR 100.3(E)(1). Opinions 97-85 (Vol. XVI); 95-05 (Vol. III); 92-14 (Vol. IX); 92-01 (Vol. IX).

### Opinion:

A part-time judge inquires whether former clients can participate in the drug treatment court where the judge presides. This Committee has previously opined that "a judge should disqualify him/herself where a party before the judge had been a former client within the preceding two years, subject to remittal of disqualification. If more than two years have elapsed, the judge may preside after full disclosure on the record and in the absence of a meritorious objection." Opinions 97-85 (Vol. XVI); 92-14 (Vol. IX), 92-01 (Vol. IX).

However, in the drug court context where the proceedings are intended to be non-adversarial, the Committee is of the opinion that when a former client of a judge appears before the judge as a participant in a drug treatment court, the judge need not immediately disqualify him/herself, unless the judge personally questions his/her ability to act fairly and impartially in the matter. In the absence of such doubt, the judge must consider all relevant factors to determine if disqualification is appropriate, including, but not limited to, the nature of the instant proceeding; the nature of the prior representation of the client; the length of time since the last representation; the amount of work done for the client; the amount of the fee; whether the judge acquired knowledge of facts concerning the defendant that would be of significance in a drug court proceeding; whether a social relationship exists between the judge and the former client; and whether there are any special circumstances that may create a likely appearance of impropriety. If, after considering all of the

circumstances, the judge personally does not conclude that disqualification is required, the judge should make full disclosure on the record and preside. However, the judge should not preside over any case in which the offense that brought the party before the judge was a matter that the judge personally handled as an attorney.

The inquiring judge also informs the Committee that he/she is representing a client in Family Court where the adversary party's girlfriend who is pregnant is a participant in the drug treatment court over which the judge presides. The judge asks whether "this would present any ethical problem." In our view the judge may preside, as the drug treatment court judge, in a matter in which the drug treatment court participant is in a personal relationship with the opposing party in a case involving a current client of the judge, provided that the judge believes that he/she can be fair and impartial. 22 NYCRR 100.3(E)(1).



NEW YORK STATE  
OFFICE OF ALCOHOLISM  
AND  
SUBSTANCE ABUSE SERVICES  
1450 Western Avenue  
Albany, New York 12203-3526

George E. Pataki  
Governor

Jean Somers Miller  
Commissioner

June 17, 2002

To: Parole, County Directors of Probation, ATI Programs, Drug Court Officials, Town/Village Justices, City, County and Family Court Judges, DCJS – Bureau for Municipal Police, County Social Service Commissioners, Municipal Housing Authorities, County Directors of Community Services

Dear Colleague:

Recently, the Second Circuit Court has issued a ruling which is directly and significantly impacting the relationship between funded Alcoholism and Substance Abuse treatment programs and self-help groups, specifically Alcoholics Anonymous. As a result of this ruling, governmental agencies and governmental funded agencies are clearly prohibited from mandating individual participation in Alcoholics Anonymous.

The enclosed OASAS document is being disseminated to all treatment programs in New York State. Those programs are being directed to comply with the procedures in the document. Because of the close referral relationships between your agency and OASAS certified treatment programs, this decision will likely impact on our shared clients. The full interpretation of what is and is not allowable is an ongoing process for the OASAS certified providers. Given that the basic premise of the decision is the maintenance of separation of church and state, this ruling may impact your agencies operations as well. **In any event, and as is the case with treatment providers, you are still permitted to encourage participation in and help link clients to this important support for recovery.**

OASAS is committed to providing assistance to both our treatment system and your agency in developing acceptable expectations for client involvement in self-help and mutual aid groups. We will not, however, provide any legal advice as it applies to any specific program or individual. If you have any questions, please feel free to contact Raymond Conte, OASAS Coordinator for Recovery Services, at 518-457-6378.

Sincerely,

Jean Somers Miller

Enclosure

# **LOCAL SERVICES BULLETIN NO. 2002-05: Impact of Recent Federal Court Decision Concerning Alcoholics Anonymous On Government Funded Providers**

**Contents:**

RECIPIENTS

## **RECIPIENTS**

- All Providers of OASAS Certified Services,
- Local Governmental Units (LGUs)

## **BACKGROUND**

The purpose of this bulletin is to inform OASAS certified treatment providers that the United States Court of Appeals for the Second Circuit in *DeStefano v Emergency Housing Group et al.* has determined that Alcoholics Anonymous ("A.A.") is a religious activity and accordingly OASAS funding of providers who mandate patient participation in A.A. and, by extension, other government funding of providers who mandate participation in A.A., is a violation of the principle of separation of church and state.

The *DeStefano* decision concluded that the promotion of religious beliefs by staff members of government funded providers through coerced, required or mandated participation in A.A. constitutes impermissible governmental indoctrination of religion in violation of the First Amendment to the United States Constitution. Consequently, an OASAS certified provider that requires or coerces a patient to participate in A.A. would not be eligible to receive government funding. While the *DeStefano* decision was specifically concerned only with A.A., the same constitutional concerns would apply to any approach, 12 step or otherwise, that has a sufficiently religious character. Government funded providers should be cautious not to risk violation of the constitutional principle of separation of church and state.

However, the *DeStefano* decision also concluded that it is permissible for a government funded provider to make A.A. programs available to patients, as long as the provider and its program staff make it clear that participation is on a voluntary basis without any coercion.

While this decision will likely require some government funded providers to alter their policies, nothing in the *DeStefano* decision alters the central role that A.A. plays in providing peer support, spiritual exploration and personal growth in support of recovery.

## **PROVIDER ACTIVITIES WHICH ARE IMPACTED BY THE DECISION**

Government funded providers should give careful consideration to activities provided as a planned component of a treatment plan which could be construed as coercion or otherwise mandated participation in a religious activity. For example, government funded providers:

- **must not** require that a patient attend A.A.
- **must not** provide staff supervision of any meetings of A.A.
- **must not** compel the reading, listening or viewing of written, audio or visual material developed by A.A.
- **may** suggest that individuals receiving services participate in A.A.
- **may** require that a patient attend recovery support groups in the community, as long as the patient has the option of choosing attendance of activities that are of a non-religious nature.
- **may** request a patient read, listen or view materials developed by A.A., as part of an introduction to available resources, as long as the materials are not limited to A.A.
- **may** make space available to A.A. for holding meetings, as long as the space is available to other groups as well.

Employees who are members of A.A. may participate in such meetings, as long as they are not acting as an employee of the provider.

## **THE ROLE OF A.A. IN RECOVERY**

OASAS recognizes that not all alcohol and drug involved persons require treatment and that many individuals find recovery outside of the system of certified treatment providers. The use of A.A. for individuals during and after treatment has been regularly suggested and encouraged by clinicians. A.A. offers the individual a readily accessible alternative that is supportive of and complementary to chemical dependence treatment. While A.A. is a valuable resource to many individuals, it is not the same as treatment. While treatment professionals can inform and encourage individual involvement with A.A., it should be recognized

that A.A. cannot replace OASAS certified chemical dependence treatment for all persons.

## CONCLUSION

As a result of the *DeStefano* decision, an OASAS certified treatment program that requires, or coerces, participation in A.A. would not be eligible to receive government funding. As each government funded provider must make its own planning decisions, OASAS recommends that each provider carefully review the *DeStefano* decision with its own attorney to ensure that they do not violate the constitutionally mandated separation of church and state.

## SOURCE(S) OF FURTHER INFORMATION

The decision of the U.S. Court of Appeals may be downloaded from the Internet <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=2nd&navby=case&no=999146>. If you have any questions concerning the issues detailed in this Bulletin, please contact Raymond Conte, OASAS' Coordinator for Recovery Services, at (518) 485-2123.

Copies of all active Local Services Bulletins are available on the OASAS Web Site at:

<http://providernet.oasas.state.ny.us/msu/lshome.htm>

/s/ Paul S. Puccio  
Executive Deputy Commissioner



Date Issued: 05/20/2002

**From:** Frank Jordan  
**To:** District Executives; NYC Chief Clerks  
**Date:** 3/16/2007 1:22:05 PM  
**Subject:** Drug Treatment Court Subpoena Procedure

An operational procedure is in place to assist the drug treatment courts when they receive a subpoena for either testimony about a drug treatment court participant or to produce any drug treatment court records. In addition to local notification procedures, a copy of the subpoena should be sent to both John Amodeo in Counsel's Office [JAMODEO@courts.state.ny.us](mailto:JAMODEO@courts.state.ny.us) and to the appropriate Drug Treatment Court Project Manager-Karen Ambrozik, Linda M. Baldwin or Sky Davis.

For your information, I have attached a copy of the 2002 memo from Michael Colodner that first established this procedure for the subpoena of drug treatment court records. Mr. Colodner also provided important information on safeguarding our drug treatment court records and a helpful summary of the applicable laws.

Please share this information with all of your drug treatment courts as a reminder.

Thanks

Frank

Frank T. Jordan  
Executive Assistant to the Deputy Chief Administrative Judge  
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(315)466-7167  
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**CC:** Administrative Assistants; Drug Court Liaisons NYC Criminal ; Drug Court Liaisons NYC Family; Drug Court Liaisons ONYC; Drug Court Management Team; Drug Court Project Managers; John Amodeo; Judy Harris Kluger



STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
EMPIRE STATE PLAZA  
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(518) 474-7488

JONATHAN LIPPMAN  
Chief Administrative Judge

MICHAEL COLODNER  
Counsel

August 8, 2002

TO: Judges and Chief Clerks of All Drug Courts

FROM: Michael Colodner *MC*

SUBJECT: Subpoenas for Drug Court Case Records

A question has been raised as to how a Clerk of a Drug Court should respond to a subpoena *duces tecum* for records of a pending or completed Drug Court case in light of federal confidentiality protections that may apply to some of the subpoenaed case records. This issue was recently brought to our attention by a Drug Court Clerk who received a grand jury subpoena seeking "any and all" records of an identified case that had been disposed of in that Court.

We have concluded that, because of the complexity of the federal laws and regulations governing the confidentiality of certain "patient" records that are routinely received and accessed by Drug Courts throughout the State, the better practice would be for you to contact Counsel's Office immediately upon receipt of a subpoena seeking the production of any records of a pending or completed Drug Court case. This will allow us to evaluate the subpoena to determine whether the particular records sought are subject to the confidentiality provisions of the regulations, and whether an additional "disclosure order" may be required before the subpoena may be complied with.

Based on our review of these laws and regulations, we would also recommend that all Drug Court case records relating to the assessment, diagnosis, monitoring or treatment of a defendant's substance abuse problem be kept in a separate "confidential" case file, and that the file, when not in use, be stored in a locked file cabinet or other secure place.

We have attached for your consideration a brief legal analysis of the federal confidentiality provisions that form the basis of our recommendations. Any questions regarding this topic, and the providing of notice to Counsel's Office if a subpoena seeking Drug Court records is received, may be directed to John Amodeo at (518) 474-7469.

Attachment

STATE OF NEW YORK  
OFFICE OF  
COURT ADMINISTRATION

**Federal Confidentiality Laws and Regulations Affecting the  
Disclosure and Storage of Drug Court Case Records**

Federal law imposes strict limitations on the disclosure and use of certain patient records maintained in connection with the treatment of substance abuse. Pursuant to 42 U.S.C. section 290dd-2(a),

[r]ecords of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. section 290dd-2(a).

The implementing regulations for section 290dd-2 are set forth in 42 C.F.R. Part 2 ("the regulations"). Under the regulations, a "federally assisted" drug or alcohol abuse program is generally prohibited from disclosing, either directly or indirectly, "patient identifying information" (i.e., "the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publically available information"). 42 C.F.R. section 2.11. It may be assumed, for purposes of this analysis, that the various substance abuse programs utilized by Drug Courts throughout the State are "federally assisted" as that term is defined in the regulations. *See*, 42 C.F.R. section 2.12(b).

Where, pursuant to a patient's written consent or one of the other enumerated exceptions to nondisclosure, a program reveals "patient identifying information," the disclosed information retains its confidential status in the hands of the recipient and may be redisclosed by him or her only with the patient's consent or as otherwise permitted by the regulations. *See*, 42 C.F.R. section 2.12(d)(2); *see also*, 42 C.F.R. section 2.12(e)(3) [noting that the restrictions on use and disclosure contained in the regulations "apply to recipients of information under

§2.12(d);" emphasis added].<sup>1</sup>

One of the enumerated exceptions to nondisclosure under the regulations is the "consent" disclosure authorized by 42 C.F.R. section 2.35. That section, which is particularly relevant to adult Drug Courts, permits a program to "disclose information about a patient to those persons<sup>2</sup> within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody," *provided* the disclosure is made with the patient's written consent *and* the information is disclosed "only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress." 42 C.F.R. section 2.35(a); emphasis added. Subdivision (d) of section 2.35 provides that a person who receives patient information under that section "may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given."<sup>3</sup>

In accordance with 42 C.F.R. sections 2.35 and 2.12(d)(2), when a Drug Court receives patient identifying information from a program, that information retains its confidential status and may be redisclosed only to the limited extent permitted by subdivision (d) of section 2.35 (pertaining, as noted, to adult Drug Courts) or as otherwise authorized by the regulations. *See, e.g.*, 42 C.F.R. sections 2.51 [authorizing a program or other holder of patient identifying information to disclose that information to medical personnel in certain medical emergencies]; 2.12(c)(3)[authorizing the communication of patient identifying information "between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse if the communications are...[w]ithin a program or...[b]etween a program and an entity that has direct administrative control over the program"] and 2.12(c) (5)[authorizing a program to release certain patient-identifying to law enforcement officers where a patient commits or threatens to commit a crime on the premises or against program staff]. Moreover, any written records

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<sup>1</sup>Pursuant to 42 C.F.R. section 2.32, each disclosure made with the patient's written consent must be accompanied by a written statement advising the recipient, *inter alia*, that the disclosed information is protected by Federal confidentiality rules that prohibit any further disclosure absent the express written consent of the patient or unless otherwise permitted by the regulations.

<sup>2</sup>42 C.F.R. section 2.11 defines "person" as "an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity."

<sup>3</sup>The provisions of section 2.35(d) authorizing the redisclosure of patient information in connection with the recipient's "official duties" apply only to *criminal* proceedings in Drug Courts, and are not applicable to Family Court proceedings in Family Treatment Courts. *See*, 42 C.F.R. section 2.35(a). In these latter Drug Courts, any such redisclosure would ordinarily require the patient's consent thereto or a court order issued in accordance with the applicable provisions of the regulations.

containing such information must be maintained by the Drug Court "in a secure room, locked file cabinet, safe or other similar container when not in use." 42 C.F.R. section 2.16(a).

Another exception to nondisclosure, set forth in Subpart E of the regulations, permits the release of otherwise confidential patient information where a court order has been issued specifically authorizing the disclosure. The regulations make clear that a subpoena, including a subpoena signed by a Judge, is *not* sufficient, by itself, to require or even permit the holder of the information to disclose it. The disclosure order is separate from the subpoena, and, in effect, is the authorization that permits the subpoena to issue in the first place. As stated in 42 C.F.R. section 2.61(a):

An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by...these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.

42 C.F.R. section 2.61(a). Subdivision (b)(1) of section 2.61 sets forth the following example to illustrate the need for a separate disclosure order in addition to a subpoena: "A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is *not* permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations." 42 C.F.R. section 2.61(b)(1); emphasis added.

The circumstances under which a disclosure order may be entered by a court, and the specific findings that must be made prior to its issuance, vary greatly, depending on the purpose for which the order is sought.<sup>4</sup> The regulations provide, moreover, that, for certain of these orders, the person holding the records (*e.g.*, the Clerk of a Drug Court) must be given

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<sup>4</sup> See, *e.g.*, 42 C.F.R. sections 2.63 [authorizing the issuance of a court order permitting the disclosure of "confidential communications" made by a patient to a program]; 2.64 [authorizing the issuance of a court order permitting the disclosure of patient records for "noncriminal purposes"]; 2.65 [authorizing the issuance of a court order permitting the disclosure and use of patient records to "criminally investigate or prosecute a patient"] and 2.66 [authorizing the issuance of a court order permitting the disclosure and use of patient records to "criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person)"].

notice of the application for the order as well as an opportunity to file a written response to, or be heard on, the application. *See, e.g.*, 42 C.F.R. sections 2.64(b)[requiring notice of an application for a disclosure order, and an opportunity to file a written response, where the patient records are sought for "noncriminal purposes"] and 2.65(b)[requiring notice of and an opportunity to "appear and be heard" on an application for a court order permitting the disclosure and use of patient records to "criminally investigate or prosecute a patient"].

Dated: August 8, 2002



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**JONATHAN LIPPMAN**  
Chief Administrative Judge

**JOSEPH J. TRAFICANTI, JR.**  
Deputy Chief Administrative Judge  
  
Director  
Office of Court Drug Treatment Programs

April 8, 2003

TO: All Drug Court Judges

FROM: Joseph J. Traficanti, Jr. *JJT*

SUBJECT: Ex Parte Communications at Drug  
Court Staffings and Court Appearances  
[Rescission of Administrative Order 152/02]

Achieving the goal of a Drug Court participant's successful recovery from substance abuse and addiction requires the constant sharing of information among members of the Drug Court team. This collaborative approach to treatment and recovery calls for prosecutors, defense attorneys and other attorney-advocates in Drug Court to meet regularly with the Judge and other team members to review each participant's progress in treatment. These "staffing" sessions typically are followed by the participant's appearance in open court, where the Judge discusses the participant's progress, or lack thereof, directly with him or her. While proven effective in maximizing an addicted person's chances for long-term recovery, this "team" approach to adjudicating adult and Family Drug Court cases can present serious ethical issues for Drug Court Judges. This memorandum focuses on one of the most troublesome of these – the prohibition on ex parte communications – and provides some concrete guidelines for Judges to follow to avoid ex parte problems at Drug Court "staffing" sessions and court appearances.

Pursuant to section 100.3(B)(6) of the Chief Administrator's Rules Governing Judicial Conduct, "[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding." 22 NYCRR 100.3(B)(6). Among the enumerated exceptions to this general prohibition against ex parte communications are subparagraphs (d) and (e) of section 100.3(B)(6), which provide, respectively, that "[a] judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters," and "[a] judge may initiate or consider any ex parte communication when authorized by law to do so." 22 NYCRR 100.3(B)(6)(d) and (e).

This latter exception, permitting ex parte communications “when authorized by law,” formed the basis of an administrative order (“the order”) signed by Judge Lippman at my urging in March of last year (*see*, Administrative Order 152/02, attached). The order, which was intended to address the issue of ex parte communications at Drug Court staffings, required the inclusion in all Drug Court participation agreements of an acknowledgment by the participant that the non-appearance of his or her attorney at a scheduled staffing “shall be deemed a waiver of his or her participation for that particular staffing,” that communications during such staffings “may take place in the absence of...[the participant or his or her attorney],” and that such communications may be considered by the Drug Court Judge. Although the waiver language required by the order clearly satisfies the “authorized by law” exception to the general prohibition on ex parte communications, it has been criticized as being unduly burdensome to participants by requiring them, in effect, to waive their right to counsel at staffings as a prerequisite to participation in Drug Court. In addition, it has been noted that the order is too limited in scope in that it fails to address ex parte communications that may occur in open court immediately *following* the staffing.

In light of these concerns, and because, in my view, the issue of ex parte communications in the Drug Court context can effectively be addressed through the “consent” exception of subparagraph (d) of section 100.3(B)(6) and other relevant provisions of that section, I have asked Judge Lippman to rescind the order, effective immediately (*see*, Administrative Order 143/03, attached). This, of course, does not mean that Drug Court Judges are now free to engage in the kinds of ex parte communications covered by the order. To the contrary, this rescission will require each Drug Court Judge to be increasingly vigilant, and may call for the implementation of new practices and procedures tailored to the available resources and specific needs of each jurisdiction, to insure compliance with the rule against ex parte communications. To that end, and with the generous assistance of members of the recently formed New York State Drug Court Best Practices Committee, I have developed the following five guidelines to be applied at all Drug Court staffings and court appearances:

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- I. **For purposes of the rule against ex parte communications, Drug Court staffings should be treated no differently than any other criminal or Family Court proceeding.**

**Comment:** Although Drug Court staffing sessions are usually conducted in an informal and non-adversarial setting, these proceedings are part of the underlying criminal or Family Court case, and, unless one of the exceptions under section 100.3(B)(6) applies, no ex parte communications with the Judge are permitted at such staffings.

- II. At the first court appearance in Drug Court, or as early in the proceedings as possible, the Judge should: (A) ascertain whether the attorney for the participant will be representing the participant through completion of the case; and (B) make clear to the attorneys for the parties that they, or their duly designated representatives, are expected to be present at all future staffings and court appearances.**

**Comment:** Part (A) of this Guideline is particularly relevant to adult Drug Court cases where the participant's attorney is retained. Sometimes a participant, due to limited financial resources or other circumstances, will retain an attorney solely for the purpose of negotiating a plea bargain, executing the Drug Court participation agreement and entering a guilty plea. It is important that the Judge, as early in the proceedings as possible, be made aware of this kind of limited retainer agreement so that he or she can take appropriate action, such as formally relieving the retained attorney (at the conclusion of his or her representation) and inquiring as to the participant's eligibility for assigned counsel. Having accurate and up-to-date information about the status of each participant's legal representation will assist the Judge in avoiding *ex parte* problems and unnecessary delays at future staffing sessions and court appearances.

Unlike most criminal or Family Court proceedings, Drug Court cases typically involve frequent court appearances, as well as weekly, bi-weekly or monthly staffing sessions, conducted over an extended period of time. An attorney representing a party in Drug Court should be advised by the Judge at the earliest possible time that he or she is expected to be present at *all* future staffings and court appearances. Making this expectation clear to the attorneys at the inception of the case, as required by Part (B) of this Guideline, should reduce the need to deal with *ex parte* communications issues as the case progresses.

- III. Where an attorney for a party, or the attorney's designated representative, cannot be present at a staffing or court appearance, the Judge should, in accordance with section 100.3(B)(6)(d) and the relevant provisions of these Guidelines, obtain the consent of that attorney to proceed *ex parte* before going forward.<sup>1</sup> A record of any such consent should be retained in the Court's case file.**

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<sup>1</sup>Since staffing sessions, to be effective, are nearly always conducted without the participant present, the *participant's* consent to the Judge's proceeding in his or her own absence at all future staffing sessions is often included as one of the terms of the Drug Court participation agreement. Nothing in these Guidelines or in section 100.3(B)(6) would prohibit the continued inclusion of such a provision in the agreement. However, where the participant, at any stage of the proceedings and after appropriate cautionary instructions from the Judge, elects to proceed *pro se*, the Judge should, at the point of such election, advise the participant on the record of his or her right to be present at all future staffing discussions of the case.

**Comment:** Where an attorney for a party is unable to attend a staffing or court appearance, he or she may consent to the Judge's ex parte conversations at that proceeding with the other party's attorney (*see*, NYCRR 100.6(B)(6)(d)). Whenever possible, this consent should be obtained well in advance of the proceeding, so as not to delay the proceeding or necessitate an adjournment. The consent need not be a formal, written consent, and can be established through a simple phone conversation with the attorney, or by having the attorney fax a prepared form<sup>2</sup> confirming that the Judge is authorized to proceed in the attorney's absence. Regardless of whether the consent is written or verbal, a record thereof should be included in the Court's case file.

- IV. (A) Under the exception in subparagraph (c) of section 100.3(B)(6), the Judge may engage in ex parte communications at staffing sessions with members of the Drug Court team who are employees of the Drug Court, such as the Drug Court Coordinator and Case Manager; and (B) Under the exception in subparagraph (e) of section 100.3(B)(6), and in accordance with Administrative Order 142/03, the Judge may also, with the consent of the parties and their attorneys, engage in ex parte conversations at staffing sessions with members of the Drug Court team who are *not* employees of the Drug Court.**

**Comment:**

**Part (A):** Subparagraph (c) of section 100.3(B)(6) expressly permits ex parte communications between the Judge and "court personnel whose function is to aid the [J]udge in carrying out the [J]udge's adjudicative responsibilities." In the Drug Court context, such "court

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<sup>2</sup>To facilitate the use of this "faxed consent" procedure, Drug Courts may want to prepare and distribute to the attorneys for each party, at the inception of the case, a form to be completed, signed and faxed to the Court by the attorney when he or she is unable to attend a specific staffing or court appearance, expressly consenting to the Court's going forward in the attorney's absence. The form should contain a reference to the absent attorney's consenting to ex parte conversations at the proceeding with the attorney(s) for the other parties, and with the other (non-party) members of the Drug Court team. *See*, Guideline IV, *infra*. The form might also contain a clause acknowledging that: (1) where a significant sanction such as incarceration is likely to be imposed, the absent attorney will be contacted by the Drug Court Coordinator by telephone either prior to, during or immediately following the staffing or court appearance, so that appropriate arrangements can be made for the attorney to appear and be heard prior to the imposition of such sanction; and (2) in the rare instance where the *immediate* imposition of a significant sanction such as incarceration is deemed necessary by the Judge (*e.g.*, where the participant appears in court in an intoxicated condition or after being rearrested for a serious crime), and the attorney cannot be reached or, if reached, is unable to appear, the case will be adjourned, following imposition of the sanction, to the next business day or to a date requested by the attorney.

personnel” would include the Drug Court Coordinator and any other employees of the Drug Court who serve this function. *See*, 22 NYCRR 100.3(B)(6)(c).<sup>3</sup>

**Part (B):** Because the exception in subparagraph (c) of section 100.3(B)(6) applies only to *ex parte* conversations with “court personnel,” it presumably would not permit a Drug Court Judge to engage in *ex parte* conversations with members of the Drug Court team who are not directly employed by the Court. This would include, in many jurisdictions, treatment providers, probation officers and other non-Court employed professionals who regularly participate in Drug Court staffings. Nor would such *ex parte* conversations with non-Drug Court personnel be permitted under the “consent” exception of subparagraph (d) of section 100.3(B)(6). As previously noted, that provision allows the parties to a court proceeding to consent to the Judge’s “conferring separately *with the parties and their lawyers* on agreed-upon matters.” 22 NYCRR 100.3(B)(6)(d); *emphasis added*. Because, on its face, this consent provision is limited to *ex parte* communications with “the parties and their lawyers,” it arguably would not allow a party to consent to *ex parte* communications between the Judge and a *non-party*.

To deal with this problem, I have asked Judge Lippman to prepare a new Administrative Order (*see*, Administrative Order 142/03, attached) expressly authorizing a Drug Court Judge, with the consent of the non-present party and his or her attorney, to discuss the case at the staffing session with non-party members of the Drug Court team who are not “court personnel.” This Order is based on the exception set forth in subparagraph (e) of section 100.3(B)(6) which, as previously noted, permits a Judge “to initiate or consider any *ex parte* communications *when authorized by law* to do so.” 22 NYCRR 100.3(B)(6)(e); *emphasis added*.<sup>4</sup>

- V. **To minimize the need to rely on attorney consent under Guidelines III and IV(B), the Judge is encouraged to explore with the local provider(s) of indigent defense services (e.g., the Public Defender’s Office or 18-B Administrator) the possibility of having these providers designate one or more attorneys to attend Drug Court staffings and court appearances when the originally assigned Public Defender or 18-B attorney is not available.**

**Comment:** In many jurisdictions around the State, representation of indigent participants at Drug Court staffings and court appearances is routinely provided by an attorney

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<sup>3</sup>Unlike the “consent” exception of subparagraph (d) of section 100.3(6)(B)(*see*, Guideline III, *supra*.), this “court personnel” exception to the prohibition on *ex parte* communications does *not* require the consent of the absent party or his or her attorney.

<sup>4</sup>In effect, the Administrative Order constitutes the “law” that allows the parties to consent to such *ex parte* communications, and the Judge to consider same, without violating the general prohibition of section 100.3(B)(6).

specifically designated by the County 18-B Administrator or Public Defender's Office to handle these proceedings. Not surprisingly, in jurisdictions where this procedure has been established, problems with ex parte communications at staffings and court appearances have been largely eliminated. In Drug Courts where the participants are currently represented by several different attorneys from the local 18-B Panel or Public Defender's Office, the Judge, in cooperation with the local District Attorney's Office, may want to reach out to the 18-B Administrator or Public Defender in that jurisdiction to see if this representation model, or some variation thereof, can be implemented in that jurisdiction.<sup>5</sup>

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I would emphasize that the above Guidelines are intended both to alert affected Judges to the very real problem of ex parte communications in the Drug Court setting, and to provide practical recommendations for addressing the issue in the context of Drug Court staffing sessions and court appearances. Any questions regarding the Guidelines may be addressed to John Amodeo in Counsel's Office at (518) 473-2129.

**Attachments**

- c: Honorable Jonathan Lippman
- Honorable Ann T. Pfau
- Honorable Joan B. Carey
- Michael Colodner, Esq.
- Executive Assistants
- NYC Chief Clerks
- Greg Berman
- Mizzi Diamond
- Drug Court Project Managers
- Drug Court Liaisons

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<sup>5</sup>Implementation of this or a similar representation model is certainly not the only means by which a Drug Court Judge might address the ex parte problem at staffings and court appearances. With respect to the former, for example, Judges might consider allowing attorneys who would otherwise be unable to attend a particular staffing to "appear" by way of speaker phone or video conference, where these options are available at the Drug Court site.

RESCINDED 4/8/03  
**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, I hereby direct that each drug treatment court should incorporate the following, in substantially similar language, into its agreement with a defendant to participate in the drug treatment court program:

I understand that the staff of the drug court, which may include the judge presiding over my case, will be meeting at regularly scheduled staffings to discuss my ongoing progress and participation in the drug court program, and that such meetings may include my substance abuse treatment provider. I understand that my attorney is invited to these staffings and may or may not attend them in his or her discretion. I agree that any non-appearance by my attorney at a staffing shall be deemed a waiver of his or her participation for that particular staffing. I further understand and agree that communications during these staffings may take place in the absence of myself or my attorney and that the judge may consider such communications.

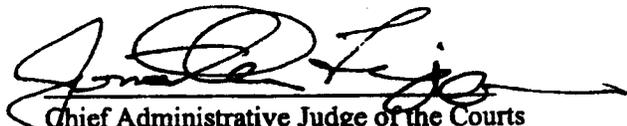
  
Chief Administrative Judge of the Courts

Dated: March 19, 2002

AO/ 152 /02

**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, I hereby direct that a Judge presiding over a drug treatment court may, at a drug court appearance or staffing session, initiate, permit or consider *ex parte* communications with treatment providers, probation officers, law enforcement officials and other members of the drug court team who are not court personnel, provided the absent party and his or her attorney have consented thereto.

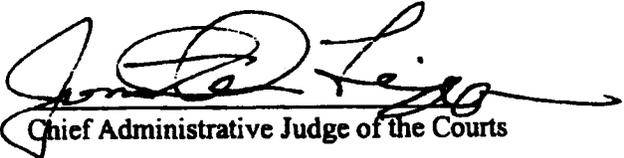
  
Chief Administrative Judge of the Courts

Dated: April 8 , 2003

AO/ 142 /03

**ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, I hereby rescind, effective immediately,  
Administrative Order AO/152/02, requiring the inclusion in all drug treatment court participation  
agreements of certain provisions relating to staffing meetings.

  
Chief Administrative Judge of the Courts

Dated April 8, 2003

AO/ 143 /03

## MEMORANDUM

TO: Drug Court Judges  
Drug Court District Liaisons  
Drug Court Coordinators

FROM: Office of Court Drug Treatment Programs

DATE: July 25, 2003

SUBJECT: Privacy Regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and their Impact on Drug Treatment Court Operations

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HIPAA's privacy regulations have established standards and requirements to protect the privacy and security of private health information.<sup>1</sup> Due to drug treatment courts' frequent and routine handling of private health information, the impact of these regulations on drug court operations has been debated among drug court professionals. The memorandum will summarize key aspects of HIPAA's privacy regulations and analyze their potential impact on the operations of drug treatment courts in New York State.

### **Do HIPAA's Privacy Regulations Apply to New York State's Drug Treatment Courts?**

HIPAA's privacy regulations govern the use or disclosure of *protected health information* by a *covered entity*.<sup>2</sup> Therefore, to determine if New York State's drug treatment courts are subject to the requirements of HIPAA's privacy regulations, we must first determine if the drug treatment courts are "covered entities" that use or disclose "protected health information."

*Protected health information* is defined in the regulations as information relating to the past, present or future health condition of an individual that identifies or can be used to identify the individual.<sup>3</sup> A *covered entity* is defined in the regulations as either (1) a health care provider that engages in certain electronic transactions (such as the electronic transmission of health care claims, health claims attachments, health care payment and remittance advice, and other administrative documents related to the payment of health care costs<sup>4</sup>); (2) a health plan; or (3) a health care clearinghouse.<sup>5</sup>

Although drug treatment courts certainly use or disclose protected health information regularly as part of their operations, New York State's drug treatment courts do not fall under the regulations' definition of a covered entity. First, drug treatment courts are neither health plans nor health care clearinghouses. Second, although some drug treatment courts may be considered health care providers under HIPAA<sup>6</sup>, New

York State's drug treatment courts do not, in any event, currently engage in those specific electronic transactions (see footnote 4) that would make them the type of health care providers that are covered entities under HIPAA. *Accordingly, New York State drug treatment courts are not covered entities under HIPAA.*

Because drug courts are not covered entities, they may collect protected health information from their participants (as they do when conducting assessments) and disclose/share such information with treatment providers, *without having to obtain consents from their participants or comply with the many administrative requirements established by the Privacy Rule.*

Even though New York State's drug treatment courts are not covered entities under HIPAA, however, drug treatment courts' operations will be affected *indirectly* by HIPAA's privacy regulations because the treatment and other health care providers that work with drug treatment courts will, in all likelihood, themselves be covered entities subject to the mandates of HIPAA. Accordingly, understanding the requirements of HIPAA's privacy regulations will help the drug treatment courts to work with these providers as they adapt their policies to be in compliance with HIPAA.

### **General Provisions of HIPAA's Privacy Regulations**

Pursuant to HIPAA's privacy regulations, a covered entity may only use or disclose protected health information in the following types of situations:

- to the individual who is the subject of the protected health information<sup>7</sup>;
- to carry out treatment, payment, or health care operations, if a valid consent has been obtained in accordance with Section 164.506 or, if a consent is not required, pursuant to Section 164.506(a)<sup>8</sup>;
- under an allowed exception (for example, for judicial and administrative proceedings, for law enforcement purposes, for research purposes, or pursuant to a valid subpoena)<sup>9</sup>;
- pursuant to a valid "authorization", if the disclosure is not to carry out treatment, payment, or health care operations<sup>10</sup>;
- where the protected health information has been "deidentified" in accordance with Section 164.514 (and is, therefore, no longer protected health information)<sup>11</sup>;
- to a "business associate," if the covered entity receives satisfactory assurances that the business associate will appropriately safeguard the information<sup>12</sup>.

When making a disclosure, a covered entity must make reasonable efforts to limit the use or disclosure of protected health information to the "minimum necessary" to accomplish the intended purpose, except when treating the individual or where authorization has been granted.<sup>13</sup>

Covered entities must provide individuals with a written notice informing them of their rights and the covered entity's legal duties with respect to protected health

information. Section 164.520 of the regulations provides detailed guidance on the information that must be contained in the notice.

The regulations also spell out certain "Administrative Requirements" that a covered entity must follow with respect to the safeguarding of health information, namely, (1) that it designate a "privacy official" to be the person responsible for the development and implementation of the policies and procedures of the entity; (2) that it designate a contact person or office to be the person to whom complaints or questions concerning the information contained in the privacy notices will be directed; and (3) that it put in place "appropriate administrative, technical and physical safeguards to protect the privacy of protected information."<sup>14</sup>

A covered entity must also keep records and submit compliance reports so that the Secretary of the Department of Health and Human Services can ascertain whether the covered entity is in compliance with HIPAA.<sup>15</sup> Covered entities are required to comply with the privacy standards by April 14, 2003, except for small health plans, which have been given until April 14, 2004.

### **How HIPAA May Affect New York Drug Courts**

In accordance with standard operations, drug treatment courts regularly receive protected health information from treatment providers in the form of treatment updates. The treatment updates are reports designed to inform the Court about the drug court participants' progress in treatment and the results of drug tests performed on them. These treatment providers are, in almost all circumstances, covered entities under HIPAA. (Treatment providers all fall under the HIPAA definition of "health care provider" and, if they engage in any of the electronic transactions defined in 45 C.F.R. 160.103, will also be considered covered entities under HIPAA. (See footnote 4.)) Accordingly, the providers' treatment updates are treated as disclosures of protected health information subject to the protections and limitations of HIPAA's privacy regulations for which an authorization/or consent should be obtained by the treatment providers from their participants prior to disclosure.

Under certain circumstances, however, treatment providers may be excepted from obtaining HIPAA consents or authorizations from drug court participants. For example, the privacy regulations provide that covered entities may disclose protected health information without a consent "in the course of any judicial or administrative proceeding . . . in response to an order of a court or administrative tribunal."<sup>16</sup> Thus, if a treatment provider were to receive an order from a drug treatment court requesting the disclosure of protected health information concerning a drug court participant, a treatment provider would be permitted to disclose the information requested without obtaining a HIPAA consent or authorization from this participant.<sup>17</sup>

The Office of Court Drug Treatment Programs has developed samples of two such "HIPAA orders" that may be used by drug treatment courts to obtain protected

health information regarding one or more drug court participants from a treatment or other health care provider when that provider has not yet obtained an appropriate HIPAA consent or authorization from its client(s). The first is a Standing HIPAA Order that, once executed by a particular drug treatment court, could be used to obtain protected health information from any treatment or other health care provider concerning any participant of that drug court. The second is a more limited HIPAA Order, to be used when a Standing HIPAA Order has not been issued and when a drug court requires protected health information concerning a particular participant from a particular treatment or other health care provider. Samples of the two types of orders are attached to this memorandum as Attachments A and B.

Accordingly, drug treatment courts can obtain protected health information from treatment and other health care providers in compliance with HIPAA in any one of the following three ways: (1) by requiring treatment and other health care providers to obtain HIPAA-compliant consents or authorizations from their clients; (2) by issuing a Standing HIPAA Order; or (3) by issuing individualized HIPAA Orders on a case-by-case basis.

### **Continued Applicability of State and Federal Confidentiality Law and Regulations**

HIPAA's privacy regulations will not require a change in the operations of drug treatment courts. *Drug treatment courts will continue to comply with current federal and state laws and regulations concerning the confidentiality of substance abuse patient records<sup>18</sup> and must continue to obtain waivers of confidentiality from their participants as current procedures dictate.*

State and federal confidentiality laws and regulations will also continue to govern disclosures made by the drug treatment courts to their evaluators for the research and analysis of their programs.<sup>19</sup>

If you have any questions concerning the contents of this memorandum or the impact of HIPAA's privacy regulations on drug treatment court operations, please call Linda M. Baldwin of the Office of Court Drug Treatment Programs at (914) 682-3221.

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1. 45 C.F.R. Parts 160 and 164; 65 F.R. 82462; 67 F.R. 53182

2. See 65 F.R. 82462, at 82618.

3. 45 C.F.R. § 160.103; 45 C.F.R. § 164.501.

4. The transactions that automatically turn a health care provider into a "covered entity" are listed in Section 1173(a) of HIPAA and include: health care claims or equivalent encounter information, health claims attachments, health plan enrollments and disenrollments, health plan eligibility, health care payment and remittance advice, health plan premium payments, first report of injury, health care claim

status, referral certification and authorization, coordination of benefits, and any other transaction that may be included by the Secretary of the Department of Health and Human Services. (Section 1173(a)(1) and (2) of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); 45 C.F.R. 160.103.)

5. 45 C.F.R. § 160.103.

6. 45 C.F.R. 100.103 defines "health care provider" as "any . . . person or organization who furnishes, bills, or is paid for healthcare in the normal course of business." Some New York State drug treatment courts may be said to furnish healthcare, because 45 C.F.R. § 160.103 defines "health care" as including "assessment . . . with respect to the physical or mental condition, or functional status of an individual".

7. 45 C.F.R. 164.502(a).

8. 45 C.F.R. 164.502(a), 164.506.

9. 45 C.F.R. 164.510, 164.512, 164.514.

10. 45 C.F.R. 164.502(a).

11. 45 C.F.R. 164.502(d).

12. Certain third parties who transmit or receive protected health information to or from covered entities may fall under the definition of a "business associate". Business associates must sign agreements in which they agree to handle such information in compliance with HIPAA's regulations. 45 C.F.R. 164.502(e).

13. 45 C.F.R. 164.502(b)

14. 45 C.F.R. 164.530.

15. 45 C.F.R. 160.310.

16. 45 C.F.R. 164.512(e)(1).

17. Any disclosures made by the treatment provider must conform to the Privacy Rule's "minimally necessary" standard, however, and may contain only the protected health information expressly authorized by such order. 45 C.F.R. 164.512(e)(1)(i).

18. In addressing the exception created for disclosures made in response to an order of a court, DHHS specifically discussed the continued applicability of the federal law concerning the confidentiality of substance abuse patient records, 42 U.S.C. 290dd-2 and its implementing regulations, 42 C.F.R. Part 2, specifically noting that "these more stringent rules will remain in effect." (64 F.R. 59918, at 59959)

19. In responding to comments to the proposed privacy regulations regarding the concern for potential re-disclosure of protected health information by non-covered entities who have received such information pursuant to an exception in the privacy regulations (such as drug treatment courts do when they pass on protected health information to their evaluators), DHHS stated that "[u]nder HIPAA, we have the authority to restrict re-disclosure of protected health information only by covered entities" and that any other re-disclosures "are not within the purview of this rule." Accordingly, the HIPAA regulations will not require New York State drug treatment courts to change the manner in which they allow access to participant data by their evaluators for the purposes of research and evaluation of drug treatment court programs. (65 F.R. 82462, at 82672)

**[NAME OF COURT]  
STATE OF NEW YORK**

**ORDER TO DISCLOSE PROTECTED HEALTH INFORMATION**

WHEREAS one of the purposes of the \_\_\_\_\_  
[Name of Drug Treatment Court]  
(the "Drug Treatment Court") is to monitor closely the progress of defendants  
("Participants") appearing in the Drug Treatment Court in their substance abuse treatment; and

WHEREAS Participants' enrollment in a substance abuse treatment program is a condition  
of Participants' continued participation in the Drug Treatment Court; and

WHEREAS the Drug Treatment Court requires timely and accurate information concerning  
Participants' attendance and progress in treatment in order to adequately monitor the effectiveness  
and progress of Participants' participation in treatment; and

WHEREAS, from time to time, the Drug Treatment Court may direct a Participant to receive  
additional health-related services in connection with the Participant's involvement in the Drug  
Treatment Court, from which follow-up information concerning the diagnosis and prescribed  
treatment of the Participant must be received by the Drug Treatment Court staff in order for the  
Court to properly monitor and modify the Participant's treatment plan; and

WHEREAS this Court recognizes that the privacy regulations promulgated by the United  
States Department of Health and Human Services pursuant to the Health Insurance Portability and  
Accountability Act of 1996 ("HIPAA") have imposed restrictions on the ability of health care  
providers to disclose protected health information concerning a particular individual to third parties  
except under particular circumstances; and

**ATTACHMENT A**

**SAMPLE**

WHEREAS HIPAA's privacy regulations contain an exception permitting health care providers to disclose protected health information "in the course of any judicial or administrative proceeding . . . in response to an order of a court or administrative tribunal" (45 C.F.R. 164.512(e)(1));

THEREFORE, it is hereby ORDERED that all substance abuse treatment and other health care providers to whom a Participant is referred by the Drug Treatment Court disclose to the Drug Treatment Court and/or its staff, upon request, subject to the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2), information concerning, as applicable, the treatment recommendation, diagnosis, attendance, scope of treatment, treatment progress and quality of participation, dates and results of toxicology testing, and termination or completion of treatment concerning such Participant of the Drug Treatment Court.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge/Justice

At Part \_\_\_\_ of the \_\_\_\_\_ Court County of \_\_\_\_\_  
at \_\_\_\_\_,  
New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 2003

Present: Hon. \_\_\_\_\_

THE PEOPLE OF THE STATE OF NEW YORK

-against-

**ORDER TO DISCLOSE PROTECTED  
HEALTH INFORMATION**

Docket#/SCI#/IND# \_\_\_\_\_

\_\_\_\_\_  
Defendant

WHEREAS the above-referenced Defendant is currently a participant in the

\_\_\_\_\_ (the "Drug Treatment Court"); and  
[Name of Drug Treatment Court]

WHEREAS Defendant's participation in a substance abuse treatment program is a  
condition of Defendant's continued participation in the Drug Treatment Court; and

WHEREAS the Drug Treatment Court requires timely and accurate information  
concerning Defendant's attendance and progress in treatment in order to adequately monitor the  
effectiveness and progress of Defendant's participation in treatment;

ORDERED that \_\_\_\_\_ disclose to  
[Name of Treatment or Health Care Provider]  
the Drug Treatment Court and/or its staff, subject to the federal regulations governing the  
Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. Part 2), information  
concerning, as applicable, the treatment recommendation, diagnosis, attendance, scope of treatment,  
treatment progress and quality of participation, dates and results of toxicology testing, and  
termination or completion of treatment concerning the above named Defendant.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge/Justice

ATTACHMENT B



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
OFFICE OF COURT DRUG TREATMENT PROGRAMS  
4 ESP. SUITE 2001  
ALBANY, NEW YORK 12223-1450  
(518) 474-3828  
Fax (518) 473-5514  
E-mail: [jtrafica@courts.state.ny.us](mailto:jtrafica@courts.state.ny.us)

**JONATHAN LIPPMAN**  
Chief Administrative Judge

**MEMORANDUM**

**JOSEPH J. TRAFICANTI, JR.**  
Deputy Chief Administrative Judge

Director  
Office of Court Drug Treatment Programs

**TO:** Drug Treatment Court Judges  
Drug Treatment Court Coordinators

**FROM:** Office of Court Drug Treatment Programs

**DATE:** August 5, 2003

**SUBJECT:** HIPAA

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To further clarify our position concerning the treatment providers' responsibility for obtaining HIPAA-compliant consents or authorizations from their clients, we recommend that in the future your courts' linkage agreements with their providers include the following language:

The Provider acknowledges that it is a "covered entity", as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As such, the Provider understands that it may be required to obtain HIPAA-compliant authorizations or consents from its clients enrolled in the Court sufficient to permit its disclosure of protected health information concerning those clients upon request to the Court.

Notwithstanding this language, as discussed in our July 25, 2003 memorandum regarding the impact of HIPAA's privacy regulations on drug treatment court operations, a Court may nevertheless decide to issue a standing or individualized HIPAA Order exempting the provider from having to obtain the otherwise necessary authorization or consent from its drug-court referred client(s) prior to disclosing protected health information concerning such client(s) to the drug court.

To explain the effect of these HIPAA Orders to the providers, the Office of Court Drug Treatment Programs has developed a notice entitled Notice to Treatment and Other Health Care Providers Regarding Court Order To Disclose Protected Health Information. We recommend that a copy of the Notice, which is attached to this memorandum, be sent, along with the HIPAA Order, to the treatment or other health care provider to whom the HIPAA Order is being sent.

**NOTICE**  
**TO TREATMENT OR OTHER HEALTH CARE PROVIDERS REGARDING**  
**COURT ORDER TO DISCLOSE PROTECTED HEALTH INFORMATION**

In order to fulfill its mission, the \_\_\_\_\_ relies on up-  
[name of drug treatment court]

to-date information from you concerning the health of its participants (your clients), including their progress in substance abuse treatment. Although such information is considered to be "protected health information" (as defined under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")), which requires you to obtain appropriate HIPAA-compliant consents or authorizations from your clients prior to disclosing the requested information to this drug treatment court, the attached HIPAA order will permit you to do so without obtaining such a consent or authorization.

45 C.F.R. 164.512(e)(1) of HIPAA's privacy regulations creates an exception to the general requirement that a HIPAA-compliant consent or authorization form be in place prior to the disclosure of any protected health information. The exception provides that no consent or authorization is needed if protected health information is disclosed "in the course of any judicial or administrative proceeding . . . in response to an order of a court or administrative tribunal." The attached order has been executed in order to place such disclosures by your treatment program or health care organization squarely within this exception.

*Please note that this order does not alter your current obligations regarding compliance with applicable federal confidentiality laws and regulations.*

If you have any questions concerning this notice or the attached Order please call Linda Baldwin of the Office of Court Drug Treatment Programs at (914) 682-3221.



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
OFFICE OF COURT DRUG TREATMENT PROGRAMS  
4 ESP, SUITE 2001  
ALBANY, NEW YORK 12223-1450  
(518) 474-3828  
FAX (518) 473-5514

**JONATHAN LIPPMAN**  
Chief Administrative Judge

**JOSEPH J. TRAFICANTI, JR.**  
Deputy Chief Administrative Judge

Director  
Office of Court Drug Treatment Programs

**FRANK T. JORDAN**  
Executive Assistant

## Memorandum

**To:** Administrative Judges  
**From:** Joseph J. Traficanti, Jr. *JT*  
**Date:** December 23, 2003  
**Subject:** Drug Treatment Courts

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Now that drug treatment courts in most areas are in operation, or an advanced phase of planning, a portion of my efforts are focusing on the process of integrating these courts into the normal operational and administrative procedures for each judicial district. This will help facilitate the eventual transition of administrative control to each district.

One procedural area that I have been asked to address is the practice of purchasing awards and incentives, such as plaques or gift certificates, for drug court participants. In reviewing the financial procedures for the Unified Court System I have found no authority to support this type of expenditure and the majority of our drug courts do not present such items. While there are many drug courts that currently provide such items to participants to commemorate phase advancement or successful graduation from the program, the items presented are often donated through a community based or non-profit agency rather than purchased. These types of donated awards are not prohibited, but neither the judge nor the court can be involved in the solicitation of such items.

It would be appropriate for the drug treatment courts to present certificates of achievement signed by the judge at the time of phase advancement or graduation. These types of certificates can either be purchased or produced locally using office technology. It would also be appropriate to purchase the inexpensive tokens or pins that are commonly presented with the certificates.

I hope that you find this type of procedural guidance helpful in the successful operation of your drug treatment courts and I ask that you contact me with any questions that you may have. As always, I thank you, your judges and court staff for all of your hard work in establishing and supporting the drug treatment court program.

**Please distribute this memorandum to all appropriate drug treatment court judges and personnel.**

cc: Honorable Jonathan Lippman  
Honorable Ann T. Pfau  
Honorable Joan B. Carey  
David L. Sullivan  
Frank T. Jordan  
Executive Assistants

# **RECORDS RETENTION AND DISPOSITION SCHEDULE**



## **DRUG TREATMENT COURTS**

**DIVISION OF COURT OPERATIONS  
OFFICE OF RECORDS MANAGEMENT**

**JANUARY 2005**

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# **NEW YORK STATE UNIFIED COURT SYSTEM**

## **DRUG TREATMENT COURTS**

### **RECORDS RETENTION AND DISPOSITION SCHEDULE**

#### **DRUG TREATMENT COURT PROGRAM CASE FILES**

**A case file contains all papers and documents relating to the proceedings of a treatment program participant, including any trial case papers forwarded from the originating Family and Criminal Courts. Documents include but are not limited to: participant's information intake and/or data sheet(s); participant's Plea Agreement or Contract; copies of Court Orders from Family or Criminal Court; Department of Social Services' Mental Health Report(s); Drug Treatment Court Program Update Biopsychosocial Report(s); Treatment Providers' Psychosocial Assessment(s); Drug Treatment Court Plans Monitoring Report(s); copies of participant's medical record(s) and/or report(s); Drug Treatment Court Progress Form(s); copies of Court Case Summaries of Proceedings; Drug Treatment Court's Weekly Progress Report(s); Drug Treatment Court Plan(s); Treatment Center Referral Form(s); participant's Consent and Authorization for Release and/or Disclosure of Confidential Information Form(s); copies of pharmaceutical prescriptions, representative counsel letters, alien and/or visa cards; Judge's Participant Progress Report(s); Treatment Facility Drug Testing Toxicology Report(s); copies of school records, correspondence and Certificates for Treatment Program Completion.**

**Note that some Courts currently store some of the documents listed above separately from the case file. These documents have been distinguished as a separate record series in this Schedule, but have the same retention requirements as the related case file.**

## CASE FILES

RECORD SERIES TITLE	DESCRIPTION	RETENTION
<b>DRUG TREATMENT COURT PROGRAM CASE FILES</b>	<p>Records used for monitoring and/or assessing progress made by alcohol and substance abuse program participants of the Drug Treatment Court.</p> <p>a) <b>DRUG TREATMENT COURT PROGRAM RECORDS</b></p> <p>b) <b>TRIAL COURT RECORDS</b></p>	<p>a) Retain for six years after discharge or until completion of all requirements of participant's plea agreement/contract, whichever is longer, then destroy.</p> <p>b) Retain until all requirements of the Drug Treatment Court Program Records are completed, then destroy all duplicates immediately and return records to originating trial Court.</p>

## SUPPLEMENTAL CASE RECORDS

RECORD SERIES TITLE	DESCRIPTION	RETENTION
<b>DEFENDANT CRIMINAL HISTORY RECORDS</b> (also known as "RAP SHEETS")	Arrest and case disposition records of defendants.	Destroy immediately after superseded or after DRUG TREATMENT COURT PROGRAM CASE is completed, whichever occurs first, then destroy.

RECORD SERIES TITLE	DESCRIPTION	RETENTION
<b>UNIVERSAL TREATMENT APPLICATION (UTA) DATABASE FILES</b>	<p>Records used for managing and/or administering information obtained on Drug Treatment Court participants. Information includes but is not limited to: participant name(s) and identification number(s); docket number(s); release statuses: top charge(s); plea conviction charge(s); participant interview date(s); interested program(s); case disposition(s); date(s) of drug testing, plea agreement and drug treatment court hearings; referral treatment plan(s); participant address(es) and telephone number(s); whether participant(s) can speak, read and/or write English; birth date, age, country of citizenship of participant (s), date(s) of residency; social security number(s); country of birth; race(s)/ethnicity; marital statuses; sexual preference(s); assessment location(s); whether participant(s) owns an alien green card, valid driver's license and employee identification card; number(s) of treatment plans used; participant(s) employment status, primary means of financial support, veteran status, home and social environment; number of children; participant(s) physical and mental health, whether participant(s) were victim of a crime, used alcohol and/or drugs; past treatment history(s) and barrier(s) to hinder treatment(s); requested treatment(s); comments on participant(s) progress.</p>	

RECORD SERIES TITLE	DESCRIPTION	RETENTION
<b>UNIVERSAL TREATMENT APPLICATION (UTA) DATABASE FILES (continued)</b>	<p>a) <b>UTA TREATMENT PROGRAM CASE FILES</b></p> <p>b) <b>UTA TREATMENT PROGRAM ANALYSIS REPORTS</b></p> <p>c) <b>UTA DATABASE ENTRY FORMS</b></p>	<p>a) <b>Considered to be part of the DRUG TREATMENT COURT PROGRAM CASE FILE. Retain for same length of time as DRUG TREATMENT COURT PROGRAM CASE FILE.</b></p> <p>b) <b>Considered to be part of the DRUG TREATMENT COURT PROGRAM CASE FILE. Retain for same length of time as DRUG TREATMENT COURT PROGRAM CASE FILE.</b></p> <p>c) <b>Retain until information is entered into UTA DATABASE FILES and quality control is conducted, then destroy.</b></p>

## CASE MANAGEMENT RECORDS

RECORD SERIES TITLE	DESCRIPTION	RETENTION
<b>STATISTICAL/ ADMINISTRATIVE REPORTS</b>	<p>Record created to document current status of incoming and/or outgoing Drug Treatment Court Program Cases. Information includes but is not limited to: Court and location; month(s) and year(s) being reported; status of new and old case(s); sex (male/female) of treatment participant(s), status of intake and eligible determination; number of arraignment charges; age of participant(s); number by race/ethnicity of participant(s); primary drug(s) of choice of participant(s); number of opened, warranted, graduated and failed case(s).</p>	<p>Retain until updated or until no longer needed, whichever is shorter, then destroy.</p>



RECORD SERIES TITLE	DESCRIPTION	RETENTION
<b>PERFORMANCE BASED CONTRACT (P.B.C.) INVOICES</b>	<p>Documents used by Drug Treatment Courts of New York City to request payment from Federally awarded Grant funds managed by the Mayor's Office. Include but are not limited to: correspondence; memorandum(s); invoice(s); copies of contract(s); list of name(s) and identification number of participant(s); billing information.</p>	<p>Considered to be part of the GRANT PROGRAM FILE. File in GRANT PROGRAM FILE. If maintained separately, retain for same length of time as GRANT PROGRAM FILE.</p>

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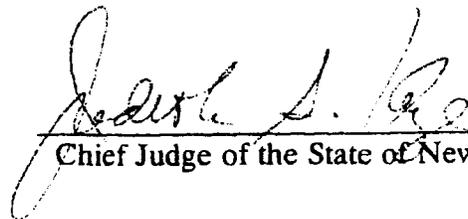
**ADMINISTRATIVE ORDER OF THE  
CHIEF JUDGE OF THE STATE OF NEW YORK**

Pursuant to Article VI, §28(c) of the State Constitution and section 211(1)(a) of the Judiciary Law, and upon consultation with the Administrative Board of the Courts and with the approval of the Court of Appeals of the State of New York, I hereby promulgate, effective immediately, new Part 43 of the Rules of the Chief Judge, relating to operation of Superior Courts for Drug Treatment, to read as follows:

**PART 43. SUPERIOR COURTS FOR DRUG TREATMENT**

§43.1. Superior Courts for Drug Treatment. (a) A Superior Court for Drug Treatment may be established in Supreme Court or County Court in any county by order of the Chief Administrator of the Courts following consultation with and agreement of the Presiding Justice of the Judicial Department in which such county is located. A Superior Court for Drug Treatment shall have as its purpose the hearing and determination of criminal cases in the courts of the county that are appropriate for disposition by a drug treatment court.

(b) The Chief Administrator, upon consultation with the Administrative Board of the Courts, shall promulgate such rules as are necessary to regulate operation of each Superior Court for Drug Treatment, and to permit transfer to the court, for disposition, of drug cases that are pending in another court in the same county.

  
\_\_\_\_\_  
Chief Judge of the State of New York

Attest: \_\_\_\_\_  
Clerk of the Court of Appeals

Date: October 18, 2005

AO/ 04 /05

From: Frank Jordan  
To: Drug Court Liaisons NYC Criminal ; Drug Court Liaisons NYC Family;  
Executive Assistants  
Date: 10/19/2006 5:12:36 PM  
Subject: **SAMHSA EtG Advisory**  
CC: Administrative Assistants; brada@uarc.org; Drug Court Liaisons ONYC; Drug  
Court Management Team; Drug Court Project Managers; FTC Judicial Advisory  
Committee; kenperez@oasas.state.ny.us; NYC Chief Clerks

Attached please find a recently released Advisory from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) titled "The Role of Biomarkers in the Treatment of Alcohol Use Disorders."

In discussing the use of tests to detect Ethyl Glucuronide (EtG) the Advisory concludes that:

"Currently, the use of an EtG test in determining abstinence lacks sufficient proven specificity for use as primary or sole evidence that an individual prohibited from drinking, in a criminal justice or a regulatory compliance context, has truly been drinking. Legal or disciplinary action based solely on a positive EtG, or other test discussed in this Advisory, is inappropriate and scientifically unsupportable at this time.

These tests should currently be considered as potential valuable clinical tools, but their use in forensic settings is premature."

In light of the information in this Advisory I would advise against using an EtG test as a basis for any sanction in the drug treatment courts.

Please share this information with your drug treatment courts and feel free to call me with any questions.

Thanks

Frank



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
OFFICE OF COURT ADMINISTRATION  
25 BEAVER STREET, SUITE 1128  
NEW YORK, NEW YORK 10004  
(212) 428-2130  
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**JONATHAN LIPPMAN**  
Chief Administrative Judge

**JUDY HARRIS KLUGER**  
Deputy Chief Administrative Judge  
Court Operations & Planning

## MEMORANDUM

**To:** Administrative Judges

**From:** Honorable Judy Harris Kluger  
Deputy Chief Administrative Judge  
Court Operations and Planning 

**Date:** February 2, 2007

**Subject:** Ethical Guidance for Drug Treatment Court Employees Regarding  
501(c)(3) Organizations that Raise Funds for the Drug Treatment Courts

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We have been presented several times with the question of whether Drug Treatment Court employees may be involved in the management, operations or fund-raising activities of 501(c)(3) organizations that raise funds for the Drug Treatment Courts. In consultation with the office of the Statewide Special Counsel for Ethics, I am writing to advise you that our employees should not have any involvement with such organizations.<sup>1</sup>

As you know, the Chief Judge's Rules prohibit court employees from participating in outside employment or business activities "that create an actual or appearance of conflict" with their official duties. 22 NYCRR 50.1(III)(A).

If a Drug Treatment Court employee solicits funds for the Drug Treatment Courts, there is a tremendous risk that the solicitation will be viewed as the "price of doing business" with the court system. Moreover, litigants and counsel dissatisfied with the outcome of litigation may claim that they were treated unfairly because they gave less than requested or less than their opponents did.

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<sup>1</sup> The Advisory Committee on Judicial Ethics has similarly held that a judge may not help form, or serve as an officer or director of, a not-for-profit entity whose purpose is to solicit funds and services for the benefit of the judge's Drug Treatment Court. Opinion 97-83; 22 NYCRR 100.4(C)(3) (barring judges from participating in fund-raising activities).

Even if Drug Treatment Court employees volunteer in a *non*-fund-raising role, their involvement still creates the perception that the courts are improperly involved in, or even control, fund raising entities.

Frank Jordan is available to discuss these matters further if you have any questions or concerns.

cc: Hon. Jonathan Lippman  
Hon. Ann Pfau  
Hon. Joan Carey  
District Executives  
Chiefs of Staff

§ 170.15 Removal of action from one local criminal court to another.

Under circumstances prescribed in this section, a criminal action based upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint may be removed from one local criminal court to another:

1. When a defendant arrested by a police officer for an offense other than a felony, allegedly committed in a city or town, has, owing to special circumstances and pursuant to law, not been brought before the particular local criminal court which by reason of the situs of such offense has trial jurisdiction thereof, but, instead, before a local criminal court which does not have trial jurisdiction thereof, and therein stands charged with such offense by information, simplified information or misdemeanor complaint, such local criminal court must arraign him upon such accusatory instrument. If the defendant desires to enter a plea of guilty thereto immediately following such arraignment, such local criminal court must permit him to do so and must thereafter conduct the action to judgment. Otherwise, it must remit the action, together with all pertinent papers and documents, to the local criminal court which has trial jurisdiction of the action, and the latter court must then conduct such action to judgment or other final disposition.

2. When a defendant arrested by a police officer for an offense other than a felony has been brought before a superior court judge sitting as a local criminal court for arraignment upon an information, simplified information or misdemeanor complaint charging such offense, such judge must, as a local criminal court, arraign the defendant upon such accusatory instrument. Such judge must then remit the action, together with all pertinent papers and documents, to a local criminal court having trial jurisdiction thereof. The latter court must then conduct such action to judgment or other final disposition.

3. At any time within the period provided by section 255.20, where a defendant is arraigned upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a city court, town court or a village court having trial jurisdiction thereof, a judge of the county court of the county in which such city court, town court or village court is located may, upon motion of the defendant or the people, order that the action be transferred for disposition from the court in which the matter is pending to another designated local criminal court of the county, upon the ground that disposition thereof within a reasonable time in the court from which removal is sought is unlikely owing to:

(a) Death, disability or other incapacity or disqualification of all of the judges of such court; or

(b) Inability of such court to form a jury in a case, in which the defendant is entitled to and has requested a jury trial.

4. Notwithstanding any provision of this section to the contrary, in any county outside a city having a population of one million or more, upon or after arraignment of a defendant on an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a local criminal court, such court may, upon motion of the defendant and with the consent of the district attorney, order that the action be

removed from the court in which the matter is pending to another local criminal court in the same county which has been designated a drug court by the chief administrator of the courts, and such drug court may then conduct such action to judgement or other final disposition; provided, however, that an order of removal issued under this subdivision shall not take effect until five days after the date the order is issued unless, prior to such effective date, the drug court notifies the court that issued the order that:

- (a) it will not accept the action, in which event the order shall not take effect, or
- (b) it will accept the action on a date prior to such effective date, in which event the order shall take effect upon such prior date.

Upon providing notification pursuant to paragraph (a) or (b) of this subdivision, the drug court shall promptly give notice to the defendant, his or her counsel and the district attorney.

SUPPLEMENTARY PRACTICE COMMENTARIES

07 Electronic Update

by Peter Preiser

2000

Subdivision four, added in 1998 and amended in 1999 was again amended in 2000. The purpose of the latest amendment was to create "hub" central drug courts in the three counties formerly specified by name--i.e., Rockland, Suffolk and Tompkins--and thus facilitate administration of the drug court program, as described in my 1999 Practice commentary.

Accordingly, the sole statutory change was elimination of the names of the three counties and substitution of "any county outside of a city having a population of one million or more".

1999

Subdivision four of this section added in 1998 and amended in 1999 provides a procedural mechanism for transfer of jurisdiction over an action involving a charge less than felony grade to a specialized court with support services designed for diversion of nonviolent offenders with drug or alcohol addiction. The objective is to assist the offender to overcome the addiction with the expectation that this will be a key factor in turning the individual from criminal activity.

The specialized court program, funded in part by federal grants, presently is in operation in various parts of the state as well as in many other jurisdictions. Basically no legislation is required, as diversionary programs have been in operation in this state for many years without specific legislation. Certain economies of scale however require legislative authorization for transfer of cases due to peculiar geographic jurisdictional limitations of local criminal courts.

CPL § 100.55 sets forth specific geographic jurisdictional limits for filing of local criminal court accusatory instruments and the CPL as unamended does not provide authority for transfer of an action when the accusatory instrument has been filed in the statutorily designated court for commencement of the criminal action. In the case of courts serving smaller populations it may be uneconomical to provide the intensive counseling and other services necessary to the few offenders who would qualify. Accordingly, it makes sense for courts in the counties where that problem exists to pool their resources and provide the services in one or more central locations. The new procedure permits transfer of cases to another court within the same county that has been designated to operate a special "drug court" program. As enacted in 1998 it applied only to Rockland County. The 1999 amendment permitted expansion to Suffolk and Tompkins counties. It also added two administrative provisions: first, that the "drug court" be one designated by the Chief Administrator of the Courts; and second, a procedure for the "drug court" to reject the transfer.

Note that there is no provision as to how a "drug court" is to operate. The sole statutory requirement is a motion by defendant, consent of the district attorney and exercise of judicial discretion to transfer the action. Presumably the operation is a matter of local county option. This would include, such matters as: whether a plea of guilty is to be required prior to or post transfer; whether there is to be a specified sentence upon a guilty plea, if entered, that will be carried out if defendant does not perform acceptably in the program; or whether a guilty plea, if entered, may be withdrawn upon successful completion of a program.

From the standpoint of logical statutory organization, it would have made more sense to place the authority herein granted in CPL § 170.10, as the present section is focused upon situations where the case is commenced in a court other than the one that normally would have had initial preliminary jurisdiction. A parallel provision for felony charges is set forth in a new subdivision three added to CPL § 180.20.

ACTICE COMMENTARIES

93 Main Volume

by Peter Preiser

Subdivision one of this section establishes authority for a substitute local criminal court--one that lacks geographical trial jurisdiction over the offense--to conduct an arraignment. The circumstances under which an arrested person may be brought to such court for arraignment are set forth in CPL §§ 120.90(5) and 140.20(1). This, of course applies only when the charge is below felony grade. Where the accusatory

instrument charges a felony--*i.e.*, is a felony complaint--the appropriate court for arraignment is ascertained pursuant to CPL § 100.55(6) and, in the case of Class E felonies CPL § 120.90(5).

Note that the substitute arraignment court also has authority to make immediate post-arraignment disposition of the charge by accepting a guilty plea and imposing sentence. But if a guilty plea is not entered immediately following arraignment, the action and all pertinent documents must be remitted to the court with trial jurisdiction for further processing.

Subdivision two deals with arraignments for offenses other than a felony conducted by a superior court justice or judge sitting as a local criminal court (see CPL § 10.10[3(f) and (g)] ). In this case, however, a plea of guilty cannot be accepted following arraignment. As a technical matter, where a supreme court justice acts, the legislature has no power to curtail jurisdiction, because the New York Constitution vests that court with "general original jurisdiction in law and equity" (art. 6, § 7). Thus a plea accepted-- or a trial conducted--by a supreme court justice could not be held to be a nullity by virtue of the limitation set forth in this subdivision. See *People v. Darling*, 50 A.D.2d 1038, 377 N.Y.S.2d 718 (3d Dept.1975). Nevertheless, this subdivision does express a legislative preference for utilizing the concurrent jurisdiction of the local criminal court judge to dispose of the case.

Subdivision three is the change of venue provision for cases that are processed to judgment in local criminal courts. The statutory authorization here appears narrower than the change of venue standard applicable to cases pending in superior courts. The latter provision (CPL § 239.20[2] ) authorizes a change of venue if a party demonstrates "that a fair and impartial trial cannot be had" in the jurisdiction served by the court. That clearly includes inability to select an impartial jury in the jurisdiction. Here, however, the only authorized ground is that disposition of the case within a reasonable time is unlikely, due to one of the two specified factors. It is possible though to construe this provision as applicable in a situation where the attempt to impanel an unbiased jury would negate the likelihood of disposition within a reasonable time. Moreover, it seems clear that if in fact an unbiased jury cannot be selected, due process would require construction of the provision to permit change of venue. See *People v. Roberts*, 95 Misc.2d 41, 406 N.Y.S.2d 432 (Tompkins Co.Ct.1978).

An application for a change of venue may be made by motion of either the defendant or the people. That motion must be made to a county court judge of the county where the action is pending and normally must be made within the forty-five day period following arraignment specified in CPL § 255.20.

## LEGISLATIVE HISTORIES

**L.1999, c. 565:** For Legislative, Executive or Judicial memorandum relating to this law, see McKinney's 1999 Session Laws of New York, p. 1953.

**L.2000, c. 67:** For Legislative, Executive or Judicial memorandum relating to this law, see McKinney's 2000 Session Laws of New York, pp. 1499, 2005.

**L.1998, c. 77:** For Legislative, Executive or Judicial memoranda relating to this law, see McKinney's 1998 Session Laws of New York, p. 1559.

## CROSS REFERENCES

Arraignments outside county, see NY City Crim. Ct. Act § 54.

Copy of accusatory instrument attached to warrant of arrest as constituting valid basis for arraignment under this section, see CPL 120.40.

### Definitions

City court, see CPL 10.10.

Police officer, see CPL 1.20.

Town court, see CPL 10.10.

Trial jurisdiction, see CPL 1.20.

Village court, see CPL 10.10.

Drawing of jurors in criminal cases, see UCCA § 2012; UDCA § 2012; UJCA § 2012.

Formation of trial juries generally, see CPL 360.10.

### Geographical jurisdiction of

Cities, towns and villages over offenses, see CPL 20.50.

Counties over offenses, see CPL 20.40.

Judge before whom defendant arraigned or tried, city court, see UCCA § 2009.

Pleas to informations, see CPL 340.20.

Removal of proceeding against juvenile offender to family court, see CPL 725.00 et seq.

Speedy trial, right to, see CPL 30.20; CPL 30.30; Civil Rights Law § 12.

Superior court indictments; pre-trial motion procedure, see CPL 255.20.

**From:** Frank Jordan  
**To:** Drug Court Liaisons NYC Criminal ; Drug Court Liaisons NYC Family; Executive Assistants; NYC Chief Clerks  
**Date:** 10/25/2006 11:18:26 AM  
**Subject:** Role of Drug Treatment Court Teams with the Drug Treatment Process

Attached please find sections from the New York State regulations governing the Department of Mental Health, Office of Alcoholism and Substance Abuse Services (OASAS). These sections address the role of OASAS licensed treatment providers in the initial determination of a need for substance abuse treatment, the level of care determination, the admission to treatment decision, the comprehensive evaluation and the development of individual treatment plans.

Our drug treatment court teams work closely with our treatment providers and regularly make referrals and recommendations to treatment providers in these areas. However, the drug treatment court teams should be aware that 14 NYCRR 822 places the responsibility for the final decision in these areas on the OASAS licensed treatment providers.

Please share this information with all of your drug treatment courts.  
Thank you for your continuing cooperation and please call me if you have any questions.  
Frank

Frank T. Jordan  
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**CC:** Administrative Assistants; David Sullivan; Drug Court Liaisons ONYC; Drug Court Management Team; Drug Court Project Managers; FTC Judicial Advisory Committee; Judy Harris Kluger; kenperez@oasas.state.ny.us; Maria Logus Esq.

## NEW YORK CODES RULES AND REGULATIONS

Title 14 Department of Mental Hygiene  
Chapter XXI Office of Alcoholism and Substance Abuse Services  
Part 822 Chemical Dependence Outpatient Services

### **Initial Determination**

#### **14 NYCRR 822.3. Admission procedures.**

- (a) An individual who appears at the outpatient service seeking or having been referred for treatment or evaluation shall have an initial determination made and documented in a written record by a qualified health professional, or other clinical staff under the supervision of a qualified health professional, which states the following:
- (1) that the individual appears to be in need of chemical dependence services;
  - (2) that the individual appears to be free of serious communicable disease that can be transmitted through ordinary contact; and
  - (3) that the individual appears to be not in need of acute hospital care, acute psychiatric care, or other intensive services which cannot be provided in conjunction with outpatient care or would prevent him/her from participating in a chemical dependence service.
- (b) The determinations made pursuant to the above shall be based upon service provider records, reports from other providers and/or through a face-to-face contact with the individual, all of which must be documented.

### **Level of Care Determination**

#### **14 NYCRR 822.3(c) Level of care determination.**

If an individual is determined to be appropriate for chemical dependence services, a level of care determination shall be made by a clinical staff member who shall be provided clinical oversight by a qualified health professional. The level of care determination shall be signed and dated by the clinical staff member. The level of care determination shall be made promptly and in no event not later than two visits to the service, or two weeks for minors.

- (d) The level of care determination process must be in accord with the governing authority's policy and procedures and incorporate the use of the OASAS Level of Care for Alcohol and Drug Treatment Referral Protocol (LOCADTRP) or another Office-approved protocol.
- (e) Prohibition against discrimination. No individual shall be denied admission to the outpatient service based solely on the individual's:
- (1) prior treatment history;
  - (2) referral source;
  - (3) maintenance on methadone or other medication prescribed and monitored by a physician, physician's assistant or nurse practitioner, however, if an outpatient service objects to an individual's continued use of such prescribed drugs or substances, the outpatient service shall document each of the following: (i) obtain a signed consent form in accordance with the requirements of 42 Code of Federal Regulations Part 2 which authorizes the release of patient identifying information to the physician, physician's assistant, or nurse practitioner who prescribed the drug or substance to the patient ("the prescribing professional"); (ii) consult with

the prescribing professional to ascertain their knowledge and awareness of the individual's history of chemical dependence, and if the prescribing professional is unaware of the individual's history of chemical dependence, inform the prescribing professional accordingly; and (iii) after the required consultation in (ii) above, if the prescribing professional believes that the individual should be permitted to continue to use the drug or substance, the individual must be permitted to continue to use the drug or substance.

- (4) pregnancy;
- (5) history of contact with the criminal justice system;
- (6) HIV and AIDS status;
- (7) physical or mental disability; or
- (8) lack of cooperation by significant others in the treatment process.

(f) Admission criteria. To be admitted for outpatient services, the individual must: (1) be determined to be able to achieve or maintain abstinence and recovery goals with the application of outpatient services; or (2) be a significant other who manifests psychological, behavioral and/or emotional effects arising from another individual's chemical abuse or dependence, as significant others may be treated as patients in their own right and admitted to the chemical dependence service, regardless of whether the addicted person is in treatment, or they may be treated as part of a family; or (3) meet the admission criteria identified in § 822.9 for outpatient rehabilitation services.

(g) If the individual is deemed inappropriate for outpatient services, unless the individual is already receiving chemical dependence services from another provider, a referral to a more appropriate service shall be made. The reasons for denial of any admission to the outpatient service must be provided to the individual and documented in a written record maintained by the outpatient service.

#### **Admission Decision**

**14 NYCRR 822.3 (h) If determined appropriate for the outpatient service, the individual shall be admitted.** The decision to admit an individual shall be made by a staff member who is a qualified health professional authorized by the policy of the governing authority to admit individuals. The name of the qualified health professional who made the admission decision, along with the date of admission, must be documented in the patient record.

(i) There must be a notation in the patient record that the patient received a copy of the outpatient service's rules and regulations, including patient rights and a summary of federal confidentiality requirements, and a statement that notes that such rules were discussed with the patient, and that the patient indicated that he/she understood them.

(j) All patients shall be informed that admission is on a voluntary basis and that a patient shall be free to discharge himself or herself from the service at any time. For patients under an external mandate, the potential consequences for premature discharge shall be explained, but this shall not alter the voluntary nature of admission and continued treatment. This provision shall not be construed to preclude or prohibit attempts to persuade a patient to remain in the service in his or her own best interest.

### **Comprehensive Evaluation**

#### **14 NYCRR 822.4 Post admission procedures.**

(a) Comprehensive evaluation.

- (1) The goal of the comprehensive evaluation shall be to obtain that information necessary to develop an individual treatment plan.
- (2) The comprehensive evaluation shall obtain that information necessary to determine whether a diagnosis of alcohol related or psychoactive substance related use disorder in accordance with the International Classification of Diseases, Ninth Revision or another Office-approved protocol is indicated.
- (3) Each comprehensive evaluation shall be coordinated by a qualified health professional and be based, in part, on clinical interviews with the patient, and may also include interviews with significant others, if possible and appropriate.

### **Individual Treatment Plan**

#### **14 NYCRR 822.4 (f) Individual treatment plan.**

Within thirty days of admission to an outpatient service, a written individual treatment plan ("the treatment plan") based on the comprehensive evaluation shall be developed and approved by the multidisciplinary team for each patient.

14 NYCRR 800.2. Definitions.

- (12) **Multi-disciplinary team** means a team of health professional staff including, at a minimum, one medical staff member (where applicable) as defined in this section, one credentialed alcoholism and substance abuse counselor (CASAC) and one other staff member who is a qualified health professional as defined in this section in a discipline other than alcoholism and substance abuse counseling.

### **Individual Treatment Plan**

#### **14 NYCRR 822.4 (l) The treatment plan shall:**

- (1) be developed in collaboration with the patient and reviewed by a multi-disciplinary team; (2) be based on the admitting evaluations specified above and any additional evaluation(s) determined to be required; (3) specify the treatment goals for each problem identified; (4) specify the objectives to be achieved while the patient is receiving services which shall be used to measure progress toward attainment of treatment goals; (5) prescribe an integrated program of therapies and activities to meet the objectives, with target dates for achievement; (6) include schedules for the provision of all services prescribed to the patient and their significant others as appropriate; (7) identify a single member of the clinical staff responsible for coordinating and managing the patient's treatment ("the responsible clinical staff member"); (8) include each diagnosis for which the patient is being treated; (9) include a description of the additional services, particularly the vocational, educational, or employment services needed by the patient and a plan for meeting those needs; and (10) be signed by the responsible clinical staff member and be approved, signed and dated by the medical director or other physician employed by the service within seven days of review and approval by the multidisciplinary team.

**DANIEL TORRES, Petitioner-Appellant, -v.- J. BERBARY, Superintendent, Respondent- Appellee.**

**Docket No. 02-2463**

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

*340 F.3d 63; 2003 U.S. App. LEXIS 16167*

**April 30, 2003, Argued**  
**August 7, 2003, Decided**

**PRIOR HISTORY:** [\*\*1] Appeal from a judgment denying a petition for a writ of habeas corpus entered in the United States District Court for the Southern District of New York (Martin, J.), the District Court having determined that the state court sentencing challenged by petitioner was justified by a satisfactory evidentiary showing of a breach of the condition of the original sentence imposed.

*Torres v. Barbary, 2002 U.S. Dist. LEXIS 10041 (S.D.N.Y., May 31, 2002)*

**DISPOSITION:** Vacated and remanded with instructions.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Petitioner inmate filed a petition for a writ of habeas corpus pursuant to 28 U.S.C.S. § 2254 and challenged his resentencing by a state court following an alleged breach of the condition of his original sentence, completion of a drug treatment program, The United States District Court for the Southern District of New York denied the inmate's petition. The inmate filed a timely notice of appeal.

**OVERVIEW:** The inmate entered a plea of guilty to the offense of criminal sale of a controlled substance in the third degree. The sentence provided for a conditional release to a drug treatment facility. The inmate was discharged from the program because of his alleged involvement in the distribution of contraband in the facility. Although the inmate asked for review by the program director, no review was provided to him. The inmate was sentenced to four and a half to nine years imprisonment. The Appellate Division, First Department affirmed. The appellate court found that the total reliance by the trial court on a hearsay report that itself contained only uncorroborated statements of unnamed informants, the failure of the trial court to conduct some kind of hearing, the lack of preponderating evidence of the inmate's wrongdoing, and the gross disparity between the sentence the inmate would have received if he completed the drug treatment program and the four-and-a-half-to-nine-year sentence to state prison that he received, mandated a

finding of denial of due process in the inmate's sentencing and compelled the issuance of a writ of habeas corpus pursuant to 28 U.S.C.S. § 2254.

**OUTCOME:** The district court's denial of the inmate's habeas petition was reversed and the court directed that a writ of habeas corpus be issued releasing the inmate from his present confinement unless the state provided him with a new sentencing hearing within 90 days.

**LexisNexis(R) Headnotes**

*Civil Procedure > Appeals > Standards of Review > De Novo Review*

*Criminal Law & Procedure > Appeals > Standards of Review > De Novo Review > General Overview*  
*Criminal Law & Procedure > Habeas Corpus > Appeals > Standards of Review > General Overview*

[HN1] An appellate court reviews de novo a district court's denial of a writ of habeas corpus to a person in custody pursuant to a state court judgment. The standard for review by a district court in the first instance has been established by an Act of Congress, the Antiterrorism and Effective Death Penalty Act of 1996, as codified in 28 U.S.C.S. § 2254(d).

*Criminal Law & Procedure > Habeas Corpus > Cognizable Issues > General Overview*  
[HN2] See 28 U.S.C.S. § 2254(d).

*Civil Procedure > Judgments > General Overview*  
*Civil Procedure > Appeals > Standards of Review > De Novo Review*

*Criminal Law & Procedure > Habeas Corpus > Appeals > Standards of Review > De Novo Review*

[HN3] The deferential review of state court judgments established by the statutory scheme of 28 U.S.C.S. § 2254(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) is dependent on the federal claim having been adjudicated on the merits by the state court. If there is no such adjudication, the deferential standard does not apply, and the courts apply the pre-AEDPA standards, and review de novo the state court disposition of the petitioner's federal constitutional claims. A peti-

tioner's federal constitutional claim is adjudicated on the merits in state court when the state court disposes of the claim on the merits and reduces its disposition to judgment. The issue of whether the claim has been disposed of on the merits by a state court includes an inquiry into: (1) what the state courts have done in similar cases; (2) whether the history of the case suggests that the state court was aware of any ground for not adjudicating the case on the merits; and (3) whether the state court's opinion suggests reliance upon procedural grounds rather than a determination on the merits.

***Criminal Law & Procedure > Habeas Corpus > Cognizable Issues > General Overview***

***Criminal Law & Procedure > Habeas Corpus > Review > Standards of Review > General Overview***

***Governments > Courts > Judicial Precedents***

[HN4] With respect to the elements of deferential review under the Antiterrorism and Effective Death Penalty Act of 1996 set forth in 28 U.S.C.S. § 2254(d)(1), a state court's decision is "contrary to" clearly established United States Supreme Court precedent if the state court arrives at a conclusion opposite to that reached by the United States Supreme Court on a question of law or if the state court decides a case differently than the United States Supreme Court has on a set of materially indistinguishable facts. And an "unreasonable application" of clearly established United States Supreme Court precedent occurs when a state court identifies the correct governing legal principle from the United States Supreme Court's decisions but unreasonably applies that principle to the facts of the prisoner's case. Although it is clear that the question is whether the state court's application of clearly established federal law was objectively unreasonable, the precise method for distinguishing objectively unreasonable decisions from merely erroneous ones is less clear. However, it is well-established in the Second Circuit that the objectively unreasonable standard of 28 U.S.C.S. § 2254(d)(1) means that petitioner must identify some increment of incorrectness beyond error in order to obtain habeas relief.

***Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > General Overview***

***Criminal Law & Procedure > Sentencing > Appeals > General Overview***

***Criminal Law & Procedure > Sentencing > Imposition > General Overview***

[HN5] The United States Supreme Court has clearly spoken on the question of the standard of proof of facts in sentencing in relation to the constitutional requirement of due process, holding that the preponderance of evidence standard satisfies the requirement.

***Criminal Law & Procedure > Sentencing > Alternatives > Probation > Revocation > General Overview***

***Criminal Law & Procedure > Sentencing > Imposition > General Overview***

***Criminal Law & Procedure > Postconviction Proceedings > Parole***

[HN6] The United States Supreme Court has clearly spoken on the question of the process due one who is alleged to have failed to abide by the rules governing his parole. The determination to resentence for the breach of a condition of a sentence is analogous to the determination to revoke the parole of a parolee for failure to comply with the conditions of parole. It is also analogous to the determination to impose a sentence for violation of the terms of probation. All those determinations should be informed by the same considerations. For parole revocation, an opportunity for a hearing must be provided. According to the United States Supreme Court, that hearing must be the basis for more than determining probable cause, it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation.

***Administrative Law > Agency Adjudication > Hearings > Evidence > General Overview***

***Criminal Law & Procedure > Trials > Examination of Witnesses > Cross-Examination***

***Criminal Law & Procedure > Postconviction Proceedings > Parole***

[HN7] In order to justify the further punishment generated by parole revocation, the following minimum requirements of due process must be filled: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses, unless the hearing officer specifically finds good cause for not allowing confrontation; (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. The inquiry is said to be a narrow one, and the process should be flexible enough to consider evidence, including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

***Criminal Law & Procedure > Sentencing > Imposition > Evidence***

[HN8] The United States Court of Appeals for the Second Circuit has previously reviewed United States Supreme Court teaching to arrive at the conclusion that, although due process considerations are implicated in sentencing generally, not all the evidentiary limitations and procedural safeguards are required in the conduct of a sentencing proceeding. The United States Court of Appeals for the Second Circuit has gone so far as to hold that due process does not prevent use in sentencing of out-of-court declarations by an unidentified informant where there is good cause for the nondisclosure of his identity and there is sufficient corroboration by other means.

***Criminal Law & Procedure > Sentencing > Imposition > Evidence***

***Evidence > Hearsay > Hearsay Within Hearsay***

[HN9] Due process in sentencing requires at least a showing by a preponderance of evidence to resolve disputed factual issues. While it is true that the use of material that would not be admissible in an adversary criminal trial is permitted, a single report replete with multiple levels of hearsay and speculation cannot be said to suffice to make a showing by a preponderance of the evidence, even under the "flexible" standard that is permitted.

***Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Scope of Protection Constitutional Law > Substantive Due Process > Scope of Protection***

[HN10] Due process has clearly been held to require some kind of hearing before a person is deprived of a liberty interest.

***Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Right to Confrontation Criminal Law & Procedure > Trials > Examination of Witnesses > Cross-Examination***

***Criminal Law & Procedure > Sentencing > Imposition > Evidence***

[HN11] While it is true that the United States Supreme Court has held that it was not a denial of due process in sentencing to rely on information supplied by witnesses whom the accused could neither confront nor cross-examine, it is also true that the Court does not hold that all hearsay information must be considered. In the federal sentencing context, the United States Court of Appeals for the Second Circuit has held that admission of an unidentified informant's corroborated declarations in a sentencing proceeding where there is good cause for not disclosing his identity is not barred by the *Confrontation Clause*.

**COUNSEL:** DAVID E. LIEBMAN, ESQ., New York, NY, for Petitioner-Appellant.

NISHA M. DESAI, Assistant District Attorney for Bronx County, Bronx, NY, (Joseph N. Ferdenzi, Assistant District Attorney, Robert T. Johnson, District Attorney for Bronx County, Bronx, NY, on the brief), for Respondent-Appellee.

**JUDGES:** Before: MINER, McLAUGHLIN and POOLER, Circuit Judges.

**OPINION BY:** MINER

**OPINION**

[\*64] MINER, *Circuit Judge*: Petitioner Daniel Torres appeals from a judgment denying a writ of habeas corpus entered in the United States District Court for the Southern District of New York (Martin, J.). Torres filed his petition for the writ pursuant to 28 U.S.C. § 2254 as a person in state custody. By the petition, Torres challenged his resentencing [\*\*2] by a state court following an alleged breach of the condition of his original sentence. The District Court determined that the resentencing was justified by a satisfactory evidentiary showing of the breach in state court and concluded that the decision of the trial court was not contrary to the jurisprudence of the Supreme Court of the United States. *See Torres v. Barbary, 2002 U.S. Dist. LEXIS 10041, No. 01 CIV 4512, 2002 WL 1218276 (S.D.N.Y. June 4, 2002)*. Because we conclude that the hearing afforded by the state court that resulted in the resentencing was inconsistent with due process, we vacate the judgment of the District Court and remand with directions to grant the writ conditionally.

**BACKGROUND**

On March 16, 1998, Torres entered a plea of guilty in New York Supreme Court, Bronx County, to the offense of Criminal Sale of a Controlled Substance in the Third Degree, *N.Y. Penal Law § 220.39(1)*, a Class B Felony. The court accepted the plea following the customary allocution and proceeded to impose sentence in accordance with a plea bargain previously arrived at. The sentence provided for a conditional release to Phoenix House, a drug treatment facility and was encompassed in its [\*\*3] entirety in the following dialogue between the court and Torres, designated "THE DEFENDANT" in the transcript:

THE COURT: Okay. I am going to sentence you. I will release you on the 23rd to Phoenix House. If you work out, you will be allowed to come back, re-plead to

a misdemeanor, and I will sentence you [to] time served. If you don't work out, you will get at least four [\*65] and a half to nine years in jail. Do you understand?

THE DEFENDANT: Yes. THE COURT: Is that satisfactory to you?

THE DEFENDANT: Yes.

"If you work out" apparently was understood by all concerned to refer to the successful completion by Torres of the drug treatment program provided by Phoenix House. According to the sentence, successful completion would result in a return to court for repleading to a misdemeanor in place of the felony, and a resentencing to time served. Failure to complete would result in a sentence of imprisonment of four-and-a-half-to-nine years on the original felony charge.

Torres immediately entered the Phoenix House program. Less than a month later, Torres was discharged from the program. The "Client Discharge Form" dated April 10, 1998, provided to Torres [\*\*4] by Phoenix House, gave the following reasons for his discharge: "Your alledge [sic] involvement in the distribution of contraband in the facility. You are being directed to immediately surrender yourself to 1020 Grand Concourse Part 51 Bronx Supreme Court." The Form contained the following legend: "You have the right to have this decision reviewed by the Program Director. You may seek advice from outside sources in preparation for the program director/designee review of the discharge decision." Although Torres inserted a checkmark in the space provided in the Form following the words: "I wish a review" and signed the Form, no review was provided to him.

By letter dated the same date as the Discharge Form, Ed Greaux of Phoenix House advised the Bronx Supreme Court of Torres' discharge. The letter, in its substantive entirety, reads as follows:

Your Honor, with reference to the above-named client, information has come to light that compels us to discharge this resident. New residents overheard conversations conducted in Spanish between this client and other residents claiming that they could make illicit drugs available for sale within this facility.

It is suspected [\*\*5] that the drugs may have been entering the facility through the use of church trips. Confederates may have met clients at church to pass drugs or money. Also, it is suspected that gang activity in the form of meetings

on the male floor and the use of gang hand signals have involved the above-named client.

Although we have been unable to obtain physical evidence, we have received information from residents that clearly implicates this individual in an organized attempt to sell drugs in this facility.

Following his discharge, Torres was returned to the court for further proceedings. At the outset of the proceedings, counsel for Torres addressed the court as follows:

[COUNSEL]: Judge, for the record, my client is, again, he had pled guilty and was given his plea wherein if he completed the Phoenix Drug House program, to which he was assigned, he would be allowed to complete that program and that if he completed it successfully, he would be allowed to withdraw his felony plea and receive a plea with a misdemeanor and time served.

I realize there has been a communication to the Court. I've seen a copy of it indicating that my client was discharged from Phoenix [\*\*6] House and making an accusation that he was involved with other people in trying to bring drugs into the facility. My client denies that. He's asked me to state that he never was a participant with anyone else in trying to bring drugs into the facilities, and he [\*66] has tested clear all times and he would like an opportunity to complete a drug program and complete all the conditions of the plea.

The court responded as follows:

THE COURT: The application is denied. The report has convinced me that he violated the conditions I set down, very seriously. You have an exception for the record.

Later, there was this exchange between counsel and the court:

[COUNSEL]: Judge, the Defendant is again giving me [a] copy of the notification, that he received a client discharge

form from Phoenix House, and that he says he requested a review which he was never given.

THE COURT: I'm still prepared to sentence him. Phoenix House has indicated they don't want him. Let's proceed, please.

After a further exchange during the proceedings, counsel again advised the court of Torres' adamant assertion that he did not bring drugs into Phoenix House, [\*\*7] and of Torres' request that he have "some sort of hearing, evidentiary hearing on this issue." The court responded to that request as follows:

THE COURT: I decline to do so. I received a communication, as you know, you were given it as soon as I received it, indicating that Phoenix House had had people overhear him plotting with other people to bring drugs into the facility. I'm not going to try that case because Phoenix House, in my opinion, generally gives me accurate reports, and most of the time, they want to keep a client, not let a client go. I'm prepared to sentence your client. I deny any further applications to be given.

Torres then personally requested the opportunity to speak, which the court granted. The following is a transcript of Torres' unsworn statement to the court:

THE DEFENDANT: Yeah. When I went, a lot of people, which is usually people that I know was upstate with me before, one of them, which I don't know, who supposedly got caught with drugs or gave drugs to somebody, now, it's the people I talk to almost every day when I have a cigarette break. When that happened, they took my unit twice and searched me and saying, that's [\*\*8] my people, that I screw around, but I say that I don't know what happened. They still threw me out due to the fact that I associate with them, that I say what's up to them, and I say hello to them, when we used to go down for a cigarette smoke. In other words, they also told me, I will have a review with the director, but they are stating that they just threw me out for associating with them. It was really, I don't know who or what really happened.

The court immediately proceeded with sentencing after Torres' statement as follows:

THE COURT: Okay. Based upon everything I know about the case, based upon the recent communication and writing that I received from Phoenix House, Defendant is sentenced to a minimum term, which I promised him if he did not successfully complete the program, four and a half to nine years, and I am imposing the statutory surcharge.

On appeal to the Appellate Division, First Department, Torres' judgment of conviction and sentence was affirmed. The Appellate Division reasoned as follows:

The court promised that it would impose a more lenient disposition in the event that [Torres] successfully completed a drug program. [\*\*9] [Torres] was expelled from the drug program. Before imposing [\*67] sentence, the court conducted an inquiry to determine whether or not there was any legitimate basis for defendant's exclusion from the drug program, and satisfied itself that the report of [Torres'] misconduct in the program was reliable and accurate. Hence, the court properly sentenced [Torres] on the felony.

*People v. Torres*, 277 A.D.2d 12, 12, 715 N.Y.S.2d 59 (1st Dep't 2000) (mem.) (citations omitted). Leave to appeal to the New York Court of Appeals was denied. See *People v. Torres*, 96 N.Y.2d 764, 725 N.Y.S.2d 290, 748 N.E.2d 1086 (2001).

In his petition for a writ of habeas corpus dated May 29, 2001, Torres alleged that his due process rights were violated because he was denied an evidentiary hearing in connection with his discharge from Phoenix House. He asserted that he was "ejected from the treatment program on the basis of uncorroborated and unsubstantiated double-hearsay allegations from unnamed sources" and that "the ejection was conducted without an internal review hearing and in violation of the treatment program's internal policies." His due process challenge [\*\*10] was grounded in his claim that "no evidentiary hearing of any kind was conducted by the sentencing court to evaluate the allegation, even though I requested and was not given a hearing at the treatment center, and I was not permitted to challenge the evidence or cross-examine any witness."

In an unpublished, eleven-page opinion and order dated May 31, 2002, the District Court denied Torres'

petition for relief under the provisions of 28 U.S.C. § 2254. The District Court concluded that the state court's decision was "not contrary to 'clearly established Federal law, as determined by the Supreme Court of the United States.'" *Torres*, 2002 U.S. Dist. LEXIS 10041, 2002 WL 1218276, at \*4. In support of that conclusion, the District Court reasoned as follows:

The sentencing judge had a report from a reliable institution to which the courts regularly send defendants for treatment, that Petitioner had been involved in bringing drugs into the institution. While the institution's conclusion was based on information from unnamed, recently admitted residents, there was no reason to believe that the institution did not have an adequate basis to believe their statements. [\*\*11] Had the court ordered a hearing, the institution would no doubt have resisted disclosing the identities of those who provided information in confidence. Thus, it is likely that the record at the close of the hearing would have been no different than it was at the time of sentencing, with the petitioner denying the charge, and Phoenix House staff persuaded that the charges were true and stating that they would not re-admit the Petitioner.

*Id.* A certificate of appealability was issued by the District Court, and Torres filed a timely notice of appeal.

## DISCUSSION

I. Standards for Habeas Corpus Review of State Convictions: The Statutory Scheme *Examined*.

[HN1] We review *de novo* a district court's denial of a writ of habeas corpus to a person in custody pursuant to a state court judgment. *Loliscio v. Goord*, 263 F.3d 178, 184 (2d Cir. 2001). The standard for review by a district court in the first instance has been established by an Act of Congress, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as codified in 28 U.S.C. § 2254(d). The statute provides as follows:

[HN2]

An application for a writ [\*\*12] of habeas corpus on behalf of a person in custody pursuant to the judgment of a State [\*68] court shall not be granted with respect to any claim that was adjudi-

cated on the merits in State court proceedings unless the adjudication of the claim --

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

[HN3] The deferential review of state court judgments established by the statutory scheme is dependent on the federal claim having been "adjudicated on the merits" by the state court. If there is no such adjudication, the deferential standard does not apply, and "we apply the pre-AEDPA standards, and review *de novo* the state court disposition of the petitioner's federal constitutional claims." *Aparicio v. Artuz*, 269 F.3d 78, 93 (2d Cir. 2001). A petitioner's federal constitutional claim is adjudicated on the merits in state court [\*\*13] when the state court disposes of the claim on the merits and reduces its disposition to judgment. See *Norde v. Keane*, 294 F.3d 401, 410 (2d Cir. 2002). The issue of whether the claim has been disposed of on the merits by a state court includes an inquiry into: "(1) what the state courts have done in similar cases; (2) whether the history of the case suggests that the state court was aware of any ground for not adjudicating the case on the merits; and (3) whether the state court's opinion suggests reliance upon procedural grounds rather than a determination on the merits." *Sellan v. Kuhlman*, 261 F.3d 303, 314 (2d Cir. 2001) (internal quotation marks omitted).

II. *The Appropriate Standard of Review in this Case: The Unreasonable Application Rule Described*.

There is no question that the issue before us was "adjudicated on the merits" in the state courts. The Appellate Division concluded that the inquiry conducted by the state trial court revealed an adequate basis for the expulsion of Torres from the drug program, specifically determining that the trial court had properly satisfied itself that the report of Torres' conduct at Phoenix House "was [\*\*14] reliable and accurate." *Torres*, 277 A.D.2d at 12. The Appellate Division effectively decided that there was no violation of Torres' right to constitutional due process and sentencing when it held that the trial court "properly sentenced [Torres] on the felony." *Id.* Accordingly, we are constrained to conduct our review under the deferential standard established by the AEDPA.

[HN4] With respect to the elements of AEDPA deferential review set forth in § 2254(d)(1), a state court's decision is "contrary to" clearly established Supreme Court precedent if "the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412-13, 146 L. Ed. 2d 389, 120 S. Ct. 1495 (2000); see also *Eze v. Senkowski*, 321 F.3d 110, 123 (2d Cir. 2003). And an "unreasonable application" of "clearly established" Supreme Court precedent occurs when a state court "identifies the correct governing legal principle from [the Supreme] Court's decisions but [\*\*15] unreasonably applies that principle to the facts of the prisoner's case." *Williams*, 529 U.S. at 413. "Although it is clear that the question is [\*69] 'whether the state court's application of clearly established federal law was objectively unreasonable,' the precise method for distinguishing 'objectively unreasonable' decisions from merely erroneous ones is less clear." *Cotto v. Herbert*, 331 F.3d 217, 248 (2d Cir. 2003) (citation omitted). "However, it is well-established in [this C]ircuit that the 'objectively unreasonable' standard of § 2254(d)(1) means that petitioner must identify some increment of incorrectness beyond error in order to obtain habeas relief." *Id.* (internal quotation marks omitted).

### III. Due Process in the Sentencing Context: Supreme Court Precedent Identified.

[HN5] The Supreme Court has clearly spoken on the question of the standard of proof of facts in sentencing in relation to the constitutional requirement of due process, holding that the preponderance of evidence standard satisfies the requirement. See *McMillan v. Pennsylvania*, 477 U.S. 79, 91, 91 L. Ed. 2d 67, 106 S. Ct. 2411 (1986) ("Like the [state] [\*\*16] court below, we have little difficulty concluding that in this case the preponderance standard satisfies due process."); see also *United States v. Watts*, 519 U.S. 148, 156, 136 L. Ed. 2d 554, 117 S. Ct. 633 (1997) (noting, in connection with the approval of standard under Federal

Sentencing Guidelines, that the Court has "held that application of the preponderance standard at sentencing generally satisfies due process"). [HN6] The Supreme Court also has clearly spoken on the question of the process due one who is alleged to have "failed to abide by the rules" governing his parole. See *Morrissey v. Brewer*, 408 U.S. 471, 479, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972). The determination to resentence for the breach of a condition of a sentence is analogous to the determination to revoke the parole of a parolee for failure to comply with the conditions of parole. It is also analogous to the determination to impose a sentence for violation of the terms of probation. All these determinations

should be informed by the same considerations. For parole revocation, an opportunity for a hearing must be provided. According to the Supreme Court,

this hearing [\*\*17] must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation.

*Id.* at 488.

[HN7] In order to justify the further punishment generated by parole revocation, the following "minimum requirements of due process" must be filled:

- (a) written notice of the claimed violations of parole;
- (b) disclosure to the parolee of evidence against him;
- (c) opportunity to be heard in person and to present witnesses and documentary evidence;
- (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
- (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and
- (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [\*\*18] parole.

*Id.* at 489. The inquiry is said to be a "narrow" one, and "the process should be flexible enough to consider evidence, including letters, affidavits, and [\*70] other material that would not be admissible in an adversary criminal trial." *Id.*

[HN8] We have previously reviewed Supreme Court teaching to arrive at the conclusion that, although due process considerations are implicated in sentencing generally, not all the evidentiary limitations and procedural

safeguards are required in the conduct of a sentencing proceeding. See *United States v. Fatico*, 579 F.2d 707, 711 (2d Cir. 1978). We have gone so far as to hold "that Due Process does not prevent use in sentencing of out-of-court declarations by an unidentified informant where there is good cause for the nondisclosure of his identity and there is sufficient corroboration by other means." *Id.* at 713 (footnote omitted).

#### IV. *Torres' Second Sentence: The Process Analyzed and Evaluated.*

Torres actually was sentenced a second time under the peculiar procedure followed by the state trial court. Originally, his plea to a felony drug count was accepted by the court, and [\*\*19] he was remanded to a drug rehabilitation program. Successful completion of the program, he was told, would result in his return to the court for a plea to a misdemeanor, apparently in replacement of the felony conviction, and a sentence to "time served" in the rehabilitation program. When Torres was returned to the trial court for further proceedings, however, it was not for a misdemeanor plea, but for a sentence of four-and-a-half-to-nine years. The felony sentence imposed was the sentenced promised if Torres did not "work out" in the Phoenix House program. In imposing the sentence, the trial court relied only on its review of the letter from Phoenix House, and, after he had requested and received permission to be heard, on Torres' brief unsworn statement to the court that he was innocent of the alleged wrongdoing. Due process standards clearly established by the Supreme Court were thereby ignored.

In rejecting Torres' unsworn statement and relying on the report from Phoenix House, the trial court noted that it was convinced by the report that Torres had "violated the conditions" the court had set down "very seriously." An examination of the report that formed the entire basis for [\*\*20] the court's determination reveals that double and triple hearsay informed the decision of Phoenix House to discharge Torres from the program for attempting to sell drugs at the facility. According to the report, certain residents of the facility overheard conversations in Spanish between Torres and others "claiming that they *could* make illicit drugs available for sale" within the facility. (emphasis supplied) The report recites that "it is *suspected* that drugs *may* have been entering the facility through the use of church trips," and that "confederates *may* have met clients at church to pass drugs or money." (emphasis supplied) These speculative statements obviously do not implicate Torres in any way.

There is one statement in the report that does implicate Torres: "It is *suspected* that gang activity in the form of meetings on the male floor and the use of gang hand signals have involved [Torres]." (emphasis supplied) This statement does not even implicate Torres directly in

drug dealing at the facility. It is only the concluding sentence of the Report that mentions Torres in connection with drug dealing at the facility. According to the concluding sentence, [\*\*21] information received from (unnamed) residents "clearly implicates" Torres "in an organized attempt to sell drugs in this facility." That statement is qualified by the statement: "We have been unable to obtain physical evidence."

[\*71] In affirming Torres' felony sentence, the Appellate Division recognized the due process implications of the procedure in the trial court, finding that the trial court properly relied on a report of misconduct that was "reliable and accurate." 277 A.D.2d at 12. The Appellate Division therefore recognized the Supreme Court's due process jurisprudence relating to sentencing but applied it to the facts of this case in an objectively unreasonable manner. See *Wiggins v. Smith*, 156 L. Ed. 2d 471, 123 S. Ct. 2527, 2538-39 (2003); see also *Woodford v. Visciotti*, 537 U.S. 19, 24-25, 154 L. Ed. 2d 279, 123 S. Ct. 357 (2002) (per curiam).

In the first place, it cannot be said that the required preponderance of the evidence standard in sentencing can be met with only a report of the type furnished by Phoenix House. As has been demonstrated, [HN9] due process in sentencing requires at least a showing by a preponderance of evidence [\*\*22] to resolve disputed factual issues. While it is true, as the learned district judge noted, that *Morrissey v. Brewer* permitted the use of "material that would not be admissible in an adversary criminal trial," 408 U.S. at 489, a single report replete with multiple levels of hearsay and speculation cannot be said to suffice to make a showing by a preponderance of the evidence, even under the "flexible" standard that is permitted. And, while *Morrissey* involves standards for parole revocation, it is not a great extension to apply its principles to the breach-of-condition-of-sentence case before us. See *Kennaugh v. Miller*, 289 F.3d 36, 44-45 (2d Cir.), cert. denied, 537 U.S. 909, 154 L. Ed. 2d 187, 123 S. Ct. 251 (2002).

[HN10] Due process has clearly been held to require "some kind of hearing" before a person is deprived of a liberty interest. See *Wolff v. McDonnell*, 418 U.S. 539, 558, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974) (In the context of deprivation of good time prison credits for serious misconduct, "the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process [\*\*23] appropriate for the circumstances must be observed."). The teachings of the Supreme Court have been effectively ignored in the case of Torres. He was not afforded the opportunity to testify under oath, and no witness from Phoenix House testified as to the reliability of those who furnished the information of Torres' wrongdoing. The district judge opined that the institution "no doubt" would have resisted

disclosure of the names of those who furnished the information. We cannot say that this is so, and we certainly cannot say that a witness familiar with the administration of Phoenix House could not or would not have furnished some basis for determination of the informants' reliability. A Phoenix House representative could have testified in this regard.

The District Court also opined that "there was no reason to believe" that Phoenix House did "not have an adequate basis to believe" the informants' statements. The problem with that analysis is that there was no explanation of the basis for the beliefs of Phoenix House other than vague references to information furnished by informants. Had the informants furnished reliable information in the past? Did they have any axes to grind? Were [\*\*24] they promised any rewards for informing? Torres said he was discharged from the program merely for associating with certain other inmates during "cigarette breaks." His "hearing" did not even include his own sworn testimony in the trial court and he therefore was not available for cross examination regarding his contentions. As a matter of fact, he was not even given a review by Phoenix House prior to his discharge despite the fact that he requested a review by the Program [\*\*72] Director by checking the space provided for such a request on his Client Discharge Form.

[HN11] While it is true that the Supreme Court in *Williams v. New York*, 337 U.S. 241, 252 n.18, 93 L. Ed. 1337, 69 S. Ct. 1079 (1949), "held that it was not a denial of due process in sentencing to rely on information supplied by witnesses whom the accused could neither confront nor cross-examine," *Fatico*, 579 F.2d at 711, it is also true that "*Williams* does not hold that all hearsay information must be considered," *id.* at 712. In the federal sentencing context, we have held "that admission of an unidentified informant's *corroborated* declarations in a sentencing proceeding [\*\*25] where there is *good cause for not disclosing* his identity is not barred by the *Confrontation Clause*." *Id.* at 714 (emphasis supplied). In the case at bar, there was no corroboration of informant declarations and no showing of good cause for failure to disclose the identity of any informant who may have furnished information to Phoenix House regarding Torres.

We think that well-settled and clearly established Supreme Court due process jurisprudence or, at the very least, a reasonable extension of it, mandates a finding of denial of due process in Torres' sentencing. The following elements, unique to this case, compel the issuance of a writ of habeas corpus: total reliance by the trial court on a hearsay report that itself contains only uncorroborated statements of unnamed informants; omission of any finding by the trial court as to the reliability of the informants or as to reasons for the non-disclosure of their

identities; failure of the trial court to conduct some kind of hearing, including provision for the examination of Torres under oath; lack of preponderating evidence of Torres' wrongdoing; and the gross disparity between a sentence that would release [\*\*26] Torres to society on a plea to a misdemeanor charge after completion of the Phoenix House program and the four-and-a-half-to-nine-year felony sentence to state prison that he received for violating the original sentence condition.

## CONCLUSION

We direct that a writ of habeas corpus be issued releasing Torres from his present confinement unless the State provides him with a new sentencing hearing within ninety days.

**C**

People v. Joseph  
N.Y.Sup.,2004.

Supreme Court, Kings County, New York.  
PEOPLE of the State of New York

v.

Pierre JOSEPH, Defendant.  
Sept. 22, 2004.

**Background:** Hearing was brought to impose enhanced sentence against defendant for violating residential drug treatment condition in plea agreement after defendant was discharged from residential treatment program.

**Holding:** The Supreme Court, Kings County, Joseph E. Gubbay, J., held that due process was satisfied in resentencing based on defendant's expulsion from drug treatment facility.

Ordered accordingly.  
West Headnotes

**[1] Constitutional Law 92 4725**92 Constitutional Law92XXVII Due Process92XXVII(H) Criminal Law92XXVII(H)6 Judgment and Sentence92k4724 Resentencing92k4725 k. In General. Most CitedCases

(Formerly 92k270(1))

**Sentencing and Punishment 350H 2094**350H Sentencing and Punishment350HX Alternative Dispositions350HX(E) Termination350Hk2094 k. Effect of Termination. MostCited Cases

Due process was satisfied in resentencing of burglary defendant based on his expulsion from drug treatment facility for assault on co-resident; four written reports and one oral report were offered outlining facility's investigation of assault which included victims names and nature of injuries, defendant was given opportunity to provide sworn testimony at hearing,

defendant and his counsel were provided opportunity to dispute evidence, and preponderance of evidence supported charge that defendant assaulted co-resident. U.S.C.A. Const.Amend. 14.

**[2] Constitutional Law 92 4705**92 Constitutional Law92XXVII Due Process92XXVII(H) Criminal Law92XXVII(H)6 Judgment and Sentence92k4704 Matters Considered inSentencing92k4705 k. In General. Most CitedCases

(Formerly 92k270(2))

As a matter of due process, an offender may not be sentenced on the basis of materially untrue assumptions or misinformation; rather, to comply with due process the sentencing Court must assure itself that the information upon which it bases the sentence is reliable and accurate. U.S.C.A. Const.Amend. 14.

**\*\*292 \*517 Spencer Leeds**, for defendant.

Charles J. Hynes, District Attorney (Jonathan Laskin of counsel), for plaintiff.

**JOSEPH E. GUBBAY, J.**

[1] **\*518** Defendant entered into a conditional plea of guilty whereby he agreed to comply with a period of residential drug treatment. If the defendant complied with treatment, the defendant would receive a sentence of probation. In the alternative, if he failed, he would be sentenced to six years state prison. Defendant was discharged from residential treatment for allegedly assaulting a co-resident in connection with a gang-related initiation rite. This case requires the court to consider the level of due process the defendant is entitled to in determining whether the defendant has failed to comply with the conditions of his plea. The court's opinion is guided by the United States Court of Appeals, Second Circuit decision Torres v. Berbery, 340 F.3d 63 (2003), which sets forth the federal due process parameters in this context. The impact of Torres can **\*\*293** not be minimized given the existence of nine drug treatment courts in New York City alone, and the fact that each of these courts routinely confronts the issue at the heart of Torres: what *quantum* and *character* of evidence must a court consider to determine whether

a defendant was justifiably discharged by a treatment provider.<sup>FN1</sup>

FN1. In Kings County there are three drug treatment courts, Brooklyn Treatment Court, The Screening Treatment and Enhancement Part (STEP), and Misdemeanor Brooklyn Treatment Court; in Manhattan there are two such courts, Manhattan Treatment Court and Manhattan Misdemeanor Treatment Court; in Queens there are two drug treatment courts, the Queens Treatment Court and the Queens Misdemeanor Treatment Court; the Bronx and Staten Island each have a treatment court, the Bronx Treatment Court and the Staten Island Treatment Court, respectively.

Defendant asserts that he is entitled to the broadest hearing, that due process requires the calling of witnesses and the right to cross examine. The People oppose, arguing that there is sufficient evidence before the court for it to find that the defendant was justifiably discharged from the treatment program based on the alleged conduct.

Based on the reasoning below, the court concludes that any defendant who disputes the factual basis of termination from a residential treatment program, and where continued treatment is no longer offered by either the court or the People, if imposition of the jail alternative is based solely on this discharge and the underlying facts which led to the discharge, such defendant is entitled to a hearing, if requested, before the jail alternative may be imposed.<sup>FN2</sup> The court, however, is not bound to convene a hearing of the breadth sought by the defendant in the instant case, so long as there is a preponderance of trustworthy, reliable,\*519 and accurate evidence for the court to resolve the disputed facts.

FN2. The court's holding does not contemplate the case of a defendant who is discharged based on conduct which resulted in an arrest. In that event, the New York Court of Appeals decision in *People v. Outley*, 80 N.Y.2d 702, 594 N.Y.S.2d 683, 610 N.E.2d 356 (1993), would control.

#### *Factual Background*

On February 3, 2003, the defendant pled guilty to one count of burglary in the second degree [P.L.

140.25(2) ], a C felony, and one count of petit larceny [P.L. 155.25], an A misdemeanor, in satisfaction of the pending indictment.<sup>FN3</sup> Defendant admitted that he entered a private dwelling without permission or authority and stole money. Defendant's plea was predicated on the following conditions: that if he complied with residential drug treatment, his felony plea would be vacated and dismissed and he would be sentenced to a period of three years probation on the misdemeanor conviction. Defendant was advised that his plea was conditioned on his "cooperating with [the] residential program" where he would be placed. Defendant was further advised that if he did not complete the program he would be sentenced to a state prison alternative of six years. The defendant indicated that he understood and accepted the terms of the plea (T. pgs. 5-7). On March 19, 2003, defendant was released from custody and placed in a residential treatment facility, Phoenix House. He remained overall compliant with the treatment mandate until February 15, 2004.

FN3. The indictment charged the defendant and his co-defendant with nine counts, including 3 separate counts of burglary in the second degree. Defendant pled guilty to one of these counts.

On February 17, 2004, the court was notified by the court appointed monitor, Treatment Alternatives to Street Crime ("TASC"), that the defendant was discharged\*\*294 from Phoenix House. In a letter provided to the court dated February 17, 2004, addressed to TASC, the Managing Director of the Phoenix House facility where the defendant was placed reported, "On February 15, 2004, Mr. Joseph was identified as being part of a group who took part in a gang initiation ritual. The initiation rite involved physical violence which is grounds for discharge. It was reported that Mr. Joseph is alleged to be a member of the, "Crypts" [*sic*] and one of the individual's who carried out the initiation. Consequently, he was discharged from Phoenix Academy."

On February 18, 2004, the defendant, with counsel present, appeared in court and was remanded. The case was calendared \*520 for the following day for the People to provide the court with more facts.

On February 19, 2004, the defendant was present and represented by counsel. The People, based on discussions with TASC and staff from the facility

where the incident occurred, related that on the date of the incident the defendant was in the program's auditorium rehearsing for a cultural event. The auditorium is located on the first floor of the facility. The assault took place on the floor below the auditorium. Defendant was seen in the auditorium between the hours of 7:00 p.m. and 11:00 p.m. by a staff member whose name was provided in open court. The incident occurred between the hours of 8:00 p.m. and 9:00 p.m. The People described the rehearsal as a "fluid situation" where skits were rehearsed and "people would come and go." The People added that the victims of the assault were also members of the identified gang, but not members of the "local chapter." The defendant was known to the victim by his street name identified in court. He lived in the same unit in the facility as the victim. The two victims were beaten one at a time. The People had spoken with the named individual who conducted the investigation (the program's Deputy Director for Adolescents), who had interviewed both victims. The victims named the defendant as one of the initiators and named him by his street name. A corporeal identification proceeding ensued and the defendant was identified. (T. pgs. 2-6.)

The defendant was given an opportunity to make a sworn statement to the court. He denied his participation in the gang initiation and stated that during the assault he was participating in another activity at the facility and that this could be verified by the same staff member identified by the People. (T. pgs. 7-10.) The defendant never denied his gang affiliation or the street name by which he was known.

In response to the defendant's statement, the People cited a second letter, submitted to the court and dated February 19, 2004, addressed to TASC, written by the Managing Director of the facility, "This letter serves as a follow up to our review of Mr. Joseph's reported involvement in the gang initiation ritual that took place here on February 15, 2004. Mr. Joseph insisted that, at the time of the beating, he was participating in a community activity. He adds that the activity was overseen by a facility staff member. When asked to corroborate Mr. \*521 Joseph's alibi, the staff member stated that Mr. Joseph was seen at the activity but she could not account for his presence for the full period. Nevertheless, Mr. Joseph was identified as one of the gang initiators by the two victims."

In a letter dated March 16, 2004, written to TASC, the Vice President and Deputy Regional Director for

the program advocated for the defendant's reinstatement to the program given the defendant's repeated petitions to return, and the director's\*\*295 belief in the defendant's commitment to treatment. This endorsement was based on the defendant's compliance with a call-in schedule set by the director, and because in the director's own words, "He also seems genuine in renouncing gang affiliation and helping the Phoenix community deal with the gang issue."

On May 13, 2004, after meeting with the People and counsel for defendant, the court corresponded with the facility's Managing Director seeking more specific facts concerning the incident, including the identities of the victims and any witnesses, as well as the details of their personal observations.<sup>FN4</sup> A response was received dated June 7, 2004. It states in relevant part,

FN4. The instant court was assigned to the case April, 2004.

"As you requested, I conducted a thorough review of Mr. Pierre Joseph's discharge from the Phoenix Academy. The discharge was based on reports from two residents one of whom identifies Mr. Joseph as his attacker in what was later described as an [*sic*] gang initiation ritual. The reporting resident stated that he had no desire to be gang initiated. Adding, he proceeded to the area where the incident took place believing that a legitimate facility function was happening. At the time of this incident, both of the residents were relatively new to the program and believed they were following the directions of responsible peers."

The letter continues to describe the same alibi offered by the defendant and concludes, "Mr. Joseph was observed by a staff member participating in the rehearsal but, could not account for his presence during the entire activity."

\*522 Despite the court's request for *in camera* review, the identities of the witnesses were not revealed.<sup>FN5</sup>

FN5. To comply with federal regulations, the program would not disclose the full names of the victims. See, 42 U.S.C. 290dd-2, 42 C.F.R. Part 2.

In so far as the program's reply was not fully responsive, a follow-up request for further

information, dated June 21, 2004, was made on the court's behalf by the Citywide Drug Treatment Court Coordinator to the Phoenix House Assistant General Counsel. A response dated June 30, 2004, was received from the Director of Clinical Services. The response identified, by full name, the two staff members who investigated the incident. Further, the two victims were named by first name and last initial. Unredacted copies were provided to the People and the defendant. The letter states in pertinent part, "The victims [first name last initial of both victims in original], were interviewed separately by [names of both investigators in original] respectively on the day of the incident.

On the day of the incident, [victim No. 2] first identified Mr. Pierre Joseph from a list of suspects and then identified him in person. [Victim # 2] stated the he was a former Crips and wanted to disaffiliate himself. He adds that for several weeks he was being pressured to renew his participation. He proposed the reason for his attack was based on his position not to be gang affiliated.

Both victims sustained injuries but, neither required medical attention. Both interviewing counselors observed the following injuries: [victim # 1] had scratches on his neck and upper body, and [victim # 2] had facial and neck bruises and was given an ice pack for the facial swelling. No photographs were taken of the victims. Neither victim wished to press charges so a police report was not filed.

**\*\*296** The incident was reported to the appropriate criminal justice agencies on the day of the incident. Upon conclusion of the staff's investigation, two days after the incident occurred, it was decided that all clients identified as attackers were to be discharged."

*Torres v. Berbary*

In *Torres v. Berbary*, 340 F.3d 63 (2nd Cir.2003), defendant sought *habeas* relief in the United States Court of Appeals for \*523 the Second Circuit. The *Torres* court held that the trial court erred in relying on a single written report, which the Court of Appeals found to be fundamentally untrustworthy, in determining that the defendant had violated the plea agreement and was subject to the prison alternative. The *Torres* court ruled that federal due process in sentencing "requires at least a showing by a preponderance of evidence to resolve disputed factual issues," a standard not afforded by the trial court (*id.* at 71).

[2] Due process is implicated in sentencing because a

defendant's right to enforce his plea agreement is a fourteenth amendment liberty interest [U.S.C.A. Const.Amend. 14]. See *People v. Outley*, 80 N.Y.2d 702, 712, 594 N.Y.S.2d 683, 610 N.E.2d 356 (1993) and *Lopez v. Sanders*, 302 F.Supp.2d 241, 246 (S.D.N.Y.2004). "[A]s a matter of due process, an offender may not be sentenced on the basis of 'materially untrue' assumptions or 'misinformation' (*People v. Naranjo*, 89 N.Y.2d 1047, 1049, 659 N.Y.S.2d 826, 681 N.E.2d 1272, citing *United States v. Pugliese*, 805 F.2d 1117, 1123 [2nd Cir.1986], quoting *Townsend v. Burke*, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed. 1690 [1948] ). "Rather, 'to comply with due process ... the sentencing Court must assure itself that the information upon which it bases the sentence is reliable and accurate' " (*People v. Naranjo, id.*, at 1049, 659 N.Y.S.2d 826, 681 N.E.2d 1272 quoting *People v. Outley*, 80 N.Y.2d 702, 712, 594 N.Y.S.2d 683, 610 N.E.2d 356 [1993] ).

*Torres* involved a defendant who was allowed to enter drug treatment after pleading guilty to criminal sale of a controlled substance in the third degree, a B Felony. Less than a month after his placement, the defendant was discharged from the program for his involvement in a plan to sell drugs at the treatment facility and his participation in gang meetings. In determining that the defendant's discharge was justified, the trial court relied exclusively upon a single report from the program. The report contained references to overheard conversations in Spanish between the defendant and other residents. There was no physical evidence connecting the defendant to the alleged drug sales, and the only evidence directly implicating him were allegations that he had engaged in the use of gang-related hand signals. The sources of the information were unnamed informants. There was no evidence of corroboration within the body of the report, nor was any subsequently provided. On the basis of this report, and despite the defendant's request for "some sort of hearing, evidentiary hearing on this issue," the trial court determined that defendant breached a condition of his plea and sentenced him to four-and-a-half-to-nine years (*Torres*, 340 F.3d at 66).

In overturning the sentence, the Court of Appeals examined the report upon which the trial court based its determination. It \*524 noted that double and triple hearsay informed the decision of the treatment provider to discharge Torres from the program (*emphasis supplied* ). The Court of Appeals was specifically concerned about the speculative nature of the accusations leveled at Torres, which did not

specifically implicate him in any way with respect to \*\*297 the drug sales (*Torres*, 340 F.3d at 70). The *Torres* court observed,

“In the first place, it cannot be said that the required preponderance of the evidence standard in sentencing can be met with only a report of the type furnished by Phoenix House. As has been demonstrated, due process in sentencing requires at least a showing by a preponderance of evidence to resolve disputed factual issues. While it is true, as the learned district judge noted, that *Morrissey v. Brewer* permitted the use of ‘material that would not be admissible in an adversary criminal trial,’ 408 U.S. at 489, 92 S.Ct. 2593 [33 L.Ed.2d 484], a single report replete with multiple levels of hearsay and speculation cannot be said to suffice to make a showing by a preponderance of the evidence, even under the ‘flexible’ standard that is permitted.” *Torres*, *id.* at 71.<sup>FN6</sup>

FN6. The “flexible” standard cited by the court refers to the United States Supreme Court decision in *Morrissey v. Brewer*, which set forth the due process requirements in the context of a parole revocation proceeding, “the process should be flexible enough to consider evidence, including letters, affidavits, and other material that would not be admissible in an adversary criminal trial” (*Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 33 L.Ed.2d 484).

In *Torres*, the court stated that the standard of proof to resolve disputed facts in sentencing is a preponderance of the evidence. It did not, however, hold that this standard can only be met by holding an evidentiary hearing which includes the calling of witnesses subject to cross examination. Rather, so long as the court is provided with sufficient information which it determines is reliable and trustworthy, and that evidence reaches the threshold of a preponderance to resolve the disputed facts, then due process has been satisfied. A defendant’s compliance with the condition that he successfully complete a drug treatment program “can be readily established based upon factual information provided to the court ... provided that the court has assured itself that the factual information justifying its departure from the negotiated sentence is reliable and accurate” (*People v. Parker*, 271 A.D.2d 63, 711 N.Y.S.2d 656 [4th Dept.2000]). The *Torres* court set forth 5 elements, “unique” to the case, which compelled it to grant the writ of *habeas*

*corpus*:

\*525 “[1] total reliance by the trial court on a hearsay report that itself contains only uncorroborated statements of unnamed informants; [2] omission of any finding by the trial court as to the reliability of the informants or as to reasons for the non-disclosure of their identities, [3] failure of the trial court to conduct some kind of hearing, including provision for the examination of Torres under oath, [4] lack of preponderating evidence of Torres’ wrongdoing; and [5] the gross disparity between a sentence that would release Torres to society on a plea to a misdemeanor charge after completion of the Phoenix House program and the four-and-a-half-to-nine-year felony sentence to state prison that he received for violating the original sentence condition” (*Torres*, 340 F.3d at 72).

#### *Findings of Fact and Law*

In the instant case the initial information received from the treatment provider regarding defendant’s discharge was conclusory and uncorroborated. This court, guided by *Torres*, insisted that the treatment provider provide it with as many facts as possible, including the identities of the witnesses and investigators, the nature of the injuries and the defendant’s role in inflicting those injuries, as well as any evidence which could corroborate the allegations.\*\*298 The evidence ultimately presented to the court, taken in its entirety, satisfies the due process requirements set forth in *Torres*.

It is a sad and unfortunate reality that many defendants in residential treatment are unable to comply with the strict mandates required of living in a therapeutic community. It is not an uncommon occurrence for such defendants to be discharged by the facility. After an evaluation of the circumstances of discharge, in many cases, defendants are given a second chance either at the original program or in a new placement. It is a probability that the defendant’s initial discharge is considered prejudicial, and that should he be given a second chance, it is in all likelihood his last chance.

To require a full blown evidentiary hearing each time a defendant is discharged from a residential treatment program would place an undue and onerous burden on the court. If such a hearing was convened, how broad should the inquiry reach? Would residents be required to testify? If so, the court would have to take precautions to protect their identities in

compliance with federal confidentiality requirements, and in certain circumstances,\*526 it may have to provide them with counsel.<sup>FN7</sup> Will treatment counselors have to testify, disrupting the provision of services to others in need, in order to travel, frequently from outlying jurisdictions? Further, the amount of the court's time that would be consumed by such litigation would have a debilitating effect on its ability to adequately and efficiently hear all the cases on its already congested docket.

FN7. 42 U.S.C.A. 290dd-2.

Each of the five elements outlined by the *Torres* court, as set forth above, is satisfied in the instant case.

#### 1) *Reliance on Hearsay Reports*

Rather than relying on a single report which contains uncorroborated statements of unnamed informants, this court has considered the oral report of the People based on their interview of one of the investigating Phoenix House staff members as well as four separate written reports, the last of which, dated June 30, 2004, provided the names of the staff members who investigated the incident and described how the incident was brought to their attention. Further, it identified the names of the victims who were involved in the incident, the nature of the injuries they sustained, and the fact that these injuries were observed and thus corroborated by staff members. It also indicated that on the day of the incident one of the victims identified the defendant from a list of suspects and then identified him in person as one of the perpetrators of the attack.

Significantly, the *Torres* court had serious concerns whether there was a reliable basis for the treatment provider to have discharged Torres in that his discharge was based on double and triple hearsay. See, *Torres*, 340 F.3d at 70. In the instant case, a much more thorough internal investigation was conducted by Phoenix House. Each victim was interviewed separately on the date of the incident, and on that same date the defendant was identified as the perpetrator. The victims' visible injuries were treated and the defendant was confronted. The alibi which the defendant offered was investigated and found to be unconvincing. Based on the information of eyewitnesses, Phoenix House determined that discharge was appropriate.

#### 2) *The Reliability of the Informants and the Disclosure of Their Identities*

Given the specificity of the details provided about the gang initiation, the injuries \*\*299 sustained by the victims which were verified\*527 by Phoenix House staff, and the victims' candid statements against penal interest as to their one time gang affiliation, the court finds that the informants are reliable. With respect to the identity of the informants, defendant was provided the names of the Phoenix House staff investigators and the defendant was identified as the perpetrator by the one of the victims in a face-to-face encounter and thus is aware of his accuser's identity.

#### 3) *Defendant Was Given a Hearing of Sufficient Breadth*

As stated above, the court finds that when a defendant is discharged from a residential program and replacement in treatment is no longer being offered by either the People or the court, if imposition of the jail alternative is based solely on this discharge and the underlying facts which led to the discharge, then before the jail alternative may be imposed, if requested, a defendant is entitled to a hearing.<sup>FN8</sup> Such hearing does not necessarily require the calling of witnesses or an opportunity for the defendant to cross-examine. Rather, so long as the criteria of *Torres* and *Outley* are complied with, that there is sufficient reliable, trustworthy, and accurate evidence for the court to determine whether discharge was justified, based upon a preponderance of the evidence, due process is satisfied.

FN8. The court's holding incorporates the qualification set forth in footnote 2 above.

The court carefully reviewed the record in its entirety and the defendant was given an opportunity to provide sworn testimony. The court's review and detailed summary of the record in open court, the opportunity given to the defendant to provide sworn testimony, and the opportunity given for the defendant and his counsel to dispute the People's representations as well as the court's analysis of the record, constitutes a hearing of sufficient breadth to satisfy the due process requirements of *Torres* and is consistent with the New York State Court of Appeals holding in *Outley*.

4) *Defendant Engaged In Alleged Wrongdoing Based on a Preponderance of the Evidence*

“The burden of showing something by a ‘preponderance of the evidence’ simply requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence ...’ (Concrete Pipe and Products, Inc., 508 U.S. 602, 622, 113 S.Ct. 2264, 124 L.Ed.2d 539 [1993] quoting, In re Winship, 397 U.S. 358, 371-372, 90 S.Ct. 1068, 25 L.Ed.2d 368 [1970] ). The court finds that the information provided by Phoenix House, including\*528 the reports of the investigators and victims and the narrative of facts recited by the People, is reliable, trustworthy and accurate. The defendant’s sworn testimony was considered and found not to be persuasive. A preponderance of the evidence plainly supports the charge that the defendant assaulted two co-residents in furtherance of a gang initiation rite.

5) *Disparity In Sentence*

When the defendant pled guilty to a violent felony, burglary in the second degree, he accepted a weighty bargain: comply with treatment and be sentenced to three years probation or fail and be sentenced to six years state prison. Typically this is the model followed in most felony drug treatment courts, liberty if one succeeds and extended state prison if one fails. The theory underlying the model is that a lengthy jail alternative has a coercive effect to ensure compliance with drug treatment. While it is true Phoenix House has offered to re-admit the defendant, the \*\*300 People are not willing to re-offer treatment based upon the circumstances of his discharge. Their position is that an individual who furthers gang activity, activity which has a lethal hold on some of Brooklyn’s poorest and most vulnerable communities, is not deserving of a second chance at treatment. The court agrees. Insofar as the defendant has been afforded a hearing consistent with due process, sentencing may proceed.

N.Y.Sup.,2004.

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5 Misc.3d 517, 785 N.Y.S.2d 292, 2004 N.Y. Slip Op. 24354

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## **APPENDIX V**

### **The New York State Experience**

In 2007, the Office for Court Drug Treatment Programs and the Center for Court Innovation conducted a survey of New York's fifty-four family treatment court programs. The survey sought to gather basic data from the courts regarding their eligibility criteria, referral processes, and operational policies and procedures. Responses from 52 courts reflect both significant differences, (e.g. requirements and legal consequences for graduation, or methadone policies) and many common characteristics (e.g. frequent court appearances and drug testing). The results, which follow here, support the widely accepted premise that the drug court model does indeed include key components, but can be adapted to meet local preferences and resources. Reviewing how other programs approach their policies and procedures can serve two purposes. First, the data can provide a perspective or barometer for one's own program. Second, examination of other drug court operations can generate ideas about new directions or program adjustments for one's own court, such as eligibility criteria or graduation requirements.

### Team Members

FTC Judge	90%
Other Judges	2%
Court Attorney	44%
Coordinator	90%
Parent Attorney	77%
Attorney for the Child	90%
County Attorney	71%
Treatment	69%
Probation	27%
Parent Program	8%
CASA	25%
Case Manager	33%
CPS	69%
Referee	8%
Contract Agency Worker	13%
Contract Agency Attorney	13%
Other	44%

<b>Team Staffings</b>	96%
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### Eligible Case Types

Abuse Cases	31%
Neglect Cases	100%
Other Cases	15%

### Ineligible Reasons

Severe Mental Illness	75%
Prior CPS involvement	0%
Child not removed	2%
Child removed	0%
Multiple Active Petitions	6%
DV	31%
Respondent parent incarcerated	25%
Level of drug use does not meet threshold	40%
Both parents <i>not</i> respondents	19%
Both parents <i>are</i> respondents	0%
Other	27%

### How Respondent Entered FTC

Court-ordered	4%
Voluntary	71%
Both	25%

Required to make an admission	88%
Required to sign a contract	98%

### Rewards Regularly Used

Increase in visits	58%
Unsupervised visits	56%
Certificate	81%
Sober coins	44%
Applause	92%
Judicial praise	96%
Decrease treatment	38%
Phase advance	90%
Decrease hearings	77%
Gift cards/tickets	27%
Other	21%

### Sanctions Regularly Used

Decrease visits	25%
Lose unsupervised visits	40%
Community service	56%
Judicial admonishment	87%
Essay	92%
Incarceration	44%
Decrease phase	60%
Upgrade treatment	62%
Observe court	25%
Other	21%

### How Incarceration is Used

Not used	17%
Sanction without further legal proceedings	37%
In response to contempt finding	37%
In response to bench warrant	54%
Other	12%

### Graduation Requirements

Minimum months clean	88%
6 or less months	19%
7-9 months	10%
10 months	2%
11 months	2%
12 months	37%
18 months	8%
Community service	6%
Reunification	40%
Permanency plan	62%
Completed parenting program	58%

Completed drug treatment / In good standing	94%
High school degree / GED / vocational training	31%
Job / Sufficient means of support	75%
Fulfilled terms of order of disposition	77%
Other	13%

### **Consequences of Graduation**

Record Expunged	6%
1061 Dismissal	13%
Suspended Judgment Vacated	17%
Other	50%

### **Consequences of Unfavorable Discharge**

Direction to file TPR	19%
TPR filed	0%
Return to general Family Court calendar	75%
Other	0%

### **Criteria for Terminating Participation**

Voluntary surrender of parental rights	54%
Permanent TPR granted	46%
Criminal arrest	15%
Criminal conviction	13%
Incarceration	17%
New family court petition	10%
Continued noncompliance with case plan	92%
Continued drug use	63%
ASFA timeline runs out	23%
Other	17%