

# Rockingham County Drug Treatment Court

## Policies, Procedures & Practices Manual

This Manual will form the basis for the operating procedures, policies and practices of the Rockingham County Drug Treatment Court (RCDTC). Information in this Manual is informed by research on evidence-based practices as outlined by the National Association of Drug Court Professionals (NADCP) and guidelines set by the NH Drug Offender Program and the RCDTC Team. The Manual will be revised and modified as needed by the members of the RCDTC Team.

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## MISSION STATEMENT

The mission of the RCDTC is to reduce recidivism and enhance community safety by providing participants whose chemical dependence has impacted their criminal behavior with treatment and community supervision. As an alternative to incarceration, this judicially supervised program will provide participants with the opportunity to promote their recovery to reduce crime, restore families, and successfully reintegrate participants into the community.

**The RCDTC Team is committed to working with those individuals who choose to participate in the Program and who are willing to work toward making healthy lifestyle changes in their recovery.**

## INTRODUCTION

The information in this Manual is provided to individuals who are being considered as participants or have already been accepted into the RCDTC Program (“Program”). This Manual is for those individuals to keep and refer to. Hopefully it will answer some questions about the Program and how the Program works. The RCDTC Team evaluates the Program policies, procedures and practices on a regular basis and for that reason this Manual is subject to change when the need arises. In addition, the Team may waive adherence to a rule for good cause shown.

The Program is specifically designed to help people who have addiction issues and have become involved in the criminal justice system. In order to be admitted into the Program, the participant must be sentenced to probation or parole supervision. Through probation/parole monitoring, the Program is able to detect those individuals who are starting to fail their obligations or are engaging in criminal conduct. Because of the strict reporting requirements, those who miss work, don't return home, or fail to appear for counseling sessions are quickly detected. Participants will be expected to follow both the rules of the Program and probation/parole. The RCDTC Team will be there for support, but each participant will ultimately determine his/her progress in the Program and in his/her recovery.

While this is a challenging Program it provides an opportunity for individuals to work toward recovery. Reading and understanding the expectations of the Program should help individuals decide if the Program is the right fit.

If an individual who is being considered for this Program has a question on the expectations of the Program, the individual should direct the question to his/her lawyer. If an individual has already been accepted into the Program, the individual should direct questions to the RCDTC probation officer or a RCDTC clinician.

## TEAM MEMBERS AND ROLES

In accordance with the 10 Key Components of adult drug courts as established by the NADCP, representatives from local law enforcement, criminal justice, and treatment agencies will work collaboratively, bringing with them the perspective of their particular expertise, to review, monitor, and recommend courses of action for each participant. Team members share the common goal of successful treatment and rehabilitation for each participant. Additional members may join at the discretion of the Team.

*Superior Court Judge* – The judge presides over the court proceedings and monitors the appropriate application of treatment, community supervision, sanctions and incentives, while maintaining the integrity of the court. The judge is ultimately responsible for determining and imposing sanctions, including incarceration and/or termination.

*Superior Court Clerk* – The clerk is responsible for scheduling all legal proceedings such as pleas and status hearings as well as processing all orders of the court.

*County Prosecutor* – The prosecutor's role is to promote community safety and ensure that justice is being served. The prosecutor initially reviews the application for entry to the Program to determine if the application is legally cleared. The prosecutor monitors participant's progress and makes recommendations regarding the appropriate supervision, incentives and sanctions to support the participant's recovery and rehabilitation. The prosecutor works in a collaborative manner during Team meetings and court sessions.

*Public Defender* – The defense attorney's role is to promote the legal rights of participants. The defense attorney monitors participant's progress and advocates regarding the appropriate supervision, incentives and sanctions to support the participant's recovery and rehabilitation. The defense attorney does not represent a participant's stated legal interests in an adversarial way in the courtroom, rather the defense attorney works in a collaborative manner during Team meetings and court sessions by helping the Team take account of the possible interests and legal rights of the participant.

*Probation/Parole Officer* – The PPO is responsible for community supervision of participants and monitoring a participant's compliance with Drug Court and probation requirements. The PPO works in a collaborative manner with the team and makes recommendations regarding treatment, incentives and sanctions to support the participant's recovery and rehabilitation.

*Representative from House of Corrections* – The representative serves as a liaison between the Team and the HOC staff regarding the needs, behavior and comportment of the participant who is incarcerated due to sanction, new arrests, and/or violations of probation. The representative also facilitates connecting participants to drug testing, and case management at the HOC, and other HOC programs (e.g. Medication Assisted Treatment) to assist an incarcerated participant.

*Representative(s) From Law Enforcement* – The representative acts as a liaison between RCDTC and their respective department. The representative is responsible for disseminating information to colleagues to support officers and the participant during home visits and curfew checks as well as non-planned contacts. The representative also provides important information to the Team regarding community and policing issues that could impact the progress of a participant.

*Treatment provider(s)* – The clinician conducts an assessment of the applicant for entry into the Program. The clinician also assesses a participant to determine the appropriate level of treatment to offer the participant. The clinician facilitates intensive outpatient treatment, other substance abuse groups, and individual therapy. The clinician provides recommendations to substance-abuse and mental health services not provided directly through the Program such as inpatient treatment, partial hospitalization, psychopharmacological evaluation, psychological evaluation, and Medication-Assisted Treatment. The clinician provides to the Team information and updates regarding a participant's substance use treatment needs, mental health concerns, and adherence to treatment.

*Case Manager(s)* – The case manager works in a collaborative way with the participant and all treatment providers to support the participant's treatment and long-term recovery. The case manager provides referrals and linkages to other services and agencies in the community such as educational programs, social services, housing, medical services, substance-abuse and mental health services not provided directly through the Program such as inpatient treatment, partial hospitalization, psychopharmacological evaluation, psychological evaluation, and Medication-Assisted Treatment. The case manager provides information and updates to the Team regarding the participant's compliance with program rules, overall progress toward goals, and barriers to recovery and rehabilitation.

*Coordinator* – The Coordinator, under the supervision of the Judge, is responsible for overseeing the Drug Court program, to ensure the Program provides high-quality services in accordance with empirically determined best practice standards for Drug Courts and meets the requirements of grantors and contracts. The Coordinator also

acts as a liaison to public and private agencies and the NH Drug Offender Program to help engage the larger community in supporting the Program.

## CONFIDENTIALITY

Team members will adhere to the confidentiality policy established by the New Hampshire Office of Drug Offender Programs (Appendix A), their respective agency, and any professional obligations. While the confidentiality policy is explained in more detail in the Appendix A, no member of the Team shall reveal any information learned as a result of participating in confidential RCDTC matters to anyone outside the Team except under specific circumstances which primarily include, RCDTC session, medical emergency, research/audit/evaluation (with no personal identifiers included), and a court order. Team members must sign the RCDTC Acknowledgement of Confidentiality prior to becoming a Team member, and thereafter annually renew the Acknowledgement.

## DRUG COURT STRUCTURE

The RCDTC will use a post-plea model. Applicants must enter a guilty plea on a felony, misdemeanor, or probation charge pursuant to a fully negotiated sentence, which will include a term of probation. As a condition of probation, a participant will be required to successfully complete the Program.

It is not consistent with NADCP best practices to require a participant to first serve a period of incarceration before entry into the Program. However, a participant may be required to serve such a sentence if there is a statutory, mandatory, stand committed sentence upon conviction for the offense or good cause is found by the Court.

## TARGET POPULATION

In accordance with best practices, the RCDTC serves criminal offenders determined to be legally eligible for participation and are assessed as high risk of recidivism and in high need of substance use treatment due to a moderate or severe substance use disorder. Participants must reside in Rockingham County, unless otherwise directed, and be 18 years of age or older.

## APPLICATION PROCESS

Anyone can refer an applicant to the Program. The applicant must complete the RCDTC application and submit it to the Rockingham County Attorney's Office. A prosecutor will conduct a legal screening to determine if there are any prior convictions

or pending charges that would preclude the applicant from entering the Program. The prosecutor will advise the Team of the application and the outcome of the legal screening. If the applicant does not pass the legal screen, the applicant may ask for a review of the application by the Team. Upon passing the legal screen, the RCDTC clinician will perform a clinical screen of the applicant to determine the applicant's level of criminogenic risk and to confirm the presence of a moderate to severe substance use disorder. This screening will be done using both agency and evidenced-based tool(s) and will occur within three weeks of the referral. Applicants who score a low or moderate probability of having a substance use disorder defined by the DSM V will be determined ineligible for participation in the RCDTC.

Applicants who are determined to meet high risk/high need by the clinician will next be referred to the Team for further assessment. Information regarding the applicant's screening and assessments will be communicated to the Team. Team members who have concerns about the applicant's appropriateness for the RCDTC, notwithstanding the results of the screen/assessment, will share their concerns. The issue(s) will be discussed by the Team and a final decision will be made by the Team on the individual's suitability for RCDTC and/or the RCDTC's suitability to meet the applicant's needs.

If the applicant is found appropriate for RCDTC, the coordinator/judge will, in conjunction with the court clerk, schedule a plea and sentencing hearing to admit the applicant into the RCDTC. Similarly, the coordinator/judge will notify the court clerk if the applicant is found ineligible. A status hearing with counsel will be immediately scheduled if the applicant is found ineligible. The coordinator will maintain the status and screening/assessment results of all applicants in a database and report out information required by funders or other interested parties as needed.

If the applicant fails to appear for a screening or assessment appointment, the coordinator and the court clerk's office will be notified. The applicant will be moved to the bottom of the wait list if one exists. The court will immediately schedule a status hearing to address the applicant's behavior.

## STAFFING MEETINGS

The Team will meet prior to each Drug Court session to review the progress of each participant who is schedule to appear at the court session. All Team members must regularly attend the staffing meeting. At minimum, the public defender, prosecutor, PPO, clinician, case manager, and judge must be in attendance. The Team will discuss the participant's progress and make recommendations regarding the appropriate supervision, incentives and sanctions to support the participant's recovery and rehabilitation. The judge will make a tentative decision at the staffing meeting and final decision during the court session. All communication among Team members, whether

at the staffing meeting or via email/telephone, will be conducted in accordance with the Program's confidentiality policy.

Colleagues of Team members or outside service providers who are interested in learning more about drug court may not attend a staffing meeting unless they are authorized by the confidentiality policy.

## POLICY MEETINGS

The Team will meet on a monthly basis to review programmatic, operational, and policy issues.

## PROGRAM REQUIREMENTS

### *Program Phases*

The RCDTC has 5 phases. Participants must complete each phase in order to successfully complete the Program. The time spent in each phase is dependent on the participant's progress toward the required objectives in each phase. The time may be longer than indicated or shortened if there is significant progress. In order to advance to the next phase, the participant must complete a Phase Advancement Petition for Team review, outlining accomplishments in meeting the objectives of the phase. If the Team determines the participant has not yet met the phase objectives, the Team will provide constructive feedback to the participant regarding its assessment of the participant's progress and identify what is needed for advancement. A more detailed list of phase obligations is found at Appendix B.

### Phase I (approximately 60 days)

The focus is on stabilization into the Program and the objectives relate to addressing responsivity needs that impact successful engagement in treatment. In order to advance, the participant should meet Phase I objectives, which include:

1. Participant demonstrates responsibility in abiding by all Program rules and obligations. (Rules are located at Appendix C.)
2. Participant establishes initial treatment goals.
3. Participant complies with treatment and case management.
4. Participant resolves issues that may negatively impact engagement in treatment, such as obtaining emergency medical needs, child care, or safe housing (even if temporary).
5. Participant develops a transportation plan.
6. Participant obtains health insurance (at a minimum submits an application for health insurance), unless otherwise directed.
7. Participant demonstrates honesty about drug/alcohol use.
8. Participant establishes a minimum of 14 consecutive days of sobriety.

9. Participant clears all outstanding warrants.

*Phase II (approximately 90 days)*

The focus is on engaging and adhering to treatment and the objectives relate to addressing both responsivity and criminogenic needs. In order to advance, the participant should meet Phase II objectives, which include:

1. Participant demonstrates responsibility in meeting Program rules and obligations. (Rules are located at Appendix C.)
2. Participant complies with treatment and case management.
3. Participant demonstrates honesty about drug/alcohol use, behaviors, and activities.
4. Participant begins participating in a Criminal Thinking Intervention.
5. Participant begins participating in Peer Support or Recovery Support groups.
6. Participant maintains safe, stable housing.
7. Participant obtains a valid, government ID.
8. Participant establishes a minimum of 30 consecutive days of sobriety.
9. Participant clears all outstanding warrants.

*Phase III (approximately 90 days):*

The focus expands to include maintenance needs that could negatively impact treatment gains. In order to advance, the participant should meet Phase III objectives, which include:

1. Participant demonstrates responsibility in meeting Program rules and obligations. (Rules are located at Appendix C.)
2. Participant complies with treatment and case management.
3. Participant establishes a payment plan and begins making regular payments toward any restitution or fines.
4. Participant demonstrates honesty about drug use, behaviors, and activities.
5. Participant is an active participant in a Criminal Thinking Intervention.
6. Participant is active in a recovery support network.
7. Participant participates in pro-social activities to broaden his or her pro-social network.
8. Participant identifies goals for addressing maintenance needs in the areas of education/career, family, housing, financial management, health/medical, etc. and has begun making progress toward these goals.
9. Participant establishes a minimum of 45 consecutive days of sobriety.
10. Participant clears all outstanding warrants.

Phase IV (approximately 90 days):

The focus expands to further developing and broadening the support system in his/her life to maintain long-term recovery. In order to advance, participants should meet Phase IV objectives, which include:

1. Participant demonstrates responsibility in meeting Program rules and obligations. (Rules are located at Appendix C.)
2. Participant complies with treatment and case management.
3. Participant makes regular payments toward any restitution or court fines.
4. Participant demonstrates honesty about drug use, behaviors, and activities.
5. Participant is an active participant in a Criminal Thinking Intervention.
6. Participant establishes a solid recovery support network, which includes pro-social activities.
7. Participant makes progress to address individualized goals in areas such as education/career, family, housing, financial management, health/medical, etc.
8. The participant develops a Continuing Care Plan to implement in Phase V.
9. The participant develops an approved plan to “give back” to the Drug Court community.
10. Participant establishes a minimum of 60 consecutive days of sobriety.
11. Participant clears all outstanding warrants.

Phase V (approximately 90 days):

The focus expands to participating in and evaluating the suitability of the continuing care plan for preparation to recovery efforts after graduation. In order to graduate, participants should meet Phase V objectives, which include:

1. Participant demonstrates adherence to his or her Continuing Care plan.
2. Participant demonstrates responsibility in meeting program rules and obligations. (Rules are located at Appendix C.)
3. Participant demonstrates adherence to treatment and case management.
4. Participant makes regular payments toward any restitution or court fines.
5. Participant demonstrates honesty about drug use, behaviors, and activities.
6. Participant completes a Criminal Thinking Intervention.
7. Participant is active in a recovery support network, which includes pro-social activities.
8. Participant continues to make progress in individualized goals in areas such as education/career, family, housing, financial management, and health/medical.

9. Participant completes an aftercare plan to support ongoing recovery post-commencement.
10. Participant establishes a minimum of 90 consecutive days of sobriety.
11. Participant clears all outstanding warrants.

### Completion/Commencement

In order to successfully complete the Program, the participant must satisfy all requirements of all phases.

## SANCTIONS AND INCENTIVES

Research is clear that establishing a gradual system of sanctions and incentives is critical for a successful drug court. Proximal and distal behavioral goals will be considered when determining the appropriate sanction and incentive. The following will be used as a guideline in responding to a participant's proximate behaviors, subject to modification by the Team.

### Phase I:

- On time attendance for all drug court requirements
- Honesty about behaviors and activities

### Phase II:

- Continue of all Phase I behaviors
- Engagement in and adherence to treatment
- Begin attendance at Peer Support Group

### Phase III:

- Continue of all Phase I and II behaviors
- Engagement in pro-social activities and sober network
- Obtain assessments as appropriate (i.e. education, job, housing)

### Phase IV:

- Continue of all Phase I, II and III behaviors
- Maintenance of pro-social activities and sober network
- Development of a continuing care plan

### Phase V:

- Continue of all Phase I - IV behaviors
- Maintenance of continuing care plan
- Maintenance of sobriety

Proximal behaviors will be rewarded with low level incentives. Those exhibiting distal behaviors in early phases will receive higher level incentives. The following are examples of the sanctions and incentives to be used in the RCDTC.

Sanctions:

- Write and present an essay on assigned topic
- Report early to an appointment
- Admonishment by judge
- Community service hours
- Complete an observation of other court proceeding
- Increased reporting to court
- Stricter curfew
- Electronic monitoring
- Increased drug testing
- Immediate arrest or ordered to appear in court for non-compliance
- Increased supervision by probation
- Short term period of incarceration
- House arrest

Incentives:

- Chip
- Fishbowl (obtain monetary incentive)
- Verbal praise, applause
- Extending curfew
- Permission to travel out of state
- Permission to associate with other drug court participants
- Medallion for consecutive days of sobriety
- Decrease in reporting to court
- Early dismissal from court
- All star board recognition
- Phase advancement / certificate
- Reduction of court fees, waiver of supervision fees

## DRUG TESTING

The RCDTC will monitor participants for substance use through observed, random urine screens at the rate of probability of at least twice weekly in accordance with NADCP guidelines and treatment recommendations. The RCDTC may utilize an outside laboratory for collection and testing of the urine screens.

## TREATMENT

The RCDTC clinician provides assessment, treatment planning, and outpatient and intensive outpatient substance use treatment for the participants. He/she will utilize the an evidence based curriculum as recommended by the NADCP, such as Matrix

Model for Criminal Justice Systems (a curriculum designed to address substance use disorder and criminal thinking), Seeking Safety (a curriculum designed to address trauma and substance use), and other evidence-based treatments such as Motivational Interviewing and Cognitive-Behavioral Therapy.

Upon entry into the Program and on an ongoing basis, the clinician will assess a participant's treatment needs using ASAM criteria to determine the recommended level of care. If the participant is in need of a higher level of care than IOP, referrals will be made to outside treatment providers offering the appropriate level of care. In these situations, the clinician will communicate and collaborate with the outside provider. The clinician and participant will also complete the ASI assessment and develop an Individualized Treatment Plan. The clinician will inform the Team of the participant's compliance with treatment.

### CASE MANAGEMENT

The case manager educates the participant regarding program rules. The case manager will assess the participant to determine the participant's immediate and long-term needs and goals. The case manager will also develop and monitor a care plan to address those needs and goals, including referrals to and information about collateral services (e.g. housing, medical services, recovery support services, education and employment services). The case manager will monitor the participant's compliance with and gather reports from outside counselors, medical providers and probation/parole. The case manager will inform the Team of the participant's compliance.

### ABSCONDING

The Team will consider the following circumstances when deciding appropriate sanctions/termination for a participant who has absconded.

1. Treatment history
2. Length of time in the Program
3. Length of time absent from the Program
4. Whether or not the participant has absconded previously
5. Whether the participant's return was voluntary or the result of being apprehended by law enforcement
6. Whether or not the participant committed new crimes during this period

After 30 days from the date a *capias* issues, the participant will be considered "Inactive" in the Program. The Team may move a participant to "inactive" status before 30 days has passed if circumstances warrant. After 180 days from the date a *capias* issues, the participant may be terminated from the Program. If the participant is not terminated, return to active participation depends on Program capacity.

## NEW OFFENSES

If a participant is arrested and charged with a new offense, the participant may be terminated, not allowed to return to the Program until there is a resolution on the new charge, or allowed to continue with the Program while the charge is pending. If a participant is incarcerated pending the resolution of the new charge and drug court termination has not been decided, the participant will be transported to the next available court session for status hearing. The participant may be moved to “inactive” status if it appears that the participant will remain incarcerated for an extended period of time. In anticipation of the participant’s release from jail and return to the Program, the case manager/ clinician will meet with the participant to develop a transition plan. The new charge may impact Phase advancement and commencement.

## “CARE AND CONCERN” MEETINGS

The Team will meet with a participant when a participant is demonstrating a pattern of non-compliance with Program rules or an inability to adequately progress with Program and treatment goals. It will meet to share concerns in an attempt to help the participant resolve the issues. The coordinator will provide written notice of the meeting to the participant. If appropriate, written notice of any new court ordered obligation(s) will be provided to the participant at the conclusion of the meeting.

## BEHAVIORAL CONTRACT

The RCDTC does not terminate a participant quickly or easily; the decision is not taken lightly. However, there are times when a participant’s non-compliance and lack of progress will lead the Team to wonder if there is any point in continuing to work with the participant. In these circumstances, the participant will be required to complete a behavioral contract, and if accepted by the Team, will be expected to comply with all terms of the contract.

## TERMINATION

A participant may be terminated from the RCDTC if the participant no longer can be safely managed in the community, repeatedly fails to comply with treatment or Program rules, or absconds from the program for 180 days or more. A participant will not be terminated for continued substance use if otherwise compliant with treatment and Program rules unless the participant is not amenable to the reasonably available treatments.

If termination is being considered, a Team meeting shall be held outside the presence of the judge and must include at a minimum, a prosecutor, defense attorney, treatment provider, PPO, case manager, and the coordinator. Based on the discussion regarding the above considerations, if a majority of the Team members in attendance agree that termination is to be recommended to the judge, the PPO will file a Violation of Probation or the county attorney's office will file a motion to impose suspended sentence. The court will appoint counsel for the participant, who will be entitled to due process, including a bail hearing if incarcerated. The participant will be allowed to choose to have the RCDTC judge or another drug court trained judge preside at the final termination hearing. The court will immediately schedule the termination hearing, as the docket permits.

## APPENDIX A

### **New Hampshire Drug Court Confidentiality Policy**

As a general proposition, no member of the Team shall reveal any information learned as a result of participation in confidential drug court matters to anyone outside the Team. Prosecutors generally may not use information obtained in the confidential Program setting to prosecute a participant for new crimes. The drug court must address confidentiality on many different fronts. A participant's treatment records, progress and behavior in the Program are all subject to privacy laws. This policy attempts to outline some, but not all, of the circumstances under which the drug court and/or its Team must turn over information to third parties. This policy also outlines the potential duty prosecutors have to disclose information regarding participants to other criminal defendants. Many of these guidelines are derived from federal law.

#### I. Information to Law Enforcement / Third parties

The RCDTC must adhere to 42 USC 290dd-2 and the relevant CFRs promulgated thereunder.<sup>1</sup> Failure to follow these laws could result in criminal liability. These laws establish that Program information is privileged and can only be disclosed to third parties, including law enforcement, under certain circumstances. The three main circumstances include medical emergency, research/audits/evaluation (with no personal identifiers), and a court order. See 42 USC 290dd-2(b)(2)(a)-(c). In addition, a participant can consent to disclosure.

It is most likely that problems will arise under the "court order" exception. If that is the case, the process depends on the purpose for which the information is needed. If the party seeking the order intends to use the information for non-criminal reasons (i.e. a civil case such as divorce, custody, etc.), the party must proceed under 42 CFR 2.64. Under this section, the party seeking the court order must:

- (1) Request the information from a court using the name "John Doe" and not include any identifying information;
- (2) Give notice to the drug court participant and the record holder;
- (3) A hearing should be scheduled by the court issuing the order and the drug court participant and/or record holder should be allowed to participate.
- (4) The hearing should be sealed or off the record (the CFR mentions having it in the judge's chambers).

The court may grant the order only after finding: (1) other ways of obtaining the information are not available or would not be effective; and (2) the public interest and

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<sup>1</sup> These can be accessed at:  
<https://www.law.cornell.edu/uscode/text/42/290dd-2> (Statute)  
<https://www.law.cornell.edu/cfr/text/42/part-2> (CFRs)

need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services. The court should tailor the order to limit disclosure to only what is necessary and to only those who need the information. The court may also impose other conditions to protect the participant's privacy.

If the party seeking the information intends to use the information to prosecute and/or investigate the participant, then a different process applies. First, this type of court order can be requested by either the record holder or law enforcement. (It is not clear why the record holder would want a court order, but there may be some circumstances under which it may be appropriate.) Under this section, only the record holder—not the patient—needs to be given notice of the request. At the hearing regarding the court order, the record holder should be afforded “[a]n opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.” The record holder may be represented by counsel. The hearing should be sealed or off the record. The court may grant the order only after finding:

- (1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect. See United States v. Hughes, 95 F. Supp. 2d 49, 58 (D. Mass. 2000) (discussing what is a serious crime).
- (2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.
- (3) Other ways of obtaining the information are not available or would not be effective.
- (4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.
- (5) If the applicant is a person performing a law enforcement function that:
  - (i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and
  - (ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been represented by counsel independent of the applicant.

As with the court orders for civil cases, these orders must be narrowly tailored “to those parts of the patient’s record which are essential to fulfill the objective of the order” and only to the necessary law enforcement/prosecutorial individuals.

**NOTE:** It is very important that any court order be accompanied by a subpoena. The record holder should not comply with a request for information, absent consent, if: (1) there is only a subpoena, but no court order; (2) there is only a court order, but no

subpoena; (3) there is neither a court order nor a subpoena; or (4) the record holder was not given notice or the opportunity to appear in front of the issuing court. In the event of number (4), the record holder should consult with counsel regarding legal options to quash the order.

No court order is necessary if the drug court participant consents. However, any consent should include the following:

(1) The specific name or general designation of the program or person permitted to make the disclosure.

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 2.15 in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the program or person, which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

If the participant has died, then the decedent's personal representative can give the required consent. If there is no personal representative, consent can be given by a spouse, or if none, then by a "responsible" family member.

## II. Prosecutor's Duty to Disclose vs. Duty of Confidentiality

Brady obligations, could potentially conflict with federal law. For instance, 42 CFR 2.13 provides that: "The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority." (Emphasis added). There is no regulation permitting disclosure for Brady reasons. But see 42 CFR 2.12 (noting exceptions for crimes on program premises or against program personnel and reports of suspected child abuse and neglect). Therefore, it is quite possible that a prosecutor could have a constitutional duty to disclose certain information, but by doing so, would

violate federal law and other ethical duties.<sup>2</sup> Moreover, there is little to no case law suggesting the proper course of action for a prosecutor to follow when faced with such a dilemma. While the Supreme Court has been willing to abdicate certain privileges in favor of a defendant's constitutional rights, see, e.g., United States v. Nixon, 418 U.S. 683, 707, 713 (1974) (holding that executive privilege must yield to specific need for evidence in criminal prosecution); Davis v. Alaska, 415 U.S. 308, 319 (1974) (state privilege in protecting secrecy of juvenile offender records must yield to defendant's Sixth Amendment right to confront witnesses); but see Swidler & Berlin v. United States, 524 U.S. 399, 403 (1998) (declining to rule on whether defendant's rights under Brady superseded the attorney-client privilege), it remains an open question if they would do so here. Thus, as things currently stand, the prosecutor is in an untenable position.

There are steps that can be taken to help minimize this concern.

1. Prosecutors should not share any information regarding drug court participants with non-drug court prosecutors.
2. The files should be kept separate in their offices and not be accessible to other prosecutors. This limits the pool of prosecutors who could face this issue to only drug court prosecutors.
3. Prosecutors should try to avoid taking on cases (or recuse him or herself) in which drug court participants may be involved as witnesses, or try to pursue the case without the use of the drug court participant. See Davis, 415 U.S. at 320 ("The State could have protected Green from exposure of his juvenile adjudication in these circumstances by refraining from using him to make out its case.").
4. The surest way to resolve this issue would be by obtaining the drug court participant's consent. The participant should be made aware at the outset that a prosecutor may have certain constitutional obligations under limited circumstances to disclose information obtained in drug court to third parties. The participant would have to sign a consent form consistent with the nine requirements listed above in order to be admitted into drug court. The drug court participant's continuing consent would be a requirement to remain in the program. The consent cannot last indefinitely, so it is possible that even consent would not solve all Brady issues. Short of adopting this requirement, prosecutors must make their own Brady determinations, based on their training, experience, and own ethical guidelines, under the given circumstances.

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<sup>2</sup> The National Drug Court Institute takes the position that, based on "federal and state rules protecting information about recipients of AOD treatment and the drug court's rules and memorandum of understanding," the prosecutor owes drug court participants a duty of confidentiality. National Drug Court Institute, Ethical Considerations for Attorneys and Judges in Drug Court 41-42 (2001).

## APPENDIX B

### PHASE INFORMATION

#### Phase I (approximately 60 days)

The focus is on stabilization into the Program and the objectives relate to addressing responsivity needs that impact successful engagement in treatment. In order to advance, the participant should meet Phase I objectives, which include, but not limited to:

1. Participant demonstrates responsibility in meeting Program rules and obligations, including attendance at weekly court session and probation meeting, compliance with 9pm curfew, and submitting to random drug testing at least twice weekly.
2. Participant establishes initial treatment goals.
3. Participant complies with treatment and case-management (e.g. follows treatment plan regarding level of care or referrals for complementary services such as psychiatric care).
4. Participant resolves issues that may negatively impact engagement in treatment, such as obtaining emergency medical needs, child care, or safe housing (even if temporary).
5. Participant develops a transportation plan to ensure that he/she will be able to attend treatment and other appointments.
6. Participant obtains health insurance (at a minimum submits an application for health insurance), unless otherwise directed.
7. Participant demonstrates honesty about drug/alcohol use.
8. Participant establishes a minimum of 14 consecutive days of sobriety.
9. Participant clears all outstanding warrants.

#### Phase II (approximately 90 days)

The focus is on engaging and adhering to treatment and the objectives relate to addressing both responsivity and criminogenic needs. In order to advance, the participant should meet Phase II objectives, which include:

1. Participant demonstrates responsibility in meeting program rules and obligations such as attendance at bi-weekly court session and weekly probation meeting, compliance with 10pm curfew, and submitting to random drug testing at least twice weekly.
2. Participant complies with treatment and case-management (e.g. attends treatment, participates actively in treatment planning and treatment activities and follows treatment plan including referrals for complementary services such as psychiatric care).
3. Participant demonstrates honesty about drug/alcohol use, behaviors, and activities.

4. Participant begins participating in Peer Support or Recovery Support groups such as AA, NA, HA, Smart Recovery, etc. by attending a minimum of two meetings per week.
5. Participant maintains safe, stable housing.
6. Participant obtains a valid, government ID.
7. Participant establishes a minimum of 30 consecutive days of sobriety.
8. Participant clears all outstanding warrants.

*Phase III (approximately 90 days):*

The focus expands to include maintenance needs that could negatively impact treatment gains. In order to advance, the participant should meet Phase III objectives, which include:

1. Participant demonstrates responsibility in meeting program rules and obligations such as attendance at monthly court session and weekly probation meeting, compliance with 11pm curfew, and submitting to random drug testing at least twice weekly. Probation may adjust probation meetings to bi-weekly, as needed.
2. Participant complies with treatment and case-management (e.g. attends treatment, participates actively in treatment planning and treatment activities and follows treatment plan including referrals for complementary services such as psychiatric care).
3. Participant establishes a payment plan and begins making regular payments toward any restitution or fines.
4. Participant demonstrates honesty about drug use, behaviors, and activities.
5. Participant is an active participant in a Criminal Thinking Intervention.
6. Participant participates in Peer Support or Recovery Support groups such as AA, NA, HA, Smart Recovery, etc. by attending a minimum of two meetings per week.
7. Participant participates in pro-social activities to broaden his or her pro-social network.
8. Participant identifies goals for addressing maintenance needs in the areas of education/career, family, housing, financial management, health/medical, etc. and has begun making progress toward these goals.
9. Participant establishes a minimum of 45 consecutive days of sobriety.
10. Participant clears all outstanding warrants.

*Phase IV (approximately 90 days):*

The focus expands to further developing and broadening the support system in his/her life to maintain long-term recovery. In order to advance, participants should meet Phase IV objectives, which include:

1. Participant demonstrates responsibility in meeting program rules and obligations such as attendance at monthly court session and bi-weekly probation meeting, compliance with 12am curfew, and submitting to random drug testing at least twice weekly.
2. Participant complies with treatment and case-management (e.g. attends treatment, participates actively in treatment planning and treatment activities, and follows treatment plan including referrals for complementary services such as psychiatric care).
3. Participant makes regular payments toward any restitution or court fines.
4. Participant demonstrates honesty about drug use, behaviors, and activities.
5. Participant is an active participant in a Criminal Thinking Intervention.
6. Participant is active in a recovery support network, including attending Peer Support or Recovery Support meetings and pro-social activities by attending a minimum of two meetings/events per week.
7. Participant makes progress to address individualized goals in areas such as education/career, family, housing, financial management, health/medical, etc.
8. The participant develops a Continuing Care Plan to implement in Phase V.
9. The participant develops an approved plan to “give back” to the Drug Court community.
10. Participant establishes a minimum of 60 consecutive days of sobriety.
11. Participant clears all outstanding warrants.

Phase V (approximately 90 days):

The focus expands to participating in and evaluating the suitability of the continuing care plan for preparation to recovery efforts after commencement. In order to graduate, participants should meet Phase V objectives, which include:

1. Participant demonstrates responsibility in meeting program rules and obligations such as attendance at monthly court session and probation meeting, complying with curfew as directed, and submitting to random drug testing.
2. Participant demonstrates adherence to his or her Continuing Care plan.
3. Participant complies with treatment and case-management.
4. Participant makes regular payments toward any restitution or court fines.
5. Participant demonstrates honesty about drug use, behaviors, and activities.
6. Participant completes a Criminal Thinking Intervention.
7. Participant is active in a recovery support network, including attending Peer Support or Recovery Support meetings and pro-social activities.
8. Participant continues to make progress in individualized goals in areas such as education/career, family, housing, financial management, and health/medical.
9. Participant has “given back” to the Drug Court community.
10. Participant completes an aftercare plan to support ongoing recovery post-commencement.

11. Participant establishes a minimum of 90 consecutive days of sobriety.
12. Participant clears all outstanding warrants.

## APPENDIX C

### RCDTTC PROGRAM RULES

#### General Rules

1. A participant must not sell, distribute, transport, possess, use or be in the presence of any alcohol or drugs\* (\*except as medically allowed), including synthetic substances.
2. A participant must within 24 hours of sentencing (unless directed otherwise by the judge) contact treatment and PPO. Office hours and contact information for both entities are listed in Appendix D.
3. A participant must have an operational personal phone with voicemail set up at all times. If a participant changes his/her phone number they must provide the new information to treatment and probation within 24 hours. If a participant needs financial assistance with purchasing minutes for their phone he/she must contact the case manager for assistance. Within 10 days of starting the Program, a participant must save within their cell telephone all telephone numbers for probation, treatment, case management, and testing.
4. A participant is not permitted to travel outside of New Hampshire without permission from the PPO.
5. A participant must maintain residency within Rockingham County while in the Program, unless otherwise directed.
6. A participant will be expected to live in a residence that is approved by the PPO. An overnight spent elsewhere is only permitted after the name, address, and telephone number of the occupants of the alternate housing is provided to the PPO and the PPO grants permission.
7. A participant must immediately clear all outstanding warrants.
8. A participant cannot live with nor have an intimate relationship with another participant while in the Program.
9. A participant who is ordered to complete community service hours must complete the required hours at a non-profit or governmental agency and provide written proof of the completed hours on the RCDTTC form provided to the participant.

Documentation from an agency that is signed by a participant's family member will not be accepted. The PPO will verify that the completed community service hours noted on the form are valid.

10. A participant will be required to sign an acknowledgement and waiver of rights form agreeing to participate in the Program. A participant must sign a limited waiver to allow the RCDTC to obtain an updated criminal record on the participant at 2 and 5 years post-graduation. (This information shall be used solely for auditing/research purposes.) A participant must also sign other paperwork, such as release of information form to allow the RCDTC Team to share necessary participant information.
11. If a participant is ordered to attend a non-Drug Court hearing, the participant will be required to provide written proof of the court hearing to the PPO or case manager, including the time of release.
12. A participant must attend all scheduled group and individual treatment sessions. A participant must also attend all required Peer Support or Recovery Support meetings and pro-social activities.
13. A participant must timely complete all assignments, and if ordered, present them during court or in treatment. Therapeutic assignments must be reviewed by treatment before they are presented in court.
14. A participant is required to be on time to all Program related obligations. If a participant expects he/she will be late for a probation or court obligation, the participant must immediately contact the PPO. If a participant expects he/she will be late for treatment, the participant must immediately contact treatment. A twenty-four (24) hour advance notice is required if a participant needs to reschedule an individual therapy or case management session. Failure to provide a 24-hour notice (except in cases of emergency), will be treated as a missed individual therapy or case management session for that week, and will result in a court sanction. What constitutes an emergency will be at the discretion of treatment. Group sessions cannot be rescheduled; therefore if a participant misses a group session without permission, it will result in a court sanction.

15. If a Team member suspects that a participant is impaired during a Drug Court session, the PPO reserves the right to detain the participant.
16. A participant must show respect for the court and appear appropriately dressed for all Drug Court proceedings. Tank tops, sweat pants, hats, shorts, flip flops, T-shirts with offensive or demeaning graphics or language or any clothing that promotes alcohol or drugs are not allowed. A participant must also dress appropriately for RCDTC probation and treatment requirements. While participants may dress more casually, t-shirts with offensive or demeaning graphics or language and any clothing that promotes alcohol or drugs will not be allowed. Specific dress code concerns will be addressed with the participant at probation and the treatment agency, as necessary.
17. A participant must have reliable transportation to all Program obligations and may not rely on other participants for transportation. **At the discretion of the RCDTC Probation Officer**, participants in Phase II – Phase V **may** be allowed to ride together to Program requirements including court, probation, and treatment. Prior to the participants riding together, **each participant** must obtain verbal permission from the PPO. If the participant violates this rule, both participants will receive a court sanction.
18. A participant is not allowed to lend money to or be involved in any business transaction with another participant.
19. A participant must not have contact (in-person, phone, text, email, social media) with another participant. The only exception is in-person contact during group treatment or court sessions, and contact should be only as needed.
20. A participant must not eat or ingest any foods with alcohol, poppy seeds or hemp.
21. A participant must not eat any foods cooked with alcohol.
22. A participant may be ordered to appear in court at any time to address suspected non-compliance issues.
23. A participant must timely pay all drug court fees, as directed.

### **Probation/Reporting Procedures/Drug Testing Rules**

24. A participant must report directly to the Exeter Probation/Parole Office upon release from any House of Correction (“HOC”) incarceration. If a participant is released on a morning that a participant is to attend treatment, the participant must report to treatment first and after completion of treatment, report to probation. If the participant is released from HOC after probation business hours, including weekends and holidays, the participant must report to probation the following business day and treatment as previously scheduled. Office hours and holiday schedule of the Exeter Probation/Parole Office and treatment are listed in Appendix D of the Participant Manual.
25. Participants must report to the Exeter Probation/Parole Office as directed by the Phase obligation (check-in between 8 a.m. and 10:30 a.m.).
26. Participants can expect to have to submit to daily, random drug tests (“UA”). The participant will be assigned a color for UA testing and will be instructed to telephone a specified number each morning. If the participant’s color is called, the participant must report to testing as directed.
27. A Participant must call the testing color line or visit the testing website (See Appendix D for telephone number and web address) each morning to determine if his/her assigned color has been called. When a participant’s color has been called Monday through Friday and Sunday, the participant must report to the Exeter Probation/Parole Office as directed to complete the UA. When a participant’s color is called on a Saturday or a holiday, he/she needs to report to the Rockingham County HOC between the hours of 8 a.m. and 1 p.m. to complete the UA. Random UA’s are conducted every day, including weekends and holidays. All questions about these procedures should be directed to the PPO. A case manager will daily review test and inform the Team of all results.
28. All drug testing performed at probation, regardless of the result, will be sent out to a testing laboratory. A participant agrees to accept the UA results of testing conducted at the testing laboratory. Prior to testing, a participant is asked to report all substances prohibited in drug court.

29. The following will be considered a positive UA: Testing positive for non-prescribed drug(s) or other illegal substances such as bath salts; Dilution of sample (adding liquid to the sample to achieve a drug concentration below the threshold); Adulteration (adding a chemical masking agent to the sample to inhibit the testing procedure); Substitution (replacing a participant's sample with that of another); Refusal to produce a sample; inability to produce a sample of sufficient quantity; Refusal to produce a sample after 60 minutes; Eating poppy seeds or hemp resulting in a positive UA, or eating foods which contain or are cooked with alcohol resulting in a positive UA.
30. A missed UA will be treated as a positive UA resulting in a sanction, unless the missed UA is excused by the Team.
31. A participant is required to submit to all random UA testing regardless of any scheduling conflict or other Program obligations. For example, if a participant has treatment scheduled and his/her color is called, the participant must ensure that both obligations are met.
32. A participant who is submitting to UA's thru his/her medically assisted treatment ("MAT")(i.e. suboxone, naltrexone, methadone) provider must report all test results to the PPO. All MAT UA's with a positive result, as defined by the Program rules, shall be treated as positive for Program purposes.
33. A participant who believes that he/she is too sick or incapacitated to report to probation must call the Exeter Probation/Parole Office and receive verbal permission from the PPO to be excused from reporting. If a participant cannot reach the PPO, he/she must call all other available Probation/Parole Officers until he/she reaches someone and is given verbal permission to be excused.

### **Medical Care Procedures/Rules**

34. A participant who has a medical situation that requires attention must acknowledge and communicate the following to the treating provider: A) He/she has a substance dependence issue; B) He/she is participating in the Program; and C) He/she should not be given or prescribed any narcotic medication unless medically necessary. The

medical provider must be asked to complete the Medical Provider Notification Form given to the participant upon entry into the Program.

35. A prescription drug must be pre-approved by the PPO, clinician, or case manager before being filled or consumed/administered **unless it is administered to the participant during a medical emergency**. A participant is also required to obtain pre-approval from the PPO, clinician, or case manager prior to taking any over-the-counter medication, herbal supplements, dietary supplements (such as cough syrup, Benadryl).
36. If a participant is prescribed medication upon discharge from a hospital, the participant must obtain permission from the PPO, clinician, or case manager before filling the prescription.
37. A participant will be required to sign necessary release(s) to allow the PPO, clinician, or case manager to consult with the medical provider(s) to confirm the treatment provided to the participant or obtain additional information about the participant's medical status.
38. A participant must schedule all medical appointments to avoid conflict with Program requirements. If an appointment is scheduled during a Program obligation, the participant must provide proof to the PPO, clinician, or case manager that the medical visit was urgent. The proof must be provided at the request of the PPO, clinician, or case manager but no later than the next meeting with the PPO, clinician, or case manager or the next court session.
39. A participant who misses more than two consecutive days of Phase I treatment due to a medical issue must provide written proof of medical treatment for that medical issue.
40. A participant is allowed to utilize MAT if documented as a medical necessity by a medical provider and approved by the Team. All questions relating to MAT must be directed to treatment.

**APPENDIX D**

**CONTACT/HOLIDAY INFORMATION**

<b>Address</b>	<b>Phone Number</b>	<b>Hours of Operation</b>
Exeter Probation/Parole Office 8A Continental Drive Exeter, NH 03833  *RCADC PPO – John Clemons john.clemons@doc.nh.gov	General #: 603-773-0254  CPPO Clemons: 603-773-0255  Fax: 603-583-4627	Monday 8am – 4pm Tuesday 8am – 4pm Wednesday 8am – 5pm Thursday 8am – 4pm Friday 8am – 4pm
GNCA / Keystone Hall 133 Epping Road, Unit B Exeter, NH 03833	603-658-0188  Fax: 603-418-7099	Monday – Friday 8am – 4pm
Rockingham County Superior Court 10 Route 125 Brentwood, NH 03833	855-212-1234	Monday – Friday 8am – 4pm
Rockingham County House of Correction 99 North Road Brentwood, NH 03833	603-679-2244  Color Call: 603-679-9464	
NH Public Defender 142 Portsmouth Ave. Stratham, NH 03885	603-778-0526	Monday – Friday 8am – 4pm
Rockingham County Attorney 10 Rte 125 Brentwood, NH 03833	603-642-4249	Monday – Friday 8am – 4pm
Drug Court Testing Laboratory	603-392-7144 Location code: 16734 rockinghamcolors.com	Colors posted 7 days per week 6am – 1pm

**Holiday Schedule for Rockingham County Superior Court, GNCA / Keystone, and Exeter Probation/Parole Office** (office closed on these days) –

New Year's Day  
 Martin Luther King Jr./Civil Rights Day  
 President's Day  
 Memorial Day  
 Independence Day  
 Labor Day

Columbus Day (Court Only)  
 Veterans' Day  
 Thanksgiving Day  
 Day after Thanksgiving  
 Christmas Day

APPENDIX E

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

ADULT DRUG TREATMENT COURT
ACKNOWLEDGEMENT OF RECEIPT OF
POLICIES, PROCEDURES & PRACTICES MANUAL

State v. \_\_\_\_\_

Docket Number: \_\_\_\_\_

I, \_\_\_\_\_, my attorney being, \_\_\_\_\_, do hereby acknowledge that I have fully reviewed and received a copy of the Rockingham County Adult Drug Treatment Court Policies, Procedures & Practices Manual. I understand, my criminal record will be run while in drug court and up to five years post graduation for monitoring and statistical purposes.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness