



NADCP

National Association of
Drug Court Professionals

Prosecutor and Defense Counsel

Working Effectively on the Treatment Court Team

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If not us, then who?



In treatment courts, our roles provide the opportunity for a unique collaboration to effectuate positive change within the criminal justice system.

While prosecutors and defense counsel may disagree on individual participants and legal matters, we have the common goal of ensuring that the treatment court produces the best possible outcomes.

If not us, then who?

The Prosecutor and the Defense Counsel also have the shared goals of reduced recidivism and increased community safety.

Effective collaboration between the prosecutor and the defense counsel is vital for ensuring the treatment court operates effectively, avoids pitfalls, identifies areas needing improvement, and provides equal opportunities to participate.



The ABA Criminal Justice Standards

Standard 3-1.2 Functions and Duties of the Prosecutor:

(e) The prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases or classes of cases.....

Standard 4-1.2 Functions and Duties of Defense Counsel:

(f) Defense counsel should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases, and communicate them to the client.

The ABA Criminal Justice Standards

Standard 3-1.2 Functions and Duties of the Prosecutor:

...The prosecutor's office should be available to assist community efforts addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

Standard 4-1.2 Functions and Duties of Defense Counsel:

...Defense counsel should be available to assist other groups in the community in addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

The ABA Criminal Justice Standards

Standard 3-1.2 Functions and Duties of the Prosecutor:

(f) The prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice...

Standard 4-1.2 Functions and Duties of Defense Counsel:

(e) Defense counsel should seek to reform and improve the administration of criminal justice...

Areas for Effective Collaboration

- **Target Population**
 - **Program Structure**
 - **Eligibility Criteria**
 - **Entry Process**
 - **Common Legal Issues**
 - **Drug Testing Issues**
- **Effective Communication**
 - **Crisis Management**
 - **Equity and Inclusion**
 - **Written Materials**
 - **Sustainability**
 - **Ongoing Team Training**



Target Population

- **Examine data of justice population**
 - Who's on community supervision?
 - Who's in jail?
 - What offenses, other than drug possession, are being committed because of substance use or mental health issues?
 - Felonies? Misdemeanors? DWIs? Probation Violators?

Are we targeting the population that will generate the greatest impact in our community?



Who are we bringing into our treatment courts?

	High Risk	Low Risk
High Needs (dependent)	<u>Standard Track</u> Accountability, treatment, and habilitation	<u>Treatment Track</u> Treatment and habilitation
Low Needs (abuse)	<u>Supervision Track</u> Accountability and habilitation	<u>Diversion Track</u> Secondary prevention

Target Population



Risk Level

Reminder

“Risk” refers to the likelihood that the offender will not succeed adequately on standard supervision and will continue to engage in the same behavior that got him or her into the trouble in the first place.

*Risk does **NOT** refer to danger to the community.
Risk levels need to be separated.*



Clinical Need

Reminder

“Need” is whether the client needs treatment and what kind of treatment he/she needs.

The higher the need level, the more intensive the treatment or rehabilitation services should be, and vice versa.

Eight Central Factors of Criminal Behavior

- **History of Antisocial Behavior**
- **History of Antisocial Personality Patterns**
- **Antisocial Cognitions**
- **Antisocial Associates**

Known as the Big Four. These are most likely to reduce recidivism if directly addressed.

- **Family/Marital Circumstances**
- **School/ Work**
- **Leisure/Recreation**
- **Substance Use**

Treatment Courts usually focus on these four factors.

The Psychology of Criminal Conduct, Bonta & Andrews, 6th edition.



Program Structure

- **Examine Program Structure**
 - Pre-Plea/Diversion
 - Post-Plea
 - Deferred Sentencing
 - Probation
 - Probation Revocation
 - Re-Entry
 - Mixed Models

What's the legal incentive to participate?



Eligibility Criteria

Eligibility Criteria – written and objective characteristics that define who within your offender population may be admitted to treatment court.

- **Legal Eligibility**
- **Risk Level**
- **Clinical Need**

No voting!

Legal Eligibility

- **Only Drug Possession Cases?**
 - Greater effects with theft and property offenders
 - Often not jail or prison bound
- **Dealers?**
 - Do just as well in treatment court.
- **Violent Offenders?**
 - Do just as well in treatment court.

Barring legal prohibitions those charged with dealing or violent histories should not be excluded automatically



Keep in mind....

Prosecutors must accept that defense attorneys will advocate for the admission of probation violators and other aggravating cases with clients who have substantial records.

Defense attorneys must accept that prosecutors may be required to consider the wishes of victims and the community.



Fact Sheets

Targeting the Right Participants:

<http://www.ndci.org/wp-content/uploads/2019/04/Targeting-The-Right-Participants.pdf>

Alternative Tracks in Drug Courts:

<http://www.ndci.org/resources/alternative-tracks-in-adult-drug-courts/>

Selecting and Using Risk and Need Assessments:

<http://www.ndci.org/resources/selecting-and-using-risk-and-need-assessments/>



Entry Process

What process gets clients into the treatment court?

- **Referral/Application**
 - Who and When?
- **Legal Screening**
 - Who and When?
- **Risk and Clinical Assessments**
 - Who and When?

Entry Process



What barriers must be overcome along the way?

- Court processes or procedures?
- Lack of buy in by defense counsel?
- Limited resources?

Common Legal Issues

- **Confidentiality**
 - 42 CFR Part 2
 - HIPPA
 - Staffings
 - Open Courtrooms
 - Law Enforcement
- **Ex Parte Communication**
- **Judicial fraternization and impartiality**
- **Due Process**
- **First Amendment**
- **Probation Restrictions**
- **Preventive Detention**
- **Jail Sanctions**
- **Medication Assisted Treatment**
- **Medical Marijuana**



Treatment Courts and MAT

- **The Dept. of Justice is actively investigating treatment courts in violation of American Disabilities Act (ADA) by prohibiting or limiting the use of medication to treat Opioid Use Disorder.**
- **Courts denying MAT or requiring discontinuance as condition of program completion are creating liability.**

NDCI Caselaw Resource

<https://www.ndci.org/law-2-2/>



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LAW

Legal Guidance from the Experts

NDCI understands how important it is for treatment court professionals to remain informed about the latest statutes, case authority and how treatment courts are impacted. We maintain an up-to-date webliography of the relevant case law pertaining to treatment court operations to help guide court professionals as they navigate the ever-shifting legal landscape.

Constitutional and Other Legal Issues in Drug Court:

Hon. William G. Meyer (ret.)

Senior Judicial Fellow

National Drug Court Institute

Updated: June 7, 2018

Click on each section to see relevant cases.

- ⬆ I. Cases holding that mandating individual to Alcoholics Anonymous/Narcotics Anonymous (AA/NA) is a violation of the First Amendment
- ⬆ II. Cases discussing providing a secular alternative as an option will validate a referral to religious based programs like AA/NA as a component of treatment
- ⬆ III. Cases holding that attendance at AA/NA does not establish a cleric-congregant relationship subject to protection by an evidentiary privilege
- ⬆ IV. Cases holding that place restrictions on the Drug Court participant are constitutional, when reasonably related to rehabilitative needs.

Medical Marijuana Fact Sheet

https://www.ndci.org/wp-content/uploads/2022/12/Med_Marijuana_FAQ.pdf



FREQUENTLY ASKED QUESTIONS:

Medical Marijuana and Treatment Courts

October 2022

The legalization of medical marijuana raises important questions for treatment courts. To what extent do treatment courts have the authority to restrict a participant's use of medical marijuana? How should treatment courts supervise participants who are permitted to use medical marijuana? This FAQ document explores the legal status of medical marijuana in the United States and the impact of medical marijuana legalization on treatment courts.¹

1

Marijuana is an illegal drug under federal law. So why is it an issue for treatment courts?

Marijuana is classified as a Schedule I drug under the federal Controlled Substances Act,² meaning it is regarded as having high potential for abuse and no accepted medical use.³ As a result, it is unlawful to possess or use marijuana under federal law.⁴ In 2006, the U.S. Supreme Court confirmed that the Controlled Substances Act prohibits marijuana possession despite state laws to the contrary. The Court expressly concluded that the federal prohibition on marijuana possession contains no exception for the use of medical marijuana in compliance with state laws.⁵

Despite federal law, however, states have continued

of Justice has declined to enforce the Controlled Substances Act when a person buys, sells, or possesses medical marijuana in accordance with state law.⁶ Since 2014, Congress has reinforced this arrangement by defunding the Department of Justice's prosecution of the exchange of medical marijuana in cases "where it is legal under state law."⁷

In sum, marijuana remains illegal under federal law, but federal authorities forgo prosecution when the use of marijuana is legal under state law. Therefore, treatment courts must consider state law and determine how it affects the rights of participants

Drug Testing



Characteristics of a Good Drug Test:

- **Scientifically Valid**
 - Employs proven methods & techniques and accepted by scientific community
- **Legally Defensible**
 - Able to withstand challenge of legal review
- **Therapeutically Beneficial**
 - Provides accurate profile of client's drug use and rapid results for appropriate response.

Best Practices Review: Drug & Alcohol Testing, Paul Carey , MS (2020)

Drug Testing Fact Sheets



Urine Concentrations:

[Urine Drug Concentrations.pdf](#)

Creatinine:

[https://www.ndci.org/wp-content/uploads/2021/08/Use-of-Urine-Creatinine Paul-Cary Aug-2021.pdf](https://www.ndci.org/wp-content/uploads/2021/08/Use-of-Urine-Creatinine-Paul-Cary-Aug-2021.pdf)

THC Window Detection:

[https://www.ndci.org/wp-content/uploads/THC Detection Window 0.pdf](https://www.ndci.org/wp-content/uploads/THC-Detection-Window-0.pdf)

Effective Communication

Staffing:

Yes!

- Ensure Inclusiveness
- Ensure everyone “stays in their own lanes”

No!

- Regularly engage in adversarial behavior
- “Voting” on client eligibility



Effective Communication

Email Communication

Yes!

- For updates on clients
- Arrange special staffing sessions
- Keep team updated on any changes

No!

- Arguing Positions
- Sarcasm





Crisis Management

Crisis Response Plan:

- Suicide, Overdose, Re-offense, Relapse
- Media Plan
- Proactive Planning rather than Reactive

NADCP Guide:

[Managing the message during a crisis: A guide to planning and implementing your response \(wicourts.gov\)](https://www.wicourts.gov)



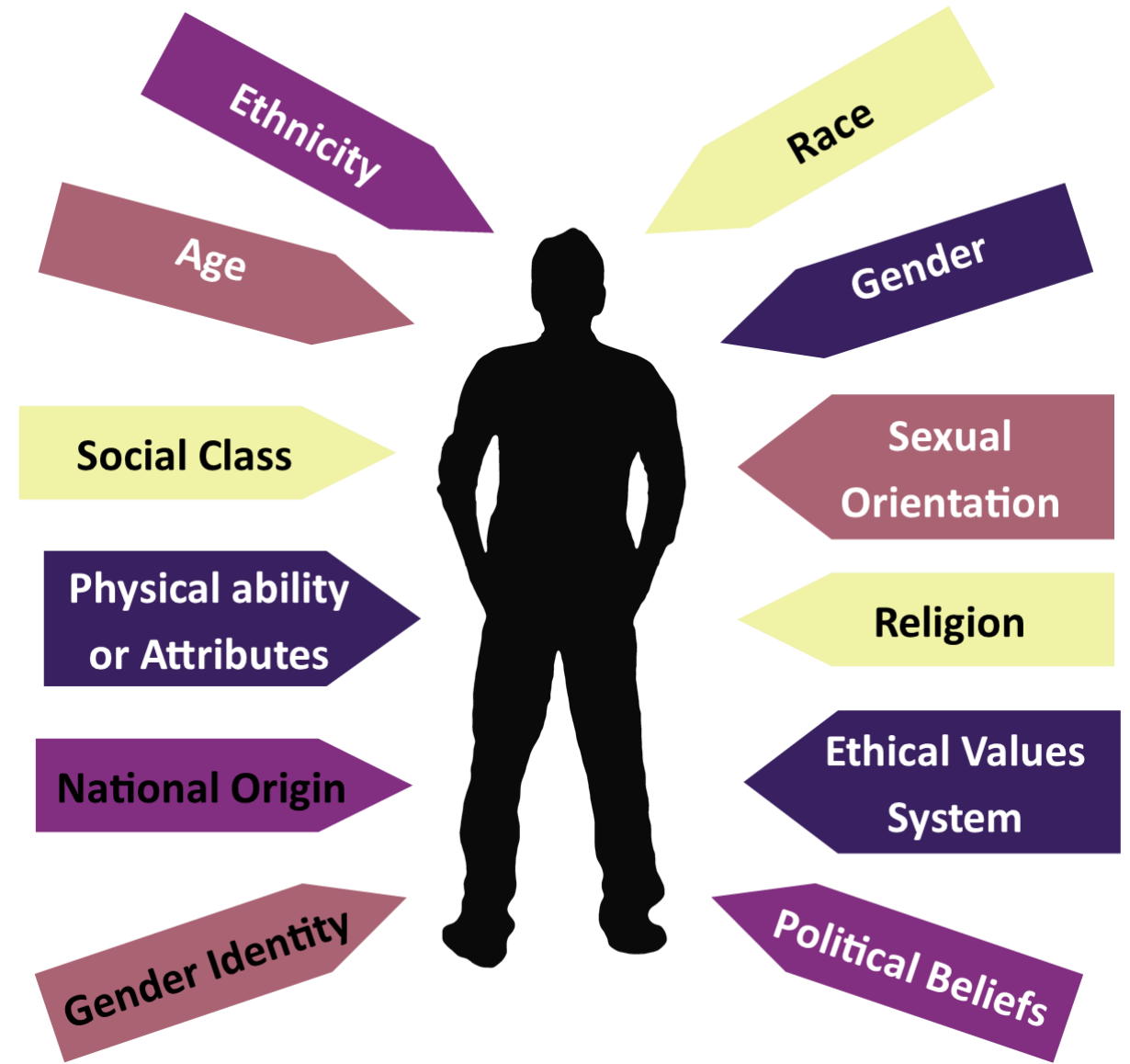
Standard II: Equity and Inclusion

Regularly Review Data:

- Referrals
- Admissions
- Exits
 - Absconders
 - Voluntary withdrawals
 - Involuntary Termination
 - Successful Completion

Diversity is a Fact

- Diversity is the range of human differences
- Inclusion is an act and takes practice
- Equity is the goal





Equity and Inclusion

Regularly Review Criteria:

- Legal Criteria
- Program Fees
- Transportation
- Housing
- Sobriety

Intent vs. Impact



Equity & Inclusion



EQUIVALENT ACCESS
ASSESSMENT *and* TOOLKIT

Adult Drug Court
Best Practice Standard II



Equity and Inclusion Resources

Journal of Advancing Justice:

<https://www.ndci.org/resource/publications/journal-for-advancing-justice/>

Equity and Inclusion Toolkit:

<https://www.ndci.org/wp-content/uploads/2019/02/Equity-and-Inclusion-Toolkit.pdf>

Regularly Review Program's Written Materials



- **Policy and Procedures Manual**
 - Updated and Accurate?
- **Participants Manual**
 - Understandable resource?
- **Participants Contract**
 - Explains expectations and consequences?
- **Memorandums of Understanding**
 - Identifies specific responsibilities?

Sample Documents

<https://www.ndci.org/resource/sample-documents/>



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SAMPLE DOCUMENTS

NADCP developed the following template documents to help programs apply the skills taught at training. The documents below are free to use and should be adapted to your program's policy and procedures based on the ***Adult Drug Court Best Practice Standards***

Virtual Reporting Form

This form is a tool to use while courts are meeting clients through virtual reporting.

[Download](#)

Policy & Procedure

This document for new courts and existing courts lays out the procedures for operation of the program.

[Download](#)

Phase Requirements

This is a tool used to set expectations by explaining requirements for each phase of the program.

[Download](#)

Memorandum of Understanding

These are written agreements with other agencies or organizations for services and coordination.

[Download](#)

Participant Handbook Guide

This guide provides the framework for creating a user-friendly, effective participant handbook.

[Download](#)

Exit Interview

Interviewing participants when they leave the program can often provide valuable insight into effectiveness.

[Download](#)

Sustainability

Contribute to the program's efforts in community education and local resources acquisition.

- *Speak to Community Organizations*
- *Organize a CLE*



[Your Logo Here]

Sample New Staff Orientation Sheet for Treatment Court

Welcome to your new role with Treatment Court. Please complete the following check-list to learn about treatment courts and how your role on the team can positively change lives.

- ☐ **Received/Read the Policy Manual**
- ☐ **Received/Read Participant Handbook**
 - Understand the Phase Structure & Phase Requirements
- ☐ **Register for the NADCP E-Learning Center and Complete the Essential Elements of Adult Drug Courts online training** <https://www.nadcp.org/e-learning-center/>
- ☐ **Review the National Drug Court Resource Center and sign up for announcements**
NDCRC is your resource for all things treatment courts. <https://ndcrc.org/>
- ☐ **Review the Courses on Treatment Courts Online** www.treatmentcourts.org:

NDCI Training Videos	Role of Treatment Provider	Role of Coordinator
Role of Probation Officer	Moral Reconation Therapy	Evidence-Based Practice
Building Capacity	Drug Use and Addiction	Cultural Competency
Trauma Informed Care	Incentives & Sanctions	Maximizing Participant Interactions
Role of Defense Attorney	Role of the Prosecutor	Procedural Fairness
- ☐ **Review the Following NADCP Publications:**
 - **Adult Drug Court Best Standards Volume I & II**
<https://www.ndci.org/resources/publications/standards/>
 - **Targeting the Right Participants for Adult Drug Court**
https://www.ndci.org/wp-content/uploads/Targeting_Part_I.pdf
 - **Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions**
<https://www.ndci.org/wp-content/uploads/BehaviorModification101forDrugCourts.pdf>
 - **Six Steps to Improve Outcomes for Adults with Co-Occurring Disorders**
<https://www.ndci.org/wp-content/uploads/C-O-FactSheet.pdf>
- ☐ **Sign Up for the Latest Trainings, Publications, Webinars and NADCP Events!**

Visit www.ndci.org for more information

Ongoing Team Training

E-learning:

<https://www.nadcp.org/e-learning-center/>

10 Key Components:

[Ten Key Components - National Drug Court Institute - NDCI.org](http://www.ndci.org)

Drug Court Best Practice Standards Vol. I & II:
[Standards - National Drug Court Institute - NDCI.org](http://www.ndci.org)



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QUESTIONS?





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