

Wisconsin Treatment Court Standards

Wisconsin Association of Treatment Court Professionals
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Introduction

Treatment courts promote recovery through a coordinated response to participants who are dependent on alcohol and other drugs (AOD) and/or living with severe or persistent mental illness or organic brain disorders. A team approach is required, including the collaboration of judges, treatment court coordinators, prosecutors, defense counsel, probation authorities, law enforcement, treatment providers, and evaluators. Treatment courts employ a multi-phased treatment process. The goal of treatment courts is to engage individuals in treatment long enough to experience the benefits in order to end the cycle of recidivism and successfully intervene on the addiction. Treatment courts encompass adult drug court, hybrid courts, OWI courts, mental health courts, juvenile drug courts, family dependency courts, and veteran courts.

These standards support continuing implementation of evidence-based best practice approaches to the criminal justice system. Evidence-based interventions assist individuals who have court involvement and behavioral health issues as well as other complex needs to develop the necessary skills to successfully address both public safety issues and related behavioral health issues. These skills will prevent or limit incarceration and support successful community tenure and recovery, without compromising public or community safety.

Formed in 2004, the Wisconsin Association of Treatment Court Professionals (WATCP) is a professional organization representing the interests of treatment courts in Wisconsin. WATCP's multidisciplinary membership includes judges, prosecutors, defense attorneys, court administrators, treatment providers, probation and community corrections officers, social service caseworkers, and other treatment court stakeholders.

WATCP initiated the development of treatment court standards to provide guidance to local courts when planning and implementing a treatment court. The core of these standards is the Ten Key Components published by the U.S. Department of Justice, Office of Justice Programs. Additional research, evaluation and lessons learned from across the nation are incorporated into the standards. Each standard encompasses a set of practice points. Practice points identify specific steps to achieve the standards and activities unique to treatment courts in Wisconsin. WATCP recognizes different types of treatment courts may have unique practices, such as OWI courts or juvenile treatment courts and those practices may not be found in these standards. WATCP encourages treatment courts to make an effort to follow the standards as best as practicable. The WATCP standards seek to create a level of uniform practices and to encourage local treatment courts to tailor their programs to meet their local needs.

These standards must be reviewed and modified from time to time based upon empirical research.

Note: The National Association of Drug Court Professionals released *Adult Drug Court Best Practice Standards, Volume I* in July 2013. The WATCP Standards Workgroup has incorporated appropriate components of *Volume I* into the Wisconsin standards. *Volume II* will be released in May 2014.

Definitions

Adult Drug Court: A specially designed criminal court calendar or docket, the purposes of which are to achieve a reduction in recidivism and substance abuse among substance abusing offenders and increase the offenders' likelihood of successful habilitation. Interventions include early, continuous and intensive judicially supervised treatment, mandatory periodic drug testing, community supervision, and the use of appropriate sanctions, incentives, and habilitation services (Bureau of Justice Assistance, 2005).

Advisory Board/Committee: A board/committee of criminal justice system partners established to develop and periodically update procedural and substantive guidelines for drug court operations including treatment court policies, procedures and forms. The board/committee is responsible monitoring all aspects of treatment court operations and making recommendations to the county board and administration. A county criminal justice coordinating council may serve as the treatment court advisory board.

Assessment: A process to determine suitability for specific types and intensity of services, and it routinely occurs after the offender is admitted into the drug court program. Assessment is typically conducted by substance abuse treatment professionals who have specialized education and training in these areas. Assessment is more comprehensive in scope and provides much more detailed information, including examination of specialized areas such as diagnosis of mental health disorders. Assessment and related diagnostic information contribute directly to developing an individualized drug court treatment plan (Peters & Peyton, 1998).

Criminal Court File: A basic record kept by the clerk of circuit court that adequately documents the progress of the treatment court proceedings in relation to the criminal case and records any judicial action taken in relation to it. Access to and retention of the file is governed by the laws and procedures pertaining to criminal court cases (Wisconsin Supreme Court, 2011).

Evidence-Based Practice: The partnership between research and practice. Research is used to determine how effective a practice is at achieving positive measurable outcomes, including reduction of recidivism and increasing public safety (Wisconsin Statewide Criminal Justice Collaborating Council, Evidence-Based Practice Subcommittee 2013).

Family Dependency Treatment Court: A juvenile or family court docket for cases of child abuse or neglect in which parental substance abuse is a contributing factor. Judges, attorneys, child protection services, and treatment personnel unite with the goal of providing safe, nurturing, and permanent homes for children while simultaneously providing parents with the necessary support and services they need to abstain from the use of drugs and alcohol. Family Dependency Treatment Courts aid parents or guardians in regaining control of their lives and promote long-term stabilized recovery to enhance the possibility of family reunification within mandatory legal timeframes (Huddleston, et al., 2005).

Forensic Evidence: Evidence used in court; especially evidence arrived at by scientific or technical means (Black's Law Dictionary, 2009, pg. 637).

Impact Evaluation: A study to gauge the effect of the intervention on the target population, if information is available on comparable defendants or offenders outside the program (National Institute of Justice, 2010).

Juvenile Drug Court: A specialized docket within the juvenile or family court system, to which selected delinquency cases, and in some instances cases of status offenders, are referred for handling by a designated judge. The youths referred to this docket are identified as having problems with alcohol and/or other drugs. The juvenile drug court judge maintains close oversight of each case through regular status hearings with the parties and their guardians. The judge both leads and works as a member of a team comprised of representatives from treatment, juvenile justice, social and mental health services, school and vocational training programs, law enforcement, probation, the prosecution, and the defense. Over the course of a year or more, the team meets frequently (often weekly), determining how best to address the substance abuse and related problems of the youth and his or her family that have brought the youth into contact with the justice system (National Drug Court Institute & National Council of Juvenile and Family Court Judges, 2003).

Mental Health Court: Modeled after drug courts and developed in response to the overrepresentation of people with mental illnesses in the criminal justice system, a mental health court diverts select defendants with mental illnesses into judicially supervised, community-based treatment. Defendants are invited to participate following a specialized screening and assessment, and they may choose to decline participation. For those who agree to the terms and conditions of community-based supervision, a team of court and mental health professionals work together to develop treatment plans and supervises participants in the community. Participants appear at regular status hearings during which incentives are offered to reward adherence to court conditions, sanctions for non-adherence are handed down, and treatment plans and other conditions are periodically reviewed for appropriateness. Some mental health courts are adapting the use of consumers to provide support to peers to aid in recovery. Consumers, whether or not they have been involved in the criminal justice system, are ideally suited to support mental health court participants because of their unique insights into recovery (Council of State Governments, 2005). Peer support encourages and engages other peers and provides each other with a vital sense of belonging, supportive relationships, valued roles, and community. Through helping others and giving back to the community, one helps one's self. Peer operated supports and services provide important resources to assist people along their journeys of recovery and wellness (SAMSHA, 2012).

Outcome Evaluation: An outcome evaluation measures the program's influence on graduation, criminal recidivism and relapse among cohorts of participants (National Institute of Justice, 2010).

OWI Court: A post-conviction court docket dedicated to behavior of the alcohol- or drug-dependent repeat offender or high-BAC offender arrested for Driving While Impaired (OWI). The goal of the OWI court is to protect public safety while addressing the root causes of impaired driving. OWI courts utilize a team of criminal justice professionals (including prosecutors, defense attorneys, probation and parole agents and law enforcement) along with substance abuse treatment professionals to systematically change participant behavior. Like drug

courts, OWI courts involve extensive interactions between the judge and the offenders to hold the offenders accountable for their compliance with court, supervision, and treatment conditions (Huddleston, et al., 2004).

Process Evaluation: A study that documents a program's actual caseflow, service delivery and resources in relation to its planned target population, policies and procedures over time (National Institute of Justice, 2010).

Reentry Court: A court that seeks to stabilize participants after their return from prison during the initial phases of their community reintegration by helping them to find jobs, secure housing, remain drug-free and assume familial and personal responsibilities. Following graduation, participants are transferred to traditional supervision where they may continue to receive case management services voluntarily through reentry court. The concept of reentry court necessitates considerable cooperation between corrections and local judiciaries, because it requires the coordination of the work of prisons in preparing offenders for release and actively involves community corrections agencies and various community resources in transitioning offenders back into the community through active judicial oversight (Bureau of Justice Assistance, 2010; Hamilton, 2010).

Screening: A process conducted in the very early stages of drug court involvement and typically precedes assessment and other diagnostic activities. Drug court screening typically consists of two steps: (1) justice system screening to decide if the prospective participant meets predetermined eligibility requirements related to criminal history, offense type and severity, etc.; and (2) clinical screening to determine whether the prospective participant has a substance abuse problem that can be addressed by available treatment services, and whether there are other clinical features (e.g., serious mental health disorders) that would interfere with an individual's involvement in treatment (Peters & Peyton, 1998).

Treatment Court File: A repository for information related to the defendant's substance abuse diagnosis, treatment, progress, and related medical and psychological information kept by the treatment court coordinator or case manager, who may be part of the department of health services, probation, a private provider, or other agency. Access to and retention of the treatment court file may be governed by the law and procedures pertaining to the coordinator's agency if sufficient to address these issues (Wisconsin Supreme Court, 2011).

Tribal Healing to Wellness Court: A component of the tribal justice system that incorporates and adapts the *wellness* concept to meet the specific substance abuse needs of each tribal community. It provides an opportunity for each Native American community to address the devastation of alcohol or other drug abuse by establishing more structure and a higher level of accountability for these cases through a system of comprehensive supervision, drug testing, treatment services, immediate sanctions and incentives, team-based case management, and community support. The team includes not only tribal judges, advocates, prosecutors, police officers, educators, and substance abuse and mental health professionals, but also tribal elders and traditional healers. The concept borrows from traditional problem-solving methods utilized since time immemorial, and the court process restores the person to his or her rightful place as a contributing member of the tribal community. The programs utilize the unique strengths and

history of each tribe, and realign existing resources available to the community in an atmosphere of communication, cooperation and collaboration (Native American Alliance Foundation, 2006; Tribal Law and Policy Institute, 2003).

Veterans Treatment Court: A hybrid court integrating the principles of drug court and mental health court to serve military veterans and sometimes active-duty personnel. These courts promote sobriety, recovery, and stability through a coordinated response that involves collaboration with the traditional partners found in drug courts and mental health courts, as well as the Department of Veterans Affairs healthcare networks, Veterans Benefits Administration, state veterans agencies, volunteer veteran mentors, and organizations that support veterans and veterans' families (Office of National Drug Control Policy, 2010).

Standard 1: Demonstrated Commitment to Evidence-Based Practices

Treatment courts must demonstrate commitment to evidence-based principles in the design and delivery of the services, referrals to services, and the development of policies and procedures (Hardin & Kushner, 2008).

- 1) Treatment courts must assess actuarial risk and needs.
- 2) Treatment courts must enhance intrinsic motivation by employing motivational interviewing techniques.
- 3) Treatment courts must target interventions based on the risk, needs, responsivity principles, dosage, and integrated treatment.
- 4) Treatment courts must use programming that emphasizes cognitive behavior strategies and is delivered by well-trained staff.
- 5) Treatment courts must employ positive reinforcement in a 4-to-1 ratio of incentives to sanctions through the use of contingency management principles.
- 6) Treatment courts must actively engage pro-social support for offenders in their communities .
- 7) Treatment courts must measure relevant processes and practices.
- 8) Treatment courts must provide measurement feedback to the advisory board.

Practice Points:

- 1) The treatment court should develop a mission or vision statement that demonstrates a commitment to evidence-based practice.
- 2) The treatment court should incorporate evidence-based principles in memoranda of understanding between team members.
- 3) The treatment court should incorporate evidence-based principles into materials provided for potential participants and their representatives.
- 4) The treatment court manual should include core curriculum and core competencies for all participants in the meaning and application of evidence-based principles.
- 5) Application of evidence-based principles should result in improved public safety and reduction of criminal justice related expenditures.
- 6) The treatment court should incorporate evidence-based principles into all program policies and procedures, rules, guidelines, and contingencies.
- 7) The treatment court should reference research on effective rules, guidelines, contingencies, and other program materials for the treatment court.

Standard 2: Equal Treatment of People who have Experienced Discrimination or Reduced Social Opportunities

Treatment courts must provide the same opportunity to people who have experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status. (NADCP, 2013)

- 1) Eligibility criteria, screening and assessment tools must be nondiscriminatory in intent and impact. (NADCP, 2013)
- 2) All treatment court participants must have access to the same levels of care and quality treatment.
- 3) The treatment court must monitor the delivery of incentives and sanctions to ensure they are administered equivalently to all participants. Except where necessary to prevent harm, members of disadvantaged groups receive the same incentives and sanctions as other participants for comparable achievements and infractions. (NADCP, 2012)
- 4) Each treatment team member must receive up-to-date training on recognizing implicit cultural biases and correcting disparate impacts for members of disadvantaged groups (NADCP, 2012) (Guerrero & Andrews, 2011).
- 5) Every treatment court must examine whether there are potential racial or ethnic disparities in their programs and take reasonable actions to prevent or correct any racial or ethnic disparities. (NADCP, 2010)

Practice Points:

- 1) Treatment courts should examine the factors that might account for discrepancies in graduation rates of racial and ethnic minority participants.
- 2) Treatment courts should collect valid and reliable data about the percentage of racial and ethnic minority participants enrolled in a treatment court, the percentage of racial and ethnic minority participants who graduate from treatment court.
- 3) Treatment courts should examine valid and reliable data and consider to what extent the data reasonably represents the respective arrestee population for treatment court eligible offenses.
- 4) Programs that continually solicit feedback about their performance in the areas of cultural competence and cultural sensitivity learn creative ways to address the needs of their participants and produce better outcomes as a result (Szapocznik et al., 2007).

Standard 3: Planning Process

Treatment courts must bring the appropriate individuals and agencies into a collaborative planning process as early as possible to attain the goals of the program (Marlowe and Meyer, 2011, p.21).

- 1) Formation of a planning committee must be separate from the treatment court team.
- 2) Treatment courts must complete training and a guided planning process with these standards (Minnesota Judicial Branch, 2009, p.3).
- 3) Planning committee must form a treatment court team with written roles and responsibilities of each core team member (Minnesota Judicial Branch, 2009, p.3).
- 4) Treatment courts must define the problem and target population based on community mapping and jurisdictional research (Marlowe and Meyer, 2011, p. 24).
- 5) Treatment courts must establish a written mission statement.
- 6) Planning committee must gather and identify community resources (Marlowe and Meyer, 2011, p. 30).
- 7) Planning committee must determine eligibility criteria based on target population data and potential future funding sources.
- 8) Planning committee must develop treatment court policies and procedure manual, participant contracts, memoranda of understanding, participant handbook, and waivers.
- 9) Develop an Advisory Board for ongoing supervision and review of the treatment court program.

Practice Points:

- 1) Planning committee should select a treatment court model which will include one or more of the following:
 - a. Pre-plea diversion
 - b. Diversion with stipulation of facts
 - c. Post-plea, pre-adjudication
 - d. Post-adjudication, probation
 - e. Alternatives to revocation of supervision
 - f. Reentry court
 - g. Mixed model
- 2) Manualization of the procedures, contracts, waivers and memorandums of understanding (MOUs) should be reviewed regularly and revised as needed.
- 3) All manualization of the procedures, contracts, waivers and MOUs should be public.
- 4) Areas that should be developed into the program manual include but are not limited to the following:
 - a. Mission statement, goals and objectives
 - b. Treatment court team and advisory board membership
 - c. Team member roles and responsibilities
 - d. Eligibility criteria
 - e. Referral process
 - f. Program fees (if applicable)
 - g. Record-keeping and confidentiality policy (See Standards 6 & 8)

- h. Graduation criteria
 - i. Termination process and criteria
 - j. Phase structure
 - k. Incentives and sanctions guidelines
 - l. Testing procedure
 - m. Confidentiality
 - n. Sustainability plan
 - o. Assessment
 - p. Program resources
- 5) In determining admission criteria, the determination of current or prior offenses that disqualify individuals from participation in the drug court is based on empirical evidence indicating which offenders can be safely and effectively managed in drug courts.

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Standard 4: Teams

The treatment court team is the group of professionals who are primarily responsible for overseeing the day-to-day operations of the program and administering the treatment and supervisory interventions. The judge is the leader of the treatment court team (Marlowe and Meyer, 2011, p.23).

- 1) Treatment court teams must incorporate a non-adversarial approach.
- 2) At a minimum, teams must have participation from a treatment court judge, prosecuting attorney, defense attorney, community corrections agent, law enforcement officer, treatment professional, and coordinator.
- 3) Treatment court teams must adopt policies which include an expectation that all team members will be present at the team meetings prior to the treatment court hearings. Team members must understand and respect the boundaries and responsibilities of other team members and the ethical obligations that come with their respective roles (Marlowe and Meyer, 2011, p. 24).
- 4) Treatment court teams must recognize the participant's right to request the attendance of defense counsel, including private bar attorneys who represent the participant, during team meetings, treatment court hearings, admission proceedings and terminations concerning the participant and develop policies outlining the procedures for defense counsel to follow.

Practice Points:

- 1) The focus of the team should be assisting participants in achieving their goals, promoting recovery and achieving reductions in recidivism.
- 2) Team members should be respectful of the viewpoints of participants and of each other.
- 3) Team members should be engaged in consensus building.
- 4) All team members should be familiar with the National Drug Court Institute's (NDCI) core competency guide for treatment court teams which outlines the respective roles and responsibilities of each team member.
- 5) Teams should develop policy dealing with the identification, selection, transition and training of new members of the treatment court team.
- 6) If a stakeholder elects to be represented by more than one individual at team meetings, the team should develop written policy outlining decision making authority among those individuals.
- 7) Teams should establish a policy and practice of regular team meetings prior to participant's scheduled appearances, at least bi-weekly.
- 8) Teams should maintain a current memorandum of understanding defining the agreement of the team and other stakeholders to uphold confidentiality requirements, exchange participant information and uphold team responsibilities.
- 9) Teams should consider inviting additional stakeholders and community members who are engaged with participants to participate in meetings with the team.
- 10) Teams should consider including peer support specialists, mentors, and graduates in an advisory capacity if appropriate for your treatment court model.

- 11) Teams should provide detailed materials outlining the processes of the treatment court to private legal counsel representing a treatment court participant who wish to attend a team meeting, treatment court hearing, admission or termination.
- 12) Teams should have a consistent schedule of business meetings to discuss policy and procedures.

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Standard 5: Judicial Interaction/Role

The treatment court judge's influence extends from the courtroom and justice system to the offender, the offender's family, and the community. The effective treatment court judge acts as leader, communicator, educator, community collaborator, and institution builder (Marlowe and Meyer, 2011, p.48, 59). The treatment court judge interacts frequently and respectfully with participants, and gives due consideration to the input of other team members (Hora & Stalcup, 2008)

- 1) The treatment court judge must preside in the treatment court for no less than two consecutive years (Carey 2012, Carey 2008).
- 2) The treatment court judge must ask open-ended questions, affirm the defendants' conduct and views, and whenever appropriate reflect back the defendants' comments, and summarize. The treatment court judge must avoid blaming, shaming, discounting, arguing with, confronting, labeling, and belittling defendants and must not permit others to do so (National Center for State Courts, 2006). The judge must not humiliate participants or subject them to foul or abusive language (Miethe et. al., 2000).
- 3) The treatment court judge must possess or acquire skills as a leader, communicator, educator, community collaborator, and institution builder (Marlowe and Meyer, 2011, p. 47).
- 4) The judge must participate fully as a treatment court team member, committing him- or herself to the program, mission and goals, and works as a full partner to ensure their success.
- 5) As part of the treatment court team, in appropriate non-court settings (i.e., staffing), the judge must advocate for effective incentives and sanctions for program compliance or lack thereof.
- 6) The judge must be knowledgeable of addiction, alcoholism, recovery, brain disorders, mental illness, and pharmacology generally and apply that knowledge to respond to compliance in a therapeutically appropriate manner.
- 7) The judge must be knowledgeable of gender, age, and cultural issues that may impact the offender's success.
- 8) The judge must initiate the planning process by bringing together the necessary agencies and stakeholders to evaluate the current court processes and procedures and thereafter collaborate to coordinate effective solutions.
- 9) The judge must be a program advocate by utilizing his or her community leadership role to create interest in and develop support for the program.
- 10) The judge must effectively lead the team to develop all the protocols and procedures of the program.
- 11) The judge must consider the merits of other team members' input when imposing a consequence, balancing the collaborative approach of treatment courts with their discretion and independence.
- 12) The judge must be aware of the impact that substance abuse has on the court system, the lives of offenders, their families and the community at large.
- 13) The treatment court judge must utilize therapeutic skills to develop and establish a rapport with treatment court participants.

- 14) The judge must contribute to education of peers, colleagues, and judiciary about the efficacy of treatment courts.
- 15) The treatment court judge must attend all treatment court related meetings including planning team meetings and court team staffings (Marlowe and Meyer, 2011, p. 49).

Practice Points:

- 1) The treatment court judge should attend annual training specific to treatment courts.
- 2) The treatment court judge should interact with each court participant no less than three minutes during each court review (Carey 2012, Carey 2008).

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Standard 6: Balancing the Non-Adversarial Approach with Due Process Concerns and Community Safety

Treatment courts must protect a participant's due process and Constitutional rights while promoting public safety and working in a non-adversarial fashion.

- 1) Treatment courts must develop standards with criteria:
 - a. For admission
 - b. For sanctions
 - c. For incentives
 - d. For phase advancement
 - e. For treatment
 - f. For graduation
 - g. For termination/expulsion (Meyer, 2011)
- 2) Treatment court standards and policies must be written.
- 3) Treatment court participants must be informed verbally and in writing of policies and procedures prior to entering treatment court. Participant must acknowledge by signature their understanding of the policies and procedures noted above.
- 4) Team members must clearly understand their roles (refer to Standard 3) within the treatment team. It is essential to keep in mind that each discipline on the treatment court team has its own ethical obligations, and each represents diverse professional philosophies and interests. Each team member must understand and respect the boundaries and responsibilities of other team members (Marlowe and Meyer, 2011, p. 24).
- 5) Treatment court participants must have an opportunity to be heard at every stage in the proceedings.
- 6) There must be opportunities for non-deity-based treatment and support groups.
- 7) Treatment court participants have the right to be represented by counsel at all stages of the proceedings. Defense counsel as a member of the treatment court team does not represent individual participants.
- 8) Treatment court participants must make a knowing waiver of judicial conflict of interest and ex-parte communication (Wisconsin Supreme Court Rule 60.04(1)(g)6).
- 9) Records must be made of all public treatment court proceedings.
- 10) The court must have procedures that follow Wisconsin Supreme Court Rule 60.04(1)(g)6 of the Code of Judicial Conduct.

Practice Points:

- 1) A team member should review all contract, waivers, policies, procedures, rights and responsibilities for treatment court participation before participation in the treatment court.
- 2) Procedures for drug testing should include clear chain of custody of samples (Meyer, 2011) and the opportunity for retesting (Marlowe and Meyer, 2011, p. 168).
- 3) Treatment courts should utilize Memoranda of Understanding to clearly define the roles of team members.

- 4) Participants should be given the opportunity to challenge allegations of violations and to present evidence.
- 5) The NDCI provides a core competency guide (available from the National Drug Court Resource Center) for treatment court teams that outlines the respective roles and responsibilities of each treatment court team member (Marlowe and Meyer, 2011, p.24) that should be utilized and followed by each core team member.
- 6) Participants should have representation present when liberty interests are at stake.

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Standard 7: Record Keeping (Wisconsin Supreme Court, 2011)

In order to comply with both state and federal record keeping expectations for both legal and medical information all problem-solving courts must develop a bifurcated filing system to protect confidential medical and treatment records as much as possible, while still providing a complete record of judicial action in the open court file.

- 1) The recordkeeping system must be identified in the policies and procedure manual.
- 2) All records must be reviewed to determine whether they contain confidential medical and treatment information.
- 3) The criminal court file must be kept by the clerk of circuit court. Access to and retention of the file is governed by the laws and procedures pertaining to criminal court cases.
- 4) The treatment court file must not be kept by the clerk of courts or the judge.
- 5) Recordkeeping policies must be explained in an understandable manner to problem-solving court participants.
- 6) Basic demographic information must be kept on all referrals, participants, and terminations.

Practice Points:

- 1) The criminal court file should be a basic record that adequately documents the progress of the treatment court proceedings in relation to the criminal case and records any judicial action taken in relation to it. In addition to the items usually found in a criminal court file, this file may include:
 - a) Any order referring the defendant to treatment court
 - b) Any notice admitting or rejecting the defendant to the program
 - c) Any order staying the criminal court proceedings
 - d) Any waiver pertaining to court proceedings (waiver of confidentiality regarding discussion of treatment-related issues, waiver of ex parte contact by judge)
 - e) Any proceedings or orders regarding sanctions
 - f) Any order or notice of defendant's voluntary termination from the program
 - g) Any proceedings or orders regarding involuntary termination from the program
 - h) Any acknowledgement of successful completion of the program
 - i) Any letters or information that go directly to the judge

*Items designated below for inclusion in the treatment court file should not be included in the criminal court file.

- 2) The treatment court file should be a repository for information related to the defendant's substance abuse diagnosis, treatment, progress, and related medical and psychological information, including the following:
 - a) Any application to participate in the treatment court
 - b) Any information gathered to evaluate the application
 - c) Any treatment court participation contract (i.e. understanding rules of the program)
 - d) All medical information and history of substance abuse: diagnosis, drug and alcohol use, drug and alcohol testing results, medical and psychological reports, prescriptions, etc.

- e) All treatment team information: weekly progress reports, information provided by team members, team member recommendations
 - f) Any agreement by team members that information in treatment file shall be used only for purposes of treatment court
 - g) Established case plan signed by the participant and an identified team member
- 3) The extent of the confidentiality provided to treatment records by Wis. Stat. §51.30 is unclear in the treatment court context. If the court believes it is applicable, the court may consider whether to issue a blanket order or local rule sealing the treatment records under the authority of this statute.
 - 4) Treatment court files should be maintained as a group and should be separated from any other files kept about the same offender. For example, if treatment court services are provided by the probation department, those records should be maintained separately from the records of any other probation services the individual offender receives.
 - 5) The judge should not keep the treatment court files, or any other medical or substance abuse treatment information, in the judge's chambers. Using the judge or clerk of court as a record-keeper lends support to an argument that these files should be considered open records. The judge may keep his or her own notes, separate from the criminal case or treatment court files.
 - 6) The treatment team coordinator should not be an employee of the judge or court. Direct court supervision of the coordinator also lends support to the argument that these files are open court records.
 - 7) The treatment team members should review the confidentiality policies of the court periodically and should identify a process to follow if a team member receives an open records request with respect to confidential treatment records.
 - 8) The contract or memorandum of understanding establishing the treatment court should address who will have access to the records; how long the records will be kept; and what happens to the records if the treatment court ends.
 - 9) The clerk of court office personnel should be trained on these record keeping standards.
 - 10) The treatment court coordinator should collect demographic information including but not limited to race, gender, age, referral, admission and exit type (Rubio, et al., 2008).

Standard 8: Training

To promote effective treatment court planning, implementation, and ongoing operations, treatment courts must assure continuing education of team members.

- 1) Every treatment court must provide implementation training before starting the court.
- 2) In addition to implementation training, operating procedures must define requirements for the continuing education of each team member.
- 3) Each treatment team member must establish and maintain a viable continuing education plan.

Practice Points:

- 1) At least every two years, treatment court teams should work with outside experts to assess team functionality, review all policies and procedures and assess the overall functionality of the court.
- 2) Each member of the treatment court should work towards obtaining 40 hours of training per year (Carey 2012, Carey 2008).
- 3) The treatment court should plan for the transition of new team members and provide sufficient training. This training could include role specific training and training that provides an overview of treatment court similar to implementation training.
- 4) Training should be viewed as an ongoing process.
- 5) Each court should identify and build a relationship with a mentor court of its specific model.
- 6) Treatment courts should regularly observe other treatment courts.
- 7) Treatment courts should consider sending team members to role-specific training and other “formal” training provided by recognized national organizations.
- 8) Treatment courts should make efforts to effectively use all available resources including state conferences, national conferences, webinars and other training resources.
- 9) Treatment courts should emphasize training that reinforces a familiarity with and emphasis of the ten key components.
- 10) Teams should identify an individual responsible for recording and maintaining records of the training received by the team.

Standard 9: Confidentiality

Treatment courts contemplate the integration of criminal case processing and treatment participation. Sharing of limited treatment information is a necessary function of treatment court operations. Compliance with federal confidentiality laws can be readily accomplished with proper procedures, notification, and consent forms and limitations on disclosure to the minimum necessary to accomplish the intended purpose of the disclosure (Marlowe and Meyer, 2011, p.190, Wisconsin Supreme Court, 2011).

- 1) Treatment court teams must designate a privacy official who is responsible for the treatment court program's compliance with federal and state confidentiality law requirements.
- 2) Treatment court teams must provide the privacy official with the necessary resources to do the job.
- 3) Treatment court teams must ensure that appropriate administrative, technical, and physical safeguards are in place to protect the privacy of patient information. One essential safeguard is to use locked storage cabinets.
- 4) Treatment court teams must have agreed-upon procedures to redact and segregate treatment court files into what is available to the public and what is confidential; such procedures include the installation of electronic firewalls to prevent access to participant information.
- 5) Treatment court teams must ensure that written policies and procedures are in place to limit the disclosed information to the minimum necessary to accomplish the intended use.
- 6) All treatment court team members and staff must be trained and periodically retrained on federal and state confidentiality requirements.
- 7) Treatment court teams must review the current notification, consent, and re-disclosure forms to ensure they meet federal and state standards.
- 8) Treatment courts must employ the best practices outlined previously on the reobtaining of consent and contents of the consent form.
- 9) Treatment courts must document all privacy policies and procedures.
- 10) Treatment courts must assume that the confidentiality laws are going to apply to disclosures and, therefore, must take all precautions to protect participant confidentiality rights.

Practice Points: (Wisconsin Supreme Court, 2011 p.11-12)

- 1) The privacy officer can be an identified member of the team.
- 2) The criminal case file should not have treatment records.
- 3) Treatment court files should be the repository for information related to the participant's treatment and kept separately from any other files.
- 4) Treatment files should be kept by the treatment court coordinator or case manager.
- 5) The judge should **not** keep the treatment court files or treatment information in the judge's chambers. (See standard 6 for definition)
- 6) The treatment court coordinator should not be an employee of the judge or the court.
- 7) The treatment court team should review the confidentiality policies at least annually.

- 8) A written process for an open records request should be established with respect to treatment records.

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Standard 10: Community Outreach

Treatment court team members will engage in community outreach activities to build partnerships that will improve outcomes, support specialized docket sustainability, and ensure that the best interests of the community (including public safety) are considered.

- 1) Treatment court teams must develop and maintain community resources.
- 2) Treatment courts must participate in open dialogue with community agencies and stakeholders to ensure collaboration between resources to improve participant outcomes (Marlowe and Meyer, 2011, p.54).
- 3) Treatment court judges must share information regarding the efficacy of treatment courts with local civic organizations, other members of the judiciary, and the community at large (Marlowe and Meyer, 2011, p. 54).
- 4) Treatment court teams must attend utilized participant resources such as treatment providers a minimum of once per year to update the memorandums of understanding and to ensure the resources are employing evidence based services.

Practice Points:

- 1) The treatment court advisory board should develop and regularly review a community outreach and education plan.
- 2) The treatment court advisory committee should develop a community relations kit that provides information on treatment courts, including their proven effectiveness at reducing recidivism and costs while promoting public safety. Sample materials can be found at the National Drug Court Institute website (www.ndci.org).
- 3) Treatment court teams should seek opportunities to illuminate media sources about treatment court (Marlowe and Meyer, 2011, p. 55).
- 4) Treatment court teams should be tracking collateral benefits to the community (community service, drug free babies, fines and fees, restitutions, reduction of crime reporting).
- 5) Counties should create or use an already existing criminal justice coordinating council (CJCC) as a tool for community outreach.

Standard 11: Evaluation of Treatment Courts

A treatment court shall engage in ongoing data collection and evaluation to assess whether the treatment court is adhering to the Ten Key Components, evidence-based practices, and specific program goals and objectives.

- 1) Treatment courts must develop a process to collect data.
- 2) Treatment courts must perform process and impact evaluations every three to five years.
- 3) Treatment courts must perform outcome evaluations.
- 4) Process, impact, and outcome evaluations must be based on reliable and valid scientific principles.

Practice Points:

- 1) As noted by the National Drug Court Institute, “Every drug court team member should understand the essential differences between a *process evaluation*, which evaluates the operations of the program itself, and an *outcome evaluation*, which evaluates the program’s impacts on its participants. Process evaluations tell the team what is and isn’t working in the day-to-day operations of the court...an outcome evaluation measures how effective the program is.” (Marlowe and Meyer, 2011, p. 41-42).
- 2) At a minimum, treatment courts should track the data gathered by implementation of the performance measures developed for Wisconsin treatment courts by the National Center for State Courts in conjunction with the model standards for treatment courts developed by the Wisconsin Association of Treatment Court Professionals.
- 3) Note that the National Drug Court Institute recommends that, at a minimum, the following three data outcomes categories should be evaluated: 1) Recidivism, 2) Retention and 3) Sobriety (Heck, 2006, p. 8-9).
- 4) The treatment court coordinator should collect demographic information including but not limited to race, gender, age, referral, admission and exit type (Rubio, et al., 2008).
- 5) Between evaluations, the treatment court should monitor performance measurement data to address performance problems as they arise.
- 6) The treatment court team should apply the vigorous standards of evidence-based practices and utilize an outside, independent evaluation by trained professionals.
- 7) The treatment court team should continually solicit feedback about their performance to learn creative ways to address the needs of their participants and produce better outcomes.

Standard 12: Referral and Eligibility

Eligibility criteria for referral must be nondiscriminatory in intent and impact, based on established written criteria, objectively measurable, that can be communicated to a wide audience of potential referral sources, including but not limited to law enforcement, defense attorneys, prosecutors, treatment professionals and correctional officials.

- 1) Eligible treatment court participants must be promptly identified and referred into program.
- 2) Eligible treatment court participants must be advised about program requirements prior to admission.
- 3) A standard form must be completed by the individual and reviewed by the treatment court team prior to acceptance into the program.

Practice Points:

- 1) Only individuals who are found to be chemically dependent, suffering from a severe or persistent mental illness, organic brain disorder or a co-occurring disorder under the most current Diagnostic and Statistical Manual of Mental Disorders diagnostic criteria should be considered appropriate for specialty courts.
- 2) Possible funding sources should be considered when establishing the eligibility criteria.
- 3) Individuals should be identified and referred to the treatment court program within 50 days from the time of arrest or trigger event.
- 4) Eligibility criteria include but are not limited to residency, age, and qualifying offense.
- 5) If adequate treatment and supervision are available there is not empirical justification for routinely excluding violent offenders from participation in treatment courts (NADCP, 2013).

Standard 13: Screening and Assessment

The treatment court must promptly screen and assess potential participants to determine program eligibility and adequate treatment services. Screening is a process used to determine if an individual is an appropriate candidate for the treatment court program. The screening process allows the treatment court to consider an individual's eligibility for participation and to complete a validated risk and needs assessment for candidates accepted into the court. Assessment must be an ongoing part of the treatment process.

- 1) Treatment court screening and assessment must use validated tools appropriate to the court's identified population to identify high risk/high need criteria for eligibility.
- 2) Treatment court screening must include gathering brief information to assist in identification of candidate's program eligibility. Screening must include but is not limited to gathering information related to chemical use, reviewing criminal history (including arrest and complaint papers), and completing a brief health screen.
- 3) Risk and needs assessments must utilize current empirically validated assessment instruments.
- 4) A validated risk and needs assessment must be completed with all participants by trained individuals approved by the treatment court team and appropriate governing agency.
- 5) Assessment must gather all relevant information including but not limited to alcohol and other drug abuse, legal history, vocational history, mental health history, family history, educational history, financial history, medical history, treatment history, risk/needs and responsibility. This may involve utilizing more than one assessment tool.
- 6) Assessment must include collateral information as appropriate including but not limited to past treatment records, medical records, educational records, and legal records.
- 7) Before an assessment is conducted, a treatment court representative must explain the reason why the assessment is being done, how the resulting information will be used, and how it will be shared.
- 8) Assessment must be an ongoing process and part of the case plan throughout the individual's treatment court involvement.
- 9) Assessments must result in referral of individual to the appropriate resources and treatments (SAMHSA, TIP 44, 2005).
- 10) The individual must complete a release of information form to consent to the sharing of confidential information between the licensed assessment agency and the treatment court team.

Practice Points:

- 1) Assessment process and resulting diagnostic evaluation should take no longer than seven business days after the initial appointment date (SAMHSA, TIP 44, 2005).
- 2) All assessments should result in a complete assessment summary of the individual's history, including alcohol and other drug abuse diagnosis and all other coexisting conditions that must be shared with the treatment court team members.

- 3) All participants should meet the current Diagnostic and Statistical Manual of Mental Disorders criteria for chemical dependency.
- 4) The treatment court should strongly consider contact with family members and other natural supports in the community.
- 5) Treatment court team members should remain in regular contact with assessment agencies and receive updated assessments showing graduated individual progress no less than every three months.
- 6) The treatment court team should request further assessments for all areas of concern at any time during the individual's involvement with the court.
- 7) Data should be collected by agencies performing assessments and/or the treatment court regarding length of time between initial appointments and receiving the diagnostic evaluation.
- 8) Assessment tools should be reviewed yearly to ensure the best practice of utilizing current evidence-based materials.

Standard 14: Treatment

Treatment courts must provide prompt admissions to continuous, comprehensive, evidence- and strength-based treatment and rehabilitation services.

- 1) Treatment referrals must be based on assessment results.
- 2) An active and vital part of treatment must be continuous and ongoing assessment as a method to track participant progress.
- 3) Treatment providers must utilize evidence-based practices which are individualized to fit participant needs including but not limited to culture, gender, age, cognitive abilities and other responsivity issues.
- 4) Treatment providers must provide continuous assessments of individual's needs.
- 5) All treatment providers must be licensed with the Wisconsin Department of Safety and Professional Services or the equivalent governing agency when applicable.
- 6) All treatment court participants must have a current treatment plan and adequate record of progress.
- 7) Treatment providers must have participant sign a release of information consenting to sharing of confidential information between the service provider and the treatment court team.
- 8) Treatment providers must provide aftercare planning and relapse prevention planning.
- 9) Treatment must address multiple needs not just the addiction.
- 10) Appropriate and evidence-based assessment tools must be used by trained/licensed staff in accordance with HSF 75.
- 11) The individual must complete a release of information form to consent to the sharing of confidential information between the licensed assessment agency and the treatment court team in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 and 42 CRF.

Practice Points:

- 1) Treatment court team has access to visit and tour treatment facilities to ensure quality of services.
- 2) No one treatment is suitable for all individuals. Matching treatment needs to the individual is crucial in the individual's ultimate success.
- 3) Treatment facilities should provide trauma-informed care services and cognitive behavior therapy.
- 4) Mental health and addiction issues should be treated with an integrated approach.
- 5) All services should include individual sessions.
- 6) Treatment services should include but are not limited to outpatient, intensive outpatient, clinically managed residential, medically-monitored inpatient or medication assisted treatment.
- 7) Treatment services should offer gender specific services. (Carey et. Al. 2012)

- 8) Other treatment services should include educational services, vocational training, employment services, domestic violence services, medical treatment services, dental services, mental health services, and financial planning services.
- 9) Treatment services should provide progress reports to the treatment court team prior to team meetings as established by the memorandum of understanding.
- 10) All treatment providers should have competency of coexisting conditions.
- 11) Participants should have the opportunity to attend a non-deity based treatment program and self-help group.
- 12) Family members and other natural supports should be included in treatment where appropriate.

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Standard 15: Monitoring Participant Behavior through Drug Testing

Efficient and accurate monitoring of drug court participant abstinence through use of effective drug detection protocols is crucial for long-term program effectiveness. Drug testing serves as a tool for treatment teams to direct appropriate interventions which support participant goals. “In order for case adjudication to be appropriate, consistent, and equitable, drug detection procedures must produce results that are scientifically valid and forensically defensible.” (Marlowe & Meyer, 2011, p. 115).

- 1) The treatment court manual, participant contract and participant handbook must contain written procedures and methods for drug testing.
- 2) Drug testing methods must be valid, legally defensible, and therapeutically beneficial.
- 3) Drug testing must be random in order to increase the validity.
- 4) The collection of urine drug tests must be witnessed by a trained professional (Marlowe & Meyer, 2001, p. 122).
- 5) Drug testing must be completed a minimum of twice per week and is not phase-dependent.
- 6) Urine drug testing must be completed a minimum of twice /week in the early phases of the drug court program.
- 7) Drug testing must be observed by a trained professional.
- 8) The treatment court must maintain a forensic evidentiary standard for drug test results.
- 9) Test results must be given in a time frame that allows for rapid intervention.

Practice Points:

- 1) Treatment court participants should receive notice of testing procedures as well as the consequences of use.
- 2) Drug tests should be tested for tampering (e.g., creatinine levels and dilution) (NDCI, 2011).
- 3) Drug testing should establish a baseline for abstinence.
- 4) Treatment court participants should have the ability to dispute the test results and request a confirmation lab retest.
- 5) Treatment court participants should have access to the testing results.
- 6) Treatment courts should develop multiple techniques to conduct blind randomized testing and continue to update the randomization process.
- 7) Testing methods should consider program monitoring goals, personnel availability, volume, drugs being tested for, report time, and cost.
- 8) Drug testing should include weekends and holiday schedules.
- 9) Testing methods should not be based upon individual chemical use and drugs of choice, with the exception of alcohol.

Standard 16: Case Planning

Case planning is the process by which the staff and participant identify and rank criminogenic/responsivity needs based on a validated risk and needs assessment tool. This process establishes agreed-upon proximal and distal goals, based on criminogenic and responsivity factors, and determines a case plan and the resources to be utilized.

- 1) Case plans must be reviewed when participant is scheduled to appear in court.
- 2) A designated treatment team member must explain assessment results to participant in an understandable manner.
- 3) In conjunction with the treatment court participant, designated treatment team member must identify and rank problem domains based on risk/criminogenic/responsivity needs in a written case plan, which is to be signed and given to the participant.
- 4) Case plan is based upon the results of the initial assessment and should identify participant's strengths, risk factors, criminogenic needs and supports.
- 5) A written case plan must state agreed-upon proximal and distal goals using behavioral terms.
- 6) Case plan goals must be measurable.
- 7) Case plans must be reviewed and updated with the participant a minimum of every six months.
- 8) Identify the treatment methods and resources to be utilized as appropriate for the individual participant.

Practice Points:

- 1) The language of the problem, goal, and strategy statements should be specific, understandable to the participant and expressed in behavioral terms.
- 2) Case plan should include significant others and/or family members when appropriate.
- 3) Case plan should be shared with prosocial supports by the participant as appropriate.
- 4) The plan or strategy is a specific activity that links the problem with the goal. It describes the services, who will perform them, when they will be provided, and at what frequency.
- 5) Case plan should be reviewed by a treatment court team member and the participant during all individual sessions.

Standard 17: Applying Incentives and Sanctions

In a treatment court it is essential to closely monitor the participant's conduct and impose certain immediate rewards for achievements and sanctions for infractions (Marlowe and Meyer, 2011, p. 141).

- 1) Coordinated Response must include the following:
 - a. Treatment courts must have reliable monitoring.
 - b. Treatment courts must police misconduct.
 - c. Treatment courts must monitor and reward achievements.
 - d. Treatment courts must have scheduled status hearings.
 - e. Treatment courts must introduce greater certainty, celerity, and fairness into the process of imposing criminal justice sanctions.
 - f. Incentives and sanctions must be appropriate proportional responses to behaviors.
 - g. Treatment courts must develop rewards and sanctions that are perceived to be fair.
 - h. Treatment court participants must be given advance notice about the specific behaviors that may trigger incentives and sanctions.
 - i. Treatment court participants must be allowed the opportunity to be heard and express their perspectives in all incentive or sanction actions.
 - j. Treatment courts must draw distinctions between proximal and distal goals.
 - k. Increased treatment must not be considered a sanction.
 - l. Team members must try to reach consensus among the team members as to the response.

Practice Points: (Hardin & Kushner, 2008, p. 113)

- 1) Treatment courts should develop a systemized avenue of incentives for participants that meet requirements.
- 2) Treatment court teams should avoid using jail as the only sanction to avoid the ceiling effect.
- 3) Positive reinforcement should relate to therapeutic goals in the business of the courts.
- 4) Incentives and sanctions should be delivered at a rate of 4-to-1.
- 5) Treatment courts should have ground rules established in advance for the following:
 - a. Infractions concretely defined
 - b. Permissible range of sanctions clearly specified
 - c. Response to infractions promptly
 - d. Written in manual.
- 6) Treatment courts should monitor clients closely by:
 - a. Using established testing procedures
 - b. Documenting the chain of custody of test samples
 - c. Observing collections of test samples
 - d. Conducting tests for drugs no less than twice per week
 - e. Testing for alcohol
- 7) Treatment courts should utilize moderate sanctions and rewards (Marlowe and Meyer, 2011, p.145 & Marlowe, 2008, p. 113).
 - a. Be able to ratchet upward or downward in response to behavior

- b. “Goldilocks and the Three Bears” response...just right
- 8) Treatment courts should sanction misbehavior (noncompliance-proximal goal violation).
 - a. Punitive sanction
 - b. Increase supervision
- 9) Treatment courts should treat dysfunction (nonresponsive-distal goal violation).
 - a. Alter the treatment plan

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