

AMERICAN BAR ASSOCIATION

Judicial Division

STANDARDS RELATING TO TRIAL COURTS

Standard 2.77

Procedures in Drug Treatment Courts

Approved by the ABA House of Delegates on August 7, 2001 at the ABA Annual Meeting in Chicago, Illinois.

Preface

Drug Treatment Courts are one of the fastest growing innovations in the American judicial system. Mindful of the important role that drug courts have in solving problems that bring people to court, the American Bar Association adopted on August 7, 2001 the black letter of Standard 2.77 – Procedures in Drug Treatment Courts. This Standard is now part of the ABA Standards Relating to Trial Courts which were initially approved in February of 1976 and amended in February of 1992.

The Standard was drafted by experienced Drug Court practitioners with the assistance of the Justice Management Institute under a grant from the U.S. Department of Justice. The Standard adopts the existing benchmarks outlined in Defining Drug Courts: The Key Components published by the National Association of Drug Court Professionals and the U.S. Department of Justice. The Task Force responsible for preparing the Standard consisted of the following persons:

Hon. Henry duPont Ridgely, Chair, Dover, DE
Hon. Richard S. Gebelein, Wilmington, DE
Hon. Leslie B. Miller, Tucson, AZ
Hon. Salvatore A. Alamia, Central Islip, NY
Hon. Abraham G. Gerges, Brooklyn, NY
Victoria Cashman, Esq., Middletown, OH
Dr. Barry Mahoney, Denver, CO

The Standard is consistent with the August 3, 2000 Resolution on Problem Solving Courts by the Conference of Chief Justices and the Conference of State Court Administrators. The Conference of Chief Justices expressly endorsed its adoption by the ABA on January 25, 2001 at its meeting in Baltimore, Maryland through its approval of Resolution 19.

The American Bar Association's House of Delegates approved Standard 2.77 – Procedures in Drug Treatment Courts at the ABA Annual Meeting in Chicago on August 7, 2001.

2.77 Procedures in Drug Treatment Courts.

In the growing number of Drug Treatment Courts traditional adversary proceedings have been replaced in varying degrees by a team approach to using the jurisdiction of the Court to encourage and enhance substance abuse treatment for defendants in criminal, juvenile and family court proceedings. The Court should ensure that such treatment is ordered and implemented on the basis of adequate information, in accordance with applicable law, and with due regard for the rights of the individual and of the public.

(a) Procedure Requirements.

- (i) The person who is subject to the proceeding and family members or others immediately concerned for the person's welfare as well as the attorney for the public should be given adequate notice and opportunity to be heard on the issues involved.**
- (ii) At any proceeding wherein an individual is called upon to waive any constitutional rights in a Drug Treatment Court, such as at entry, diversion, termination, sentencing, etc., that individual should be entitled to representation by competent counsel as provided in 2.20. Such counsel should be provided at public expense if the individual does not have adequate resources.**
- (iii) Clinical evaluation should be made as promptly as possible by professionally qualified persons on the basis of examination, urine tests and other professionally recognized standards. The person subject to the proceeding should be entitled to obtain and present such an evaluation at public expense if that person has inadequate resources.**
- (iv) The treatment ordered by the Court should only be provided by professionally qualified providers and the treatment should meet professionally recognized standards.**
- (v) In exercising its power to order treatment, the Court should consider possible alternative dispositions employing the least restrictive option that provides adequate treatment for the individual and protects public safety.**
- (vi) The Court should review its treatment orders and the status of the individual's progress in treatment on a regular basis and modify them when a less restrictive option becomes appropriate.**

- (vii) The Court, consistent with federal, state and local laws and procedures should incorporate all or as many of the key elements that define drug treatment courts as possible.**
 - (a) Drug courts integrate alcohol and other drug treatment services with justice system case processing.**
 - (b) Drug Courts use a non-adversarial approach, wherein prosecutors and defense counsel promote public safety while protecting participants' due process rights.**
 - (c) Eligible participants are identified early and promptly placed in the drug treatment program.**
 - (d) Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.**
 - (e) Abstinence is monitored by frequent alcohol and other drug testing.**
 - (f) A coordinated strategy governs drug court responses to participants' compliance.**
 - (g) Ongoing judicial interaction with each drug court participant is essential.**
 - (h) Drug Courts provide for monitoring and evaluation to measure the achievement of program goals and gauge effectiveness.**
 - (i) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.**
 - (j) Partnerships among drug courts, public agencies, and community-based organizations are forged to generate local support and enhance drug court effectiveness.**
- (b) Resource Requirements**
 - (i) Resources should be available to all courts to screen all defendants for substance abuse problems to identify those eligible for drug court treatment.**
 - (ii) The Court should have access to sufficient internal resources to properly manage, coordinate and supervise this special caseload.**

(iii) The Court should have access to sufficient treatment resources to provide quality treatment without regard to the resources of the individual involved.

(c) Performance Measures:

(i) It must be recognized in performance standards for trial courts that many drug courts will keep cases open for the period of treatment to encourage participation. These cases should be placed on a specialized or inactive docket so as not to be counted in a trial court's time to disposition performance.

Commentary

It has long been acknowledged that a relationship between criminal activity and substance abuse exists. Indeed studies indicate that between 70-80% of all persons arrested for crimes have either an alcohol or illegal drug abuse problem. In the 1980s when the war on drugs was enhanced with substantial additional resources being directed at the arrest and prosecution of substance abusers, dealers and traffickers, the courts began to be overwhelmed with drug cases. In the mid to late 1980s, many trial courts began to try various innovative ways of dealing with these substantially increased caseloads since Judicial resources had not increased to keep pace. These programs included expedited differentiated case management for drug cases, numerous first offender diversion programs, (sometimes legislatively enacted, sometimes by agreement of prosecuting authorities) and in 1989 the first diversionary "Drug Treatment Court" in Miami, Florida.

Since 1989, Drug Treatment Courts have become one of the fastest growing innovations in the American Judicial system. By September 2000, over 550 jurisdictions were operating one or more drug courts or were in the implementation stage of establishing a drug treatment court. These courts, most often part of a unified court system, involve dedicating judicial resources in a non-traditional use of judicial authority, in criminal, civil and/or family law settings, to compel substance abuse treatment for defendants, juveniles or litigants. While the initial model was developed for defendants in criminal cases, the methodology has been

extended to juvenile proceedings, driving under the influence cases, as well as domestic relations and family court matters.

The basic model uses the court, the judicial officer, as a focal point to encourage a non-adversarial resolution of the pending matter that involves substance abuse treatment, urine monitoring, direct judicial involvement in participant case management, the use of graduated sanctions for non-compliance, as well as rewards for compliance. The court uses frequent appearances before the judicial officers where the participant and the judicial officer directly interact. The parties and the court participate as a team in attempting to promote public safety through the active treatment of an alcohol or controlled substance addiction of a defendant or litigant.

Drug Courts are now more than 10 years old, those studies that have been completed indicate that drug treatment courts have had a positive impact on reducing substance abuse and consequently reducing criminal recidivism (see ABA Standing Committee on Substance Abuse, *op. cit. infra*). Long term studies are underway to verify, if possible, these early results. Drug Courts have become an extremely popular program obtaining support from Legislatures, Governors, Congress and the United States Department of Justice. The advantage of support for these programs has recently been noted by the Conference of State Court Administrators.

“The human and political success of therapeutic justice programs is too great to ignore. Being perceived as hiding behind judicial independence and administrative concerns make courts look less responsive to communities and their concerns than ever. But if a court system leads out on the design and implementation of these programs, then a balance can be struck, where the courts are responsive to changing times and changing expectations, but not at the cost of their fundamental roles and responsibilities.”

This position has been endorsed by the Conference of Chief Justices in Resolution 22. Recognizing that Drug Treatment Courts do act in a non-traditional, non-adversarial fashion, requires that the Court take steps to assure that participants' constitutional due process rights are respected during the course of all proceedings. In many instances individuals are called upon to waive rights in order to participate in these programs. The court must ensure that all such waivers are knowingly, freely and voluntarily made with the assistance of qualified counsel. It is the responsibility of the counsel involved to ensure that all such waivers of rights are made with full knowledge of all the possible consequences involved. The court must also ensure that where an individual may be subject to any form of sanction, that individual is afforded the right to adequate counsel at that proceeding. Finally, the court must also ensure that the resources are available to provide adequate treatment to those referred for treatment on a timely basis.

The Office of Justice Programs, U.S. Department of Justice sponsored the development of "The Key Components" for drug treatment courts by a committee of The National Association of Drug Court Professionals. These 10 components form the basis for standards for drug treatment courts, and have been recognized by the Conference of Chief Justices as a beginning point for standards for "problem solving courts" in general.

It must be noted that drug treatment courts often maintain open or pending criminal charges to provide leverage to keep offenders in treatment. Treatment success is often enhanced by length of time in treatment. It would be counterproductive to penalize these courts by counting this specialized docket against normal case processing time standards. Thus, the standards suggest creation of a specialized or inactive docket for these cases.

References:

American Bar Association Standing Committee on Substance Abuse, Report With Recommendations to The House of Delegates. Approved 1994, Mid-Year Meeting, Kansas City, Missouri, February 7-8, 1994.

Standards Relating to Trial Courts

Aukerman, R.B., and P. McGarry, Combining Substance Abuse Treatment with Intermediate Sanctions for Adults in the Criminal Justice System [Treatment Improvement Protocol (TIP) Series 12], Public Health Service, Office of Substance Abuse Prevention, U.S. Department of Health and Human Services, 1994.

Bean, P., “America’s Drug Courts: A New Development in Criminal Justice,” The Criminal Law Review, October 1996, pp. 718-721.

Conference of Chief Justices Conference of State Court Administrators, CCJ Resolution 22, COSCA Resolution 4, In Support of Problem-Solving Courts. Adopted as Proposed by the Task Force on Therapeutic Justice of the Conference of Chief Justices in Rapid City, South Dakota at the 52nd Annual Meeting on August 3, 2000.

Cooper, C.S., and S.R. Bartlett, Drug Courts: An Overview of Operational Characteristics and Implementation Issues, Vol. I, Justice Programs Office, School of Public Affairs, American Univ., Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 1995.

Cooper, C.S., S.R. Bartlett, M.A. Shaw, and K.K. Yang, Drug Court Survey Report, 1997, Vol. I, Judicial Operations and Perspectives, American Univ. Drug Court Clearinghouse and Technical Assistance Project, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice, September 1997.

Davis, R.C., B.E. Smith, and A.J. Lurigio, “Court Strategies To Cope With Rising Drug Caseloads,” Justice System Journal, Vol. 17, No. 1, 1994.

“Drug Courts: A Revolution in Criminal Justice,” Drug Strategies, May 1999.

Drug Courts: Information on a New Approach to Address Drug-Related Crime, U.S. General Accounting Office, 1995.

“Drug Courts Proving Effective in Reducing Crime, Substance Abuse,” Join Together, a project of the School of Public Health, Boston Univ., Join Together Newsletter, Vol. 1, No. 1, Fall 1998.

Standards Relating to Trial Courts

Drug Courts: Overview of Growth, Characteristics, and Results, U.S. General Accounting Office, 1997.

Drug Courts: Ethics in Light of the Judicial Canons and Model Rules of Professional Responsibility, National Drug Court Institute.

DUI/Drug Courts: Defining a National Strategy [Monograph Series 1], National Drug Court Institute, March 1999.

Gebelein, Richard S., “The Rebirth of Rehabilitation: Promise and Perils of Drug Courts,” Sentencing and Corrections, Issues for the 21st Century, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, May 2000.

Goldkamp, J.S., Justice and Treatment Innovation: The Drug Court Movement; A Working Paper for the First National Drug Court Conference, December 1993, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, October 1994.

Goldkamp, J.S., “The Drug Court Response: Issues and Implications for Justice Change,” Albany Law Review, Vol. 63, May 2000.

Hora, P.F., W.G. Schma, and J.T.A. Rosenthal, “Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America,” Notre Dame Law Review, Vol. 74, No. 2, January 1999.

Huddleston, C.W., “Closing the Circle: Jail-Based Treatment and Reentry Drug Courts, A Unique Opportunity for Collaboration and Change,” National Drug Court Institute Review, National Drug Court Institute, Vol. II, No.1, Spring 1999.

Huddleston, C.W., “Drug Courts and Jail-Based Treatment: Jail Setting Poses Unique Opportunity to Bridge Gap Between Courts and Treatment Services,” Corrections Today, Vol. 60, No. 6, October 1998, pp. 98-101.

Standards Relating to Trial Courts

Inciardi, J.A., D.C. McBride, and J.E. Rivers, "Drug Control and the Courts," Drugs, Health, and Social Policy Series, Vol. 3, Sage Publications, 1996.

Inciardi, J.A.. (ed.), Drug Treatment and Criminal Justice, Sage Publications, 1993.

Juvenile and Family Drug Courts: An Overview, American Univ. Drug Court Clearinghouse and Technical Assistance Project, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice, August 1999.

Juvenile Drug Court Activity Update: Summary Information, American Univ. Drug Court Clearinghouse and Technical Assistance Project, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice, February 29, 2000.

Kaldy, J., "Drug Courts: Treatment and Support in a Unique Setting," Alternatives to Incarceration, Vol. 2, No. 1, January-February 1996, pp. 18-20.

Looking at a Decade of Drug Courts, American Univ. Drug Court Clearinghouse and Technical Assistance Project, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice, August 1999.

MacKenzie, D.L. and C.D. Uchida, Drugs and Crime: Evaluating Public Policy Initiatives, 1994.

Martinez, R.S., "Drug Courts: An Innovative Approach to Drug-related Crime," Judicial News, November 1997, pp. 5-7.

Morrison, R.D., "Drug Court: The Latest Move in the War on Drugs," Law Enforcement Technology, Vol. 24, No. 11, November 1997, pp. 48-50.

National Association of Drug Court Professionals, Defining Drug Courts: The Key Components, Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice, January 1997.

National Council of Juvenile and Family Court Judges, The Promise and Challenge of Juvenile Drug Courts, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

Standards Relating to Trial Courts

National Council of Juvenile and Family Court Judges, “Drugs-The American Family in Crisis: A Judicial Response, 43 Recommendations,” Juvenile and Family Court Journal, Vol. 46, No. 1, Winter 1995.

Peters, R.H., and M.R. Murrin, “Effectiveness of Treatment-Based Drug Courts in Reducing Criminal Recidivism,” Criminal Justice and Behavior, Vol. 27, No. 1, February 2000, pp. 72-96.

The Report of the Therapeutic Justice Task Force: A Joint Effort of the Conference of Chief Justices and the Conference of State Court Administrators, July 2000.

Roberts, M., J. Brophy, and C.S. Cooper, The Juvenile Drug Court Movement, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, March 1997.

Rottman, D., and P. Casey, “Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts,” National Institute of Justice Journal, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice, July 1999.

Tauber, J.S., American Drug Courts: A Common Sense Approach to the Drug-Using Offender, National Association of Drug Court Professionals, April 1999.

Terry, W.C., III, (ed.), “The Early Drug Courts: Case Studies in Judicial Innovation,” Drugs, Health, and Social Policy Series, Vol. 7, Sage Publications, October 1998.

Wice, P.B., “Making a Difference in the War on Drugs: A Case Study of Judicial Reform and Leadership,” Criminal Law Bulletin, Vol. 30, No. 1, January-February 1994, pp. 30-53.