

DRUG COURT
POLICIES AND PROCEDURES MANUAL

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO



December 18, 2008

INTRODUCTION

In 1995, the San Francisco Adult Drug Court (SFDC) was established to more effectively address the increasing number of defendants cycling through the courts and jails who have substantial substance abuse problems. SFDC is a collaboration of the Superior Court, Department of Public Health (DPH), Office of the Public Defender (PD), Office of the District Attorney (DA), Sheriff's Department, and the Adult Probation Department (APD).

MISSION

The Drug Court of the Superior Court of California, County of San Francisco, seeks to connect criminal defendants who suffer from a substantial substance abuse problem to treatment services in the community in order to enhance public safety, reduce recidivism, and to find appropriate dispositions to the criminal charges that take into consideration the individual's substance abuse problem, mental and physical health, and the seriousness of the offense.

The Drug Court aims to accomplish its mission by:

- Mandating drug-addicted offenders to judicially supervised treatment as an alternative to incarceration;
- Providing rigorous case management to ensure that each participant complies with the treatment mandate;
- Helping all participants learn how to control their addictions so they can maintain long-term recovery and sobriety;
- Utilizing health education to reduce high-risk behaviors among offenders;
- Identifying and treating the health problems of high-risk offenders; and
- Assisting participants with their housing, vocational, educational, and employment needs.

GOALS

The primary goals of Drug Court include:

- Connecting criminal defendants who suffer from serious substance abuse to treatment services in the community.
- Finding appropriate dispositions to criminal charges, taking into consideration the facts of each case and prior criminal history.
- Ensuring public safety and reducing recidivism through appropriate substance abuse treatment and intensive supervision.
- Increasing collaboration between the court, counsel, city agencies, and community substance abuse and other health treatment services.

GUIDING PRINCIPLES

The Drug Court will engage participants in a structured environment that is supportive of success in recovery. The Drug Court will utilize individualized interventions, taking into consideration the person's addiction, mental health, and physical health challenges. The Drug Court will seek to utilize the full range of incentives and the strategic use of sanctions to encourage the success of participants.

The Drug Court will make every effort to identify all reasonably appropriate treatment options, and encourage participants to continue their engagement in the treatment plan.

The Ten Key Components and the San Francisco Drug Court

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights. The DA and PD Offices will devote full-time staff to work on the DC. Attorneys develop individual plans that promote safety and due process for all clients.
3. Eligible participants are identified early and promptly placed in the program. The court refers defendants to the SFDC treatment center for immediate assessment and placement in treatment programs.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services. Participants engage in treatment, largely provided by the city's Department of Public Health for physical, mental health and substance abuse services, and the Human Services Agency for transitional housing or shelter services.
5. Abstinence is monitored by frequent alcohol and other drug testing. A series of timely progress reports coupled with court appearances encourage compliance with treatment protocols and judicial mandates. The DC coordinates with treatment providers who administer random and frequent testing.
6. A coordinated strategy governs drug court responses to participant compliance. Positive performance results in positive affirmation from judicial officials, reduced supervision and eventual graduation from the DC. Sanctions, when needed, are imposed based on their therapeutic value.
7. Ongoing judicial interaction with each drug court participant is essential. Depending on their treatment stage and level of compliance, DC participants will appear before the judge weekly, bi-weekly, or monthly.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness. The DC utilizes information technology to manage and analyze data and client referral needs. A process evaluation will begin at the full implementation stage.
9. Promote training and education for effective drug court planning, implementation, and operation. Staff will meet benchmarks by continuing to educate themselves through regional and national training conferences, studies and research efforts.
10. Forges partnerships among drug courts, public agencies, and community-based organizations to generate local support and enhance drug court program effectiveness. The collaborative structure of the DC requires constant communication among the team members and other collaborative courts to share information and to enhance DC effectiveness.

ELIGIBILITY AND SUITABILITY FOR DRUG COURT

Eligibility is a legal determination based on the nature and type of charges filed against a defendant as well as that defendant's prior criminal history. Pursuant to existing MOU guidelines (see Appendix), the District Attorney makes all eligibility decisions. The most significant component of eligibility is a demonstrated substantial substance abuse problem associated with criminal conduct and an effort to balance the concern for public safety.

Unlike eligibility, **suitability** is a more comprehensive assessment. The Court in consultation with the Drug Court team determines suitability. The Court will consider a Drug Court Treatment Center (DCTC) assessment, a criminal history proffered by the District Attorney, Police Department and the Adult Probation Department, and any other relevant information. Suitability measures, among other considerations, the likelihood that an offender will participate in and complete the DC treatment program. Suitability is determined based upon a person's level of addiction. Clinical team members will design a treatment plan based on individual need.

An individual may be determined to be **unsuitable** for DC participation when that person is likely to pose a danger to the physical and emotional well-being and recovery efforts of other participants.

The Court, with input from the defense attorney, district attorney and probation, will make an early legal determination of **unsuitability** if the defendant is unlikely to participate in residential or intensive outpatient treatment services under the supervision of the DC.

REFERRALS TO DRUG COURT

(Note: see MOU Guidelines in Appendix for more information)

The District Attorney must screen all cases for potential DC referrals. At the time of charging, the charging Assistant District Attorney (ADA) will conduct a preliminary review for Drug Court eligibility. Specifically, the ADA will determine if the new offense, or criminal history, demonstrates a substantial substance abuse problem for this defendant. Defendants charged with any of the statutory drug possession offenses will be referred on a pre-plea basis assuming they meet the other criteria listed herein. For all defendants charged with non-statutory Drug Court offenses, there must exist at the time of arrest evidence of an underlying serious substance abuse problem. The charging ADA will note in the DA's file whether the defendant is preliminarily eligible for Drug Court.

When a defendant is determined by the District Attorney to be ineligible under these guidelines, defense counsel may, on a case-by-case basis, petition the managing attorney of the Narcotics or Preliminary Hearing units to waive the criteria that rendered the defendant ineligible. Defense counsel is invited to provide any other information relevant to the defendant's underlying serious substance abuse problem to the Managing Attorneys of the Narcotics or Preliminary Hearing units for their review.

Following the District Attorney's review, the originating court will set eligible cases in Department 18 for entry and a suitability finding. Those defendants charged with drug sales offenses pursuant to Health & Safety Code sections 11352, 11355, 11379 and 11360, offenses that are found to be eligible for Drug Court, will enter a Deferred Entry of Judgment (DEJ) within 6 weeks of the first scheduled appearance in Department 18, unless there appears good cause to delay the DEJ. For these cases, the DEJ should be entered as soon as is appropriate and possible.

If not otherwise agreed to by the District Attorney, no co-defendant will be found eligible for DC without a DEJ being entered prior to DC referral.

Eligible and suitable defendants will continue in treatment under the supervision of a DCTC case manager. Unsuitable defendants will return to their originating department for further criminal proceedings.

TERMINATION FROM DRUG COURT

Since eligibility for Drug Court participation is not a right of the defendant, the Court may terminate a participant at any time.

TYPES OF TERMINATION

Self-Termination: A defendant may self-terminate from Drug Court at any time.

Court Termination: The Court, at the request of a Drug Court team member, or on its own motion, may terminate a Drug Court defendant. A violation of treatment obligations may be grounds for termination of a defendant from Drug Court participation. The seriousness of the treatment violation, repeated failures to comply when escalating sanctions are not successful, or limitation of alternative treatment options, may result in court termination. Violation of drug testing rules, in particular, the defendant's obligation not to tamper with urine samples, is presumptive grounds for termination from Drug Court participation.

- Re-entry following court termination will require a new eligibility determination by the District Attorney, and may require a new assessment by the DCTC.
- The Court may, in its discretion, refuse re-entry to any defendant. Those reasons will be stated on the record.
- At the time of court termination, the Court, in its discretion and with advice from the Drug Court team, may establish conditions for re-entry. Any re-entry conditions will be clearly noted in the case file and forwarded to counsel.

GROUND FOR TERMINATION

New Allegation of a Felony: The Court shall terminate a Drug Court defendant on motion of the District Attorney if the defendant is arrested and charged with a new felony in any jurisdiction any time after entry into Drug Court unless the new felony is

one of the statutory drug possession charges listed in the MOU. The Court may, in its discretion, deny a motion for termination if the sole basis for the motion is the defendant's being arrested and charged with a violation of a statutory drug possession offense.

New Allegation of a Violent Misdemeanor, or Felony: The court may terminate a Drug Court defendant on motion of the District Attorney if the defendant is arrested and charged with a violent misdemeanor or felony in any jurisdiction.

New Allegation of a Domestic Violence Offense: The Court shall terminate a Drug Court defendant on motion of the District Attorney if the defendant is arrested and charged with a domestic violence offense in any jurisdiction.

Violation of a Stay Away Order: Violation of a stay away order issued pursuant to Section 4.2 herein by a defendant in Drug Court may result in termination from Drug Court on motion of the District Attorney. Alternately, the Court may impose a period of incarceration, or other conditions, as a condition of further participation in Drug Court.

Administrative Termination: A fugitive defendant will be administratively terminated if a bench warrant remains outstanding thirty days after its issue.

Other Reasons for Termination: The Court may terminate a defendant based on prior failures in the treatment plan, lack of appropriate treatment services, or other reasons related to the defendant's compliance with treatment obligations.

SUCCESSFUL COMPLETION OF DRUG COURT

Graduation Outcome of Criminal Charges: Upon satisfaction of the Drug Court mandate and with the agreement of the Drug Court team, a defendant will graduate from the San Francisco Drug Court.

- Pre-Plea cases will be dismissed on motion of the District Attorney pursuant to Penal Code Section 1000.5
- Deferred Entry of Judgment Cases
 - Defendant will be allowed to withdraw the previously entered plea of guilty
 - Case will be dismissed on motion of the District Attorney pursuant to Penal Code Section 1000.3
- Motions to Revoke Probation Cases
 - Probation will be completed and successfully terminated, unless there is a specific agreement to the contrary, or additional terms and conditions are not completed. If there remains outstanding restitution, the probation may remain in effect, or a civil judgment may be entered, in the discretion of the court. If appropriate, a motion under Penal Code Section 1203.4 will be granted. The period of probation will continue to run while the defendant is

in Drug Court and will be extended only to allow for completion of the Drug Court program.

Graduation Criteria: The following factors may be considered by the Drug Court in determining whether a Drug Court defendant is eligible for graduation.

- Minimum 6-12 months Drug Court participation;
- A substantial period of abstinence from alcohol and all illegal substances as verified by urine analysis;
- Successful completion of a primary treatment program;
- Strong recovery support system and resources;
- Satisfaction of victim restitution, which, if necessary, may be satisfied by a confession of judgment; and
- Completion of a Graduate Discharge Plan as designed by the DCTC.

Extraordinary Completion: The Court, with the agreement of the Drug Court team, may grant a successful completion of the program without a formal graduation ceremony under the following circumstances:

- A defendant's terminal illness has caused his or her health to deteriorate so severely that continued treatment compliance is impossible and there is no likelihood of future criminal conduct.
- A defendant has successfully fulfilled the graduation requirements and demonstrates a compelling reason for early dismissal prior to completing 6 months in the program.
- A defendant who represents no public safety risk and no propensity for further criminal conduct and suffers from a severe mental illness that, having been diagnosed after Drug Court entry or progressed so substantially as to preclude further treatment compliance, provided that the Defendant has successfully engaged in treatment for at least 120 non-custody days at some time prior to dismissal.

Graduation: A ceremony and reception is held to commemorate participants who have met the graduation requirements. Several months before graduation, the DC team begins working with the client regarding transition to graduate status. This includes the preparation of an Exit Plan (what was learned, plans to avoid relapse, and future goals) attendance at the Exit Seminar, and participation in the Alumni Relapse Prevention program. The goal for each participant is to have in place a relapse prevention plan, stable housing, and a steady source of income.

ADDITIONAL PROVISIONS FOR PARTICIPATION

Public Safety and Treatment Orders: The Court on its own motion, or that of the District Attorney, may impose any legally available condition appropriate to a criminal proceeding during a defendant's Drug Court participation to ensure public safety, or to promote successful completion of the program.

Protective Orders: The Court may issue a stay away order from the location of a defendant's arrest during the pendency of Drug Court proceedings. Where a stay-away order is required, the District Attorney shall prepare a written order to be filed and served on the Defendant.

THE TEAM

JUDGE

The DC Judge heads the collaborative treatment team. In this capacity, the Judge regularly reviews case status reports detailing each participant's compliance with the treatment plan. During regular court appearances, the Judge administers graduated sanctions and incentives to increase each participant's accountability, and to enhance the likelihood of long-term treatment compliance.

DISTRICT ATTORNEY

The role of the District Attorney in DC differs from the traditional adjudication process. In DC, all parties and counsel share the common goal of helping participants successfully comply with treatment in a community setting. The prosecutor reviews new cases concerning eligibility pursuant to the guidelines herein. The eligibility assessment includes a review of the defendant's criminal history, consultation with victims, legal eligibility, and appropriate dispositions upon the defendant's entry into DC.

As part of a collaborative team with the Judge, defense attorney, and clinical staff, the prosecutor monitors participant progress and can make recommendations regarding incentives and sanctions. If a participant is re-arrested, the prosecutor investigates the new case and assesses the appropriateness of continued participation.

The District Attorney is also responsible for assisting the DC team regarding law enforcement, probation and parole agencies to insure the appropriateness of continued participation in the DC program and the coordination with these agencies on behalf of a defendant.

PUBLIC DEFENDER/DEFENSE ATTORNEY

The Public Defender, or defense counsel, represents and counsels the defendant in all court proceedings and is mindful of the defendant's constitutional rights as a criminal defendant and the defendant's civil rights as a substance abuse and mental health service consumer. The Public Defender, or defense counsel, uses a non-adversarial approach with a focus on protecting defendants' constitutional rights and their success in treatment to promote health and well-being. The Public Defender, or defense attorney, seeks to find treatment solutions for the defendant that will minimize the defendant's exposure to incarceration, reduce the risk of recidivism, and mitigate the consequence of a criminal conviction.

DRUG COURT TREATMENT CENTER

The Department of Public Health (DPH) operates the Drug Court Treatment Center (DCTC). Case managers of the DCTC have considerable substance abuse as well as mental health expertise.

DC clients receive comprehensive substance abuse services (including assessment, individual, family and group therapy, crisis intervention, and medication management), assertive case management, vocational training, and employment services, all of which are tailored to individual needs. This approach is an evidence-based practice designed to assist clients in avoiding criminal recidivism, and reduce harm from substance abuse while recovering from substance abuse, mental and other physical illness.

The DCTC Program Director, or designee, represents the Department of Public Health for DC. The Program Director also manages the daily clinical operations, including case flow, treatment planning, referrals to suitable treatment providers, and participant progress. The Program Director provides reports and clinical recommendations to the Court.

COMMUNITY TREATMENT PROVIDERS

DC maintains an extensive network of community-based substance abuse and mental health treatment providers. Services primarily include residential facilities and intensive outpatient case management services. The DC team refers participants to specific programs based on their clinical need, the program's ability to comply with the Court's reporting requirements, and the program's capacity to provide clinically and culturally appropriate services (e.g. mental/ physical health, language, etc.). For outpatient services, the DC clinical staff will attempt to refer participants to a provider located near their community. The clinical staff maintains close communication with treatment providers who provide input to the Court on a participant's progress in treatment.

ADULT PROBATION DEPARTMENT

Two specialized Probation Officers are assigned to Drug Court with an exclusive Drug Court caseload. These Probation Officers work closely with the drug court clientele. The clients on their caseload consist of those on probation and pre-adjudication. The Probation Officers are responsible for ensuring compliance with the terms and conditions of probation for those participants on probation, public safety, monitoring and modifying probation expiration dates, advancing Drug Court participants on calendar, documenting each Drug Court participant's disposition after each Court appearance, establishing contact with victims about restitution and providing this information to the Court, and working closely with the Drug Court team, to enhance the likelihood of positive outcomes for each Drug Court participant.

OFFICE OF COLLABORATIVE JUSTICE PROGRAMS, SUPERIOR COURT

The overall goal of the Office of Collaborative Justice Programs is to enhance the efficiency and sustainability of collaborative justice programs as well as to increase public knowledge about problem-solving courts and to strengthen inter-organizational relations. Office staff assists with the day-to-day court operations of all collaborative court programs, including DC. They serve as a liaison with other team agencies and community programs and are responsible for data collection and analysis, grant writing, resource development, and public outreach and information.

CASE PROCESSING

CASE IDENTIFICATION AND REFERRAL

As indicated above, the identification of cases for DC is made by the District Attorney's Office. Cases may also be referred by the defendant's attorney to the District Attorney for reconsideration of referral.

The Court, with input from the defense attorney, district attorney and probation, will make an early legal determination of the likelihood of the defendant being able to participate in residential or intensive outpatient treatment services under the supervision of the DCTC and the DC team.

SCREENING PROCESS

The first time a defendant appears in DC, the DC team reviews the case and determines whether he or she appears suitable to participate. At the initial court appearance, the DC judicial officers will interview the defendant to determine if a substantial substance abuse problem exists, and assess the defendant's determination to live free of drugs. Other members of the DC team may assist in this initial screening of the defendant.

If initially determined to be suitable for participation, the defendant will be referred to the DCTC to conduct a full assessment of suitability. This assessment will include an ASI evaluation. A suitability determination will include a minimum of a three (3) for substance abuse on the ASI. The DCTC will recommend a comprehensive treatment plan that is individualized for each participant, and will address substance abuse, mental health, physical health, education, employment and housing needs.

INITIAL PROGRAM REQUIREMENTS

For all defendants entering DC, a full assessment will be ordered. Defendants who are in-custody will remain so pending assessment. For those defendants who are out of custody, they will be expected to immediately participate in Intensive Outpatient Treatment (IOP) each weekday from 9:00 a.m. to noon, plus attendance at a minimum of three community meetings (typically NA or AA) per week. As an additional treatment obligation, each participant is expected to provide urinalysis and/or breath testing on Mondays, Wednesdays and Fridays.

Out-of-custody defendants will be ordered to return for a weekly check-in pending the presentation of the assessment.

The assessment is generally scheduled three (3) weeks from the initial appearance in DC.

TEAM DECISION MAKING

Prior to court, DC has a clinical conference for all cases on the calendar that afternoon. The DCTC team presents a clinical report from the service provider for each case. This report identifies compliance and non-compliance for all treatment conditions, and

recommends appropriate incentives and sanctions appropriate to the individual. It is the goal of DC to identify all targeted behavior, and provide appropriate support, or escalating sanctions, to support recovery efforts.

The determinations of appropriate incentives or sanctions, or changes to treatment plans are typically made by consensus. The general team approach is non-adversarial. Ultimately, the court will make the final determination in each situation.

CONFIDENTIALITY

Federal and State laws of confidentiality govern the DC program. Disclosure of information received in the course of treatment is strictly prohibited unless a court order “for good cause” is issued. Defendants must authorize the disclosure to the Court of information regarding their diagnosis, attendance, scope of treatment, treatment progress and quality of participation, and termination or completion of treatment. This consent shall include authorization to conduct research of treatment success, costs, and recidivism rates for participants. All parties and counsel attending the staffing are obligated to maintain confidentiality of all client information and discussions.

STATUS HEARINGS

Status hearings are a central feature of the DC. Participants appear regularly before the Judge who reviews progress. During the status hearing, the Court is provided with any additional treatment status reports and other information from a variety of sources. The client is expected to bring in his community meeting attendance sheets or other proof of treatment compliance. Clients interact directly with the Judge during status hearings.

TREATMENT PLANS

Treatment plans are flexible and adjusted based on a client’s individual needs and goals. They take into account the client’s baseline functioning, individual capabilities, and holistic needs including addiction level, physical, mental, and spiritual interests. Treatment plans are altered to reflect the client’s progress.

INCENTIVES AND SANCTIONS

Incentives and sanctions are used by the Court to motivate each client’s compliance with the recommended treatment plan. If the client is treatment compliant, he or she receives encouragement and incentives for continuing to do well. If the client is not compliant, sanctions may include a reprimand or increased intensity of treatment to enforce the importance of compliance with court orders.

INCENTIVES

Behavioral approaches to drug treatment have been successfully used for over thirty years. However, the use of incentives as a behavioral tool has proven to be more complicated (see Appendix). There are a host of studies about what rewards should be utilized and when.¹ Incentives are used to assist the defendant in achieving treatment goals. The Judge determines incentives based upon recommendations from the DC team. Examples of incentives include:

- Verbal Reinforcement from the Court
- Tokens (e.g. movie tickets)
- Applause
- Certificates of Achievement
- Group Completion
- Less Restrictive Treatment
- Reduced Frequency of Court Appearances
- Graduation

In theory, incentives are known to powerfully compel compliance and success in case outcomes. Early and significant incentives have the most effect on participants and ultimate outcomes for success. These incentives are intended to spotlight the desired appropriate compliance with treatment requirements, and to build trust that the DC team supports the individual in reaching the participant's goal of being drug-free and successful.

An example of our existing Incentive Program is the fishbowl. The theory is that drug addicts are risk-takers, and the fishbowl involves reward for good behavior and the "risk" of trying to win a gift certificate. For those individuals who are treatment compliance and drug free, incentives are provided. The right to "go fishing" is given for a month of outpatient treatment compliance and drug testing. The DC uses a fishbowl filled with folded post-its. Most rewards are candy with gift certificate awards included in the fishbowl.

SANCTIONS

Sanctions are used to assist the client in achieving treatment goals. At any time, with or without a sanction, a client may be assessed for a higher level of treatment, additional support meetings, or more intensive case management. The judge imposes sanctions after hearing from the client, counsel, and the DC team.

Examples of sanctions include:

- Admonishment or Reprimand From the Court
- Volunteer Community Service Work, or SWAP (Sheriff's Work Alternative Program)
- Assignments/Written Essays
- Increased Intensity of Treatment

¹ Greg Little, Ed.D, NCP, *The Carrot or the Stick in America's Drug Courts? A Review of Recent Scientific Research on Sanctions and Incentives with Implications on Drug Court Effectiveness*, National Drug Court Institute, 2002.

- Increased Frequency of Court Appearances
- Bench Warrant
- Termination of DC and Return to Criminal Court for Adjudication

By design, the sanction should be appropriate for the behavior, the individual circumstances, and the severity of addiction, mental health or physical health condition. Sanctions should tend to be escalating in intervention. For example, the inability of the individual to remain drug-free should result in revisions to the treatment plan, increased number of community meetings, more frequent court appearances, essay assignments, community detoxification referrals, and ultimately custodial detoxification orders. When at all possible, the custodial detoxification should be no more than 5 days. If the participant has failed to make progress with requirements of the treatment plan, a participant may remain in custody until a residential treatment placement is available.

While increased treatment may be a sanction, such a change should not be presented as a negative event. If the treatment plan is inadequate to meet the client's needs the Court must work to offer a better treatment plan, including a move from a community setting into a residential treatment program. If no reasonable treatment options are available to address the defendant's addiction, or other personal needs, or to protect the safety of others, the court has the discretion to terminate DC and return the individual for traditional criminal court adjudication.

APPENDICES

- I. MOU of July 2005
- II. Consent Form
- III. NADCP Article on Sanctions and Incentives
- IV. Confidentiality Release Forms
- V. AOC Cost Study November 2008
- VI. January 15, 2005 Recidivism Study