




Wisconsin Treatment Court Standards Training: Introduction

Learning Objectives

At the conclusion of this program you should be able to:

- Appreciate the importance and use of treatment court standards
- Develop a plan to incorporate the treatment court standards into your court practices
- Maintain fidelity to the treatment court standards in your treatment court
- Understand the concepts of performance measurement and management
- Understand how to use performance measurement data to address practical issues confronting adult and hybrid drug courts

Treatment Courts

- Promote recovery
- Require a team approach
- Employ a multi-phased treatment process
- Goals
 - End the cycle of recidivism
 - Successfully intervene in cases with addiction/mental illness
 - Increase public safety
- Encompass various types of courts

Not just drug courts

WI Treatment Court Standards Purpose

To provide guidance to local courts when planning and implementing a treatment court.

Targeted to ALL types of treatment courts

Standards Development

- Based on the Ten Key Components and the Adult Drug Court Best Practice National Standards
- Incorporated other research, evaluation and lessons learned
- Each standard includes practice points

WI Treatment Court Standards Committee

- Shelly Fox – Director of State Courts Office, Special Projects Manager
- Niki Leicht- Director of State Courts Office, Special Projects Manager
- Michelle Cern – Director of State Courts Office, Statewide Problem-Solving Courts Coordinator
- Judge Lisa Stark – Eau Claire County
- Judge Elliott Levine (Chair) – La Crosse County
- Pat Isenberger – Eau Claire County, Coordinator
- Amber Perry – St. Croix County, Coordinator
- Nikki Kulibert – Eau Claire County
- Jane Klekamp – La Crosse County, Coordinator
- Jessica Skemp – La Crosse County, Assist. District Attorney
- Liesl Nelson – State Public Defender's Office
- Jenny Ingram – Treatment Provider
- Michael Felton – Probation/Parole Agent, Eau Claire County

WI Drug and Hybrid Court Performance Measures Purpose

To encourage the development and use of meaningful measures that can be used to assess program performance.

Currently targeted to drug and hybrid courts. May evolve over time.

Performance Measures Development

- Based on WI Treatment Court Standards and measures developed by the National Research Advisory Committee convened by the National Drug Court Institute
- Incorporated work conducted by the National Center for State Courts in other states and research on evidence-based practices
- Measures are well-documented and include data sources, calculations, and performance targets

Performance Measures Work Group

- Judge Carl Ashley – Milwaukee County Circuit Court
- Katie Behl* – Treatment Court Coordinator, Walworth County
- Judge Ellen Brostrom* – Milwaukee County Circuit Court
- Rachel Brushett – Wisconsin Office of Justice Assistance, Evaluator
- Mark Cacciotti * – Wisconsin Department of Corrections, Probation & Parole Agent
- Carol Carlson * – Drug Treatment Court Coordinator, Milwaukee County
- Michelle Cern – Director of State Courts Office, Statewide Problem-Solving Courts Coordinator
- Judge Juan Colas * – Dane County Circuit Court
- Kerry Connelly * – Director of State Courts Office, Acting State Drug Court Coordinator
- Michael Felton – Wisconsin Department of Corrections, Field Supervisor
- Judge Kathryn Foster – Waukesha County Circuit Court
- Tiana Glenna * – Eau Claire County, Criminal Justice Coordinator
- Pat Isenberger† – Eau Claire County, Drug Court Coordinator
- Scott Johnson – 10th Judicial District, District Court Administrator
- Niki Leicht – Director of State Courts Office, Special Projects Manager
- Judge Elliott Levine† – La Crosse County Circuit Court
- Jane Klekamp* – La Crosse County Administrative Center, Director

*Performance Target Group Only †Performance Measures Work Group and Performance Target Group

Performance Measures Work Group Cont.

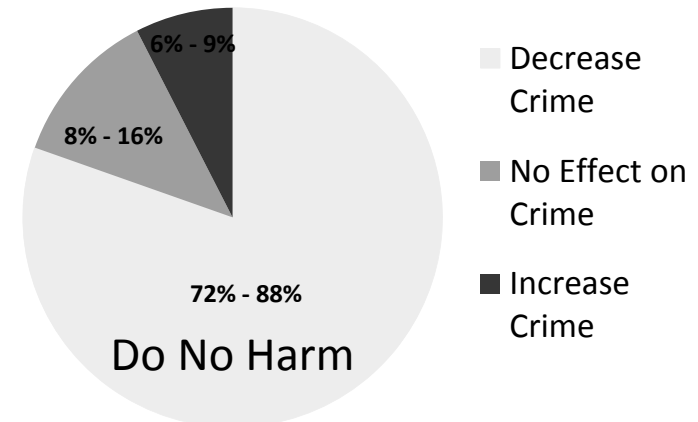
- Jennifer Madore* – Kenosha County Department of Human Services, Planning and Evaluation Coordinator
- Judge John Markson – Dane County Circuit Court
- AJ Meyer – Viterbo University, Department of Sociology, Social Work, and Criminal Justice, Assistant Professor
- Liesl Nelson – State Public Defender, First Assistant
- Amber Perry – St. Croix County, Drug Court Coordinator
- Judge Gerald Ptacek* – Racine County Circuit Court
- Bethany Robinson† – Outagamie County, Alternative Treatment Coordinator
- Jessica Skemp* – La Crosse County, Assistant District Attorney
- Judge Lisa Stark† – Eau Claire County Circuit Court
- Kit Van Stelle – University of Wisconsin Population Health Institute, Researcher/Principal Investigator
- Tony Streveler – Wisconsin Department of Corrections, Executive Policy Initiatives Advisor, Director of Research and Policy
- Kelli Thompson – State Public Defender
- Judge Glen Yamahiro – Milwaukee County Circuit Court
- Bill Zollweg – University of Wisconsin-La Crosse, Department of Sociology, Professor

*Empirical Referent Group Only †Performance Measures Work Group and Empirical Referent Group

Implementation of the Standards and Performance Measures

- Training is just the beginning
- Need right people in the right roles
- Everyone is at a different level of understanding
- Structural variations exist across courts
- On-going and continuous improvement

Variable Effects of Drug Courts on Crime



Marlowe, Douglas, J.D., Ph.D. "The Verdicts on Adult & Juvenile Drug Courts" NADCP Powerpoint Presentation. (Carey et al., 2012; Downey & Roman, 2010; GAO, 2011; Mitchell et al., 2012; Shaffer, 2010)

Training Credits

- Sign in each day!
- Verify your email address
- Credits available for:

Judges

Judicial Education Credits – up to 5 credits

Attorneys

Continuing Legal Education (CLE) Credits – up to 21 credits

Law Enforcement

Annual Recertification Training Hours – up to 20 hours

Social Work

Continuing Education Units (CEU) – up to 17.75 hours

WI Treatment Court Standards

Scenario #1

- Chelsea
 - Female, 22 years old, white, dual-diagnosis, DV trauma, 2 children
 - Offense: possession
 - Drug of choice: Alcohol and opiates
 - Urban community

WI Treatment Court Standards

Scenario #2

- Tony
 - Male, 45 years old, African-American, 3 children
 - Offense: burglary
 - Drug of choice: Meth
 - Rural community

Interactive Question

Which of the following best describes your treatment court?

- Adult Drug Court
- Designated OWI Court
- Hybrid OWI/Drug Court
- Veterans Court
- Other Problem-Solving Court

Interactive Question

How much do you know about the WI Treatment Court Standards?

- A. Nothing
- B. A Little
- C. Some
- D. A Lot

Interactive Question

The more fully you implement the WI Standards into your treatment court, the more successful outcomes you are likely to have.

- A. True
- B. False



Standard 1: Demonstrated Commitment to Evidence-Based Practices

See section 4 of binder



WISCONSIN COURT SYSTEM



Learning Objectives

As a result of this session you should be able to:

- Commit to the use of evidence-based practices in all aspects of your treatment court
- Apply evidence-based practices in all aspects of your treatment court

Evidence-Based Practice

In the criminal justice system is the partnership between research and practice. Research is used to determine how effective a practice is at achieving measurable outcomes, including reduction in recidivism, and increasing public safety.

Evidence-Based Practice Pyramid

GOLD

Experimental/control research design with controls for attrition
Significant sustained reductions in recidivism obtained
Multiple site replication
Preponderance of all evidence supports effectiveness

SILVER

Quasi-experimental control research with appropriate statistical controls for comparison group
Significant sustained reductions in recidivism obtained
Multiple site replications
Preponderance of all evidence supports effectiveness

BRONZE

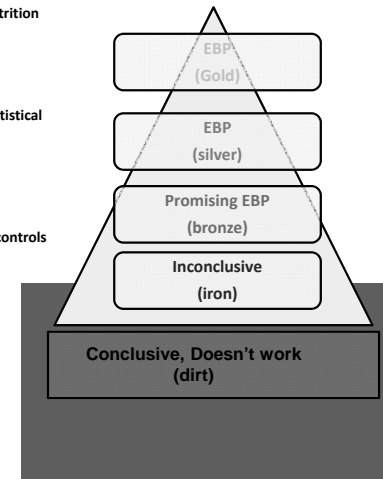
Matched comparison group without complete statistical controls
Significant sustained reductions in recidivism obtained
Multiple site replications
Preponderance of all evidence supports effectiveness

IRON

Conflicting findings and/or inadequate research designs

DIRT

Silver and Gold research showing negative outcomes



Source: *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention*, Crime and Justice Institute

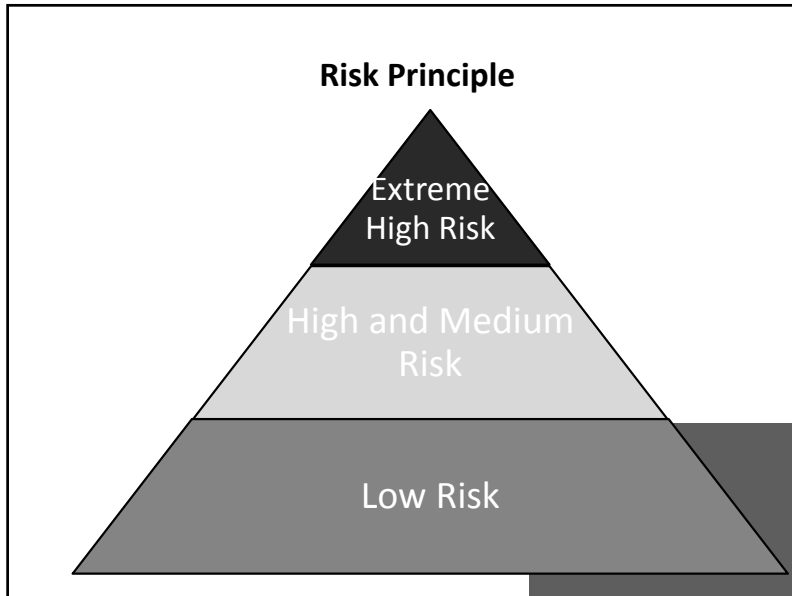
Question: Risk to Reoffend

Putting low risk offenders in programs with medium and high risk offenders will:

- A. Decrease recidivism of higher risk offenders
- B. Provide positive role models for higher risk offenders, and therefore have a "settling" effect on the group
- C. Potentially increase recidivism rates of the low risk offenders
- D. Have no real effect

Risk Principle

- Match level of service to the defendant's risk of re-offending.
- Based on static and dynamic risk factors
- High risk defendants should receive more intensive intervention
- Low risk offenders should receive no/minimal intervention
- Give low risk offenders stabilization services



Question: Needs

Which of the following is a criminogenic need?

- A. Mental Illness (for example, depression)
- B. Antisocial Cognitions
- C. Lack of Housing
- D. Low Victim Empathy

The Big Four Criminogenic Needs

1. Anti-social cognition
2. Anti-social companions
3. Anti-social personality/temperament
4. Family and/or marital

The Lesser Four

1. Substance abuse
2. Employment
3. School
4. Leisure and/or recreation

Need Principle

- Assess criminogenic needs and target them in treatment.
- Criminogenic needs are dynamic (changeable) risk factors that are proven through research to affect recidivism

Principles of Effective Intervention

1. Treatment courts must assess actuarial risk and needs

Question: Responsivity

Generally, women benefit as much from participation in mixed gender groups (men and women) as they do from participation in gender specific groups.

A: True

B: False

Responsivity

Tailoring interventions to individual learning styles, motivations and abilities can maximize the offender's ability to learn from the intervention.

Question: Enhance Motivation to Change

Q: Criminal justice professionals can impact offender recidivism through their interactions with offenders.

A: True

B: False

Principles of Effective Intervention

2. Treatment courts must enhance intrinsic motivation by employing motivational interviewing techniques.

Question: Punishment

Research shows that you can reduce recidivism by punishment alone.

A: True

B: False

Question: Punishment

The longer the period of incarceration the higher the recidivism rate.

A: True

B: False

Question: Punishment

Research shows that swift and certain interventions are more effective than the severity of the intervention.

A: True

B: False

Punishment

- Punishment by itself will not change criminal behavior
- Produces at best short term compliance
- Taken alone it actually increases recidivism
- Can be effective as a behavioral modification support for treatment and rehabilitation

Enhance Intrinsic Motivation - Research strongly suggests that "motivational interviewing" (MI) techniques, rather than persuasion or interrogation tactics, effectively enhance motivation for initiating and maintaining behavior changes

Question: RNR

RNR is:

- A. Rest and relaxation
- B. A sleep therapy
- C. Risk, Needs and Responsivity**
- D. A prescription

RNR

The risk-need-responsivity model states that the risk and needs of an offender should determine the strategies appropriate for addressing the individual's criminogenic factors.

Supervision Models & Impact on Recidivism

Model	Impact
• Intensive supervision with surveillance only	• No effect
• Intensive supervision with treatment	• 10% decrease
• Supervision using the "Risk Need Responsivity" model	• 16% decrease

M. Carter, TCG & CEPP (2012)

Principles of Effective Intervention

3. Treatment courts must target interventions based on the risk, needs, responsivity principles, dosage, and integrated treatment.

Target Interventions

- **Risk Principle** - Prioritize supervision and treatment resources for higher risk offenders.
- **Need Principle** - Target interventions to criminogenic needs.
- **Responsivity Principle** - Be responsive to temperament, learning style, motivation, gender, and culture when assigning to programs.
- **Dosage** - Structure 40% to 70% of high-risk offenders' time for 3 to 9 months.
- **Treatment Principle** - Integrate treatment into full sentence/sanctions requirements.

“Inappropriate” Treatment

Examples:

- “One size fits all” programs (all DV perpetrators receive the same 52 week program)
- All offenders with a drug history are ordered into drug treatment
- Women with past trauma are placed in mixed gender treatment groups
- Anxiety disordered individuals are placed in group treatment
- Learning disabled persons are placed in programs that require a high degree of verbal or written acuity

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Appropriate (effective) Treatment

Programs and services that:

- Target criminogenic needs (particularly the top four) of medium and high risk offenders
- Match the right offender to the right service/intervention
- Use a cognitive-behavioral approach
- Use positive reinforcement
- Match the “dosage” to the individual’s risk level

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Dosage and Intensity (Adults)



See: Bourgon, G. & Armstrong, B., 2005; Beech, Fisher, and Becket, 1998; Sperber & Latessa (forthcoming)

Interventions Designed to Address Criminogenic Needs (CEPP, 2009)

CRIMINOGENIC NEEDS	EXAMPLES OF APPROPRIATE PROGRAMMATIC INTERVENTIONS	EXAMPLES OF ADDITIONAL CASE MANAGEMENT INTERVENTIONS
Anti-social cognitions	Cognitive behavioral programs: -Thinking for a Change (T4C) -Moving On -Cognitive Self Change (CSC) -Corrective Thinking/Truthought	Use of thinking reports
Antisocial peers	Cognitive behavioral programs: -Thinking for a Change (T4C) -Moving On -A New Freedom: Phoenix (gangs)	Referral to mentoring services
Coping skills (poor problem solving, impulsivity, emotional regulation)	Cognitive behavioral programs: -Aggression Replacement Therapy (ART) -Controlling Anger and Learning to Manage It (CALM) -Cognitive Self Change (CSC)	Skill building exercises and role plays during one-on-one sessions
Family stressors	-Domestic violence program (either 26 or 52 week class) -Teaching Family Model (NIMH)	Referral to counseling

Principles of Effective Intervention

4. Treatment courts must use programming that emphasizes cognitive behavioral strategies and be delivered by well trained staff.

Question: Positive Reinforcement

What have studies regarding the use of rewards and incentives to reduce recidivism found?

- A. Rewards and incentives only encourage law breakers to continue their criminal lifestyles.
- B. The use of rewards and incentives has no impact on future behavior.
- C. Appropriate use of rewards and incentives reinforces and encourages future pro-social behavior.

Increase Positive Reinforcement -

Apply four positive reinforcements for every one negative reinforcement for optimal behavior change results.

Principles of Effective Intervention

5. Treatment courts must employ positive reinforcement in a 4:1 ratio of incentives to sanctions through the use of contingency management principles

Principles of Effective Intervention

6. Treatment courts must actively engage pro-social support in natural communities - Realign and actively engage pro-social support for offenders in their communities for positive reinforcement of desired new behaviors.

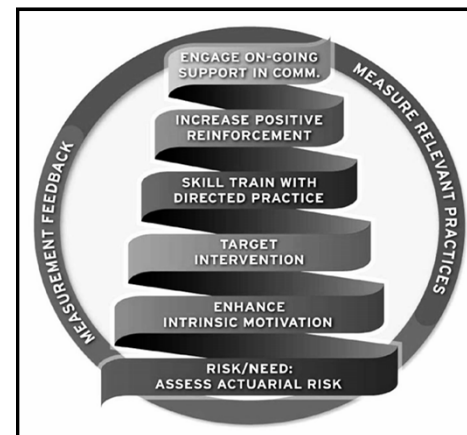
Principles of Effective Intervention

7. Treatment courts must measure relevant processes/practices - An accurate and detailed documentation of case information and staff performance, along with a formal and valid mechanism for measuring outcomes, is the foundation of evidence-based practice.

Principles of Effective Intervention

8. Treatment courts must provide measurement feedback - providing feedback builds accountability and maintains integrity, ultimately improving outcomes.

Principles of Effective Intervention



Mission Statements

- Example: The mission of the Eau Claire County Drug Court is to increase community safety and restore sober, productive and law abiding citizens to the community by breaking the cycle of drug and alcohol addiction through effective, long-term treatment with intensive court supervision.

Action Planning

At the conclusion of this session you will meet with your group to review and revise your mission statement.



Standard 2:

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

See section 4 of binder



WISCONSIN COURT SYSTEM



Learning Objectives

As a result of this session you should be able to:

- Commit to providing equal opportunity for participants
- Identify and analyze issues of inequality within your court
- Commit to providing culturally competent services for all participants
- Develop your plan to address equality in your court

Historically Disadvantaged Groups Defined

“Citizens who have historically experienced sustained discrimination, or reduced social opportunity because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other citizens to participate and succeed in the Drug Court.”

National Association of Drug Court Professionals, Volume I

Who are we talking about?

- Women
- African Americans
- Native Americans
- Hispanic/Latinos
- Asian Americans
- LGBT Community
- Others

You Need to Know

- Who is in your program?
- How are participants doing in your program?
- Who COULD be in your program?
- Who is NOT getting into your program?
- What is your cultural sensitivity toward the people in your program?

****Self check: Implicit Bias Test****

<https://implicit.harvard.edu/implicit/>

Drug Courts – Fundamental Principles, Legal & Ethical Obligations

- Due Process
- Equal Protection
- Provide Equal Access to their Services
- Equivalent Treatment for all People

The Standard

- Equivalent Access
- Equivalent Retention
- Equivalent Treatment
- Equivalent Incentives and Sanctions
- Equivalent Dispositions
- Team Training

Equivalent Access

- Eligibility criteria
 - Nondiscriminatory in intent and impact
 - Unintended effects
 - Restrictive eligibility criteria could contribute to lower # of minorities in Drug Courts
- Use of validated risk assessment tools for historically disadvantaged groups

Question: Underrepresentation

National research indicates that minority groups, specifically African American and Hispanic individuals, are underrepresented in Drug Courts by what percentage?

- A. No difference
- B. 3 – 7 %
- C. 25 – 40 %
- D. Overrepresented

*National Association of Drug Court Professionals, Volume I
Painting the Picture (Huddleston & Marlowe), National Drug Court Institute*

Eligibility Criteria

What factors may be exclusionary?

- Prostitution
- English only
- Plea of guilty
- Criminal history (certain offenses, violence)
- Housing stability
- Geography/Transportation

Equivalent Retention

- “The Drug Court regularly monitors whether members of historically disadvantaged groups complete the program at equivalent rates to other participants”

National Association of Drug Court Professionals, Volume I

Question: Graduation Rates

National research also indicates that a significantly smaller percentage of African American and Hispanic participants graduate from Drug Court, compared to non-Hispanic Caucasians.

Differences were as high as:

- A. No difference
- B. 3 – 7 %
- C. 25 – 40 %
- D. Higher graduation rates

See article by Marlowe “Achieving Racial and Ethnic Fairness in Drug Courts” for references

What to do

- If completion rates are lower, Drug Court investigates the reasons for the disparity
- Develops a remedial action plan
- Evaluates the success of the remedial actions

Equivalent Retentions: What to Assess

- Demographic Data
- Employment Status
- Education Status
- Drug of Choice
- Criminal History
- Criminal Thinking (TCU Criminal Thinking Scales)
- First 30 Days
- Mental Health
- Types of Incentives and Sanctions Given

Equivalent Treatment

- “Members of historically disadvantaged groups receive the same level of care and quality of treatment as other participants with comparable clinical needs” NADCP, 2013.

Question: What do we know about treatment inequities?

- A. Racial and ethnic minorities often receive lower quality treatment in the criminal justice system
- B. Hispanic participants are significantly less likely to be placed in residential treatment than Caucasians.
- C. African Americans are less likely to receive medication-assisted treatment
- D. All of the above

Please TURN OFF YOUR CLICKERS when done.

National Association of Drug Court Professionals, Volume I

Equivalent Treatment

- Equal level of treatment
 - Is everyone signed up for insurance?
- Evidence-based treatment/counseling
 - Culturally Tailored Treatment
- Responsivity
- Gender-specific
 - We KNOW that women do better in gender specific treatment

Intervention Resource

- The Substance Abuse and Mental Health Services Administration (SAMHSA)
 - The National Registry of Evidence-Based Programs and Practices (NREPP).
 - Examples of interventions that have been evaluated among substantial numbers of racial and ethnic minority participants.
 - NREPP, Find an Intervention: <http://www.nrepp.samhsa.gov/AdvancedSearch.aspx>

Equivalent Incentives and Sanctions

- Equal imposition of incentives and sanctions
- Monitor the delivery of incentives and sanctions

Equivalent Dispositions

- “Members of historically disadvantaged groups receive the same legal dispositions as other participants for completing or failing to complete the Drug Court program”

National Association of Drug Court Professionals, Volume I

Equivalent Dispositions

- Be aware of sentencings post expulsion
- Racial or ethnic minority participants might be sentenced more harshly for failing to complete Treatment Court
- Important since minorities may be more likely to be terminated from Treatment Courts
- Studies are mixed, but Courts need to remain vigilant about equivalent dispositions

National Association of Drug Court Professionals, Volume I

Team Training

- “Each member of the Drug Court team attends up-to-date training events on recognizing implicit cultural biases and correcting disparate impacts for members of historically disadvantaged groups”

National Association of Drug Court Professionals, Volume I

Team Training

- Significant predictor of positive outcomes for racial and ethnic minority participants in substance abuse treatment is culturally sensitive attitudes on the part of the treatment staff
- Participants are retained significantly longer in treatment when managerial staff value diversity and respect their clients' cultural backgrounds

National Association of Drug Court Professionals, Volume I

Essential Actions Steps

- Determine if disparities exist
- Assess objectivity of eligibility criteria and screening process
- Determine if using valid, evidence-based treatment tools and clinical interventions
- Develop action plan to address discrepancy
- Evaluate the success of that plan
- Cultural proficiency team training

National Association of Drug Court Professionals, 2015 Historically Disadvantaged Groups Presentation by Terrence Walton

References

- Adult Drug Court Best Practice Standards, Volume I, 2013.
- NADCP – Historically Disadvantaged Groups Presentation by Anne Dannerbeck Janku, Fred Cheesman, John Gallagher, & Erick Guerrero, 2014.
- NADCP – Historically Disadvantaged Groups Presentation by Terrance Walton, 2015.
- The National Registry of Evidence-Based Programs and Practices (NREPP)
<http://www.nrepp.samhsa.gov/AdvancedSearch.aspx>



Standard 3: Planning Process

See section 4 of binder



WISCONSIN COURT SYSTEM



Learning Objectives

As a result of this session you should be able to:

- Review and reorganize your treatment court planning committee/advisory board
- Determine if there are gaps in your planning process
- Develop plan to create, review, and implement your
 - Policies
 - Procedures
 - Contracts
 - Handbooks
 - MOUs
 - Other process documents

Advisory Board

Who should be involved?

Advisory Board

- Timing of meetings and functions
 - Community mapping
 - Review research
 - Review and establish program goals
 - Review and ensure adequate case management and info tracking systems are in place
 - Review and update policies and procedures based on law changes
 - Review and modify forms, MOUs, manuals
 - Review and modify budget

Treatment Court Team

- Sustainability
- Set meeting times
- Transitioning

Policy and Procedure Manual

What should it contain?

Planning and Training Resources

- NADCP/WATCP annual conference
- NDCI training
- Mentor Courts
- National Rural Institute
- Webinars
- Coordinators Conference

Breakout Session 1 – Sample Action Plan


Wisconsin Treatment Court Standards Training Action Plan

Breakout 1 County: ABC Court type: Hybrid Court

Topic Area	Where would you like to be?	Steps to get there?	What barriers will you face in implementing the changes?	Resources Needed?	Persons Responsible	Target dates
Tracking treatment court budget and reporting to grantor	Able to track monthly expenditures and report to granting agency within 15 days of month end	<ul style="list-style-type: none"> • Identify budget by category • Determine process to track expenditures • Develop reporting process to granting agency 	<ul style="list-style-type: none"> • Access to information • Timeliness of transactions • Method to deliver report to granting agency 	<ul style="list-style-type: none"> • Fiscal/accounting assistance • Method to track expenditures • Staff to track and report expenditures 	<ul style="list-style-type: none"> • Coordinator • Financial staff 	First report submitted by 12/15/15




Breakout Session 1

- Review and revise mission statement
- Develop a plan to complete a review of the makeup of the advisory board, its goals, and mission
- Develop committees and plan the process to review and revise all procedural documents
- Review eligibility criteria, considering issues of equal treatment



Standard 9: Confidentiality

See section 5 of binder

What is Confidentiality All About?

The right of the person's privacy versus the public's right to know.

Learning Objectives

As a result of this session, you should be able to:

- Understand and apply the law
- Appreciate and maintain appropriate levels of privacy
- Appreciate the different types of confidentiality based on roles of treatment court team members

Law Pertaining to Treatment Courts

- Wis. Stat. Ch. 51.30
- HIPAA-health insurance portability and accountability act
- 42 U.S. Code 290dd, 42 CFR Part 2- confidentiality of alcohol and drug abuse records

Confidentiality

- Treatment information and records are confidential.
- In general, they can only be released to others with the informed written consent of the individual, if competent, or the guardian.
- The rule covers both verbal information and treatment records.
- There are many exceptions

Confidentiality

- All records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism or drug dependence are confidential.
- Treatment records do not include staff's notes or records maintained for their personal use that will not be shared with others

Chapter 51.30

- Wisconsin Statute 51.30 – laws apply to anyone receiving services for mental health, developmental disabilities, or substance abuse
- Applicability to treatment courts is unclear

Federal Law

- 2 major laws apply to participants in treatment courts:
- 1) HIPAA – Health Ins. Portability and Accountability Act
 - regulates the health care industry

Federal Law

2 laws apply to participants in treatment courts (cont.):

- 2) 42 U.S. Code 290dd 42 C.F.R. Part 2
 - Confidentiality of Alcohol and Drug Abuse Patient Records – regulates drug and alcohol programs
 - 42 U.S.C. § 290dd-2(a) provides that records of the identity, diagnosis, prognosis, or treatment of any patient shall be confidential and disclosed only for certain authorized purposes, and 42 CFR § 2.12(a) applies these restrictions to substance abuse treatment.

Obtain all necessary waivers and consents from participants at their orientation to court

Sample consent form in binder

Team Communication

How do you effectively communicate with your team?

Sample: Team Progress Report “Cheat Sheet”

EAU CLAIRE COUNTY DRUG COURT CIRCUIT COURT, BRANCH 2 MICHAEL A. SCHWABER, JUDGE				Name: <input type="text"/>
				DOB: <input type="text"/>
Probation <input type="checkbox"/>	ATR <input type="checkbox"/>	ES <input type="checkbox"/>		
File # <input type="text"/>	Offense <input type="text"/>	Sentence <input type="text"/>	Exp. Date <input type="text"/>	
Start Date <input type="text"/>	Phase <input type="text"/>	Phase Date <input type="text"/>	Drug Court Case # <input type="text"/>	
Address <input type="text"/>		Phone # <input type="text"/>	Ethnicity <input type="text"/>	
Significant Other <input type="text"/>		# Children & Ages <input type="text"/>		
COMPAS ASSESSMENT & CASE PLAN				
Date: <input type="text"/>		Criminogenic Needs: <input type="text"/>		
Overall Risks				
Violence <input type="checkbox"/>	General <input type="checkbox"/>	Pre-Trial <input type="checkbox"/>		
Primary Criminogenic Needs <input type="text"/>		Score <input type="text"/>	Case Plan Goals/Tasks <input type="text"/>	
TREATMENT INFORMATION				
Sober Date <input type="text"/>	Compliance Date <input type="text"/>	Drug(s) of Choice <input type="text"/>	Primary TX Location <input type="text"/>	
Start Date <input type="text"/>	End Date <input type="text"/>	Therapist Name <input type="text"/>		
Mental Health Diagnosis <input type="text"/>	Clinic/Physician <input type="text"/>	Medications <input type="text"/>		
Other Programming <input type="text"/>	Start Date(s) <input type="text"/>			
Clinical Notes: <input type="text"/>				
EMPLOYMENT/TESTING				
Employment Location/Hrs Date <input type="text"/>		Positive UA's/Prior Sanction: <input type="text"/>		
Out Date Huber/EM <input type="text"/>				
Sanctions from previous week <input type="text"/>				
Education <input type="text"/>				
Drug Court Fees <input type="text"/>				
Completed By: <input type="text"/>		Date: <input type="text"/>		
Case Management Notes: <input type="text"/>				
Suggested Court Topics: <input type="text"/>				

Special Concerns

- Therapist/ treatment providers: privilege, signed releases of information
 - Do these cover staffings?
- Hospitals: HIPAA, release of information
- Health and human services: releases, etc.
- What are the potential consequences for a violation of confidentiality?

Designated Privacy Official

- Code of Ethics
- HIPAA
- Email usage
- Waiver and consent forms
- CORE
- CFR 42
- FOIA-Freedom of Information Act
- Waiver of ex-parte communications
- Consent forms
- Open Records request

Safeguards

- Use locked storage cabinets
- Use locked shredder bins
- Establish procedures to redact and segregate treatment court files into what is open to public and what is confidential
- Train team members and staff on federal and state confidentiality requirements
- Document privacy policies and procedures
- Regularly review waiver and consent forms

Consent Documents

- To be legally valid an informed consent document must specify what data may be shared, with whom, and for what authorized period of time
 - See NADCP best practice standard VIII, commentary

Making the Record

- What's on the record and what's not
- Open to the public:
 - Court proceedings
 - Clerk should be taking minutes (limited)
 - Recorded by reporter
 - Judge should treat confidential info with care
- Closed to public:
 - Treatment Court team meetings or staffings
 - Non team member sign confidentiality log

The Press

- As a general matter, the press has a right to be in open court
- The judge, however, has the right to control the use of cameras and other recording devices
- In the instance a local news agency wants to do a full story, how will the judge handle?

References

- HIPAA
- 42 U.S. Code 290dd, 42 C.F.R. Part 2
- NADCP presentation on confidentiality (Steve Hanson and Valerie Raine)
- Wisconsin Treatment Courts: Best Practices for Record Keeping, Confidentiality and Ex Parte Information
<http://www.wicourts.gov/courts/programs/docs/treatmentbestpractices.pdf>

Links are available in binder



Standard 7: Record Keeping

See section 5 of binder



Learning Objectives

As a result of this session, you should be able to:

- Identify the different types of records maintained by members of your treatment team and the court.
- Develop a system of record keeping that provides a complete record of judicial action in and out of court
- Develop a bifurcated filing system to protect confidential medical and treatment records

**Contents of the Criminal Court File
Kept by Clerk of Court
(Not judge's file)**

**Contents of the Treatment Court File Kept
by the Coordinator
(Separate from the treatment provider,
clerk of court and judge's files)**

**Contents of the Judge's File
(not the court file)**

Contents of the Treatment Provider File

Contents of DOC file

Policy and Procedure Manual

- Should identify the record keeping systems of the court
- Should identify a procedure to review all court files on a regular basis to be certain they do not contain confidential information

Policy and Procedure Manual

- Should provide for a procedure for the coordinator or other treatment team member to review treatment provider files on a regular basis to determine they maintain fidelity to evidence-based practices

Policy and Procedure Manual

- Should be reviewed with participants as part of the court orientation process
- Develop a process to follow if a team member receives an open records request

Freedom of Information Act (FOIA)

- Wis. Stat. s.19.31 et. seq.
- A series of laws designed to guarantee that the public has access to records of the government bodies at all levels.
- This pertains to all records not already required to be maintained as open for the public

Freedom of Information Act (FOIA)

- “Record” is any document, regardless of physical form that “has been created or is being kept by” an authority. Wis. Stat. s.19.32(2)
- A presumption of complete public access
- Denial of public access is contrary to public interest and only permitted in exceptional cases.

Freedom of Information Act (FOIA)

- “Authority” includes any of the following having custody of a record:
- State or local office
 - Elective official
 - Public body, corporate or politic
 - Or a formally constituted subunit of the above

Freedom of Information Act (FOIA)

Any requester has a right to inspect a record.

“Requester” is any person who requests inspection or copies of a record, except a committed or incarcerated person. There are many exceptions. READ THE STATUTE

Freedom of Information Act (FOIA)

- Elected officials are the legal custodians of their records.
- May designate a staff employee to act as the custodian.

Freedom of Information Act (FOIA) Practical Considerations

- Do not need to create records to respond to requests
- Fees: May be imposed for copies.
 - May not exceed the actual, necessary and direct cost of reproduction, mailing and shipping, unless a fee or cost is otherwise provided by law
- Can waive or reduce if find in public interest

Freedom of Information Act (FOIA) Practical Considerations

Timing:

- If no regular office hours - Permit access to inspect within 48 hours or 2 consecutive hours per week with 2 hours advance notice.
- If regular office hours provide access at all open times.
- No time limit to copy and provide or deny. Should be as soon as practical, without delay

**Freedom of Information Act (FOIA)
Practical Considerations**

- Cannot destroy a record after receipt of a request until granted, or at least 60 days after denied.
- Not required to notify a record subject prior to responding to a request, with exceptions

**Freedom of Information Act (FOIA)
Practical Considerations**

Enforcement of request:

- A requester may bring a mandamus action to a court or request a DA or AG to bring that action
- A circuit court can award actual reasonable attorney's fees, damages of not less than \$100 and actual costs and punitive damages to prevailing party plus penalties

**Freedom of Information Act (FOIA)
Practical Considerations**

- The court should not receive and retain confidential information. Consider whether or not to use email.
- Coordinators and case managers should not be court employees – all records are then subject to FOIA
- All records to be provided should be reviewed to determine if must be disclosed and whether redactions are appropriate and needed

QUIZ

In what files should the following be placed?

DOC Case Management Plan

- A. Judge's file
- B. Coordinator's File
- C. DOC file
- D. Court file
- E. Both B and C

Diagnostic Assessment

- A. Judge's file
- B. Coordinator's file
- C. Court file
- D. Treatment provider file
- E. Both B and D

Cheat Sheet (Team Progress Report)

- A. Judge's file
- B. Coordinator's file
- C. Court file
- D. Treatment provider file
- E. Both B and C

Please turn off your clicker when done!

Resources

- Wisconsin Statute Chapter 51
- Wisconsin Treatment Courts Best Practices for Record-keeping, Confidentiality and Ex Parte Communication
- WI DHS on Confidentiality

Breakout 2

- Review files to ensure they comply with the standards and any applicable rules on confidentiality and record keeping
- Review policies and procedures on record keeping. Note any areas needing further review and adjustment.