

MAINE TREATMENT AND RECOVERY COURTS



POLICY AND PROCEDURE MANUAL

Preface

This Policy and Procedure Manual establishes operational standards and guidelines for teams working with Maine’s Treatment and Recovery Courts, which currently include Adult Treatment and Recovery Courts, a Co-Occurring Disorders Court, and Veterans Treatment Courts (referenced collectively herein as “Treatment and Recovery Courts” or “TRCs”).¹ The manual reflects and incorporates the principles and practices set out in the *Adult Drug Court Best Practice Standards, Vol. 1 & 2*, and the *Ten Key Components* published by the National Association of Drug Court Professionals (NADCP),² and is intended to serve both as a training and orientation guide for new team members as well as an ongoing reference for all staff.

The manual was last revised in 2013. The Maine Treatment and Recovery Courts Steering Committee, which administratively oversees these courts, directed that the manual be updated in response to recommendations of the Public Consulting Group after its comprehensive review of these dockets in 2020. In the event there is a conflict between this manual and any legislation, court decision, or policy statement of the Maine Supreme Judicial Court or Steering Committee, then the latter will control. Nothing herein is intended to limit either the expansion of existing treatment courts or the addition of new types of treatment courts.

¹ The Maine Judicial Branch also operates three Family Recovery Courts (FRCs), which are specialty civil dockets focused on working with families with children at risk of abuse or neglect due to parental substance use disorders or co-occurring disorders. Since the FRCs are civil dockets, they are neither addressed in nor subject to all of the standards and guidelines set out in this manual for the criminal treatment dockets.

² The NADCP Adult Drug Court Best Practices may be found at <https://www.nadcp.org/standards/adult-drug-court-best-practice-standards/> (last visited March 14, 2022). The NADCP Ten Key Components are defined at [Defining Drug Courts: Key Components \(ndci.org\)](https://www.ndci.org/Defining-Drug-Courts-Key-Components) (last visited March 14, 2022) and set out in Appendix 3.

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Chapter 1. Maine's Treatment and Recovery Courts

A. Introduction

Maine's Treatment and Recovery Courts (TRCs) offer treatment services to participants whose criminogenic risks and treatment needs are high, producing a likelihood of recidivism under standard supervision. Participants may enter the court pursuant to a pre-adjudication agreement or a deferred disposition, as part of a plea prior to sentencing, as a condition of probation, or as a result of a probation violation. The means of entry is determined by each court and courts are not required to accept all means of entry.

Treatment and Recovery Courts employ a non-adversarial courtroom atmosphere in which a dedicated multi-disciplinary team works toward a common goal of breaking the cycle of recidivism caused by underlying substance use disorder or mental health issues. Teams are comprised of judges, prosecutors, defense counsel, substance use treatment counselors, probation officers, case managers, courtroom personnel, and may also include law enforcement personnel, mental health workers, coordinators, peer specialists or mentors, community volunteers, and in Veterans Treatment Courts, Veteran Justice Outreach specialists. Participants remain in the community while being supervised by a case manager and, if on probation, a probation officer.

Through intensive judicial monitoring, comprehensive supervision, drug testing, treatment services, peer support, and immediate incentives and responses, TRCs support participants in addressing their underlying substance use or mental health problems in a productive and pro-social manner. TRCs are also characterized by a personalized relationship with the judge who provides encouragement at regularly scheduled and frequent court appearances while enforcing the conditions established for participation. TRCs are centered on providing participants with the skills necessary to reconnect with their family and community and maintain a healthy and productive lifestyle.

B. History

The Maine Legislature authorized the development of treatment courts in 1999 through 4 M.R.S.A. §§ 421-423. Initially, six Adult Drug Treatment Courts were established in August 2000 and began accepting participants in April 2001.³ These courts were located in Androscoggin, Cumberland, Oxford, Penobscot, Washington, and York Counties. The docket in Oxford County was discontinued in May 2004 due to low census. The original Penobscot County docket graduated its final participant in 2012, and following extensive planning, organization, and development by a dedicated multi-

³ An additional Adult Drug Treatment Court in Hancock County joined the state system following the provision of funding by the 123rd Legislature on July 1, 2008, after originally being established as a county deferred-sentencing project in 2005.

disciplinary group a new Penobscot County Adult Drug Treatment Court opened in the fall of 2016.⁴ Maine currently operates Treatment and Recovery Courts (formerly called Adult Drug Treatment Courts) in Androscoggin, Cumberland, Hancock, Midcoast (Knox, Lincoln, Sagadahoc, and Waldo), Oxford⁵, Penobscot, Washington, and York Counties. A more complete legislative history and list of relevant Judicial Branch Administrative Orders may be found in Appendix 1.

In 2005, Justice Nancy Mills initiated the Co-Occurring Disorders Court (CODC) in Kennebec County. The CODC focuses on participants whose involvement in the criminal justice system arises from a severe and persistent mental health disorder in addition to a substance use disorder.

In 2011, the CODC initiated a veteran specific track. In 2018 this track was formally recognized as a Veterans Treatment Court (VTC). The VTC was created to address the needs of veterans who become involved in the criminal justice system due to a substance use or mental health disorder. The multi-disciplinary team for the VTC includes a Veteran Justice Outreach Officer (VJO) from the United States Department of Veterans Affairs. The VJO coordinates treatment services with Togus VA Hospital, other VA clinics and programs, and accesses other community benefits. In January 2019, under the direction of Justice Nancy Mills, the Cumberland County Adult Drug Treatment Court also initiated a veteran specific track and admitted seven veterans during its first year of operation. Teams from TRCs in other counties have received training and are establishing veteran specific tracks, with the goal of developing their own stand-alone VTCs.

C. Mission

The mission of Maine's TRCs is to enhance public safety by reducing recidivism with respect to crimes primarily related to substance use or mental health issues; to hold participants accountable for their behavior; and to increase the likelihood of participants entering a recovery lifestyle through intensive judicial supervision, case management, peer support, and specialized treatment for substance use or mental health disorders.

D. Objectives

The goals and objectives of the TRCs are to:

1. Support participants in their recovery from substance use disorder or mental health issues that can be managed in a more structured, judicially supervised setting;

⁴ On January 16, 2016, the Maine Supreme Judicial Court issued Administrative Order JB-16-1, Establishment and Operation of Specialty Dockets, which specifies the requirements for the establishment, content requirements, and operations of all specialty dockets in Maine, including Adult Drug Treatment Courts.

⁵ Midcoast TRC and Oxford TRC are set to begin operations in 2022 following Bureau of Justice Assistance (BJA) grant budget approval.

2. Enhance public safety by reducing recidivism;
3. Increase participant personal, familial, and societal accountability;
4. Support the development of participant personal, familial, and societal assets and skills to become productive citizens of Maine;
5. Coordinate case processing and monitoring of participants who have multiple contacts with the legal system, including child protection, domestic violence, and family matters;
6. Support participants to provide financial support for their children;
7. Promote effective coordination of resources using complementary treatment and social services, community-based programs, educational, and vocational programs;
8. Hold participants accountable for their crimes through victim compensation, community restitution, and reimbursement of government agencies and service providers;
9. Help to reduce overcrowding of jails and prisons through early identification, intervention, and treatment of people under arrest who have substance use disorders; and
10. Achieve the above by adhering to the *Adult Drug Court Best Practice Standards* (Appendix 2), the *10 Key Components of Drug Courts* (Appendix 3), the *10 Key Components of Veterans Treatment Courts* (Appendix 4), and the *10 Essential Elements of Mental Health Courts* (Appendix 5).

Chapter 2. The Treatment and Recovery Court Team

A dedicated, multi-disciplinary team of professionals manages the day-to-day operations of a TRC. Duties of the team include reviewing pending referrals; making recommendations regarding entry into the program; monitoring compliance with TRC requirements; reviewing participant progress during team meetings (also known as staffings); attending and participating in court proceedings; contributing observations and recommendations within team members' areas of expertise; and delivering or overseeing the provision of legal, treatment, and supervision services.

The multi-disciplinary team⁶ consists of a judge, prosecutor, defense attorney, case manager, treatment representative, probation officer, and may optionally include a law enforcement officer, peer recovery support, the Coordinator of Specialty Dockets and Grants (Statewide Coordinator), and an evaluator (ad hoc). In a VTC, a VJO specialist is a member of the team and a veteran mentor coordinator may also members of the team.

- A. Judge:** The judge presides over the Treatment and Recovery Court and is the ultimate decision-maker. The judge provides leadership, engages with each participant on a regular basis, facilitates communication, approves the case plan, resolves conflicts, holds all parties accountable, and uses the authority of the court to guide cases and advocate for service integration.
- B. Prosecutor:** Among other duties, the prosecutor advocates on behalf of public safety, victim interests, and holds participants accountable for meeting their program obligations. The prosecutor also represents the county, or state, regarding admissions, incentives and sanctions in response to participant behavior, and terminations. The prosecutor may also help to resolve pending legal matters that impact a participant's legal status or eligibility.
- C. Defense Attorney:** Among other duties, the defense attorney ensures that participants constitutional rights are protected and advocates for participants stated legal interests. The defense attorney also functions as a liaison to the criminal defense bar.

Defendants are usually represented by retained or appointed counsel in proceedings leading up to their entry into Treatment and Recovery Court. After entry, participants may retain their previous defense attorney, provide informed consent to be represented by the defense attorney serving on the TRC team (the "team defense attorney"), or consent to be represented jointly by private defense

⁶ Marlowe, D. B., et al. (2018). *Adult Drug Court Best Practice Standards, Volume II*, pp. 38-50. Alexandria, VA: National Association of Drug Court Professionals.

counsel or the team defense attorney. In cases of joint representation, the team defense attorney typically handles most day-to-day issues, and protects the participants' rights as their advocate, but private counsel may step in if the participant faces a potential lengthy jail sanction or discharge from the program.

Evidence suggests that participants are more likely to accept and perceive TRC procedures as fair when a dedicated defense attorney represents their interests in case-specific matters in team meetings and status hearings, and greater perceptions of fairness are consistently associated with better outcomes.

D. Probation Officer: Probation officers serve an important community supervision function with respect to participants on probation. Probation officers are expected to coordinate and communicate with the case managers in the collection of relevant criminal and probation history; work cooperatively with the court, prosecutors, and defense attorneys regarding applicants under supervision; and provide supervision consistent with the level of risk determined by an evidence-based assessment tool, including residence checks, office and collateral contacts. Probation officers are also expected to comply with Department of Corrections policies that apply to their collaboration with Treatment and Recovery Courts. While the authority to arrest for a probation violation remains within the duties of the probation officer, it is recommended that arrests take place for reasons of public safety and incarceration sanctions be administered by the TRC judge.

E. Case Manager: The case manager screens applicants for eligibility; brokers and coordinates services; advocates for participants; monitors participants on a day-to-day basis; performs drug testing; provides updates to the judge and team; provides outreach to participants; facilitates interagency communication; and serves as the liaison between court and service providers. The case manager also records data in the database used for case management and evaluation. The case manager is a contracted position funded through the Office of Behavioral Health.

A case management services supervisor observes team practices, particularly with regard to the performance of case managers, and provides quality assurance to the case management function.

A separate community case manager (if any) assists in service plan development and accessing needed services for participants with severe and persistent mental illness.

F. Treatment Representative: Each team has a designated clinician or clinicians who provides assessments, develops treatment plans, delivers cognitive behavioral treatments as well as evidence-based substance use treatments, collaborates with other service providers, and offers clinical expertise to the team.

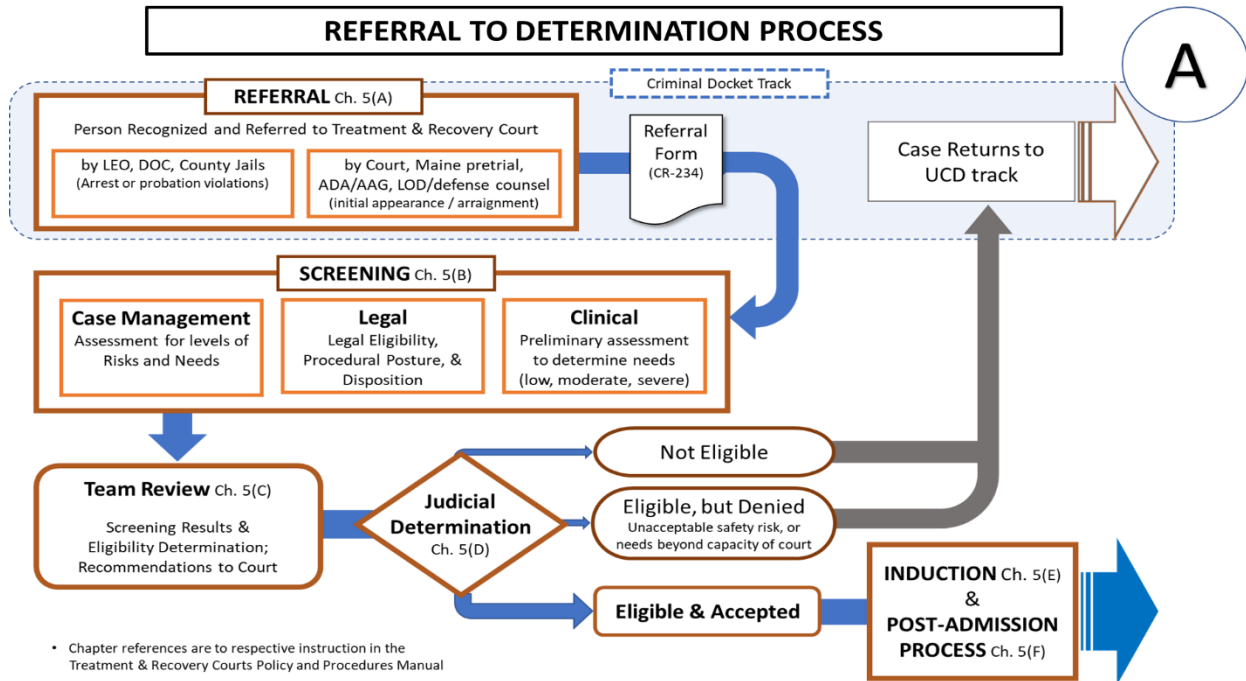
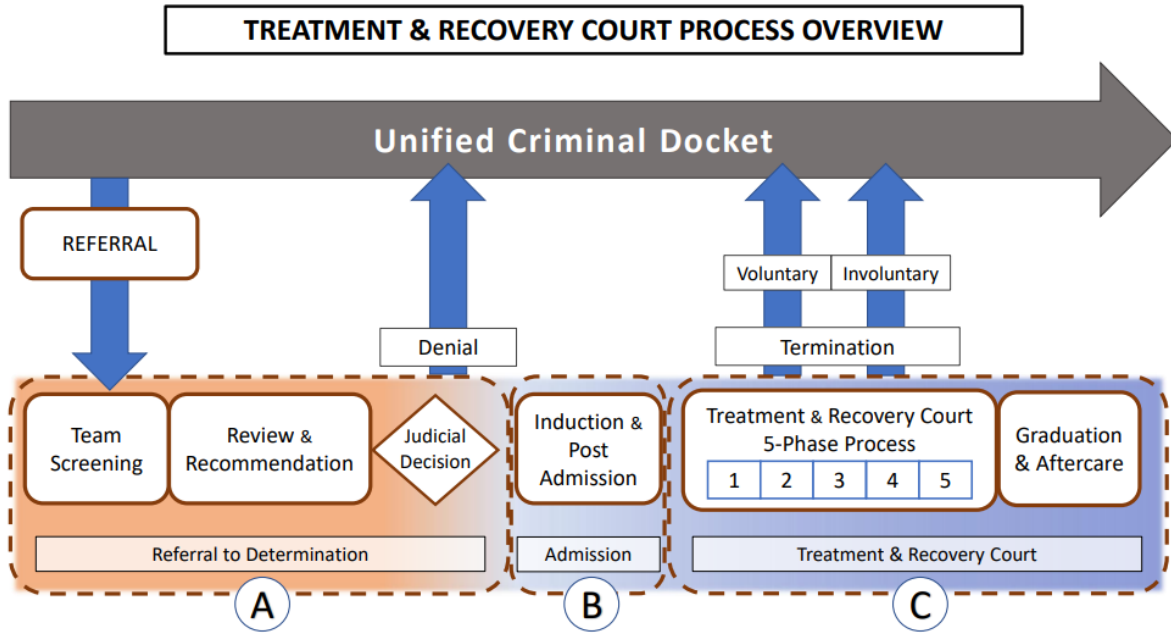
This role has historically been a contracted function to a substance use treatment agency with expertise in substance use disorders and who is also licensed to provide mental health treatment.

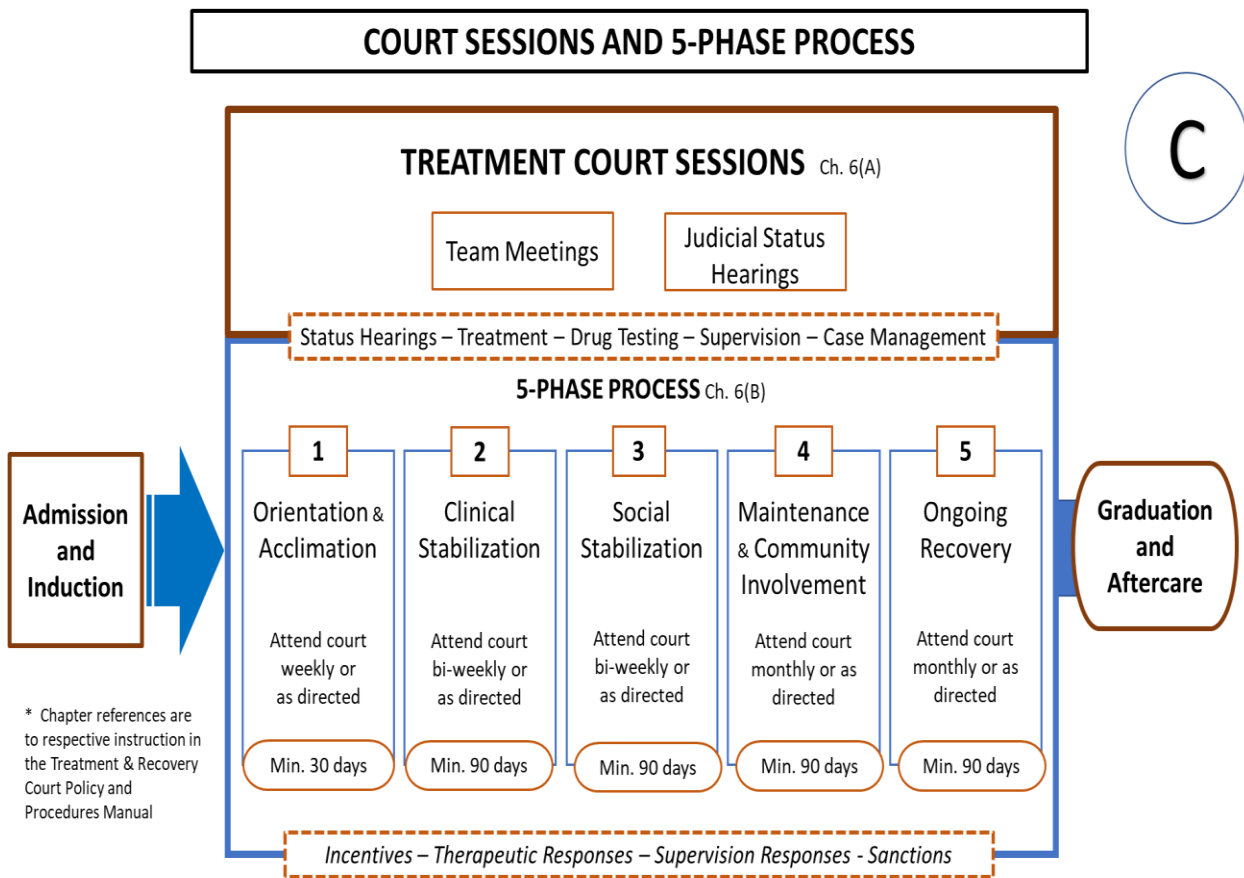
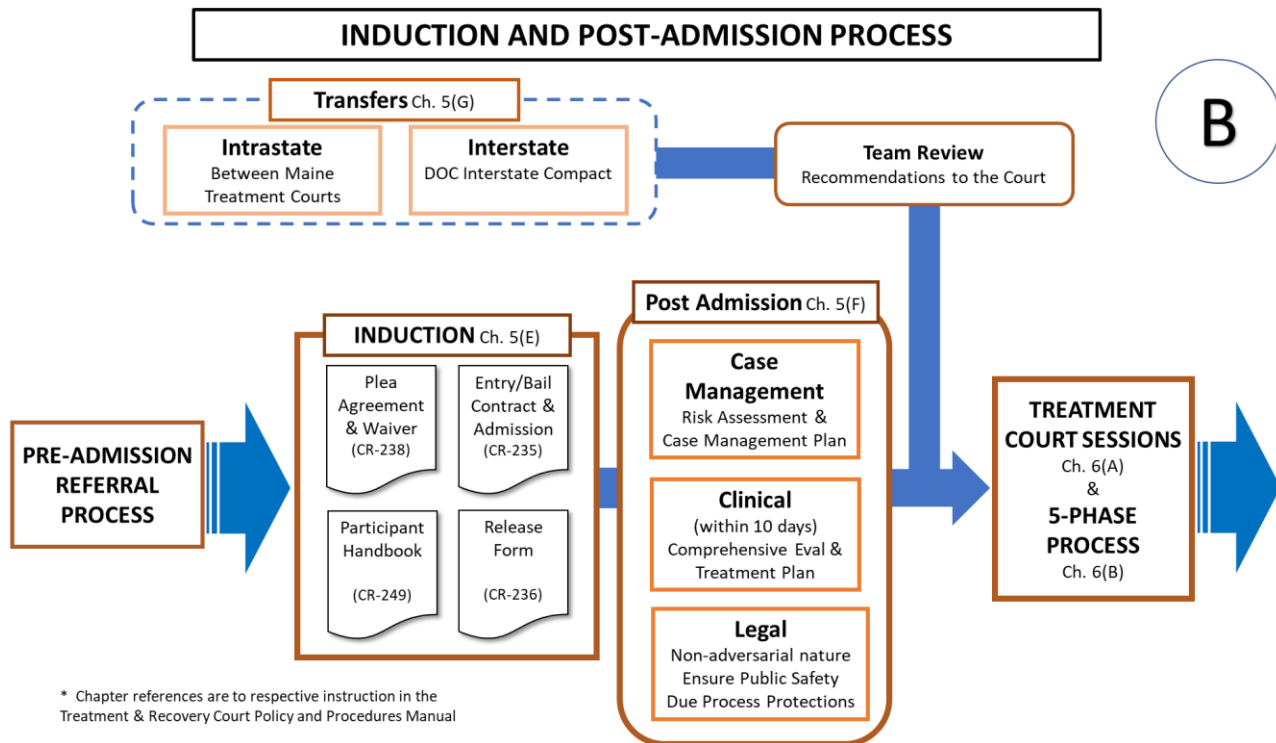
- G. Law Enforcement Representative:** A law enforcement representative may include a police officer, deputy sheriff, highway patrol officer, or jail official who typically assists with home or employment visits, observes participants in the community as the eyes and ears of the team, acts as a liaison between the police department, sheriff's office, jail, or correctional system and the Treatment and Recovery Court.
- H. Project Evaluator:** An independent project evaluator gathers data, performs analyses of process and outcome research, and provides technical assistance on court processes and functions following national best practice standards or other relevant national models. This role has traditionally been filled by a statewide contracted function. Individual courts are expected to cooperate with evaluation processes such as providing data, participating in interviews, providing access to participants, and allowing observation of TRC activities.
- I. Peer and Community Supports:** TRCs may also include other community representatives on their team, such as peer mentor coordinators, Veteran Justice Outreach specialists, veteran mentor coordinator, and a nurse or physician.
- J. Coordinator of Specialty Dockets:** In Maine, a single Coordinator of Specialty Dockets covers all TRCs statewide. The Coordinator provides information, training, expertise, and guidance on best practices, current research, and relevant legal issues.

In a well-functioning Treatment and Recovery Court, team members work in concert and in a non-adversarial manner. This does not mean that team members will always agree, but team members are expected to operate in a common framework so that information can be gathered and shared for key decisions in a timely way. Each team member should provide input based on their area of expertise while acknowledging that they are not an expert in all areas. The heart of a successful TRC team is the coming together of experts from different disciplines in a cooperative manner. In the end, it is the responsibility of the judge to bring contested positions to a conclusion and it is the team members' responsibility to support the judge.

Chapter 3. Treatment and Recovery Court Process Overview

The following charts illustrate the process Maine's Treatment and Recovery Courts follow in accepting referrals, inducing participants, and conducting operations.





Chapter 4. Eligibility Criteria and Conditions of Participation

Eligibility and exclusion criteria for TRCs are based on empirical studies indicating the types of individuals that can be treated safely and effectively in these programs. Applicants are evaluated for admission using evidence-based assessment tools and procedures.

Individuals who have historically experienced discrimination or diminished opportunities on account of race, ethnicity, gender, sexual orientation, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other individuals to participate and succeed in Maine's TRCs.

Eligibility and exclusion criteria for defendants applying for admission to a TRC are set out in Section A. Defendants applying to a VTC must meet the additional criterion set out in Section B. The conditions of participation set out in Section C apply to all applicants to either court.

A. Eligibility Criteria

1. **Age.** Age 18 years or older.
2. **Residence.** Except as provided below, an applicant must both reside in and have at least one pending charge in the county served by the court to which admission is sought. If an applicant has charges pending in another county, the District Attorney, or their designee, must agree to transfer venue to the county of the court to which admission is sought as does the receiving District Attorney, or their designee. Although priority is given to residents of the county within which the treatment Court is based, referrals from outside the county will be considered with the expectation that the applicant, if accepted, will reside in the county of the admitting court (see Chapter 3 below) or in an adjacent county with court approval.
3. **Risk of Recidivism.** An applicant must qualify as medium to high risk to recidivate based on the results of a validated, evidence-based assessment tool administered by case management or comparable evidence-based assessment tool endorsed by the Maine Office of Behavioral Health or Maine Pretrial Services.
4. **Severity of substance use disorder.** An applicant must be diagnosed by a licensed professional as having a moderate to severe substance use disorder meeting current Diagnostic and Statistical Manual-V (DSM-V) criteria. This requirement may not be applicable to applicants for VTC. See Section B, below.

5. Nature of the charge(s). An applicant must have a current charge that constitutes an adult criminal offense as defined by the Maine Revised Statutes but which is not an excluded offense as defined in subsection 5(a), below. Current charge means either new criminal conduct set out in a charging instrument or motion to revoke probation, or the charge(s) constituting the underlying conviction(s) of an applicant's probation.

a. Excluded Offenses. Except as otherwise provided in subsection 5(d), below, an applicant charged with, or serving probation with respect to any of the following offenses is **not eligible** for consideration:

- (i) Murder, 17-A M.R.S. §201;
- (ii) The following Class A offenses defined in 17-A M.R.S. Ch. 9:
 - a. Felony Murder, 17-A M.R.S. § 202;
 - b. Manslaughter, 17-A M.R.S. § 203;
 - c. Elevated Aggravated Assault, 17-A M.R.S. § 208-B;
 - d. Elevated Aggravated Assault, 17-A M.R.S. § 208-C;
 - e. Domestic Violence Aggravated Assault, 17-A M.R.S. § 208-D;
 - f. Domestic Violence Aggravated Assault, 17-A M.R.S. § 208-E;
 - g. Domestic Violence Elevated Aggravated Assault on Pregnant Person, 17-A M.R.S. § 208-F;
 - h. Kidnapping, 17-A M.R.S. § 301;
- (iii) Aggravated Sex Trafficking, 17-A M.R.S. § 852;
- (iv) All offenses defined in 17-A M.R.S. Chapter 11 Sexual Assaults;
- (v) All offenses defined in 17-A M.R.S. Chapter 12 Sexual Exploitation of Minors;
- (vi) Aggravated Trafficking of Scheduled Drugs § 1105-A(1)(K);
- (vii) Aggravated Trafficking of Scheduled Drugs § 1105-A(1)(L);
- (viii) Aggravated Furnishing of Scheduled Drugs § 1105-C(1)(K);
- (ix) Aggravated Furnishing of Scheduled Drugs § 1105-C(1)(L); and
- (x) Aggravated Unlawful Operation of a Methamphetamine Laboratory § 1105-E(1)(E);
- (xi) Aggravated Illegal Importation of Scheduled Drugs, § 1118-A(1)(I).

b. Heightened Scrutiny Offenses. In determining eligibility consistent with the policies and principles set out in this manual, particularized attention shall be given to the potential risk to the safety and welfare of a victim, members of the team, court staff, participants, and the general public when an applicant has been charged with or convicted of any of the following offenses:

- (i) Offenses Against the Person in 17-A M.R.S. Chapter 9, including domestic violence offenses not excluded in section 4(A)(5)(a) above;
- (ii) Arson, 17-A M.R.S. § 802;

- (iii) Causing a Catastrophe, 17-A M.R.S. § 803-A;
- (iv) Robbery, 17-A M.R.S. § 651;
- (v) Aggravated Trafficking of Scheduled Drugs, 17-A M.R.S. § 1105-A;
- (vi) Aggravated Trafficking or Furnishing of Counterfeit Drugs, 17-A M.R.S. § 1105-B;
- (vii) Aggravated Furnishing of Scheduled Drugs, 17-A M.R.S. § 1105-C;
- (viii) Aggravated Cultivating of Marijuana, 17-A M.R.S. § 1105-D;
- (ix) Aggravated Unlawful Operation of Methamphetamine Laboratory, 17-A M.R.S. § 1105-E;
- (x) Aggravated Illegal Importation of Scheduled Drugs, 17-A M.R.S. § 1118-A;
- (xi) Offenses involving the use of a dangerous weapon, 17-A M.R.S. § 2(9); and
- (xii) Offenses involving the use of a firearm, 17-A M.R.S. § 2(12).

c. Domestic Violence Offenses. Except as provided in subsection (5)(a), above, an applicant charged with or convicted of a domestic violence offense is not automatically excluded from seeking admission to a TRC; however, such applications shall receive heightened scrutiny consistent with subsection 5(b), above with particular consideration given to the issue of victim safety. The prosecutor is responsible for informing any victim(s) of the TRC application and providing victim input, if any, to the TRC team. TRCs are designed to address and offer treatment services for substance use disorders or mental health issues, not domestic violence. While substance use and mental health issues are often present in cases involving domestic violence, they are not the cause of domestic violence. In domestic violence cases, if participation in and completion of a domestic violence intervention program is required as a condition of bail or probation, the case manager or probation officer will monitor, and the court will enforce, compliance. Care should be taken to avoid assigning participants with domestic violence charges or convictions to group treatment settings that may also involve a victim of domestic violence.

d. Previous Convictions. An applicant whose criminal history includes a prior conviction for one or more offenses listed in subsection (5)(a) is not automatically ineligible for admission. The team, however, must give heightened scrutiny to any such referral consistent with this Chapter and Chapter 5(B).

B. Eligibility Criteria for Veterans Treatment Court

In addition to the eligibility requirements specified in Section A(1), (2), (3), and (5), above,⁷ a defendant seeking admission to VTC (or a veteran-specific track in another TRC), must be a veteran, defined as follows:

Any person who has served in the Active Duty or Reserve Components, including the National Guard, of any of the armed forces of the United States for at least one day under federal or state orders as evidenced by a discharge document such as a DD-214 for federal service or NGB-22 for National Guard service. Armed Forces includes any of the service branches under federal authority including the Army, Marine Corps, Navy, Air Force, Space Force, and Coast Guard, and all armed forces under the National Guard Bureau including the Army National Guard and the Air National Guard.

C. Other Conditions of Participation

An applicant must meet the following conditions in order to be admitted into and participate in a Treatment and Recovery Court:

1. Legal representation. Any eligible defendant who is not represented shall meet with a court-assigned attorney before admittance to the program.

2. Authorization for release of information. A defendant agrees to sign releases with regard to treatment records and information otherwise made confidential under state or federal law that is necessary to facilitate the sharing of information among treatment providers, the team, and the court in order to support their participation, treatment, supervision, and recovery.

3. Waiver of procedural rights. A defendant agrees to waive certain procedural rights as set out in the *Plea Agreement and Waiver of Rights* (Appendix 6) and *Plea Agreement and Waiver of Rights (Probation)* (Appendix 7) and the *Entry/Bail Contract and Order* (Appendix 8). The judge must review this waiver with the defendant at the time of induction to confirm that the waiver is knowing and voluntary. See Chapter 6, below.

4. Payment of financial obligations. A defendant agrees to pay restitution, child support, fines, and fees as required by the court.

5. Census and caseload. The number of participants in a TRC program is limited by the contractual limitations on caseloads for the case manager. Each case manager may supervise a total of 25 participants. A participant who repeatedly fails to appear for court, supervision, and treatment sessions is counted in this

⁷ A diagnosed Substance Use Disorder is not an eligibility criterion for a VTC or VTT; entry may be made solely on a mental health diagnosis.

contractual limitation. This may create situations where courts cannot admit new applicants as they are at capacity even though some people are not actively participating.

Chapter 5. Procedure for Admission

A. Referral

Referrals to a Treatment and Recovery Court may come from a variety of sources, including judges, prosecutors, defense attorneys, pretrial service workers, probation and parole officers, law enforcement officers, case managers, as well as potential applicants or their family members. Law enforcement officers and agencies, as well as all members of the criminal justice system, are encouraged to be attentive to signs of substance use disorder and mental health issues that suggest a referral could be appropriate. Ideally, a referral should be made at the earliest opportunity following an individual's entry or re-entry into the criminal justice system, for example, post-arrest or after revocation of bail or probation.

A referral is made by submitting the Treatment and Recovery Court Referral Form (MJB-Form-CR-234)⁸ to the court clerk. This form may be obtained from the court clerk or downloaded from the Maine Judicial Branch website. Once submitted, the designated TRC clerk will promptly forward the referral form to the case manager.

B. Screening – Entry Eligibility

To maximize access to treatment and to minimize the time to admission, screening will be based on a “rule in” rather than a “rule out” basis. Treatment courts have the greatest impact upon high-risk⁹ offenders who have more severe anti-social backgrounds or poorer prognoses for success in standard treatment with traditional supervision.¹⁰ Low-risk individuals can actually have the risk of recidivism increased by participation in a rigorous court-based intervention during which they associate with more criminally minded high-risk peers.

Once the case manager receives a completed referral form the screening process is initiated. The entire process from referral to judicial determination of eligibility should be completed within 30 to 45 days.

An applicant referred for screening prior to adjudication will not be required to enter or change a guilty (or *nolo*) plea or admit an alleged probation violation as a condition of referral for screening.

⁸ <https://mjbportal.courts.maine.gov/Court/FormsLists/Index> (last visited September 10, 2021).

⁹ High-risk refers to the degree of risk that person may recidivate on their current level of supervision. High-risk does **not** refer to public or staff safety. Treatment courts are designed for those that are ill, not for those that pose a risk to the safety of the participants, staff, or public.

¹⁰Douglas B. Marlowe, *Research Update on Adult Drug Courts*. (December 2010). National Association of Drug Court Professionals.

Eligibility determinations are to be based upon objective criteria, and not subjective impressions as to whether an applicant is suitable for the program (e.g. is motivated to change or prepared for treatment). Such “suitability determinations” do not comport with best practices and have the potential to systematically exclude eligible individuals for reasons that are empirically invalid.¹¹ Because treatment courts are generally “not very successful at predicting who will succeed in their program[s],” they should avoid discussions of suitability or motivation when determining entry.¹²

The process of screening for admission consists of the following components:

1. Case Management Screening

Upon receipt of a referral, the case manager promptly screens the applicant using a validated, evidence-based screening tool. The case manager, in collaboration with the prosecutor’s office, verifies the applicant’s criminal history, including current charges.

The case manager should conduct the screening within five working days of receiving the referral from the court clerk. If despite reasonable efforts the case manager is unable to contact an applicant within 14 days, either directly or through defense counsel, the referral may be denied. The applicant, or defense counsel, may submit a new referral, with updated contact information. The presiding judicial officer may limit future consideration upon a determination that further review would be an inappropriate use of limited resources.

2. Legal Eligibility Review

The prosecutor, defense attorney, and probation officer review an applicant’s legal status. The prosecutor and probation officer review the current charge(s), criminal history, supervision history (if any), public safety risk (if any), and criminogenic need based on a timely LSI assessment or other comparable evidence-based assessment tool, which identifies significant risk of future criminal conduct without treatment or intervention (high criminogenic needs). Defense counsel also review current charge(s), legal risks including constitutional due process and equal protection issues (if any).

Safety is also a factor to be considered. *Even if all eligibility criteria have been otherwise met*, the risk to safety that an applicant may pose to a victim, the general public, TRC staff, or other participants may constitute grounds for the court to deny admission.

The State and defense counsel should explore the applicant’s willingness (not suitability or motivation) to enter a TRC. If the applicant is unwilling to abide by the

¹¹ Douglas B. Marlowe, *Targeting the Right Participants for Adult Drug Courts*. Part 1 (Feb. 2012). National Association of Drug Court Professionals.

¹² Rossman, S.B. & Zweig, J.M., *The Multisite Adult Drug Court Evaluation*. (May 2012). National Association of Drug Court Professionals.

program rules, entry may be denied. If there is an agreement on entry, the State and defense counsel negotiate the terms of a proposed plea agreement and sentence. If the State does not support admission of an applicant who is otherwise eligible, the applicant may petition the court for entry through an open plea. If the State does not oppose an applicant's entry but counsel are unable to reach an acceptable plea agreement, the applicant may offer an open plea and the parties may argue sentencing before the court as to the appropriate disposition. At the court's discretion, the applicant either may be admitted with a disposition determined by the court or may be denied entry.

If the state is opposed to entry, then the state or the applicant may request that a judge other than the presiding TRC judge hear the matter. Such a request must be made to the TRC judge in writing within 10 days of receiving notice of the hearing, and failure to do so may waive said right. The presiding judge at the time of the plea would then hear the matter and impose sentence without delay and in doing so would have all sentencing alternatives, including TRC, at its discretion.

3. Clinical Screening

The team treatment provider will conduct a short-screen preliminary level of care assessment to determine treatment needs. If an applicant is ultimately admitted, then a more comprehensive assessment will be conducted and a full treatment plan developed. This may occur concurrently with the legal eligibility review.

C. Team Review and Team Member Recommendations

Once the individual team members have completed the necessary screenings and assessments, the team will collectively review findings to determine the eligibility of the applicant, focusing on the criteria in Chapter 4.

The case manager presents the screening results with regard to the level of risk and need to be addressed in service planning, including housing, healthcare, vocational training, education, transportation, and government entitlement needs.

The treatment provider presents findings regarding a preliminary level of care and whether available treatment services are sufficient to address the applicant's needs. At a minimum, applicants should have a preliminary intensive outpatient (IOP) level of care.

The prosecutor, defense counsel, and probation officer present information based on their legal review, including applicant's current charges, current underlying sentence (if on probation), criminal history, supervision history, victim input (if any), viability of reaching a plea agreement, collateral consequences of participation, and potential risk to the safety of the public, staff, participant(s) and victim(s), if any.

Based on the presentations, team members make individual recommendations to the presiding judge as to whether the applicant's request for admission should be: (i)

granted; (ii) denied; or (iii) deferred due to the need for additional information. In making their recommendations, the team shall not vote nor require entry by consensus or unanimous decision.

An applicant may withdraw their application at any time, or, if admitted, may decline entry into a TRC. If an application is withdrawn or entry declined, the case will be referred back to the unified criminal docket for disposition.

D. Judicial Determination of Entry

The presiding TRC judge has full discretion to accept or deny an applicant's admission and is neither required nor expected to make written findings or issue a separate order. The clerk will make an appropriate docket entry reflecting the presiding TRC judge's decision. The case manager shall notify defense counsel promptly of the decision in writing and file a copy of the letter with the clerk.

In order to comply with Key Component #3, treatment services are to begin as quickly as possible. To comply with this Key Component the TRC's will highly discourage the use of jail time after induction prior to the start of services.¹³

The intention of TRCs is to stop the revolving door of incarceration. Research suggests that TRCs are more effective at reducing recidivism compared to traditional sentences including incarceration.¹⁴ Thus, the use of upfront time in most circumstances defeats the purpose of TRCs.

If the applicant is to be admitted, the clerk removes the case(s) from the Unified Criminal Docket and promptly schedules an induction hearing on the next date available on the TRC's calendar. The prosecutor and defense counsel should promptly prepare the final paperwork, including the *Plea Agreement and Waiver of Rights* and the *Entry/Bail Contract and Order* in preparation for induction.

If an applicant entered a plea or admission predicated upon admission to a TRC and admission is subsequently denied, the applicant may seek to withdraw the plea or admission. This does not apply to circumstances where a condition of probation requires an application to a TRC follows a period of incarceration.

E. Induction

1. Induction Proceeding

¹³ US BJA drug court grants prohibit the use of upfront jail time unless required by statute. In these cases, the presiding judge shall determine admission on a case-by-case basis.

¹⁴ Carey, S. M., Mackin, J. R., & Finigan, M. W. (2012). What Works? The 10 Key Components of Drug Courts: Research Based Best Practices. *Drug Court Review*, VIII(1), 6-42.

When inducting an applicant, the presiding TRC judge shall undertake the appropriate plea or admission process as required by statute and the Maine Rules of Unified Criminal Procedure, and in addition confirm that the applicant understands and agrees to the following:

- The terms of the *Plea Agreement and Waiver of Rights* and the *Entry/Bail Contract and Order*, including:
 - The dispositional alternatives set out therein, which may include an agreement by the prosecutor to vacate the adjudication with a dismissal of the complaint/indictment/motion to revoke probation, an unconditional discharge, a specific sentence, or an open plea sentencing agreement;
 - The requirement to comply with all TRC conditions, and the consequences of failing to do so, including without limitation a jail sanction;
- The requirement to attend judicial status hearings, which are open to the public;
- Defendant is knowingly and voluntarily waiving the right to have originally retained/appointed counsel for representation at judicial status hearings, where up to 72 hours incarceration may be imposed as a sanction;
- If a term of incarceration is contemplated as a sanction or termination is sought for failure to comply (or any other reason) the defendant shall be given the opportunity to request a hearing. The team defense counsel has the authority to represent the participant at the hearing, however if a jail sanction of more than 72 hours is contemplated the court may set the hearing for a later date with notice to original retained/appointed counsel to appear; and
- Defendant's retained/appointed defense counsel shall continue as counsel of record until the case is concluded.

The judge shall also confirm with the defendant and counsel that:

- All available discovery has been received and that the referral is in the client's best interest;
- The defendant is entering into the program knowingly and voluntarily, and has reviewed the decision as well as the documents with counsel, understands the documents, agrees to sign the *Plea Agreement and Waiver of Rights* and *Entry/Bail Contract and Order*, and to abide by all of the rules and regulations of the court;
- The defendant has knowingly and voluntarily signed all necessary waiver of confidentiality forms and such other forms required for participation; or, if not already signed, that defendant is willing to sign such waivers; and
- Even though judicial status hearings and other TRC proceedings are open to the general public, and the right to a private hearing is waived, a participant may request a private meeting with the court and the team

to discuss highly confidential matters and such a meeting will not be on the record unless ordered by the judge.

The defendant, with the assistance of originally retained/appointed counsel, will execute all required forms including the *Plea Agreement and Waiver of Rights* and the *Participant Entry Contract* in the presence of the judge. The *Authorization to Release Information* (Appendix 9) should have already been signed during the screening process with the case manager.

A *Participant Handbook* also should have previously been provided to the participant by the case manager. These documents specify the performance expectations for the participant, the expected responses to participant behavior, and the dispositional alternatives for successful completion or unsuccessful termination from the TRC.

At the conclusion of the proceeding, the newly inducted participant should meet with the case manager and be provided a written schedule of the TRC sessions as well as information regarding the participant's treatment and case management regimen.

The participant will be directed to meet with the treatment provider to determine the appropriate treatment services and the proper level of care.

2. Conditions of Bail; Post-Conviction Bail

Participation in a TRC requires compliance with all conditions of post-conviction bail or probation. Conditions will include:

- Substance use disorder treatment;
- Frequent, random, and observed alcohol or other drug tests; and
- Searches of residence, vehicle, and cell phone.

Conditions may include the following:

- Mental health screenings and treatment;
- Inpatient or residential substance use disorder treatment;
- Concurrent participation in a program to address domestic violence;
- Compliance with all existing court orders, including protection from abuse orders, child protection orders, and child support and custody orders;
- Finding or maintaining employment when appropriate;
- Parenting education classes;
- Finding or maintaining a stable residence;
- Enrolling in an educational program;
- Payment of court ordered compensation, fines, or fees, including victim compensation or restitution;
- Completion of community service hours; and
- A 'no contact' list of persons with whom the participant is not allowed to have contact of any kind.

The conditions of the *Entry/Bail Contract and Order* prohibits participants from being in the presence of people who use or possess illegal, addictive, or psychoactive substances due to the increased risk such contact poses for relapse. In the event that a close associate, such as a family member, is taking prescribed medications such as prescription narcotics or benzodiazepines, a participant must obtain permission from the case manager prior to making contact. If permitted, a safety plan¹⁵ shall be developed and implemented prior to contact.

If the participant enters by way of admission to a motion to revoke probation, probation time will be tolled during participation in the TRC.

¹⁵ Safety Plan – A plan developed by the case manager or treatment provider AND the participant, exclusive to an event or period of time, that addresses potential triggers for relapse, risks associated with the environment, warning signs, positive reactions, identified supports and contacts information. The purpose of a Safety Plan is to provide the participant with options to sustain recovery.

F. Post-Induction Process

Upon induction, the case manager completes an approved evidence-based risk assessment and develops the participant's case management plan. Within five days of induction, the treatment provider performs a Level of Care (LOC) assessment using approved evidence-based comprehensive assessment tool(s).

The treatment provider determines the appropriate level of care to treat substance use disorder using the *American Society of Addiction Medicine Patient Placement Criteria* (ASAM PPC-2R or any future revisions). Using other validated assessments for co-occurring disorders on the DSM-V (or future DSM revisions) behavioral spectrum, the treatment provider will determine whether additional referrals for co-occurring conditions are needed, or a plan of care should be established to address the co-occurring conditions.

If the recommended level of care is not presently available, such as an open spot in a residential/in-patient program, the treatment provider should recommend other treatment options until the appropriate level of care becomes available. The treatment provider develops a preliminary treatment plan for all participants.

All level of treatment and comprehensive assessments will be done within five calendar days of induction and treatment shall begin within three days of the level of care determination. The case manager or treatment provider shall arrange for such other tests or assessments that are deemed appropriate or as determined by the court. The treatment provider's individual treatment plan will address substance use disorder, mental health disorders, trauma, Medication Assisted Treatment (MAT), psychotropic medication needs (if any), and other related issues

G. Transfers

One Maine Treatment and Recovery Court may transfer to, or accept transfers from, another; and may also accept transfers of probation-based cases from other states as part of the Interstate Compact for Adult Offender Supervision.

If the charges arose in a county other than the county where the transferee or "admitting court" is located, the District Attorneys, or their designees, from the originating county and the receiving county must agree to the transfer. A request for transfer should be noted on the Treatment Court Referral Form (CR-234). Admission is determined by the admitting court, and is based, on eligibility criteria set out above in Chapter 4. The individual requesting a transfer must be willing to reside in the county of the admitting court or show that they will be able to access services to the satisfaction of the court.

Chapter 6. Treatment and Recovery Court Procedures

A. Court Sessions

Courts are encouraged to hold proceedings, known as “judicial status hearings”, bi-weekly at a minimum. The frequency of a participant’s attendance at judicial status hearings will vary based upon progression through the program phases and local court requirements (See Section B, below). However, participants should be required to attend all scheduled judicial status hearings for at least the first few months they are in the program.¹⁶

All team members are expected to attend staffing meetings and judicial status hearings. This practice is supported by the National Drug Court Institute and clinical research, which found that the absence of a critical team member or discipline from team discussions or status hearings has up to a 50% reduction in effectiveness.¹⁷

During the week(s) between judicial status hearings, team members, including the judge, shall remain in close communication and keep one another informed of important developments affecting participants. Such communication may be in person or by telephone, email, or other accepted platforms.¹⁸ Email communications and attachments must be de-identified by using a participant’s initials to maintain confidentiality if protected health information is discussed.

1. Team Staffing Meeting

Prior to each judicial status hearing, the judge meets with the team to review referrals and assess the status of each participant. For reasons of confidentiality, team meetings are closed to the public and are not recorded. Non-team members may attend such meetings at the invitation of the judge, provided confidentiality interests are protected.

The team shall review new referrals promptly and make recommendations to the judge. The team may invite an attorney representing a client who is applying for admission to attend a meeting and be heard when the client’s application is being considered.

¹⁶ Marlowe, D.B. (2010). Research Update on Adult Drug Courts, National Drug Court Institute.

¹⁷ Carey S. M., Waller, M., & Weller, J. (2006). California Drug Court cost study - Phase III: Statewide costs and promising practices, final report. Portland, OR: NPC Research.

¹⁸ Marlowe, D.B. (2008). Application of Sanctions. Quality Improvement for Drug Courts: Evidence-Based Practices. National Drug Court Institute. (Series 9).

The team shall develop a coordinated strategy for dealing with each participant's progress through the phases, making recommendations to the judge regarding incentives, therapeutic responses, and sanctions to address individual participant's compliance.

2. Judicial Status Hearings

Judicial status hearings are considered regular criminal court proceedings and are conducted in a courtroom or other suitable courthouse space designated for that purpose.¹⁹ Judicial status hearings need not be recorded except as may be otherwise required by statute, rule, or policy. For instance, recording is required for: (i) induction proceedings, (ii) sanction hearings involving jail or significant alterations of probation, (iii) termination hearings, (iv) final disposition at graduation, and (v) or other final dispositional hearings.

Judicial status hearings may be held weekly, but must be held at minimum every other week, subject to the court's calendar, to maintain Best Practice standards. Participants in early phases shall appear at every scheduled judicial status hearing. Each participant will be called upon to speak with the judge and answer the judge's questions. Research indicates that judges who spend three or more minutes with a participant during status hearings have greater programmatic outcomes and savings than those courts where the judges spent less time.²⁰ Members of the team may provide information at their own initiation or as requested by the judge. The judge should both recognize appropriate behavior (and provide an incentive or reward for such) and address inappropriate behavior (and impose a sanction or require therapeutic or supervision adjustments consistent with clinical input, as warranted). Judges are encouraged to acknowledge or reward positive behaviors at a minimum ratio of 4:1 relative to negative behaviors.

At the conclusion of the interaction with each participant, it is recommended that the judge orally provide the date of that participant's next judicial status hearing; and during in-person hearings, the clerk or marshal should provide the participant with written notice of the date of the next judicial status hearing. If the participant fails to appear at the following judicial status hearing, the presiding judge may consider issuing a warrant so long as proper notice was given and the order issuing a warrant is placed on the record.

As one of the primary purposes of the TRC program is to break the cycle of incarceration due to substance use disorders or mental health disorders, an open dialogue is essential for the development of participant trust in the team, rehabilitation, and treatment. To that end, statements made by participants regarding either the underlying crime that brought them to the court or the continued use of alcohol or other drugs should not be used against them in any subsequent adversarial proceeding. However, participants should be advised by the Participant Handbook, defense counsel,

¹⁹ In the court's discretion and when circumstances require, team meetings, judicial status hearings or other court proceedings may be conducted remotely via Zoom or another approved platform.

²⁰ Douglas B. Marlowe, *Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs*, 1 Chap. J. Crim. Just. 167, 167-201 (2009)

and the presiding judge that statements made about unrelated criminal activity may be admissible in other proceedings as permitted by the Maine Rules of Evidence.

While judicial status hearings are open to the public, media and camera access are governed by Supreme Judicial Court Administrative Order JB-05-15 “Photographic and Electronic Coverage of the Courts” and “Cameras in the Courtroom,” and the discretion of the presiding judge.

B. The Five Phases of Treatment and Recovery Courts

Maine’s Treatment and Recovery Courts utilize a five-phase model as participants progress from admission to commencement. This model is consistent with the recommendations from the National Drug Court Institute and Justice for Vets, and guides participants from stabilization to abstinence and maintenance to community involvement and recovery. The five-phase process transitions the participant from a highly structured, court-supervised environment toward a community-based support network. While the phase framework will be consistent statewide, individual courts have discretion to make minor variations in phase requirements based on local conditions. The first phase lasts a minimum of 30 days, and each successive phase lasts a minimum of 90 days. **Advancement in phase is NOT automatic at the end of the minimum time period.** Participants must certify that they have attained the specific goals required in each phase to advance. The court needs to be able to respond with flexibility to the needs and challenges presented by each individual in the program.

The phases reflect the state of progress the participants are making on their journey to recovery. Phasing up should be determined on a case-by-case basis to ensure that the participant is in the proper phase for their capabilities and goals. Placement in a residential or inpatient program does not prohibit advancement in phase but is a factor to take into consideration.

Participants are informed of the requirements to phase up and must be able to demonstrate that all requirements have been met before requesting to advance a phase. If a participant has met all requirements, they may not be denied advancement for a non-objective reason.

Participation in self-help, peer-support, or pro-social meetings is key to developing a community-based recovery network. Participation in self-help or peer-support groups is consistently associated with better long-term outcomes following a substance use disorder treatment episode.²¹ Pro-social activities are those which promote positive, helpful, and social engagements with others in the community. NADCP notes that sustained benefits are more likely to be attained if participants engage in recovery-relevant activities such as developing a sober support social network, engaging in spiritual

²¹ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume I*, p. 45. Alexandria, VA: National Association of Drug Court Professionals.

practices,²² and learning effective coping skills from fellow group members.²³ Duration and frequency of meetings should be based on treatment recommendations taking into consideration that the focus for participants in the early phases should be clinical stabilization. Participants should increase peer and pro-social engagement throughout their participation in a TRC. The goal is for individuals to increase community involvement as court supervision decreases based on phase advancement. Engagement in pro-social activities should not be used in place of clinical treatment or court supervision.

The following is a summary of each phase:

Phase 1: Orientation and Acclimation

Length: 30 days (minimum)

Court: Weekly or as directed

In Phase 1, participants work with the team to address their immediate treatment and other needs. This begins by working with the primary treatment provider to develop a treatment program to address substance use and mental health issues. This phase also sees participants beginning to work with their case manager to develop a healthy living plan addressing housing, relationships, physical needs and mental health needs.

Phase 2: Clinical Stabilization

Length: 90 days (minimum)

Court: Weekly or as directed

In Phase 2, participants continue working with their primary treatment provider to implement, refine, and reinforce strategies to remain alcohol and drug free. Participants continue working with their case manager to implement a healthy living plan addressing housing, relationships, physical needs and mental health needs.

Phase 3: Social Stabilization

Length: 90 days (minimum)

Court: Every other week or as directed

In Phase 3, participants' treatment plans will be updated to identify and monitor treatment goals and objectives. Treatment and meetings focus on relapse prevention including strategies to identify and cope with stressful situations.

²² Faith-based or higher-power (i.e. Alcoholics Anonymous/Narcotics Anonymous) based activities cannot be made mandatory by a TRC based on the First Amendment of the U.S. Constitution. For specific caselaw consult the National Drug Court Institute website at: <https://www.ndci.org/law-2-2/> (last visited September 10, 2021).

²³ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume I*, p. 45. Alexandria, VA: National Association of Drug Court Professionals.

Phase 4: Maintenance and Community Involvement

Length: 90 days (minimum)

Court: Monthly or as directed

In Phase 4, participants continue to focus on ways to prevent relapse and cope with stress. An increased focus is placed on daily living skills and participants' adjustment to returning to the community as unsupervised, productive, successful citizens able to care for themselves and others.

Phase 5: Ongoing Recovery

Length: 90 days (minimum)

Court: Monthly or as directed

In Phase 5, participants continue to address ongoing recovery needs to maintain abstinence from alcohol and drugs as well as focus on developing and implementing a continuing care plan to bolster their success after completing the TRC program.

Progress through the phases is determined by the attainment of specific goals in each phase such as maintaining sobriety, finding employment, etc. When a participant is eligible to phase up, the case manager will provide that participant with a petition to advance, which should be completed and returned to the case manager by a specified date. The petitions for advancement may be found on the Judicial Branch website: <https://mjbportal.courts.maine.gov/CourtForms/FormsLists/Index>. (Appendix 10) The case manager distributes copies of the petition to the team via email prior to or in hard copy at the team staffing. The team discusses and provides feedback to the judge, who makes the final determination on the petition to phase up. A denial of the petition requires an objective reason that shall be given to the participant by the judge during the court session.

It is normal for participants who enter a TRC program at the same time to progress through the phases at a different pace. The journey into recovery is an individual one and may take many different paths. No pressure should be placed on the participants to phase up before they are ready. More information on the specific goals that are to be attained in each phase is available in the participant handbook.

Demotion to a previous phase does not fall within accepted best practices.

Phase demotion should be rare and occur only if a participant was phased up as a result of fraud or deception. Phase demotion reinforces a negative self-image. Most participants come into a TRC without having experienced positive feedback from society or authority figures, and changing that worldview is one of the keys breaking the cycle and changing their life trajectory.

C. Drug Testing

Alcohol and drug testing is a fundamental part of a comprehensive program of treatment and rehabilitation. The goal of drug testing is to monitor a participant's compliance with program requirements – in other words, abstinence from use of prohibited substances. If the court is unable to reliably monitor abstinence, the ability to use incentives and sanctions as treatment interventions is rendered ineffective. If the court is unable to identify a relapse, it is powerless to intervene therapeutically to change undesired behavior. A dilute sample, regardless of intention, prevents determination of compliance and confirmation of abstinence.²⁴

Drug and alcohol testing provides an accurate, timely, and comprehensive assessment of unauthorized use throughout a participant's engagement in Treatment Court.²⁵ Testing must be done on a frequent and random basis. Testing may also be done upon the request of any team member. The participant shall provide a specimen, submit to a breath test for alcohol, or comply with other approved methods of testing. If a sample is not provided within two hours, it will be considered a refusal and will be considered as a positive test.

The purpose of collection procedures is to provide safe, reliable processes for the collection, testing, documentation, and transfer of urine and other samples for analysis to determine the presence of alcohol or other drug metabolites. All participants are required to sign the *Maine Treatment Court Participant Testing Policy* (Appendix 11), the *Maine Treatment Court Request for Drug/Alcohol Test* at the time of sample collection (Appendix 12), and, if necessary, the *Urine Drug Test Laboratory Requisition Form* for confirmation testing (Appendix 13).

All personnel conducting testing will have been trained and have been determined by the case management services supervisor to have the knowledge and skills necessary to complete such testing in a competent manner. Tests will be conducted a minimum of twice per week on a random schedule.

In rare instances a partner or family member of a drug court participant will agree to be tested to assure the court that the participant is not residing with someone using alcohol or other drugs. The same protocols shall be followed for these individuals, including maintaining a valid release of information between the party and the court.

Test results are used to determine if the participant is progressing satisfactorily, if the treatment plan needs modification due to continued use or relapse, or as an aid in determining if the participant should receive an incentive or sanction or be graduated from

²⁴ Drug Court U, *Drug Testing: Creatinine Levels – Best Practices in Result Utilization*, <https://www.ndci.org/wp-content/uploads/2019/10/43287-NADCP-FAQ-Handouts-5.pdf> (last visited September 10, 2021).

²⁵ Marlowe, D. B., et al. (2018). *Adult Drug Court Best Practice Standards, Volume II*, p. 26. Alexandria, VA: National Association of Drug Court Professionals.

the program. Except as otherwise required by law, test results administered under the auspices of the Treatment Court are to be used solely for its purposes and no other.

The question might arise about what to do for a participant who is complying with most requirements of the program but continues to use substances over an extended period of time. If multiple adjustments to the treatment plan have not been successful in initiating and maintaining abstinence, it may be that the participant is not amenable to treatments available in the Treatment Court program. In this event, it may be determined that the participant should be discharged. Such action should not be punitive or result in an elevated sentence for trying, but failing, to respond to treatment.²⁶ Alternatively, the team might discover that the participant was willfully failing to apply him or herself in treatment. Under those circumstances, it would be appropriate to apply punitive sanctions for the willful failure to comply with treatment.²⁷

Any test sample found by the court to be dilute or adulterated will be interpreted as a positive test and the participant may receive two responses—one for substance use and one for the effort at deception.²⁸ Similarly, missed tests will be considered a positive test unless excused by the judge after adequate explanation from the participant.

Participants are required to keep their case manager up to date on all medications they are taking. This includes both prescription and over-the-counter medications. All prescription medication is to be taken as prescribed; and if the prescription medication is a designated as narcotic, addictive, or mind-altering, participants must advise their physician that they are in a substance use disorder program and request non-narcotic, non-addictive, or non-mind-altering alternative. If no alternative medications are possible, the treatment provider must advise the team if substance use disorder treatments available will be effective. If no substance use disorder treatments will be effective while on a prescribed medication, a participant may be terminated for medical reasons (see Final Disposition below).

1. Authority and Consent

All participants are required to sign a consent form agreeing to cooperate with the testing policy as part of their acceptance into the TRC program. Case managers shall perform testing in accordance with best practice standards. Clinicians and probation officers are expected to follow their agency protocols. Any test result may be excluded from consideration if the court finds the testing procedure lacks reliability or the chain of

²⁶ If a participant is terminated from a Treatment Court because adequate treatment was unavailable to meet his or her clinical needs, fairness suggests the participant should receive credit for the efforts in the program and should not receive an elevated sentence or disposition for the termination. Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume I*, p. 33. Alexandria, VA: National Association of Drug Court Professionals.

²⁷ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume I*, p. 31. Alexandria, VA: National Association of Drug Court Professionals.

²⁸ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume II*, p. 34. Alexandria, VA: National Association of Drug Court Professionals.

custody is deemed insecure. Participants may be required to pay for the costs of confirmation if a challenged presumptive positive test is lab confirmed as positive.

2. Supplies

All supplies related to the testing, collection, and documentation of samples shall be kept in an area with access limited to staff. Each court will have a minimum of one alcohol scan device or other means of testing for alcohol consumption. On-site urine testing is the primary testing method for substances. Oral fluid/saliva testing may be utilized as a secondary approach for those occasional instances in which observed testing is not possible or in otherwise logistically challenging instances. Supply purchases are made by the contracted case management services agency consistent with the size of each court and within budgetary constraints.

3. Collection

Sample collections will be monitored by staff of the case management agency or probation. Monitoring is defined as “direct observation of the urine stream or saliva test” by a gender-appropriate observer. If direct observation is not available, the participant will have all pockets searched and shall not bring any items into the bathroom when providing a sample.

If there is a waiting period prior to collection, participants shall stay within the sight of the personnel collecting the urine test. Latex or other protective gloves will be worn by all personnel handling the specimen. After the sample is provided, staff will check the temperature of the specimen and determine whether it is in the appropriate temperature range.

If a participant claims an inability to provide a sample for “medical reasons” it will be considered a refusal unless documentation is provided by a physician.

While there are other methods for drug and alcohol testing (blood, sweat, and hair), these methods are not the recommended best practice by the NADCP. Observed urine and oral swab testing are the methods recommended by the NADCP and Maine’s policy will be guided by NADCP recommendations.

The use of continuous alcohol monitoring devices, such as Secure Continuous Remote Alcohol Monitor (SCRAM), may be used when determined appropriate. Any cost associated with these devices is the responsibility of the participant unless the court determines otherwise. Case managers supervising the use of such devices must be appropriately trained in their use.

4. Records and Reports

Results of the test will be recorded in the participant’s individual testing log in the Treatment and Recovery Court Management Information System and will be reported to

the judge at the next meeting, unless positive. In that instance, the court, probation officer and treatment provider will be notified immediately, if possible, and in no less than 24 hours after the test results are received. Confidentiality of the testing log will be maintained in accordance with federal confidentiality regulations (42 CFR Part 2).

5. Recommended Protocol for Challenged Drug Tests

Urine tests are presumptively reliable and will provide adequate basis for judicial action unless challenged by the participant.

When there is a presumptive positive test and the participant denies the use of unauthorized substances, the sample shall be preserved for confirmation testing. The participant should be advised of the consequences of dishonesty. The presumptive positive test shall be sent to a reliable laboratory for confirmation testing using either gas chromatography/mass spectrometry x 2 (GC/MS/MS) or liquid chromatography/mass spectrometry x 2 (LC/MS/MS). GC/MS/MS and LC/MS/MS are the “gold standards” of testing and provide adequate basis for judicial action. The participant shall also be put on notice that they may have to reimburse the cost if the test is confirmed as positive.

D. Incentives, Therapeutic Responses, Supervision Responses, and Sanctions

Incentives, therapeutic responses, supervision responses, and sanctions are utilized as motivators to do well or as consequences for missteps. These responses are administered or reinforced by the judge at judicial status hearings. Responses must be predictable, fair, consistent, and administered without ridicule in accordance with evidence-based principles of effective behavior modification.

Policies and procedures concerning the use of incentives, therapeutic responses, supervision responses, and sanctions should be specified in writing and communicated in advance to participants in the Participant Handbook.

Incentives and sanctions serve different, but complementary, functions. Incentives are used to increase desirable behaviors, such as going to work or school. Whereas sanctions are used to reduce undesired behaviors, such as engaging in crime, lying, or willfully violating program rules. When used together, they can have synergistic effects that produce better outcomes than applying either technique alone.²⁹ Research evidence shows that better outcomes occur when rewards and incentives outnumber sanctions at least by a ratio of 4:1 per participant.³⁰

²⁹ Douglas B. Marlowe, *Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions*, Policy & Law, National Association of Drug Court Professionals (September 2012).

³⁰ According to the NADCP Adult Drug Court Best Practice Standards, “Drug Courts achieve significantly better outcomes when they focus as much on incentivizing productive behaviors as they do on reducing undesirable behaviors”. In the MADCE, significantly better outcomes were achieved by Drug Courts that offered higher and more consistent levels of praise and positive incentives from the judge (Zweig *et al.*, 2012). Several other studies found that a 4:1 ratio of incentives to sanctions was associated with

Incentives and sanctions are responses to past behavior. Therapeutic responses and supervision responses are responses to past or on-going behavior. Therapeutic responses are adjustments to levels of treatment and pro-social activities. Supervision responses are adjustments to the amount of case management or probation contact.

1. Incentives

Incentives should be offered frequently and consistently to participants in response to positive behaviors.

Incentives, or rewards, come in many forms, both symbolic or intangible (e.g., applause) and material or tangible (e.g., gift certificate). No incentive or reward shall be in the form of cash. When possible, gift certificates or gift cards should state that they are non-transferable, cannot be redeemed for cash, and shall not be used to purchase alcohol, tobacco, or over-the-counter drugs. Incentives or rewards shall not exceed \$20 in value per week without approval from the Statewide Coordinator. No reward shall depict the logo or trademark of any alcoholic beverage, tobacco, or pharmaceutical product. No incentive or reward shall take the form of a personal engagement between an individual TRC professional and a participant (e.g., taking participants to meals, movies or sporting events) or involve the use of a TRC professional's personal property or possessions.

Incentives should be discussed during the staffing meeting and presented by the judge on behalf of the team during the court session. Participants have the right to refuse any reward offered.

Teams should distinguish between proximal behaviors that participants are capable of performing (e.g., attendance at treatment) and distal behaviors that they may not yet be capable of performing (e.g., extended abstinence). These may vary by treatment phase. Rewards for achieving proximal goals should be of lower magnitude. Rewards for achieving distal goals should be of a higher magnitude. Decisions on awarding incentives should be made in consultation with the *Incentives and Sanctions Matrix* (Appendix 14). However, each team may modify the matrix with additional, creative responses. Participants particularly value responses which demonstrate trust in the individual by reducing the burdens of program participation, such as, moving to the front of the substance testing line, leaving court early, or reducing court appearances in later phases of the program. None of these incentives cost money and should be used frequently. Participants also value material incentives which assist them to achieve concrete goals like securing employment, such as, gift cards for gas or groceries.

significantly better outcomes among drug offenders (Gendreau, 1996; Senjo & Leip, 2001; Wodahl *et al.*, 2011)."

2. Therapeutic Responses

Therapeutic responses are not punishments; they are adjustments to treatment. Therapeutic responses may include an increase in treatment level, such as, moving from an IOP level of care to a residential level of care, or vice versa.

Participants do not receive sanctions if they are otherwise compliant with their treatment and supervision requirements but are not responding to the treatment interventions. Under such circumstances, the appropriate course of action may be to reassess the individual and adjust the treatment plan accordingly. Adjustments to treatment plans are based on the recommendations of duly trained treatment professionals and should be made in consultation with the *Incentives and Sanctions Matrix*. If the therapeutic response is seen as an imposition by the participant, the judge and team should explain that the response is an adjustment of treatment, not a punishment.

3. Supervision Responses

Supervision responses are not punishments; they are adjustment to the level of contact between the participant and case management or probation. These responses are done to assist the participant to focus on “doing the next right thing.”

Responses to problematic behavior should be administered as close as possible in time to the behavioral incident. To accomplish that goal in between court sessions, case management may, while in communication with the team (including the judge), require additional check ins, reporting times, or start a participant on a RAP plan as a measure to stabilize participant behavior until the next court session. House arrest is not to be used as a supervision response outside of a courtroom setting, except in the limited circumstances discussed below.

Nothing in this manual is intended to preclude the State or probation from exercising their statutory responsibilities; however, they should be used in conjunction with the TRC goals. In the event of more serious behavior where short-term incarceration may be indicated, probation officers may use their probation hold authority or prosecutors may file a motion to revoke bail (or probation).

4. Sanctions

Sanctions are responses to behavior that does not comply with program requirements. Participants are given an opportunity to explain their prospective prior to the imposition of a sanction. Sanctions are to be imposed by a TRC judge in a court setting. Sanction hearings should be held as close in time as possible to the precipitating conduct, preferably within one week. Sanctions are tailored to individual behavior, are

imposed in a fair and equitable manner, are proportionate to the violation, and take into account the participants' situation and goals.³¹

As with incentives, the team should distinguish between proximal behaviors that participants are capable of performing and distal behaviors that they may not yet be capable of performing. Sanctions for failing to meet proximal behaviors should be of higher magnitude; sanctions for failing to meet distal behaviors should be of a lower magnitude. Decisions on imposing sanctions should be made in consultation with the *Incentives and Sanctions Matrix*. While abstinence remains a distal behavior, substance use should be addressed with a therapeutic response if the participant is honest about it. Treatment courts typically administer a gradually escalating sequence of consequences for substance use. The earliest consequences often involve enhancing treatment services, whereas later consequences may include punitive sanctions of increasing severity. Once a participant has received a reasonable dose of treatment and has begun to stabilize, then it becomes appropriate for the team to raise its expectations and apply punitive consequences for drug or alcohol use.³²

TRC judges may impose a wide range of sanctions of varying magnitudes including writing essays, performing community service, curfew adjustments, house arrest, and jail. For goals that are difficult (distal) for participants to accomplish, such as abstaining from substance use, sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy (proximal) for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.

As noted earlier, the judge may sanction participants to a period of incarceration if they violate the conditions of release or the Entry/Bail Contract and Order. Participants have the right to have an attorney present at any hearing where it is possible that incarceration may be used as a sanction. Before any jail sanction is imposed the participant or defense counsel have the right to be heard. If the basis for the sanction is contested, the court shall hold a hearing.

If the requested incarceration is under or up to 72 hours³³, the judge should address this during the regularly scheduled judicial status hearing on the record. The team defense attorney may represent a participant at that hearing unless the participant's counsel of record is requested and available. This hearing may be held during the

³¹ Marlowe, D. B., et al. (2018). *Adult Drug Court Best Practice Standards, Volume I*, p. 27. Alexandria, VA: National Association of Drug Court Professionals.

³² Douglas B. Marlowe, *Research Update on Adult Drug Courts*. (December 2010). National Association of Drug Court Professionals.

³³ Programs that use sanctions of less than six days have average reductions in recidivism of 46% compared with 19% for programs that use longer-term jail sanctions. Carey, S. M., Mackin, J. R., & Finigan, M. W. (2012). *What Works? The 10 Key Components of Drug Courts: Research Based Best Practices*. *Drug Court Review*, VIII(1), 6-42.

regularly scheduled judicial status hearing or at another time if participant or defense counsel requests and the court agrees.

If the requested incarceration exceeds 72 hours, the prosecutor shall file a written motion for sanctions setting out the grounds in support of the motion. The attorney of record shall be notified of the motion and the date and time of the hearing. The participant may elect to be represented at that hearing by either the attorney of record or the team defense attorney.

House arrest is another form of sanction that may be imposed by the court. House arrest may also be imposed during the time between judicial status hearings by the case manager, provided that contemporaneous notice is given to team members, including the judge (typically by email); and the judge approves imposition of house arrest within three business days or at the next judicial status hearing, whichever comes first.

E. Final Disposition of Treatment Court Participation

The final disposition of participation in Treatment and Recovery Court shall occur in one of the following ways:

1. Graduation

Eligibility for graduation is determined by the court in consultation with the team. Graduation requires that the participant successfully complete all phase requirements during a minimum of thirteen months in the TRC. The team should consider employment and continuing education in determining eligibility to graduate. Participants should reside in a home that is supportive of their recovery lifestyle. The court should ensure that all participants who have successfully completed the program receive appropriate recognition, usually in the form of a formal ceremony during a court session and attended by family and friends.

All participants must submit a formal aftercare plan to the team for review and feedback. The court shall give close consideration to the aftercare plan when approving a participant's graduation. The aftercare plan should be a participant-focused product that emphasizes sources of community support including peer recovery and includes input from team members. Participants should begin to formulate their aftercare plans with the support of the case manager and treatment provider at an early stage in the program.

Participants should be encouraged to maintain contact with the program after graduation. Each member of the team should be available to respond to aftercare contact by a participant. The case manager should contact graduates by mail and telephone after ninety days and after one hundred eighty days. Department Of Corrections Adult Community Corrections has responsibility for community supervision after graduation for those still on probation. The treatment provider may continue to provide services to graduates.

In connection with a participant's graduation, a sentencing hearing shall be scheduled. The court will notify the State, defense counsel, and the participant of its date and time. Typically, final sentencing occurs directly before or after the graduation ceremony. If for any reason the sentencing is not held immediately on the date of graduation, the participant remains in the Treatment Court (and subject to any and all conditions thereof) until the final sentencing takes place.

2. Withdrawal

A participant may elect to withdraw from the TRC program at any time prior to the filing of a motion for termination. The participant and defense counsel shall advise the court in writing and enter into discussions with the State about a sentencing disposition. A sentencing hearing shall be set with notice to the participant, defense counsel, the State, and the team.

A participant who elects to withdraw is deemed to have unsuccessfully completed the program. Progress made by the participant (and difficulties experienced by the participant) may be considered by the judge in connection with determining the participant's final sentence.

3. Termination

Participants may be terminated from the TRC program due to new criminal conduct, repeated failure to appear, repeated failure to comply the directives of the TRC judge, repeated failure to comply with treatment or supervision requirements, or if circumstances arise that preclude successful participation, including but not limited to: criminal contempt, revocation of any waiver of confidentiality, repeated failure to comply with Entry/Bail Contract and Order, any other bail conditions, or probation conditions, repeated tampering or attempting to tamper with a drug detection specimen, or behavior that constitutes a danger to public safety.

Should the prosecutor elect to file a motion to terminate, the motion shall specify the ground(s) for the motion. Hearing on the motion shall be set within 30 days of the filing of the motion, or on the next date reasonably available thereafter on the court's calendar. The participant has the right to be represented by an attorney at the termination hearing, and the attorney of record shall be notified of the motion and the date and time of the hearing.

The participant has the right to request that a judge other than the presiding Treatment Court judge hear the matter. Such a request must be made in writing by defense counsel within ten days of receiving the notice of hearing, and failure to do so may waive said right.

At the hearing, the State has the burden of proving the ground(s) for termination by a preponderance of the evidence. If the State fails to prove by a preponderance of the evidence the ground(s) for termination, the motion shall be denied and the participant

shall not be terminated from the TRC program. If the State proves by a preponderance of the evidence the ground(s) for termination, the presiding judicial officer may determine that the participant the participant should remain in the TRC program, may modify or add conditions of participation, or may terminate the participant from the TRC program. If the motion is granted and the participant is terminated from the program, the presiding judicial officer shall either proceed directly to a final disposition hearing on sentencing or set such hearing for a later date.

Participants shall not be terminated solely for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are not amenable to appropriate level of treatment that is reasonably available. In some instances, circumstances such as a lack of adequate treatment, physical illness, or severe and persistent mental illness may pose an insurmountable obstacle to successful completion of the TRC program. If notwithstanding such circumstance(s) a participant does not voluntarily withdraw, the participant may be removed from the program for medical reasons. In that event, the prosecutor shall file a motion for involuntary removal, specifying with reasonable particularity the ground(s) for the motion. Hearing on the motion shall be scheduled within 30 days of filing, or on the next date reasonably available thereafter on the court's calendar. The participant has the right to be represented by an attorney at hearing, and the attorney of record shall be given advance notice of the date and time of hearing. If the court finds by a preponderance of the evidence that grounds for involuntary removal exist, the participant shall be removed from the TRC program. In this event, the participant shall not be deemed to have unsuccessfully completed the program and the court will conduct an open sentencing.

4. Absconding, Willful Absence, or Prolonged Failure to Appear

Absconding, willful absence, or prolonged failure to appear may be grounds for termination. A participant who is terminated from the TRC program for said grounds may reapply for admission, which should not be denied solely on the basis of prior absences.

A participant who is absent from the TRC program for more than 60 consecutive days may be removed from the TRC census.

Chapter 7. Treatment and Recovery Court Services

Treatment Court participants engage in evidence-based treatment services aimed at helping them manage and control their substance use or co-occurring disorders as well as negative thinking patterns/anti-social behaviors, and criminal thinking. This chapter describes the components of the service process.

A. Treatment

Participants are required to engage in comprehensive, evidence-based treatments that address substance use disorders, mental health issues, and criminal thinking. Participants undergo a full bio-psycho-social assessment and are placed into a treatment program that is recommended by the TRC treatment provider. Treatment may be offered in individual or group settings, and may include individual counseling, intensive outpatient (IOP), partial hospitalization, or inpatient/residential services. Clinically relevant and appropriate assessments of treatment needs will continue throughout the participant's time in the program.

Each participant will also have an individualized treatment plan reflecting treatment recommendations and goals. Treatment plans should be updated per licensing and contract requirements or earlier if deemed clinically appropriate. The treatment agency shall maintain treatment plans and shall share the treatment goals with the team.

According to NADCP Best Practice Standards, Vol 2, approximately two-thirds of treatment court participants report serious mental health symptoms and roughly one-quarter have a diagnosed psychiatric disorder, such as major depression, bipolar disorder, Post Traumatic Stress Disorder (PTSD), or other anxiety disorder.³⁴

Timely referral to services will be made if a participant would benefit from engagement in MAT services, mental health assessment, evaluation, treatment, intervention, or medication management. At the time of referral for services, it should be ensured that a release of information is in place to share critical information.

Participants are to receive psychiatric medications based on a determination of medical necessity by a qualified medical provider. The qualified medical provider must be made aware by the participant or case manager, that the participant is in a substance use disorder recovery program and the use of non-narcotic medications is requested. The final determination of medications is determined by the qualified medical provider. An applicant may not be denied entry, and a participant may not be terminated for cause, solely because they are using (as prescribed) lawfully prescribed psychiatric medication.³⁵ Participants are not required to discontinue lawfully prescribed psychiatric

³⁴ Cissner *et al.*, 2013; Green & Rempel, 2012; Peters *et al.*, 2012

³⁵ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume I*, pp. 5-10. Alexandria, VA: National Association of Drug Court Professionals.

medication as a condition of advancing on phase or commencing.³⁶ A participant should only be denied psychiatric medication if the decision is based on expert medical advice from a qualified physician who has examined the participant and is adequately informed about the facts of the case.³⁷

Whenever possible both substance use and mental health disorders should be treated in the same facility by the same professional(s) using an integrated treatment model that focuses on the mutually aggravating effects of the two conditions.³⁸ For those instances that integrated care is not possible, timely referrals should be made to medical or mental health professionals that have the ability and willingness to engage collaboratively with the TRC team to support the participants treatment plan goals through the sharing of essential information including service engagement, treatment plans, medication, and toxicology screening results.

Based on presenting needs the team may refer a participant to a variety of ancillary services to support their recovery such as recovery housing, vocational training, and educational services.

B. Case Management

TRC case managers are responsible for providing program screening and case management services for each participant. Case management is a coordinated, collaborative effort to provide linkages between the court system, treatment, and other service provider agencies, in an effort to assist the participant with their needs to facilitate successful completion of the program.

Case managers provide monitoring and reporting of participants progress to the court in regards to treatment and other program mandates, develops and executes plans for intervention services and the fulfillment of criminal justice obligations, brokers treatment and other services assuring continuity as participants progress through treatment, and assists participants in identifying and working through barriers to successful participation. GPS or geolocation devices, or apps, may be used to monitor participant movement, but require judicial approval before implementation.

Case managers maintain a participant's program file and are responsible for the overall documentation regarding participation in the program. Case managers are also responsible for providing reports to the team on a regular basis, in addition to attending all required court sessions.

³⁶ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume I*, pp. 38-54. Alexandria, VA: National Association of Drug Court Professionals.

³⁷ Peters & Osher, 2004; Steadman *et al.*, 2013

³⁸ Marlowe, D. B., *et al.* (2018). *Adult Drug Court Best Practice Standards, Volume II*, p. 5-25. Alexandria, VA: National Association of Drug Court Professionals.

TRC case management services are a contracted service overseen by the Office of Behavioral Health (OBH). OBH contract requirements establish caseload limits for case managers, which may be temporarily exceeded at times when there is a transition period to a new case manager or when there are a significant number of participants are in later phases that do not require as much supervision. Additional contract requirements include weekly meetings with participants, standards of drug and alcohol testing, record keeping and documentation, report submissions, and screening/assessment requirements.

C. Probation

Subject to available resources, the Maine Department of Corrections will assign a probation officer to each Treatment and Recovery Court location to provide information and communication. The probation officer will be responsible for monitoring all court-ordered conditions of probation and are expected to participate in weekly team meetings and court sessions.

Probation officers should report violations of probation or bail promptly to the team. While the decision to arrest for a probation violation remains within the discretion of the probation officer, unless there is a threat to public safety best practices suggest that arrest or incarceration for violations of program rules should be imposed by the presiding TRC judge.

D. Home Supervision and Visits

Random monitoring of participants through the use of home visits is an integral component of the TRC program and its ability to monitor participant sobriety and living environment. The main goal of the home visit is to assess, observe and report a participant's home environment and surroundings. Home visits also provide critical venues for the use of random alcohol or other drug tests.

It is the responsibility of the case manager to facilitate, coordinate, and document that home visits are performed and reported to the team. This does not mean that the case managers must perform home visits. The case managers are required to ensure that home visits occur. If a participant is on probation, the probation officer also conducts home visits. The case manager or probation officer should acquire all pertinent information surrounding the home visit and report it to the team. Participant home visits should be unannounced and it is recommended that staff not conduct home visits alone for their safety and protection.

Participant home visits may include the following:

- An examination of the participant's living area (i.e., apartment, house or efficiency room) for any contraband. Examinations may include all areas in the participant's living space. This means if the participant lives in an

apartment with roommates, all common areas are examined and not just the participant's individual room;

- A full interaction with or interview of the participant and any other persons present at the residence/living space. This is done to ensure that there are no prohibited persons present;
- A monitored alcohol or other drug test; and
- A full documentation of the home visit to include a listing of any contraband or interaction valuable to the court.

The frequency of home visits is determined by a participant's phase and any other considerations deemed sufficient by the court.

This policy is designed to enforce paragraph eleven of the *Entry/Bail Contract and Order* which states: "Submit to a random search of my person, possessions (including any and all data and content of a cellphone), vehicle, and residence, including the common areas of my residence, at any time as requested by the judge, staff of the TRC or member of law enforcement. If the residence is occupied solely by myself, or myself and my family members or a significant other, the entire residence shall be subject to search."

Chapter 8. Participants Rights

A. Participant Rights

Although TRC participants waive certain rights upon entry, they retain Constitutional rights, such as equal protection and due process, and other basic rights, including without limitation, the following:

- The right to confidentiality under federal and state laws relating to the receiving of services except as waived above;
- The right to be informed of various steps and activities involved in receiving services;
- The right to humane care and protection from harm, abuse, and neglect;
- The right to consult with an attorney;
- The right to make an informed decision as whether to participate in, or to decline entry into, the program;
- In the event of a potential sanction involving incarceration, the right to a hearing (and to be represented by counsel at the hearing); and
- The right to decline to participate in an evaluation activity such as an interview or focus group.

Participants should be given a written explanation of their rights when admitted to the program.

Treatment and Recovery Courts do not discriminate on the basis of:

- Race
- Religion
- Gender
- Ethnicity
- Age
- Disability
- Sexual Orientation
- Sexual Identity
- Any Other Suspect Class or Category

Consistent with Maine Judicial Branch policies and procedures, accommodations are made for persons with:

- Physical disabilities
- Limited literacy skills
- Limited English proficiency

Participants or their attorneys may review their files in accordance with agency or court protocols. The determination as to whether or not a participant should be permitted

to review the case file shall be made by the case manager, the treatment provider, and the Coordinator of Specialty Dockets. Potential grounds for determining that such review is contraindicated include, but are not limited to, the following:

- Protection of the confidentiality of other sources of information;
- Potential harm to the physical or mental health of the participant or another person; and
- Potential for substantial harm to the relationship between the participant and the program or to the program's capacity to provide services.

If a determination is made that it would be contraindicated for a participant to review the case file, the case manager shall record the determination as well as the reason(s) therefor in the case file.

B. Confidentiality and Privacy

Treatment and Recovery Courts are subject to federal and state laws governing the confidentiality of substance abuse and mental health treatment records.

1. Substance Use Disorder Treatment Records

Federal law³⁹ broadly makes confidential records of the identity, diagnosis, prognosis, or treatment of any participant which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States.

In sum, federal statutes and the regulations promulgated thereunder strictly limit the circumstances under which disclosure of the contents of such records may be made. Disclosure is strictly limited to the following circumstances: (i) a participant provides prior written consent (and then only to the extent and under the circumstances and purposes stated in the written consent); (ii) to medical personnel to the extent necessary to address a *bona fide* medical emergency (iii) to research personnel who may not identify the participant; or (iv) If authorized by an appropriate court order of a court of competent jurisdiction upon a showing of "good cause", including the need to avert a substantial risk of death or serious harm. It is this latter provision—a court order for "good cause"—that has been the focus of litigation. The statute provides further guidance for a court assessing "good cause".⁴⁰

³⁹ See 42 U.S.C. § 290dd-2; 42 U.S.C. § 290dd-3; 42 U.S.C. § 290ee-3; 42 C.F.R. Part 2 (applicable to drug/alcohol abuse and prevention programs conducted, regulated, or "directly or indirectly assisted by the federal government). "Program" is defined broadly to include one who provides "alcohol or abuse diagnosis, treatment or referral for treatment." 42 C.F.R. § 2.11.

⁴⁰ "In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the participant, to the physician-participant relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure." 42 U.S.C.

Federal statute prohibits the use of participants' treatment records in criminal, civil, or administrative proceedings, unless authorized by a court order or by consent. 42 U.S.C. § 290dd-2 provides in part that a participant's treatment record or testimony relaying the information contained therein, may not be disclosed or used in any civil, criminal, administrative, or legislative proceedings against a participant, including as information for law enforcement purposes, as evidence in criminal prosecutions, or in application for a warrant. See 42 U.S.C. § 290dd-2(c). The prohibitions apply to records concerning any individual who has been a participant even after they have ceased to be a participant. 42 U.S.C. §290dd-2(d). They do not apply to reporting under State law of incidents of suspected child abuse and neglect to appropriate State or local authorities. 42 U.S.C. §290dd-2(e).

The regulations issued pursuant to the statute are printed at 42 CFR 2.1 through 2.67. The *Authorization to Release Information Form* which is compliant with 42 CFR Part 2 may be found at Appendix 8.

2. Mental Health Treatment Records

Maine law provides similar protections for mental health treatment records and information. "All orders of commitment, medical and administrative records, applications and reports, and facts contained therein, pertaining to any client shall be kept confidential and may not be disclosed to any person..." 34-B M.R.S. § 1207. This applies to any agency "licensed or funded to provide services falling under the jurisdiction" of the Department of Health and Human Services. In addition, "an individual's health care information is confidential and may not be disclosed other than to the individual by the health care practitioner or facility "except as otherwise provided by law." 22 M.R.S. § 1711-C(2). "Health care information" includes "information that directly identifies the individual and that relates to an individuals' physical, mental or behavioral condition..." 22 M.R.S. § 1711-C(1)(E).

Disclosure of mental health records or information is permitted (i) with informed written consent of a participant who is competent to do (and then, only for the specific purpose(s) stated); (ii) if ordered by a court; or (ii) pursuant to other statutorily prescribed exceptions. See 22 M.R.S. § 1711-C(3)-(6); 34-B M.R.S. § 1207(5-A)-(9).

C. Health Insurance Portability and Accountability Act (HIPAA)⁴¹

The federal provisions of HIPAA's Privacy Regulations are located at 45 C.F.R. Part 60 (<https://www.law.cornell.edu/cfr/text/45/part-160>) and 45 C.F.R. Part 164, Subparts A and E (<https://www.law.cornell.edu/cfr/text/45/part-164>).

290dd-2(b)(2)(C). Regulations issued pursuant to the statute further delineate the balancing test for assessing "good cause."

⁴¹HHS Guidance on the HIPAA Privacy Rule, U.S. Department of Health and Human Services/HIPAA/HIPAA For Professionals/Privacy Rule, www.hhs.gov/hipaa/for-professionals/privacy/index.html (last accessed Sept 10, 2021).

Federal HIPAA privacy laws will indirectly impact the Treatment and Recovery Courts. Although they use or disclose protected health information regularly as part of their operations, Maine's Treatment and Recovery Courts themselves do not fall under the HIPAA regulations' definition of a "covered entity", because they are neither *health plans* nor *health care clearinghouses*, nor are they *health care providers* who make specific electronic transactions as defined under HIPAA.^{42,43} However, Maine's Treatment and Recovery Courts are affected *indirectly* by HIPAA's privacy regulations, because the team treatment provider and other health care providers that work with the court will themselves, in all likelihood, be covered entities.⁴⁴

Due to the indirect effect of HIPAA, both the TRCs and the treatment providers will require participants to sign written consents to share information before TRC participation and the onset of services. Unless otherwise specified, these consents afford permission to share information between and among treatment team members. If protected health information is to be shared or obtained outside of the TRC, additional consents must be obtained.

Under certain circumstances, however, treatment providers may be exempt from obtaining HIPAA consents or authorizations from TRC participants. For example, the privacy regulations permit disclosure of protected health information without a consent "in the course of any judicial or administrative proceeding... in response to an order of a court or administrative tribunal."⁴⁵ Thus, if a treatment provider were ordered by the court to disclose protected health information concerning a participant, the provider would be permitted to disclose the information without obtaining HIPAA consent from this participant.⁴⁶ Courts can obtain protected health information from other health care providers by requiring the participant to consent to a HIPAA compliant release of information.

Electronic sharing of information through, but not limited to email, video conferencing, and telehealth, must be done only with a HIPAA compliant signed consent.

⁴² 45 C.F.R. 100.103 defines "health care provider" as "any...person or organization who furnishes, bills, or is paid for healthcare in the normal course of business." Some Maine Treatment and Recovery Courts may be said to furnish healthcare, because 45 C.F.R. § 160.103 defines "health care" as including "assessment...with respect to the physical or mental condition, or functional status of an individual"

⁴³ Because Treatment and Recovery Courts are not covered entities, they may collect protected health information from their participants (as they do when conducting assessments) and disclose such information with treatment providers without having to obtain separate consents from their participants or comply with the many administrative requirements established by the Privacy Rule located at 45 CFR Part 160 and Subparts A and E of Part 164.

⁴⁴ Treatment providers all fall under the HIPAA definition of "health care provider" and, if they engage in any of the electronic transactions defined in 45 C.F.R. 160.103, will also be considered covered entities under HIPAA.

⁴⁵ 45 C.F.R. 164.512(e)(1).

⁴⁶ Any disclosures made by the treatment provider must conform to the Privacy Rule's "minimally necessary" standard, however, and may contain only the protected health information expressly authorized by such order. 45 C.F.R. 164.512(e)(1)(I).

D. Miscellaneous

State and federal confidentiality laws and regulations will also continue to govern disclosures made by the TRCs to their evaluators for the research and analysis of their programs.

All treatment-related court documents must be treated as confidential information and sealed at the conclusion of a participant's engagement in the TRC program. Documents should be retained consistent with Maine Judicial Branch policies and procedures.

Information contained in the statewide TRC management information system is entered by case management and overseen by the Maine Office of Behavioral Health consistent with Maine Department of Health and Human Services policies and procedures.

Chapter 9. Administration of Maine’s Treatment and Recovery Courts

A. Statewide Oversight

The Maine Judicial Branch, through the Coordinator of Specialty Dockets (“Coordinator”), as well as the Treatment and Recovery Courts Steering Committee (“Steering Committee”), provide oversight for the planning, implementation, development, and operation of Maine’s Treatment and Recovery Courts.

The Coordinator oversees all aspects of the TRC programs and works closely with the Steering Committee, which is comprised of representatives from TRC teams throughout the state as well as other organizations and interest groups. These include representatives of the Judicial Branch, Administrative Office of the Courts, Office of the Attorney General, District Attorneys, defense bar, case management agencies, treatment agencies, community partner agencies, Department of Corrections, the Office of Behavioral Health, and the Office of the Governor. The Steering Committee is chaired by a TRC judge and meets on a quarterly basis, or at the call of the Chair. Legal, policy, or procedural recommendations for changing the operation of the TRCs are presented to the Steering Committee for its review and approval. If the Steering Committee recommends adoption of structural changes, the chair will direct the Coordinator to present the recommendation(s) to the Chief Justice, Trial Court Chiefs, and Court Administrator for ratification.

The Coordinator monitors TRC operations through frequent site visits to ensure compliance with the Ten Key Components and best practices developed by the NADCP, National Drug Court Institute (NDCI), Justice for Vets, and the National Drug Court Resource Center (NDCRC). Monitoring will include a review of both fiscal and program operations and may result in a variety of responses ranging from the delivery of technical assistance and training to the recommendation for the expansion, creation, or elimination of a specific court.

The Coordinator also reviews and updates policies, organizes conferences and trainings, provides technical assistance, applies for grants, assists teams in problem-solving, coordinates with partners and stakeholders, performs internal audits of court performance, manages implementation and enhancement grants awarded to the Judicial Branch and oversees the program evaluations. As mandated by statute, the Coordinator conducts an annual review of the TRCs and presents the results by February 15 to the Chief Justice, Trial Court Chiefs, the State Court Administrator, and the Legislature. These reviews include process and outcome data analysis with the goal of identifying challenges to fidelity to the Ten Key Components and best practice standards as well as possible solutions.

B. Courts, Public Agencies and Community Partnerships

It is the responsibility of the Coordinator, the presiding judicial officers, and team members to work in collaboration between and among the courts, with other public agencies such as the Department of Health and Human Services' Office of Behavioral Health, and other community agencies such as those providing treatment, case management, or peer support services, consistent with judicial ethical standards.

When feasible, agencies are expected to make full or part-time team member assignments to the TRC for a minimum of two years to ensure stability and continuity of day-to-day operations and to strengthen collaborative relationships between the key professionals. All participating agencies need to support TRC programs by making appropriate adjustments to internal policies, practices and procedures to ensure successful operations. The Coordinator establishes a jurisdictional Memorandum of Understanding (MOU) with all agencies/departments to ensure the continuity of all legal policies and other standards necessary to the operation of the TRCs.

C. Interdisciplinary Education and Training

Ongoing training and education are vital to the development and maintenance of skills necessary to support competent, well-functioning TRC teams. Thus, all team members are expected to complete an orientation process within 90 days of joining the team including specified trainings and readings as developed or identified by the Statewide Coordinator. The orientation process shall be developed and posted to the Judicial Branch website and updated as needed.

In addition, team members are expected to engage in annual training arranged by the Coordinator and are also encouraged to suggest training topics to the Coordinator for future trainings. To keep up to date on the latest research and thinking in the field, all team members are also encouraged to review the publications, webinars, and modules available at the websites of national organizations such as NDCI.org, justiceforvets.org, and NDCRC.org.

D. Data Information System

All case managers are responsible for maintaining and recording a common set of information about each individual referred for TRC participation using a database authorized by OBH.

E. Program Evaluation

Subject to available funding, TRC programs will be evaluated by an independent, contracted evaluator on a regular basis as determined by the Coordinator, but at least

every five years in accordance with best practice standards. Data collection and information management requirements will be set forth by the evaluator, who will seek approval from the Coordinator and OBH. Designated TRC personnel will be responsible for submitting the required data through channels such as the case management system and the Judicial Branch's information management system.

Evaluations will encompass both process and outcome components. Process evaluation will follow guidelines established by the NADCP practice standards while outcome evaluation such as post program recidivism will be uniform throughout the state to allow for measurable results on a statewide basis. Electronic databases maintained by the Department of Corrections and the Judicial Branch, among others, may be used to determine post-program recidivism.

In addition, the Evaluator will design standard reports to track TRC results from the case management system between the large-scale evaluations. Results will be shared with the Steering Committee at least annually.

F. Crisis Management

The Steering Committee shall establish a crisis response plan.⁴⁷ The foundation of an effective crisis response plan is the establishment of crisis response team. The crisis response team for each TRC should identify a person responsible for investigating the facts of what actually happened and the person(s) who will lead remediation efforts. The sole point of contact for media inquiries shall be the PIO at the AOC.

Prior to a crisis occurring and in developing a crisis response plan, each TC team should consider the following:

- What problematic situations exist that could escalate into a crisis and negatively affect the TRC?
- How would a crisis affect program participants? What strategy will be put into place to ensure that participants are appropriately cared for, including helping them to maintain stability in recovery?
- Who is the most appropriate person or agency to handle media inquiries during a crisis?
- What messaging and statistics best demonstrate the benefits of the TC to the community?
- Is the TC following best practices? Should any modifications to existing practices or operations be made to prevent problematic situations?

Crisis management should also be looked upon at three levels, short-term, mid-term, and long-term.

⁴⁷ A crisis is any situation that threatens to undermine public confidence in the TRC, and could range, for example, from a participant's involvement in a high-profile crime to negative press coverage of a residential facility utilized by TRC participants. See *Managing the Message During a Crisis: A Guide to Planning and Implementing Your Response*, <https://www.ndci.org/wp-content/uploads/2018/08/CrisisComms.pdf> (last visited September 10, 2021).

- Short-term: Determine what happened.
 - Gather and Stick to the Facts.
 - Direct All Media or Outside Inquiries to a Single Point of Contact.
 - Contact NADCP or local Crisis Management/Public Relations Expert.
- Mid-term: Investigate why it happened.
- Long-term: Address the underlying issue and restore trust.

Crisis Communication Rules:

- Give the media, or outside agencies, a single point of contact so that you can control the message as much as possible.
- Do not release information that is not absolutely true and thoroughly verified. Provide data and evidence whenever possible.
- In a crisis, no media coverage is often the best-case scenario, even better than positive media coverage.
- Say only what is necessary. Never extend an interview or provide unsolicited information.
- Communication among the crisis response team and with the TC team and program participants is key.
- Use the resources available, including the NADCP.

Definitions, Abbreviations, and Appendices

Definitions

- 1) Abuse—any willful act or threatened act that results in any physical, mental, or sexual injury; or harm that causes, or is likely to cause, one’s physical, mental, or emotional health to be significantly impaired. Abuse includes acts or omissions.
- 2) Active Duty—full-time duty under Federal (Title 10) orders in active military service of the United States. The term includes federal duty such as full-time training, annual training, and attendance while a person is in active military service or in a school designated as a service school by law or by the Secretary of the applicable military department. The term shall also include the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause.
- 3) Adult—an individual who is 18 years of age or older, or an individual under 18 years of age who has successfully petitioned for emancipation.
- 4) Air National Guard—that part of the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia, active or inactive, which is: an air force, trained and has officers appointed under the United States Constitution, organized, armed, and equipped (wholly or in part) at federal expense, and federally recognized.
- 5) Ancillary Services—services such as educational, vocational, mental health, medical, public assistance, childcare, and transportation that may be either essential or incidental to a participant’s recovery.
- 6) Armed Forces—the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard.
- 7) Army National Guard—that part of the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia, active or inactive, which is: a land force, trained, and has officers appointed under the United States Constitution, organized, armed, and equipped (wholly or in part) at federal expense, and federally recognized.
- 8) Case Management—goal-oriented activities that facilitate, coordinate, or monitor the full range of basic human needs, treatment, and service resources delivery for individual TRC participants.
- 9) Case Management Plan—a template that assists with accessing needed substance use, medical, social, educational, vocational, and other supports necessary to rehabilitate a TRC participant.

- 10) Case Manager—an employee assigned to the TRC who provides the primary supervision of participants. The case manager assists in the planning, coordination, monitoring, and evaluation of services for an individual with emphasis on quality of care, continuity of services, and cost-effectiveness. Essential functions include, but are not limited to, screening, planning, linking, monitoring, advocacy for community supports, and education.
- 11) Chain of Custody—a monitoring process to prevent tampering with a urine or saliva sample or the results. Chain of custody begins with collection of urine or saliva and continues through the final reporting of the test results to the participant. Each individual that comes into contact with the collected sample shall be noted on the chain of custody form.
- 12) Clinical Assessment—the collection of detailed information concerning an individual's substance use, emotional and physical health, social roles, and other areas that may reflect the severity of the individual's use of alcohol or other drugs. The collection of information serves as a basis for identifying an appropriate treatment regimen.
- 13) Co-Occurring Disorder—a diagnosis of a substance use disorder and a concurrent diagnosis of a mental health disorder, such as anxiety, depression, or other mood disorder, when at least one disorder of each type (Substance Use and Mental Health) can be established independent of the other and is not simply a cluster of symptoms resulting from a single disorder.
- 14) Confirmation Test—a laboratory administered test of a urine or saliva sample using a more advanced methodology than that used for on-site testing (e.g. GC/MS/MS or LC/MS/MS) seeking to confirm or reject the result of the on-site test.
- 15) Creatinine—a naturally occurring protein found in urine as a result of muscle activity. A standard creatinine level is approximately 120-150 nanograms per milliliter. A creatinine level of less than 20 nanograms per milliliter is indicative of a manipulated sample, often caused by the addition of excessive amounts of fluids (flushing). The absence of creatinine is indicative of a specimen that is not consistent with human urine.
- 16) Deferred Disposition—the suspension of prosecution prior to arraignment for a specified period of time upon the request of the accused with the consent of the prosecutor.
- 17) Dilute/Dilution—the process of reducing the concentration of drugs or drug metabolites in the urine sample. A urine specimen is dilute when the creatinine concentration is less than 20 nanograms per milliliter.
- 18) Evidence-Based Practices—refers to preferential use of mental and behavioral health interventions for which systemic empirical research has provided evidence of statistically significant effectiveness as treatments for specific problems.

- 19) Facility—any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have, or have been diagnosed as having a mental illness or substance use impairment.
- 20) Intensive Outpatient Treatment (IOP)—a service that provides individual or group counseling in a more structured environment, is of higher quality and duration than outpatient treatment, and is provided to individuals who meet the level of care criteria for this component.
- 21) Medication Assisted Treatment (MAT)—a pharmacological intervention through the use of medication(s) as authorized by state and federal law, in conjunction with counseling, behavioral therapy, and other support, to control cravings for or block the effects of addictive substances such as opiates or alcohol.
- 22) Memorandum of Understanding (MOU)—a written document that expresses mutual accord of two or more parties and sets forth an agreed upon procedure between the parties.
- 23) Mental Health Counselor—a person licensed to practice mental health counseling.
- 24) Mental Illness—an impairment of the mental or emotional processes that exercise conscious control of one's actions or the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For the purposes of this manual, the term does not include a developmental disability, intoxication, or conditions manifested only by antisocial behavior or substance use.
- 25) Monitoring/Supervision—the oversight exercised by authorities over an offender for a period of time determined by a court or releasing authority, during which time the offender is required to report to, or be monitored by, supervising authorities, and to comply with regulations and conditions.
- 26) Offender—a person arrested for a drug/alcohol or mental health related offense but has not yet entered a TC.
- 27) Outpatient Treatment—a service that provides individual, group, or family counseling by appointment during scheduled operating hours for individuals who meet the placement criteria for this component.
- 28) Participant—a person who has been accepted into a TRC.
- 29) Physician—a medical practitioner licensed by the State of Maine or employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense.

- 30) Post-Adjudication—an agreement to enter into a TRC after entering a plea of guilty.
- 31) Pre-Adjudication—an agreement to enter into a TRC before acceptance of a plea of guilty or conviction.
- 32) Treatment and Recovery Court—any one of the treatment courts operated within the State of Maine.
- 33) Qualified Professional—a physician, physician’s assistant, psychiatrist, psychologist, or psychiatric nurse licensed by the State of Maine.
- 34) Recidivism—re-arrest or a subsequent conviction or plea of *nolo contendere* while participating in, or following graduation from, a TRC.
- 35) Recovery—the process of change through which an individual achieves abstinence and improved health, wellness, and quality of life.
- 36) Recovery Support—services designed to strengthen or assist individuals to regain skills, develop the environmental supports necessary to help the individual thrive in the community, and meet life goals that promote recovery from alcohol and drug use. These services include, but are not limited to, economic, vocational, employment, educational, housing, and other ancillary services.
- 37) Relapse—a return to substance use after a period of abstinence.
- 38) Residence—the location where a person has established their domicile. For purposes of the TRC’s a potential participant’s place of residence is their most recent address on file with the State of Maine. A potential participant shall be allowed to update their county of domicile to the satisfaction of the presiding judicial officer of the TRC where an application is pending.
- 39) Residential Treatment—a service provided in a structured, live-in, environment within a non-hospital setting on a 24 hours-per-day, 7 days-per-week basis, and is intended for individuals who meet the placement criteria for this component.
- 40) Risk/Needs Assessment—a standardized, validated instrument used to differentiate higher risk offenders from lower risk offenders, predict an offender’s risk to re-offend and link offenders with treatment appropriate to their needs.
- 41) Screening—the process of gathering basic information to determine whether the offender meets the established TRC eligibility criteria, and shall include, but is not limited to, the current charge, criminal history, psychosocial assessment, a behavioral health screening, and a brief questionnaire to determine if a risk/needs assessment is needed.

- 42) Self-Help Groups—mutual aid groups or recovery support services that include 12-step programs, support groups, and peer counseling groups that meet on a regular basis.
- 43) Serious and Persistent Mental Health Disorder—a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet diagnostic criteria within the Diagnostic and Statistical Manual of Mental Disorders (DSM-V), resulting in functional impairment which substantially interferes with or limits one or more major life activity.
- 44) Service Provider—a licensed provider of substance use disorder or mental health services.
- 45) Substance Use—a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one or more of the following, occurring within a 12-month period.
- a. Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (repeated absences or poor work performance related to substance use; substance related absences, suspension, or expulsions from school; neglect of children or household)
 - b. Recurrent substance use in situations in which it is physically hazardous (driving an automobile or operating a machine when impaired by substance use)
 - c. Recurrent substance related legal problems (such as arrests for substance related disorderly conduct)
 - d. Continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (for example, arguments with spouse about consequences of intoxication and physical fights)
- 46) Substance Use Disorder—The DSM-V diagnostic category encompassing both dependence on and abuse of drugs or alcohol.
- 47) Treatment Plan—an immediate and long-range plan based upon an individual's assessed needs and used to address and monitor an individual's recovery from substance use or co-occurring disorder.
- 48) Treatment Team—a group of professionals from diverse fields who work in a coordinated fashion toward a common goal for the patient/participant.
- 49) Veteran—Any person who has served in any of the armed forces of the United States for at least one day under federal or state orders as evidenced by a discharge document such as a DD-214 for federal service or NGB-22 for National Guard service. Armed Forces includes any of the service branches under Federal authority including the Army, Marine Corps, Navy, Air Force, Space Force, or

Coast Guard, and all armed forces under the National Guard Bureau including the Army National Guard and the Air National Guard.

Appendices

Appendix 1 Administrative Order JB-16-01

STATE OF MAINE
SUPREME JUDICIAL COURT

ADMINISTRATIVE ORDER JB-16-1

ESTABLISHMENT AND OPERATION OF SPECIALTY DOCKETS

Effective: January 15, 2016

Pursuant to 4 M.R.S. §§ 421, 422, and 423, and its inherent power to control trial dockets and issue rules, *see* 4 M.R.S. §§ 1, 8, 9, the Supreme Judicial Court hereby issues this Administrative Order, which authorizes the Trial Court Chiefs to establish and, when approved, operate specialty dockets.

I. DEFINITION OF SPECIALTY DOCKETS

As currently used, the term “specialty dockets” refers to specifically designed dockets, established or continued pursuant to this Order or the predecessor Specialty Dockets Protocol, that focus on particular individuals and particular issues that have brought those individuals into contact with the justice system, and that require participants to appear before a judge on a regularly scheduled basis that is more frequent than is required for the formal adjudication of the case. Specialty dockets ordinarily require judicial resources and court time in addition to those required by traditional dockets of the same case type.

II. PURPOSE

This Order sets forth the protocol for the establishment and continuation of specialty dockets in order to (1) support specialty dockets that are demonstrated to be effective and advance the administration of justice where resources are available; (2) ensure that any specialty dockets are demonstrably effective and constitute an appropriate use of limited judicial and other resources; (3) manage the limited judicial resources available in the most efficient and effective manner; (4) provide a mechanism for regular quality review of specialty dockets; and (5) proscribe ad hoc dockets that have not been established or continued pursuant to this Order.

III. DEVELOPMENT OF NEW SPECIALTY DOCKETS

To ensure that specialty dockets are created and maintained thoughtfully, and that the considerable demands on judicial resources and the labor-intensive and time-intensive nature of specialty dockets are addressed in the process, prior authorization by the Trial Court Chiefs is required for the development, planning, and implementation of new specialty dockets, and the continuance of existing

specialty dockets. The Chiefs will evaluate requests for approval in consultation with the State Court Administrator or designee.

IV. OPERATION OF AND RESOURCES FOR SPECIALTY DOCKETS

Each specialty docket will operate in conformity with the Code of Judicial Conduct, and according to the protocols and procedures adopted by the Trial Court Chiefs.

Each specialty docket will operate with the necessary and appropriate resources to meet best practices for the docket at issues. If an operating specialty docket loses key resources, it will be terminated (or phased out), unless appropriate alternatives are quickly available.

- A. Specialty dockets will be approved only when specific and identified resources, including judge time, clerk staff, and security are available within the Judicial Branch to support the specialty docket.
- B. Specialty dockets will be approved only when the necessary and sufficient resources external to the Judicial Branch have been identified and have demonstrated a commitment to the process and requirements of the specialty docket.

V. ADVISORY COMMITTEES

The Trial Court Chiefs may request and the Supreme Judicial Court may create advisory committees to assist the Trial Court Chiefs with the creation, operation, and evaluation of specialty dockets. The results of those reviews will be used each year by the Chiefs when they determine whether to extend or terminate the operation of the specialty dockets.

VI. ANNUAL REVIEWS OF SPECIALTY DOCKETS

Maine's specialty dockets will be reviewed on an annual basis under the direction of the Trial Court Chiefs in consultation with the State Court Administrator.

VII. PLAN OF CORRECTION

A specialty docket may be terminated when the annual review or other reports demonstrate that continuation of the specialty docket is no longer appropriate because of challenges in its operations, because it is no more effective than traditional approaches for the targeted case types, because it cannot be sustained due to resource limitations, or because other considerations lead court management to determine that the specialty docket can no longer be supported. The Judicial Branch may develop an action plan based on the results of the annual audits to address areas of challenge.

VIII. APPROVAL

Final approval for the creation of any new specialty docket or the discontinuance of any existing specialty docket will be made by the Trial Court Chiefs in consultation with the State Court Administrator and the Chief Justice of the Supreme Judicial Court.

For the Court,

 /s/ .
Leigh I. Saufley
Chief Justice

Promulgation Date: January 15, 2016

Appendix 2 NADCP Best Practice Standards

The Adult Drug Court Best Practice Standards Volume I and Adult Drug Court Best Practice Standards Volume II developed by NADCP and NDCI can be accessed at this link: www.ndci.org/standards/

The Adult Drug Court Best Practice Standards are:

I. Target Population

Eligibility and exclusion criteria for the Drug Court are predicated on empirical evidence indicating which types of offenders can be treated safely and effectively in Drug Courts. Candidates are evaluated for admission to the Drug Court using evidence-based assessment tools and procedures.

II. Equity and Inclusion

Individuals who have historically 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 receive the same opportunities as other individuals to participate and succeed in the Drug Court.

III. Roles and Responsibilities of the Judge

The Drug Court judge stays abreast of current law and research on best practices in Drug Courts, participates regularly in team meetings, interacts frequently and respectfully with participants, and gives due consideration to the input of other team members.

IV. Incentives, Sanctions, and Therapeutic Adjustments

Consequences for participants' behavior are predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behavior modification.

V. Substance Use Disorder Treatment

Participants receive substance use disorder treatment based on a standardized assessment of their treatment needs. Substance use disorder treatment is not provided to reward desired behaviors, punish infractions, or serve other non-clinically indicated goals. Treatment providers are trained and supervised to deliver a continuum of evidence-based interventions that are documented in treatment manuals.

VI. Complementary Treatment and Social Services

Participants receive complementary treatment and social services for conditions that co-occur with substance use disorder and are likely to interfere

with their compliance in Drug Court, increase criminal recidivism, or diminish treatment gains.

VII. Drug and Alcohol Testing

Drug and alcohol testing provides an accurate, timely, and comprehensive assessment of unauthorized substance use throughout participants' enrollment in the Drug Court.

VIII. Multidisciplinary Team

A dedicated multidisciplinary team of professionals manages the day-to-day operations of the Drug Court, including reviewing participant progress during pre-court staff meetings and status hearings, contributing observations and recommendations within team members' respective areas of expertise, and delivering or overseeing the delivery of legal, treatment and supervision services.

IX. Census and Caseloads

The Drug Court serves as many eligible individuals as practicable while maintaining continuous fidelity to best practice standards.

X. Monitoring and Evaluation

The Drug Court routinely monitors its adherence to best practice standards and employs scientifically valid and reliable procedures to evaluate its effectiveness.

Appendix 3 The 10 Key Components of Drug Courts

The 10 Key Components of Drug Courts developed by NADCP and the Office of Justice Programs can be accessed at this link: www.ndci.org/wp-content/uploads/2016/05/Defining-Drug-Courts-The-Key-Components.pdf

The 10 Key Components of Drug Courts are:

Key Component #1: Drug Courts integrate alcohol and other drug treatment services with justice system case processing.

Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

Key Component #3: Eligible participants are identified early and promptly placed in the drug court program.

Key Component #4: Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

Key Component #6: A coordinated strategy governs drug court responses to participants' compliance.

Key Component #7: Ongoing judicial interaction with each drug court participant is essential.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

Appendix 4 The 10 Key Components of VTC

The 10 Key Components of Drug Courts developed by the NADCP and Justice for Vets can be accessed at this link: [The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf \(justiceforvets.org\)](https://www.justiceforvets.org/10-key-components-of-veterans-treatment-courts.pdf)

The 10 Key Components of Veterans Treatment Courts are:

Key Component #1: Veterans Treatment Courts integrate alcohol, drug treatment, and mental health services with justice system case processing.

Key Component #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

Key Component #3: Eligible participants are identified early and promptly placed in the Veterans Treatment Court program.

Key Component #4: Veterans Treatment Court provide access to a continuum of alcohol, drug, mental health, and other related treatment and rehabilitation services.

Key Component #5: Abstinence is monitored by frequent alcohol and other drug testing.

Key Component #6: A coordinated strategy governs Veterans Treatment Court responses to participants' compliance.

Key Component #7: Ongoing judicial interaction with each Veteran is essential.

Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

Key Component #9: Continuing interdisciplinary education promotes effective Veterans Treatment Court planning, implementation, and operations.

Key Component #10: Forging partnerships among Veterans Treatment Court, Veterans Administration, public agencies, and community-based organizations generates local support and enhances Veteran Treatment Court effectiveness.

Appendix 5 The 10 Essential Elements of MHC

The 10 Essential Elements of Mental Health Courts developed by the federal Office of Justice Programs can be accessed at this link: [Mental Health Court Essential Elements \(ojp.gov\)](https://www.ojp.gov/mental-health-court-essential-elements)

The ten essential elements of a Mental Health Court are:

Essential Element #1: Planning and Administration. A broad-based group of stakeholders representing the criminal justice, mental health, substance use treatment, and the community guides the planning and administration of the court.

Essential Element #2: Target Population. Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to detention for defendants with mental illnesses.

Essential Element #3: Timely Participant Identification and Linkage to Services. Participants are identified, referred, and accepted into MHCs and then linked to community-based service providers as quickly as possible.

Essential Element #4: Terms of Participation. Terms of participation are clear, promote public safety, facilitate the participant's engagement in treatment, are individualized to correspond to the level of risk that the participant presents to the community, and provide for positive legal outcomes for those who successfully complete the program.

Essential Element #5: Informed Choice. Participants fully understand the program requirements before agreeing to participate in a MHC. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist to address, in a timely fashion, concerns about a participant's competency whenever they arise.

Essential Element #6: Treatment Supports and Services. MHCs connect participants to comprehensive and individualized treatment supports and services in the community.

Essential Element #7: Confidentiality. Health and legal information should be shared in a way that protects participant's confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of a participant's court-ordered treatment program or services should be safeguarded in the event the participants are returned to traditional court processing.

Essential Element #8: Court Team. A team of criminal justice and mental health staff and service and treatment providers receive special, ongoing training and helps participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.

Essential Element #9: Monitoring Adherence to Court Requirements. Criminal justice and mental health staff collaboratively monitor participants adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participant recovery.

Essential Element #10: Sustainability. Data are collected and analyzed to demonstrate the impact of the MHC, its performance is assessed periodically (and procedures modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

Appendix 6 Plea Agreement and Waiver of Rights

- UNIFIED CRIMINAL DOCKET
- SUPERIOR COURT
- DISTRICT COURT

County: _____
 Location: _____
 Docket No.: _____

STATE OF MAINE

v.

MAINE TREATMENT COURT
PLEA AGREEMENT AND
WAIVER OF RIGHTS

I, the above-named defendant, after full consultation with my attorney, do execute this written plea agreement and waiver of rights in this matter, and state as follows:

1. I understand the elements of the crime(s) and/or probation violation(s) charged against me, the maximum possible sentence, and any mandatory minimum sentence.
2. I understand that by pleading guilty to the charges and/or admitting the probation violation(s) I am giving up the following rights:
 - a. the right to remain silent;
 - b. the presumption of innocence, which means that although these charges have been brought against me, I am not guilty until the State proves the charges beyond a reasonable doubt (crimes) and/or by a preponderance of the evidence (probation violations), as applicable;
 - c. the right to a speedy and public trial, the right to be present at the trial, the right to see and ask questions of witnesses who would testify against me for the State and the right but not the obligation to testify myself and to call witnesses to testify on my behalf;
 - d. the right to a jury trial for crime(s) and the right to a unanimous verdict in order for me to be found guilty, which means all twelve jurors would have to conclude that the State had proved beyond a reasonable doubt the charge(s) against me;
 - e. the right to a jury-waived trial; in order for the judge to find me guilty for crime(s), he would have to conclude that the State has proved beyond a reasonable doubt the

charge(s) against me; in order to find I violated my probation, the judge would have to conclude the State had proved by a preponderance of the evidence that I violated my probation conditions;

f. the right to appeal any pretrial rulings and to appeal any conviction(s).

3. I am pleading guilty because I am guilty and for no other reason.
4. I am entering this plea voluntarily, based on my own free choice; no one has made any threats or promises to encourage me to plead to the charge(s) or admit the probation violation(s) other than to tell me about the sentencing agreements made in connection with the plea agreement set forth below.
5. I am not under the influence or impaired in any way by any drugs, alcohol, or medicine; I understand this proceeding and am able to make an informed decision.
6. I am satisfied with the services of my attorney. I have had enough time to discuss the State's evidence against me, the plea agreement, and the requirements of the Maine Treatment Court. I have had enough time to decide to enter plea(s) of guilty and/or admit to violating my probation conditions as opposed to having a trial.
7. I was born in _____ and I am/am not a citizen of the United States.
8. I understand the following plea agreement applies to my case:
 - a. Successful completion of the Maine Treatment Court:

 - b. Unsuccessful completion of the Maine Treatment Court:

9. I understand I am waiving my right to challenge the continuation of sentencing until either completion of or dismissal from the Maine Treatment Court. M.R.U. Crim. P. 32(a)(1)
10. I understand that I do not have the right to appeal any sentence I receive pursuant to an agreed-upon recommendation to the court.
11. I understand that I can withdraw my plea only based on the discretion of the court, and that such discretion is exercised only in exceptional circumstances. M.R.U. Crim. P. 32(d)

12. I understand that I must comply with all of the conditions of the Maine Treatment Court bail contract, and if I do not, I will be in violation of the conditions of my post-conviction bail incorporated therein, which may result in court-imposed sanctions including but not limited to incarceration, expulsion from the Maine Treatment Court, and/or being charged with a new crime, violation of conditions of release.
13. I understand that the judge and/or justice involved in the Maine Treatment Court will discuss me and my case with others while I am not present. I understand that the Maine Treatment Court team will discuss me and my case when I am not present. I understand that the judge and/or justice involved in the Maine Treatment Court may talk to me when others are not present. I understand that this communication is different from what the judge and/or justice would do if I was not participating in the Maine Treatment Court.
14. I understand that the judge and/or justice involved in the Maine Treatment Court may sanction me to a period of incarceration of up to 4 days if I intentionally or knowingly violate the conditions of release imposed by the court or the Maine Treatment Court contract. I understand that I have the right to have an attorney represent me at any hearing to determine whether a sanction of incarceration over 4 days should be imposed.
15. I understand that if I am expelled from the Maine Treatment Court, the court may proceed with the sentencing pursuant to the plea agreement outlined in paragraph 7(b) above. I understand that I have the right to have an attorney represent me at any sentencing proceeding.
16. I have read, or have had read to me, the Maine Treatment Court bail contract and Client Handbook and I understand all of the provisions of these documents.
17. If requested, an interpreter has been provided to me and I have read, or have had read to me, the Maine Treatment Court bail contract and Client Handbook and I understand all of the provisions of these documents.

All of the terms of this plea agreement and waiver of rights have been explained to me by my attorney and by the court. I have read and I understand all of the terms in this document.

Date: _____

Defendant

I have explained the provisions of this document to my client and I believe (s)he understands this document.

Date: _____

Defense Attorney

The plea agreement set forth in paragraph 7 above accurately states the agreement.

Date: _____

District Attorney

STATE OF MAINE

- UNIFIED CRIMINAL DOCKET
- SUPERIOR COURT
- DISTRICT COURT

County: _____
 Location: _____
 Docket No.: _____

STATE OF MAINE

v.

MAINE TREATMENT COURT
PLEA AGREEMENT AND
WAIVER OF RIGHTS
(PROBATION)

I, the above-named defendant, after full consultation with my attorney, do execute this written plea agreement and waiver of rights in this matter, and state as follows:

- 18. I understand the elements of the probation violation(s) charged against me.
- 19. I understand that by admitting the probation violation(s) I am giving up the following rights:
 - a. the right to remain silent;
 - b. the presumption of innocence, which means that although the motion to revoke probation has been filed against me, I may not be found to have violated the conditions of my probation until the State proves that I violated the conditions of my probation by a preponderance of the evidence;
 - c. the right to a hearing on the motion to revoke probation, the right to be present at the hearing, the right to see and ask questions of witnesses who would testify against me for the State and the right but not the obligation to testify myself and to call witnesses to testify on my behalf; and

- d. in order to find I violated the conditions of my probation, the judge would have to conclude the State had proved by a preponderance of the evidence that I violated the conditions of my probation.
20. I am entering this admission voluntarily, based on my own free choice; no one has made any threats or promises to encourage me to admit the probation violation(s) other than to tell me about the sentencing agreements made in connection with the plea agreement set forth below.
 21. I am not under the influence or impaired in any way by any drugs, alcohol, or medicine; I understand this proceeding and am able to make an informed decision.
 22. I am satisfied with the services of my attorney. I have had enough time to discuss the State's evidence against me, the plea agreement, and the requirements of the Maine Treatment Court. I have had enough time to decide to admit to violating the conditions of my probation as opposed to having a hearing.
 23. I was born in _____ and I am/am not a citizen of the United States.
 24. I understand the following plea agreement applies to my case:
 - a. Successful completion of the Maine Treatment Court:

 - b. Unsuccessful completion of the Maine Treatment Court:

 25. I understand I am waiving my right to challenge the continuation of sentencing until either completion of or dismissal from the Maine Treatment Court. M.R.U. Crim. P. 32(a)(1).
 26. I understand that I do not have the right to appeal any sentence I receive pursuant to an agreed-upon recommendation to the court.
 27. I understand that I can withdraw my admission based only on the discretion of the court, and that such discretion is exercised only in exceptional circumstances. M.R.U. Crim. P. 32(d).
 28. I understand that I must comply with all of the conditions of the Maine Treatment Court bail contract, and if I do not, I will be in violation of the conditions of my post-conviction

bail incorporated therein, which may result in court-imposed sanctions including but not limited to incarceration, expulsion from the Maine Treatment Court, and/or being charged with new crimes or a motion to revoke probation.

29. I understand that the judge and/or justice involved in the Maine Treatment Court will discuss me and my case with others while I am not present. I understand that the Maine Treatment Court team will discuss me and my case when I am not present. I understand that the judge and/or justice involved in the Maine Treatment Court may talk to me when others are not present. I understand that this communication is different from what the judge and/or justice would do if I was not participating in the Maine Treatment Court.
30. I understand that the judge and/or justice involved in the Maine Treatment Court may sanction me to a period of incarceration of up to 4 days if I intentionally or knowingly violate the conditions of release imposed by the court or the Maine Treatment Court contract. I understand that I have the right to have an attorney represent me at any hearing to determine whether a sanction of incarceration over 4 days should be imposed.
31. I understand that if I am expelled from the Maine Treatment Court, the court may proceed with the sentencing pursuant to the plea agreement outlined in paragraph 7(b) above. I understand that I have the right to have an attorney represent me at any sentencing proceeding.
32. I have read, or have had read to me, the Maine Treatment Court bail contract and Client Handbook and I understand all of the provisions of these documents.
33. If requested, an interpreter has been provided to me and I have read, or have had read to me, the Maine Treatment Court bail contract and Client Handbook and I understand all of the provisions of these documents.

All of the terms of this plea agreement and waiver of rights have been explained to me by my attorney and by the court. I have read and I understand all of the terms in this document.

Date: _____

Defendant

I have explained the provisions of this document to my client and I believe (s)he understands this document.

Date: _____

Defense Attorney

The plea agreement set forth in paragraph 7 above accurately states the agreement.

Date: _____

District Attorney

Appendix 8 Entry/Bail Contract

STATE OF MAINE

- UNIFIED CRIMINAL DOCKET
- SUPERIOR COURT
- DISTRICT COURT

County: _____

Location: _____

Docket No: _____

STATE OF MAINE

v.

ENTRY/BAIL CONTRACT and
ORDER ADMITTING
DEFENDANT INTO THE
MAINE TREATMENT COURT

Pursuant to the policies and procedures of the Maine Treatment Court (MTC) and the post-conviction bail statute, 15 M.R.S.A. §1026 and §1051, I, the above-named defendant, agree to:

1. Be honest and answer truthfully all questions posed to me by the justice, judge, or staff of the MTC, including full disclosure of any use of alcohol and drugs.
2. Appear for all MTC status review hearings as directed.
3. Participate in all MTC programs, activities, and assignments as ordered by the court.
4. Comply with all treatment and case management recommendations as identified in the treatment and case plans developed by the providers to address my specific needs, including, but not limited to, attending all substance use counseling sessions, both group and individual, and participating in a meaningful way in all such sessions.
5. Comply with all physician and pharmacy conditions, including taking all medication as prescribed.

6. Appear for all meetings with my case manager, treatment provider, and/or probation officer as directed by the court.
7. Report as required or requested by any team member for alcohol and/or drug testing, and not tamper with any drug test or drug testing procedure.
8. Not use or have in my possession, in my vehicle, or in my residence the following: alcohol, scheduled drugs (legal or illegal), or prescription medications unless approved by my treatment provider in writing; drug paraphernalia of any kind, including hypodermic apparatus (unless prescribed); mind-altering substances, including but not limited to: inhalants, synthetic or 'designer drugs'; dangerous weapons, including firearms and knives.
9. Not be on the premises of any establishment that serves alcohol without written permission of my case manager and/or probation officer.
10. Not be on the premises of any establishment that dispenses cannabis, cannabis products, or cannabis derivatives and comply with the Prohibited Substances Agreement.
11. Submit to a random search of my person, possessions (including any and all data and content of a cellphone), vehicle, and residence, including the common areas of my residence, at any time as requested by the judge, staff of the MTC, or member of law enforcement. If the residence is occupied solely by myself, or myself and my family members and/or a significant other, the entire residence shall be subject to search.
12. Obey all rules, conditions, and directives of the MTC. The MTC may impose additional conditions, rules, or directives, or may adjust or eliminate condition(s) or term(s) as required to complement my individualized treatment plan.
13. Commit no unlawful conduct; reliable information of such conduct may result in expulsion from the MTC and imposition of the unsuccessful plea agreement sentence.
14. Identify myself as being in the MTC whenever I have contact with a law enforcement officer and/or probation officer and notify my case manager and probation officer within 48 hours of the contact, regardless as to whether it led to my arrest.
15. Not leave the State of Maine or _____ County without the written approval of my case manager and/or probation officer.
16. Reside at the following address: _____, and shall not change my residence without the permission of the MTC presiding judge.
17. Obey the curfew ordered by the court. Absence from my residence during curfew hours is permitted solely for travel to and from court related activities, treatment, medical emergencies, and employment unless otherwise granted by the court.

18. Have no contact, direct or indirect, with the following: _____

I will not be at their residence, place of employment, of place of education.

19. Follow all terms and conditions of other release or probation, if any.
20. Sign all release of information forms as required by the MTC. Revocation of these forms will result in non-compliance with the conditions of the MTC.
21. Shall not associate with non-law abiding individuals or individuals who are actively using alcohol or drugs, legal or illegal.
22. Maintain or seek gainful employment, participation in an approved educational program, participation in a vocational rehabilitation program, or performance of community service work.
23. Dress appropriately for court.
24. Maintain the confidentiality of all fellow MTC participants.
25. Refrain from making threats toward other participants or MTC staff, or behaving in a violent or inappropriate manner.
26. Make payments on all financial obligations, including, but not limited to, any court ordered restitution, child support payments, and/or fines, including those which may result from other pending charges, subject to ability to pay.
27. Pay all fines and/or restitution in the amount of \$ _____ at a rate of \$ _____ per month as ordered.
28. Pay for alcohol and/or drug testing if I am dishonest or if expensive testing is required because of my conduct.
29. Make every effort to obtain a valid driver's license, if applicable.
30. Not operate a motor vehicle unless lawfully licensed.
31. Contact my case manager as directed.
32. If on probation, I understand that my probation will be tolled while I participate in the MTC, but I am required to follow all probation conditions, including reporting to my probation officer while participating in the MTC.

33. Representation at MTC court sessions by the lawyer of the day, unless I make arrangements for other representation.

34. Participate in electronic monitoring if ordered by the court.

35. I will waive extradition to the State of Maine from any other State of the United States, from the District of Columbia, from any territory of the United States, and from any other jurisdiction whatsoever, for prosecution on my charge(s).

36. Other: _____

IF ANY OF THE ABOVE CONDITIONS ARE VIOLATED, I MAY BE: SUBJECT TO ARREST AND DETENTION; REQUIRED TO MEET DIFFERENT OR ADDITIONAL CONDITIONS OF RELEASE; GIVEN COURT IMPOSED SANCTIONS; OR SUBJECT TO EXPULSION FROM THE MAINE TREATMENT COURT.

By signing here, I acknowledge that I understand the provisions of this entry contract, that I have received a copy of this contract, and I agree to the above conditions of release order as entered by the court.

Date: _____

Defendant

As counsel for the defendant, I have thoroughly explained to the defendant the Maine Treatment Court client entry contract. I believe the defendant fully understands the meaning of this contract and has the capacity to evaluate and to knowingly and intelligently enter into this contract.

Date: _____

Attorney for Defendant

ORDER

Based upon the forgoing, the defendant is hereby ADMITTED into the Maine Treatment Court and subject to the conditions, rules, and directives thereto.

Date: _____

Justice/Judge



AUTHORIZATION TO RELEASE INFORMATION WITHIN THE MAINE TREATMENT COURT TEAMS

Participant: _____

DOB: ____/____/____

SS#: ____/____/____

Docket Number(s): _____

PLEASE NOTE: Information contained in this release and any records produced as a result of this release are confidential and not open to public inspection.

I have read or had explained to me the *Notice to patients pursuant to 42 C.F.R. section 2.22* about the disclosure of my substance use treatment and mental health treatment information. I understand this form, and consent to the exchange of the following information by the Maine Treatment Courts, their team members, authorized employees, or agents with:

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Name/Agency: _____

Address: _____

Check the following types of information to be released:

- Results of case management screening
- Results of treatment screening and assessment
- Progress in Maine Treatment Court
- Maine Treatment Court case plans
- Aftercare plan

____ Progress in substance use treatment, mental health treatment, medical treatment, dental treatment, all other forms of treatment and social services, including case management
____ Prescribed medication(s)

I do ____ do not ____ authorize the release of information regarding HIV/AIDS diagnosis or treatment.

Other information to be released: _____

I authorize the court team to discuss information regarding me during pre-court briefings without me or my attorney present and in status hearings in the courtroom with other court participants present.

The purpose of the release is to permit discussion of my progress in treatment; my progress on probation, if applicable; my service plans; and my compliance with court expectations.

I understand that I may refuse to sign this authorization, which will result in my expulsion from the Maine Treatment Court.

I understand that this consent will remain in effect during my time in the Maine Treatment Court. My revocation of this authorization will result in my expulsion from the Maine Treatment Court. In addition, this authorization will be deemed revoked upon my graduation from Maine Treatment Court or upon my expulsion for not meeting the expectations of the Maine Treatment Court agreement.

I understand that information about my progress in treatment and the Maine Treatment Court program may be shared with program evaluators. The evaluators may provide reports to the court or state agencies. Any information used by the evaluators will not include identifying information about me.

I understand that any disclosure made is bound by *Part 2 of Title 42 of the Code of Federal Regulations*, which governs the confidentiality of substance use patient records, and that upon receiving this information re-disclosure may only be made in connection with official duties. I may have a copy of this authorization form upon request.

I understand that information that is related to my recovery may be received from a third party and disclosed to the presiding judge and the Maine Treatment Court team.

Further releases for disclosure between the Maine Treatment Court team to specified parties shall be executed on a case-by-case basis by the case manager.

If this information is disclosed to a third party, the information may no longer be protected by federal privacy regulations and may be re-disclosed by the person or organization that receives the information.

I release the Maine Treatment Court, its staff members, authorized employees, or agents from any legal responsibility or liability for the disclosure of the information about me to the extent indicated and that I have authorized on this form.

Participant: _____ Date: _____

Witness: _____ Date: _____

Notice to patients pursuant to 42 C.F.R. Sec. 2.22

The confidentiality of alcohol and drug use patient records maintained by this program is protected by federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program or disclose any information identifying a patient as an alcohol or drug user unless:

- (1) The patient consents in writing;*
- (2) The disclosure is allowed by court order; or*
- (3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.*

Violation of federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with federal regulations. Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime. Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

Per 42 U.S.C. § 290dd-3 (c) Prohibition against use of record in making criminal charges or investigation of patient. Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

See 42 U.S.C. § 290dd for federal law and 42 C.F.R. Part 2 for federal regulations.

PETITION TO ADVANCE TO PHASE 4

Phase 3: Social Stabilization

Length: 90 days (minimum)

Goals

- Attend and engage in treatment services.
- Continued sobriety and/or abstinence by using recovery tools learned in previous phases.
- Develop a relapse prevention plan.
- Develop a community-based support plan.
- Develop a pro-social activity plan.
- Maintain safe and stable housing.
- Demonstrate changes to your people, places, and things.

By initialing below, I certify that I have met the following expectations and am eligible to petition for advancement to Phase 4:

- _____ I have had no court imposed sanctions for a minimum of the last 14 consecutive days prior to phase up.
- _____ I have arrived on time and engaged appropriately in all court and treatment sessions, unless excused by a member of the MTC team.
- _____ I have had a 30 minute, minimum, case management session with my case manager each week and have worked on my plans to develop a community support network, meet my financial obligations, and reinstate my driver's license, if applicable.
- _____ I have participated in personal development and/or self-improvement classes recommended by the MTC team.
- _____ I have appeared as required for all alcohol and/or drug tests and tested negative for a minimum of the last 45 consecutive days prior to phase up, this includes no missed, dilute, or altered tests.
- _____ I have complied with my 11:00pm to 6:00am curfew, unless changed by the judge.
- _____ I have complied with all bail and/or probation conditions.
- _____ I have reported any contact with law enforcement to my case manager within 24 hours of the contact.
- _____ I have maintained safe and stable housing and have not changed housing without permission from my case manager.
- _____ I have complied with all requested prescription counts as directed by a member of the MTC team.
- _____ I have attended all treatment recommended recovery support groups and provided proof to my case manager.
- _____ I have complied with treatment recommendations regarding a sponsor.
- _____ I have attended and engaged in treatment and followed all recommendations for additional services.

Submitted by: _____
Printed Name Signature Date of Admission

After review and discussion of this completed phase advancement petition, such advancement is hereby: _____ granted _____ denied, effective _____.

Maine Treatment Court Judge

PETITION TO ADVANCE TO PHASE 5

Phase 4: Maintenance and Community Involvement

Length: 90 days (minimum)

Goals

- Attend and engage in treatment services.
- Continued sobriety and/or abstinence by using the recovery tools learned in previous phases.
- Demonstrate strong engagement in recovery and pro-social activities.
- Maintain engagement in a community support network.
- Maintain safe and stable housing.
- Obtain or maintain employment or attendance at school.
- Demonstrate changing people, places, and things.

By initialing below, I certify that I have met the following expectations and am eligible to petition for advancement to Phase 5:

- _____ I have not had any court imposed sanctions for a minimum of the last 14 consecutive days prior to phase up.
- _____ I have arrived on time and engaged appropriately in all court and treatment sessions, unless excused by a member of the MTC team.
- _____ I have had a 30 minute, minimum, case management session with my case manager each week and continue to refine my plans for a community support network, meeting my financial obligations, and reinstate my driver's license, if applicable.
- _____ I have participated in personal development and/or self-improvement classes as recommended by the MTC team.
- _____ I have appeared as required for all alcohol and drug tests and have tested negative for a minimum of the last 60 consecutive days prior to phase up, this includes no missed, dilute, or altered tests.
- _____ I have complied with my midnight to 6:00am curfew, unless changed by the judge.
- _____ I have complied with all bail and/or probation conditions.
- _____ I have reported any contact with law enforcement to my case manager within 24 hours of the contact.
- _____ I have maintained safe and stable housing and have not changed housing without permission from my case manager.
- _____ I have obtained or maintained gainful employment or participation in an educational program.
- _____ I have complied with all requested prescription counts as directed by a member of the MTC team.
- _____ I have attended all treatment recommended recovery support groups and have provided proof to my case manager.
- _____ I have complied with treatment recommendations regarding a sponsor.
- _____ I have attended and engaged in treatment and have followed all recommendations for additional services.

Submitted by: _____
Printed Name Signature Date of Admission

After review and discussion of this completed phase advancement petition, such advancement is hereby: _____ granted _____ denied, effective _____.

Maine Treatment Court Judge

PETITION FOR COMMENCEMENT

Phase 5: Ongoing Recovery

Length: 90 days (minimum)

Goals

- Attend and engage in treatment services.
- Complete an aftercare plan.
- Continued sobriety and/or abstinence by using the recovery tools learned in previous phases.
- Remain actively engaged in recovery and pro-social activities.
- Maintain engagement in a community support network.
- Maintain safe and stable housing.
- Maintain employment or attendance at school.
- Demonstrate changing people, places, and things.

By initialing below, I certify that I have met the following expectations and am eligible to petition for Graduation:

- _____ I have not had any court imposed sanctions for a minimum of the last 14 consecutive days prior to commencement.
- _____ I have arrived on time and engaged appropriately for all court and treatment sessions, unless excused by a member of the MTC team.
- _____ I have met with my case manager each week as directed and have continued to refine my plans for a community support network, meeting my financial obligations, and reinstating my driver's license, if applicable.
- _____ I have participated in any personal development and/or self-improvement classes recommended by the MTC team.
- _____ I have appeared as required for all alcohol and/or drug tests and have tested negative for a minimum of the last 90 days prior to Commencement, this includes no missed, dilute, or altered tests.
- _____ I have complied with my midnight to 6:00am curfew, unless changed by the judge.
- _____ I have complied with all bail and/or probations conditions.
- _____ I have reported any contact with law enforcement to my case manager within 24 hours of the contact.
- _____ I have maintained safe and stable housing and have not changed housing without permission from my case manager.
- _____ I have maintained gainful employment or participation in an educational program.
- _____ I have complied with all requested prescription counts as directed by a member of the MTC team.
- _____ I have attended all treatment recommended recovery support groups and provided proof to my case manager.
- _____ I have complied with treatment recommendations regarding a sponsor.
- _____ I have attended and engaged in treatment and followed all recommendations for additional services.

Submitted by: _____
Printed Name Signature Date of Admission

After review and discussion of this completed phase advancement petition, such advancement is hereby:
_____ granted _____ denied, effective _____.

Maine Treatment Court Judge

Maine Treatment and Recovery Court Participant Testing Policy

I understand and agree to the following testing policies and rules:

1. I am expected to be honest and admit use prior to testing.
2. It is my responsibility to call the testing line daily.
3. Specimen collection will be observed by a collector of my identified gender. If an appropriate collector is not available, I will be subject to a search of my clothes and body prior to testing.
4. A positive test will result in the loss of my documented negative testing time and dishonesty may result in additional sanctions.
5. A missed test is considered a positive test.
6. A dilute specimen is considered a positive.
7. I am responsible for what I eat and drink and I will not attempt to claim, as a reason for a dilute or positive test, inadvertent exposure by consuming foods or beverages.
8. At the time of testing I will disclose any prescription medication, over-the-counter medication, or supplements I am taking.
9. The inability to produce a urine specimen may be considered a positive test, may result in the loss of my documented negative testing days, and may result in additional sanctions.
10. If I am unable to provide a sufficient specimen, I will be asked to give another specimen. My inability or unwillingness to provide a sufficient second specimen within one hour of request will be considered a positive test, will result in the loss of my documented negative testing time, and may result in additional sanctions.
11. I am required to give a urine specimen that is within 90F-100F as determined by the temperature strip on the test. If I submit a specimen that does not fall within the proper temperature range, I will be asked to give a second specimen. My inability or unwillingness to provide a second specimen that is within the proper temperature range will be considered a positive test, will result in the loss of all my documented negative testing time, and may result in additional sanctions.
12. Altering or tampering with a test specimen will be grounds for sanction which may result in my expulsion from the program.
13. Using someone else's urine will be grounds for sanction which may result in my expulsion from the program.

Participant Signature

Date

Participant Attorney

Date

Appendix 12 Request for Drug/Alcohol Test

Maine Treatment Court - Request for Drug/Alcohol Test

This form must be completed for each test. The form must be made out by those individuals performing the indicated procedures and must be kept with the specimen.

Testing Site: _____ MPS _____

Request Made By _____ Case Management _____ Date: _____

Sample Number _____

Client Name _____

Note: Client name is only to be completed if the specimen will be tested immediately and in the presence of the client. If to be tested later please use only a number and place both the name and number on the testing log.

Substance(s) to be tested for _____ 10 Panel, Adulterant, Bup., Alcohol _____

Current approved medications for client _____ As Noted _____

Reason for request (if not random explain suspicion) _____

Client refused to submit specimen: Yes _____ No _____

Were there any problems with obtaining a specimen? Yes _____ No _____

If Yes, Explain: _____

Specimen witnessed and collected by _____ MPS (see SOP for testing males) _____

Date _____ Time _____

Specimen tested by _____ MPS _____

Date _____ Time _____

Test Results: Negative _____ Positive _____ Positive Drug Type(s) _____

I voluntarily admit that this test is positive because, _____

Client Signature: _____ Date: _____

Witnessed by: _____ Date: _____

Urine Drug Test laboratory test requisition

Client ID: 13004
 ABE ASBENT
 1111 Anywhere Ln.
 95110 107
 Anywhere, CA 95433

URINE DRUG SCREEN TYPE

Pre-Employment Periodic Medical Random Other Chain of Custody Yes No

Post-Accident Reasonable Cause Baseline

Specimen temperature within range: Yes, 10°-100°F (32°-38°C) No, record specimen temperature here

1

Seal (Donor's Initials) **REDWOOD**
 JS

2 Security Seal **REDWOOD TOXICOLOGY LABORATORY**

3

4

5

P.O. Box 5680 Santa Rosa, CA 95403 // Laboratory phone: 800-255-2159

P08/1108 Screen 8
 098 Oxycotin (\$5.00)
 Other: _____ Collector: _____

GC/MS Confirm Marijuana (Specify Drug(s))

Patient ID: John Smith Collection Date 10/20/07
 Req# 77777

REDWOOD TOXICOLOGY LABORATORY
 1800 Westside Blvd., Santa Rosa, CA 95403 // Laboratory: 800-255-2154 // Screening Division: 877-444-EDM
 Local: 707-477-7788 // Fax: 707-477-0788 // www.redwoodtoxicology.com

2-PART FORM 1 of 2 LABORATORY COPY

Urine Test Request Form

Appendix 14 Incentives and Sanctions Matrix

Positive Behavior

Incentive Matrix: “What do we want the participant to learn from this?”

Step 1. Identify the Behavior

Proximal (Expect Sooner)	Moderate	Distal (Expect Later)
<ul style="list-style-type: none"> Attendance at treatment Attendance at other appointments Home for home visits Report to UA Timeliness Payment 	<ul style="list-style-type: none"> Honesty Testing Negative Participating in Prosocial Activities Employment Progress toward Tx Goals Progress in Tx 	<ul style="list-style-type: none"> Complete Tx LOC Extended Abstinence/Neg. Tests Treatment Goals Completed Phase Goals Completed Program Goals Completed

Step 2. Determine the Response Level

		Proximal (Expect Sooner)	Moderate	Distal (Expect later)
Distal ↓ Prox	Phase 1	Small	Medium	Large
	Phase 2	Small	Medium	Large
	Phase 3		Small	Large
	Phase 4		Small	Large
	Phase 5		Small	Medium

Step 3. Choose the Responses (Paired with Judicial Approval/Verbal Praise)

3a. Therapeutic/Teaching Response

	Phase 1	Phase 2	Phase 3	Phases 4 and 5
Single Event	<ul style="list-style-type: none"> Behavior Chain Cost/Benefit Analysis 	<ul style="list-style-type: none"> Behavior Chain Cost/Benefit Analysis 	<ul style="list-style-type: none"> Behavior Chain 	<ul style="list-style-type: none"> Behavior Chain
Continued Progress		<ul style="list-style-type: none"> Discuss Change in LOC 	<ul style="list-style-type: none"> Aftercare Eqcy Discuss Re-evaluating MAT/Medications 	<ul style="list-style-type: none"> Aftercare Eqcy Discuss Re-evaluating MAT/Medications

3b. Supervision Responses

Phase 1	Phase 2	Phase 3	Phases 4 and 5
<ul style="list-style-type: none"> Change in Curfew Status 	<ul style="list-style-type: none"> Reduced Contacts Reduction in Home Visits 	<ul style="list-style-type: none"> Reduced Contacts Reduce Home Visits Reduce in External Monitoring Devices 	<ul style="list-style-type: none"> Reduced Contacts Decreased Drug Testing

3c. Incentive Response

Small	Medium	Large
<ul style="list-style-type: none"> Judicial approval (always) <u>Fish Bowl</u> Decision Dollars Example for other participants in court Handshake Candy On the A Team 	<p><i>Any small and/or:</i></p> <ul style="list-style-type: none"> Choice of Gift Certificate Supervisor Praise Written Praise Positive Peer Board Certificate Reduction in CS hours Reduction in program fees 	<p><i>Any small, medium or:</i></p> <ul style="list-style-type: none"> Framed Certificate Travel Pass Larger Gift Certificate Position as Mentor to New Participants

*NPC Research: Contact Shannon Carey (carey@npcresearch.com). Adapted from a matrix originally developed by the Harris County TX Treatment Court. Training is recommended before use. Please do not change or revise without permission. While individual responses can change, the steps and their order should remain.

Inappropriate Behavior

Sanction Matrix: “What do we want the participant to learn from this?”

Step 1. Identify the Behavior

Low (Less Immediate)	Moderate	High (More Immediate)	Very High
<ul style="list-style-type: none"> Late for Scheduled Event Missed payment 	<ul style="list-style-type: none"> Missed UA Failure to Complete Assignments 	<ul style="list-style-type: none"> Unexcused Absence tx Alcohol Use Drug Use Tamper with UA or device/dilute Dishonesty 	<ul style="list-style-type: none"> Criminal behavior (new crimes, drinking and driving) Arrest

Step 2. Determine the Response Level

		Low	Moderate	High	Very High
Distal ↓ Prox	Phase 1	Level 1	Level 2	Level 2	Level 4
	Phase 2	Level 1	Level 2	Level 3	Level 4
	Phase 3	Level 2	Level 3	Level 4	Level 5
	Phase 4	Level 3	Level 4	Level 5	Level 5
	Phase 5	Level 3	Level 4	Level 5	Level 5

Step 3. Choose the Responses (paired with Judicial Verbal Disapproval and Explanation)

3a. Therapeutic/Teaching Responses

Level 1	Level 2	Level 3	Level 4	Level 5
<ul style="list-style-type: none"> Behavior Chain Cost/Benefit Analysis Skill Development Homework/Practice Homework chats 	Level 1 plus: <ul style="list-style-type: none"> Discuss LOC Review Thinking Report Doing things for others (homeless kits, letters to nursing home) 	Level 1, 2, plus: <ul style="list-style-type: none"> Discuss Referral Medication Eval Treatment Team Review/Round Table 	Level 1, 2, 3, plus: <ul style="list-style-type: none"> Discuss Re-Assessment 	

3b. Supervision Responses

Level 1	Level 2	Level 3	Level 4	Level 5
<ul style="list-style-type: none"> ≤ 1 additional report days/week Homework chats 	<ul style="list-style-type: none"> ≤ 2 additional report days/week Home Visit Curfew (FTC) Increased supervision at child visits 	<ul style="list-style-type: none"> ≤ 3 additional report days/week Continuous Testing GPS/Electronic Monitoring Home Visit Increase frequency UA Test Additional Court Report Case Conference 	<ul style="list-style-type: none"> ≤ 4 additional report days/week Electronic Monitor Device Case Conference Curfew 	

3c. Sanction/Punishment Responses (Judicial Disapproval)

	Level 1	Level 2	Level 3	Level 4	Level 5
Community Service	≤ 4 hrs	≤ 8 hrs	≤ 16 hrs	≤ 24 hrs	≤ 32 hrs
Curfew	≤ 3 days	≤ 5 days	≤ 7 days	≤ 10 days	≤ 14 days
House Arrest	≤ 24 hrs	≤ 72 hrs	≤ 5 days	≤ 7 days	≤ 14 days
Jail			≤ 24 hours	≤ 3 days	≤ 5 days
Other				Review Placement	Termination

*NPC Research: Contact Shannon Carey (carey@npcresearch.com). Adapted from a matrix originally developed by the Harris County TX Treatment Court. Training is recommended before use. Please do not change or revise without permission. While individual responses can change, the steps and their order should remain.