

LA CROSSE COUNTY DRUG TREATMENT COURT PROGRAM

POLICIES AND PROCEDURES MANUAL

La Crosse County, Wisconsin



LA CROSSE COUNTY
Exceptional services. Extraordinary place.

(Reviewed and Updated December 2021)

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MISSION STATEMENT

THE LA CROSSE COUNTY DRUG TREATMENT COURT PROVIDES INTEGRATED SUPERVISION AND EVIDENCED-BASED SERVICES. THE COURT RECOGNIZES THE EFFECTIVENESS OF CULTURAL AND DIVERSITY AWARENESS TO PROMOTE PUBLIC SAFETY, CRIME REDUCTION, USE OF RESOURCES AND THE IMPORTANCE OF IMPROVED QUALITY OF LIFE FOR PARTICIPANTS AND COMMUNITY.

INTRODUCTION

The La Crosse County Drug Court Treatment Court is specifically designed and staffed to handle cases involving drug offenders through an intensive judicially monitored program of substance abuse treatment, rehabilitation services, and community supervision.

The Drug Treatment Court concept is based on an innovative program that was first developed in Miami, Florida in 1989. The Drug Treatment Court concept has since received widespread attention as an effective treatment strategy for drug-involved criminal offenders. There are more than 1,000 such programs in operation throughout the nation.

Drug Treatment Courts are built upon a unique partnership between the criminal justice system and the treatment community that structures treatment intervention around the authority and personal involvement of a single Drug Treatment Judge. Drug Treatment Courts are also dependent upon the creation of a non-adversarial Drug Treatment Courtroom atmosphere where a single judge and a dedicated Team of Drug Treatment Court officers and staff work together toward a common goal of breaking the cycle of substance abuse and criminal behavior.

Because of the unique problems and opportunities that present themselves in working with offenders, treatment and rehabilitation strategies must be researched. Drug Treatment Courts must be sensitive to cultural diversity and gender-based issues. Drug Treatment Courts must recognize the following:

- Individuals with severe substance use disorders are motivated to succeed when they are in the crisis of initial arrest and incarceration, so intervention should occur as soon as possible.
- Preventing gaps in communication and ensuring offender accountability are critically important. Therefore, Drug Treatment Courts must be highly coordinated and very comprehensive.
- Addiction to drugs is a longstanding, debilitating and insidious condition; so treatment must be long-term and comprehensive.
- Addiction to drugs seldom exists in isolation from other serious problems that undermine rehabilitation, so treatment must include the integration of other available services and resources, to include cognitive behavioral programming, educational assessments, vocational assessments, psychological assessments, housing, job training, and job placement.

- Relapse and intermittent advancement are part of the recovery process; so individualized progressive sanctions and incentives are integral to the Drug Treatment Court strategy.

Key:

Participant = Drug Treatment Court Participant

Team = Drug Treatment Court Team

Judge = Drug Treatment Court Judge

Coordinator = Drug Treatment Court Coordinator

The goals of the La Crosse County Drug Treatment Court are:

- Reduce participant involvement in criminal behavior.
- Reduce participant costs associated with criminal case processing and re-arrest.
- Introduce participant to an ongoing process of recovery designed to achieve abstinence from substance abuse.
- Promote participant self-sufficiency to encourage them to become productive and responsible members of the community.

I. ELIGIBILITY CRITERIA:

Applicants must meet all the following criteria to be considered for admission to the Drug Treatment Court:

- A. Residency Guidelines: The applicant is an established resident of La Crosse County according to Human Services guidelines or has sufficient ties to the community to benefit from the services of the Drug Treatment Court. Examples of sufficient ties are:
 1. Transportation
 2. Proximity
 3. Able to list support people who are confirmed by the coordinator.
 4. Family
 5. Other time periods of confirmed residency.
- B. Out of County Convictions: A person may be considered for participation in the La Crosse County Drug Treatment Court if s/he meets the criteria outlined in A.
- C. Are found to have a severe Substance Use Disorder as determined by clinical assessment.

- D. Applicants must meet the legal screening criteria (Appendix 1).
- E. Is not solely subject to supervision for an out-of-state conviction.
- F. Has not been convicted of, or has a pending charge of, homicide.
- G. Is not solely subject to revocation of extended supervision.
- H. Has been assessed as moderate to high risk/high needs using a validated risk and needs assessment tool.
- I. Has not been successful with traditional treatment. This may include:
 - Failure to complete treatment.
 - Failure to follow through with recommended treatment.
- J. The person, if accepted, must agree to abide by all Drug Treatment Court rules and modifications. Once a participant, he/she must agree to abide by any future rule modifications while they are in the Drug Treatment Court by signing the Drug Treatment Court contract and releases of information which includes obtaining insurance to cover treatment requirements (6/18).
- K. The Team may determine that the participant is unable to benefit positively from participation in the Drug Treatment Court Program or participation would undermine the treatment of other participants.

II. INTAKE/REFERRAL

Drug Treatment Court is a post dispositional court requiring resolution of all pending matters.

- A. A person may be referred to the Drug Treatment Court Program by a representative of the following disciplines:
 1. A member of the law enforcement community.
 2. The District Attorney's Office.
 3. A defense attorney.
 4. A family member.
 5. A treatment provider.
 6. A Circuit Court Judge.
 7. A Department of Corrections agent. (DOC)
 8. Justice Support Services.
 9. A Human Services Agency
 10. Defendant self-referral

Referrals to the Drug Treatment Court should take place as soon as possible after the arrest of a potential candidate. The promptness of a referral will be taken into consideration in the admission criteria reviews. The Wisconsin Treatment Court Standards state: "Eligible treatment court participants must be promptly identified and referred into program. Individuals should be identified and referred to the treatment court program within 50 days from the time of arrest or trigger event."

If facing revocation by the Department of Corrections, the referral should be made within two weeks of the DOC agent serving the person with notice of revocation, so the referral process can be completed before the revocation hearing.

Any Circuit Judge may make referrals to the Drug Treatment Court program at any time the Drug Treatment Court has jurisdiction over the defendant, including the initial appearance, bond hearings and sentencing hearings.

Substitution: A case would go to a different Judge if the sentencing Judge is the Drug Treatment Court Judge.

- a. If a participant is expelled, the sentencing Judge would assume the case again. (See Appendix I)

The Justice Support Services Pretrial Coordinator conducts interviews daily with defendants and completes the Public Safety Assessment (PSA). The Pretrial Coordinator identifies defendants who may be eligible for the Drug Treatment Court program that includes a Proxy score of 6 or 8; UNCOPE score of 3 or higher; a felony charge and the COMPAS score. (Appendix II)

- B. The referral forms must be completed and sent to the Coordinator. A Team review cannot occur until the form is completed in full.
 1. The referral form will include a detailed description of the candidate's current legal status, including the status of the proceedings, as well as all pending criminal complaints.
- C. The Coordinator will review the referral form and gather any collateral information including a research-based risk and needs assessment and an AODA assessment for the Team to review.
 1. The Coordinator will complete the assessment and interview process. It is anticipated that most referrals will be based on joint recommendations of the District Attorney and the Defense Attorney as part of the plea negotiation process if accepted.
- D. Candidates not meeting the eligibility standards will be sent a letter to explain how the criteria were not met and why admission was denied.

- E. If the candidate receives the letter explaining the reasons for denial of admission, the candidate may appeal the decision in writing to the Team. Any written appeal will state the reasons why the candidate believes the objective criteria has been inaccurately applied. The candidate may include any documentation which is relevant to the issue of meeting the standards for admission. The written appeal must be provided to the Drug Treatment Court within two weeks of the denial of admission. The Drug Treatment Court Judge, after consultation with the Team, may uphold the decision, reverse the decision, request further information and/or request a face-to-face meeting of the candidate and the Team before further decision.
- F. If the Judge has also been assigned to the candidate's pending criminal case(s), and the admission is determined on the merits of the admission criteria, the Judge will recuse him/herself from presiding on those criminal cases. The parties may waive this requirement.
- G. The La Crosse County Drug Treatment Court will send a letter to the assigned Judge, Defense Attorney, District Attorney, and Department of Corrections informing them that the candidate was screened and determined to meet the criteria for participation. Participation in Drug Treatment Court can be an option at sentencing.

III. THE LA CROSSE COUNTY DRUG TREATMENT COURT TEAM AND DRUG TREATMENT COURT POLICY TEAM

- A. The La Crosse County Team shall consist of the following:
 - 1. The Judge, who shall be a Circuit Judge.
 - 2. A representative from the District Attorney's Office.
 - 3. A representative from the Public Defender's Office.
 - 4. A Department of Corrections agent.
 - 5. The Coordinator.
 - 6. A Treatment Provider Liaison who will participate in weekly staffing and expulsion hearings but will not vote on expulsions.
 - 7. A representative from the law enforcement community.
 - 8. If possible, a treatment provider from the community, who may consult in staffing, hearings and expulsion hearings.
- B. The tenure of each member of the Team will be subject to the discretion of the Judge.
- C. The Drug Treatment Court Policy Team shall consist of:
 - 1. The Judge.

2. The District Attorney.
3. The attorney manager or first assistant state public defender.
4. A supervisor from Department of Corrections.
5. A supervisor from Justice Support Services.
6. A representative from the Law Enforcement Community.
7. Alternates for each position may be appointed by the Drug Treatment Court Policy Team representative.
8. Other individuals, including Team members, may attend upon invitation, but will not have voting privileges.

D. Method for adding or modifying a policy:

1. Any Drug Treatment Court Policy Team member may request a proposed new policy or proposed change in policy be added to the Drug Treatment Court Policy Team meeting agenda.
2. Each request for a new policy or a change in policy will be submitted in writing to the Justice Support Services Supervisor.
3. Input will be sought from the Participants and/or graduates for policy changes as appropriate.
 - a. The request should include where the current policy is located in the Drug Treatment Court policy manual, including the page number, and a proposed draft of the addition or change.

E. Drug Treatment Court Policy Team meetings will be held the third Tuesday every month unless otherwise scheduled.

IV. DRUG TREATMENT COURT PROCEEDINGS

1. The Drug Treatment Court calendar is a priority and will be held every Thursday afternoon @ 3:30 P.M. unless otherwise ordered.
 - Scheduling Drug Treatment Court hearings for sanctioned participants outside of the Drug Treatment Court may happen on occasion and will be based on team consultation.
2. All participants will attend as required. The Judge or Coordinator may excuse a participant from Drug Treatment Court without approval from the Team.
3. A closed staffing will take place prior to Drug Treatment Court. At the staffing, members of the Team will advise the Judge of the progress and/or any violations of each participant.
4. All in-Drug Treatment Court hearings will be on the record.

5. During each Drug Treatment Court hearing, the Judge will discuss progress with each participant and other interested parties when appropriate. Sanctions will be imposed for any violations.
6. The Team may share information regarding any crisis situations that arise. Crisis decisions may occur outside of regularly scheduled Team meetings by the Department of Corrections agent, Drug Treatment Court coordinator, Department of Corrections supervisor, and JSS Supervisor.

V. DRUG TREATMENT COURT PHASES

A. Treatment Phase Protocol

The Drug Treatment Court shall consist of 5 highly structured phases to motivate, assist, and promote Participant recovery. The phases are defined as follows:

La Crosse County Drug Treatment Court Phasing Structure 2021

Phase Focus	Phase 1 Acute Stabilization	Phase 2 Clinical Stabilization	Phase 3 Pro-Social Habilitation	Phase 4 Adaptive Habilitation	Phase 5 Continuing Care/Relapse Prevention	After Care Post-Graduation Support Remain on DOC Supervision
Length of Phase Sobriety Expectation (*consecutive days prior to phase advancement)	60 Days MINIMUM 14 DAYS CLEAN TEAM	60 Days MINIMUM 30 DAYS CLEAN TIME	90 Days MINIMUM 45 CLEAN TIME	90 Days MINIMUM 60 DAYS CLEAN TIME	90 Days MINIMUM 90 DAYS CLEAN TIME	30 Days Maintain Sobriety
Court Appearance	Weekly	Every Other Week	Monthly	Monthly	Monthly	Monthly
Treatment Participation/Expectations Defer to provider. Not discharged from treatment for absences. Must call in 24 hours in advance to cancel/reschedule.	Complete AODA assessment	Comply with treatment plan <u>recommendations</u> (SOP, individual)	Comply with treatment plan recommendations (SOP, individual)	Comply with treatment plan recommendations (Relapse prevention group, dual diagnosis group, individual)	Develop Recovery Plan / Relapse Prevention Plan; Present plan to the DTC team before graduation ceremony	
CBT Group Participation	N/A unless started in jail	Refer to CBT program as appropriate and participate as appropriate	Refer to CBT program and participate as appropriate	Actively participate in CBT program	Actively participate in and successfully complete CBT program	N/A
Meetings with DOC Agent	Weekly	Weekly	Every other week	Minimum of at least every other week; (dependent upon Risk and case supervision review)	Minimum of at least monthly (dependent upon Risk and case supervision review)	Dependent upon Risk and CSR
Meetings with DTC Coordinator	Every other week	Every other week	Every other week	At a minimum every 3-4 weeks; in collaboration with DOC	At a minimum every 3-4 weeks; in collaboration with DOC	Monthly
Testing Requirements / Color	Minimum of twice a week on a random basis	Minimum of twice a week on a random basis	Minimum of twice a week on a random basis	Minimum of twice a week on a random basis	Minimum of twice a week on a random basis	N/A
Employment / Education	N/A	Develop a plan for employment or education as appropriate.	Develop a plan for employment or education as appropriate.	Comply with employment/education referrals as identified in case planning	Stable employment, full- time and/or other source of stable income	
Prosocial Supports	Identify people, places, and things that are supportive and high risk	Identify people, places and things that are supportive and high risk	Develop action plan to change people, places and things that are high risk	Demonstrate changing people, places and things	Demonstrate and Maintain changing people, places, and things	Maintain and demonstrate changing people, places and things
Payments Toward Drug Court Fee (with applicable reduction), Court Obligations, including restitution	N/A	Develop a plan for employment or education as appropriate.	Complete a budget and develop a payment plan as appropriate and if employed	Complete a budget and develop a payment plan; prioritized by 1) Restitution 2) Drug Court fee 3) other fines/fees	Comply with established payment plan; review budget and revise payment plan as appropriate	N/A
Other Conditions (all court imposed requirements have been met prior to phase advancement)						

B. Drug and Alcohol Test Protocol

Each participant is subject to random testing for the purpose of detecting the unauthorized use of alcohol, drugs, controlled substances or other chemicals as follows

1. Any member of the Team, Law Enforcement or other professional working with the Drug Treatment Court Program may request testing of the participant at any time. Testing may be of the participant's urine, breath, blood, or saliva, and may include any approved, reliable method.
2. The Drug Treatment Court Participant shall be assigned a color by the Drug Treatment Court Coordinator and is responsible for calling Justice Support Services color line (608-785-5532) daily to hear if their color is called. Upon request, the participant shall deliver the requested sample or testing method. If a sample is not produced within three attempts, is not of sufficient quantity, is tampered with or falsified in any way, or if a participant fails to report for a test, it will be treated as a positive test for the presence of unauthorized alcohol, drugs, controlled substances, or other chemicals.
3. Prior to delivering the sample, the participant will be asked whether or not the test will be positive. If the participant acknowledges the test will be positive, it will be considered a positive test, and the participant may not be required to submit to testing. If the test is positive, the participant may request a confirmation test; the participant will be responsible for the cost of the confirmation test if the sample is confirmed positive. The Drug Treatment Court will impose appropriate interventions for any positive test, or test deemed positive.
4. Participants may not use products containing alcohol, including, but not limited to, toothpaste, mouthwash, astringent, cough medicine or other health or hygiene products. Participants are not allowed to use non-alcoholic beer. Any tests that are positive for the presence of alcohol will be deemed positive by the Team, and any explanation that the test may be due to the use of products containing alcohol will not change that determination.

C. Use of Prescribed Medications

1. There are certain prohibited medications, however, participants will not be prohibited from utilizing prescribed medications. The

Team will use the following guidelines:

- a. A participant using a prescribed medication will not advance within the phase unless a waiver is granted. Medications used to treat addictions may be approved by the team. Medications used to treat addictions (Methadone, Suboxone, Vivitrol, Naltrexone, etc.) may be approved by the team.
- b. A participant must take all medications as prescribed.
 1. A waiver request must include documentation from the participant's physician outlining the diagnosis that requires the prescribed medication of abuse including alternatives were discussed and found inadequate.
- c. The Team encourages participants to follow the recommendations of the participant's professional prescriber when taking prescribed medications.
- d. Participants will provide a letter to medical professionals (see Appendix II)

D. Medically Assisted Treatment Guidelines (M.A.T.)

1. National Association of Drug Court Professionals Resolution of the Board of Directors:
 - a. "The (Drug) Treatment Court Team does not impose blanket prohibitions against the use of the M.A.T. for their participants. The decision whether or not to allow the use of M.A.T. is based on a particularized assessment in each case of the needs of the participant and the interests of the public and the administration of justice.
 - b. The (Drug) Treatment Court Team bases their decision whether or not to permit the use of M.A.T., in part, on competent expert evidence or consultation. In cases in which a participant, the participant's legal counsel, or a medical expert has requested the possible use of M.A.T., the judge articulates the rationale for allowing or disallowing the use of addiction medication."
2. Drug Treatment Court criteria for M.A.T.

- a. Must be an approved provider based on license and certification and with a prescription for the necessary medication.
- b. Reciprocal releases are signed.
- c. Communication must be open and frequent between the team and provider.
- d. M.A.T. must be included in the case plan.

VI. INCENTIVES SANCTIONS AND INTERVENTIONS

Incentives are awarded to participants for many reasons specifically for demonstrating progress towards meet case plan goals.

Sanctions are a response to any violations of the rules of the Drug Treatment Court and may result in a response as determined by the Team.

The Team will use an incentives and sanctions matrix during weekly staffing to help guide their responses to participants behaviors.

Interventions are a response to assist a Participant in identifying and correcting a behavior that is preventing progress toward case plan goals.

A. Incentives may include:

- Reduced jail time.
- Driver's license reinstatement.
- Bus Tokens
- Gift Certificates
- Positive Team interaction
- Phasing
- Assistance with employment.
- Removal of curfew.
- Removal of an electronic monitoring device.
- Reduced testing
- Recognition
- Verbal praise from the Judge.
- Entry into the Fishbowl Drawing
- Recognition on the *Star Chart*

B. Sanctions may include:

- Jail
- Curfew
- Electronic Monitoring
- Increased Supervision
- Day reporting

- Phase consequence
- Community Service
- Completing an essay
- Payment when lab report differs from participant report

C. Interventions may include:

- Increased Alcohol Testing
- Increased Support Groups
- Verbal Warnings
- Team Intervention
 - a. Request the participant to come before the Team to discuss Drug Treatment Court participation concerns.
- Increased treatment
- A homework assignment to assist in changing the behavior

D. Time spent in confinement will NOT count toward phase advancement. Time spent in residential or in-patient treatment may be applied in the discretion of the Team. Furthermore, participants who were positive for drugs or alcohol during the period since their last appearance in Drug Treatment Court, or who are in jail during the Drug Treatment Court session, will not be entitled to participate in any in-Drug Treatment Court incentives.

VII. DUE PROCESS EVIDENTIARY HEARING

- A. When a participant has incurred any violation(s) of the rules of the Drug Treatment court, jail may be considered as a response by the Drug Treatment Team.
- B. When the period of incarceration being considered is longer than a one-week period, the participant may request an evidentiary hearing to address the violation(s) of the Drug Treatment Court rules and the response to alleged violation(s).
- C. When the recommendation of the team is to incarcerate a participant while they are awaiting placement at a treatment facility, the participant may request an adversarial evidentiary hearing to challenge the extended incarceration.
- D. A participant may choose to knowingly, intelligently and voluntarily waive their right to a due process hearing. (See Appendix IV)

VIII. EMPLOYMENT EXPECTATIONS

Participants are REQUIRED to notify employers of their

participation in the Drug Treatment Court program at a time to be determined with their case manager. Employers may be contacted to verify work hours, employment status, and to answer any questions employers may have about the Drug Treatment Court Program.

IX. COMMENCEMENT

Eligibility to commence requires completion of the three phases of the structured portion of the Drug Treatment Court Program, to include the payment of all assessed fees, and after submission of a qualifying application for commencement and upon recommendation for commencement by the Drug Treatment Court Team. The Commencement Ceremony will be a celebration of successful completion of the three phases of the Drug Treatment Drug Treatment Court.

If all Phase III criteria are met, participants may request an earlier scheduled commencement Drug Treatment Court date if scheduled beyond actual completion of the program.

X. COSTS

Each participant shall pay the Drug Treatment Court Program fee of \$750.00 to participate in the Program. The Judge will waive \$250 of this amount upon the Participant completing 25 hours of Community Service work. The fee must be paid according to La Crosse County Human Services policy prior to commencement.

XI. RESTITUTION, DEPARTMENT OF CORRECTIONS, AND DRUG TREATMENT COURT FEES

Good faith effort must be demonstrated for payment of Department of Corrections, restitution, and Drug Treatment Court fees. A payment plan will be established in Phase I and payments made during Phase II and Phase III.

XII. VOLUNTARY REMOVAL

A participant will not have the option to quit the Drug Treatment Court Program. Successful completion of or expulsion from the Drug Treatment Court Program are the only acceptable ways to leave the Program.

XIII. MAXIMUM BENEFIT

A determination by the Team that the participant is unable to benefit positively from any further treatment or continuation in the Drug Treatment Court Program and the continuation of the participant would undermine the ability of other participants to succeed in the program

The participant will be asked to meet with the prosecutor and Department of Corrections agent to determine if the participant is agreeable to the recommendations being made by the prosecutor and the Department of Corrections agent.

If the client agrees to the recommendations, the client will petition the Drug Treatment Court for termination from the program.

If required a hearing will occur in front of the sentencing Drug Treatment Court. The Team recommendation will be forwarded to the sentencing Court for consideration.

XIV. EXPULSION (See Appendix III)

A participant may be terminated from the Drug Treatment Court Program for the following:

1. Commission of a violent crime.
2. Failure to attend scheduled Drug Treatment Court hearings as a result of incarceration.
3. Abandonment of the Drug Treatment Court Program.
 - a. Abandonment refers to any length of time a participant is determined to have absconded, and the Team decides that the participant should be expelled from the Drug Treatment Court Program.
4. A participant who has absconded can be expelled from The Drug Treatment Court Program at any time.
5. Evidence indicating that the Drug Treatment Court participant is involved with drug use, drug dealing, assaultive behavior, or driving while under the influence of an intoxicant.

6. Any other grounds that the Drug Treatment Court finds sufficient for expulsion.

When expulsion is determined appropriate, the participant will be encouraged to ask for an admission hearing to re-enter the Drug Treatment Court Program.

1. A plan to complete the Drug Treatment Court Program must be submitted for consideration at re-admission the hearing.
2. The Team will meet with the participant.
3. If the Judge has also been assigned to the candidate's pending criminal case(s), and the expulsion is determined on the merits of the expulsion criteria, the Judge will recuse him/herself from presiding on those criminal cases. The parties may waive this requirement.
4. The Team will inform the participant of Team decision.

PROCESS FOR EXPULSION

Any member of the Team may make a Motion for Expulsion. The expulsion candidate will be served with a notice of expulsion, to include the date and time for the initial expulsion hearing and the right to be represented by an attorney.

1. Treatment court team and with the participant present. The expulsion candidate may have the representation of an attorney for this hearing. The Treatment Court Judge will leave the expulsion meeting during the team discussion and the vote. Upon a majority vote by the Team, a recommendation for expulsion will be made to the Judge. For the purposes of admission a majority is defined as 3-2. If there is no majority vote for expulsion, the expulsion candidate will continue in the Drug Treatment Court Program. The Team members are entitled to one vote from each membership position, consisting of the District Attorney's Office, the Public Defender's Office, Department of Corrections, the Coordinator, The Initial Expulsion Hearing will be set before the Drug and the La Crosse County Human Services Department. A representative from each entity is required to be present for the initial expulsion hearing held for each expulsion candidate.
2. Absconding expulsion protocol (2009):
 - a. A participant who has absconded from the program for any length of time, could be expelled from the program if the team determines this is an appropriate outcome.
 - b. A participant who has absconded and been absent for six months will automatically be expelled from the Program.
 - c. In both instances 2a and 2b, the participant will be allowed to ask for an admission hearing to re-enter into the program.

- d. The participant must bring to the admission hearing a plan outlining the objectives and goals they intend to follow through with to complete the program.
3. Readmission to the Program if previously expelled or commenced:
 - a. Re-entry will be considered on a case-by-case basis.
 - b. What treatment is available that was not available before?
 - c. Age and circumstances at first entry considered.
 - d. What time is left to serve?
4. If the Team recommends expulsion, the expulsion candidate will be notified at the next Drug Treatment Court Session and the matter will be set for an expulsion hearing before the Judge as soon as practical during a future Drug Treatment Court session. The expulsion hearing will be on the record, in open Drug Treatment Court, and in front of the other participants. An attorney may again represent the expulsion candidate.
5. If the Judge agrees that there is a basis to grant the Motion for Expulsion, findings and conclusions will be made on the record, and the participant will be expelled from the program and referred to a Sentencing Judge for imposition of sentence on the charges that had been referred to the Drug Treatment Court Program. The Judge will execute an expulsion order following the approval of the expulsion motion. The Judge will immediately revoke any charges that are the subject of a Drug Treatment Court diversion contract and judgments for said charges will be entered into the record; a pre-sentence Investigation will be ordered; if the defendant is not subject to a bond, a bond will be set; and if the defendant is already subject to a bond, the terms and conditions of the bond will be addressed.

XV. SENTENCING COURT NOTIFICATION

A Sentencing Court shall be notified as follows:

1. When the participant successfully completes the Drug Treatment Court Program, the Sentencing Court will be so notified. Drug Treatment Court cases will, if possible, be promptly closed.
2. If the participant is expelled from the Drug Treatment Court Program, the Sentencing Judge will be provided with a copy of the expulsion motion executed by the Judge following the expulsion hearing. No other information will be provided by the District Attorney's Office to the Sentencing Judge, unless first disclosed to the Sentencing Judge by the former participant.

XVI. LA CROSSE COUNTY DRUG TREATMENT COURT TEAM MEMBERS:

1. Judge: Judge Scott Horne
2. La Crosse County District Attorney's Office Representative/Assistant District Attorney: Courtney Strittmater
3. Public Defender's Office Representative: Rachel Krueger
4. Department of Corrections/Division of Community Corrections: Emma Peterson
5. The Justice Support Services members:
 - Drug Treatment Court Coordinator: Jodie Muth
 - Supervisor: Anne Patton
 - JSS Manager: Tonya Van Tol
6. Law Enforcement Representative: Investigator Andy Tolvstad
7. Treatment Provider Representative: Deb Stelmach, RN, CSAC, LPC-IT, Driftless Recovery Services

APPENDIX I

La Crosse County Drug Treatment Court
Legal Screening Tool

Defendant's Name:

Case Number(s):

Defendant's Address:

Defendant's Phone #:

Date of Arrest¹:

The purpose of this tool is to ensure that there are no criminal history or pending charge criteria for automatic exclusion from the La Crosse County Drug Treatment Court prior to the Drug Treatment Court evaluations for admission based on other criteria. These criteria apply to both cases pending in the Courts and those being considered for an Alternative to Probation Revocation (ATR)².

<p><u>Defendant's Supervision Status (all criteria must be met for further screening)</u></p> <p><input type="checkbox"/> Is not solely on Interstate Compact supervision.</p> <p><input type="checkbox"/> Is not solely on Extended Supervision.</p> <p><u>Defendant's Conviction History (all criteria must be met for further screening)</u></p> <p><input type="checkbox"/> Has not been convicted of a crime of violence, including an attempt, in the last 5 years.³</p> <p><input type="checkbox"/> Has not been convicted of a Residential Burglary when people were present in the last 5 years.⁴</p> <p><input type="checkbox"/> Has not been convicted of a felony offense involving a firearm⁵ in the last 5 years⁶.</p> <p><u>Defendant's Current Offense(s) (all criteria must be met for further screening)</u></p> <p><input type="checkbox"/> Is a felony or enhanced misdemeanor that may be punishable by a prison sentence</p> <p><input type="checkbox"/> Is not a crime of violence.</p> <p><input type="checkbox"/> Is not a Residential Burglary.</p> <p><input type="checkbox"/> If the crime alleged is delivery or possession with intent to deliver, the total weight⁷ of each controlled substance in the case does not exceed:</p> <p style="padding-left: 40px;">-3g at the time of charging for heroin or fentanyl.</p> <p style="padding-left: 40px;">-7.5 g at the time of charging for methamphetamine or cocaine/cocaine base</p> <p><input type="checkbox"/> Does not involve a firearm or facsimile firearm.⁸</p>

Reason for exception:

Reviewed by:

District Attorney/Deputy District Attorney

¹ If multiple cases, most recent arrest date should be used. Evidence shows that admission to Treatment Court within 50 days of arrest is most effective.

² Limited exceptions (less than 10% of admissions) may be made to these exclusionary criteria, only upon stipulation of the parties and with the approval of the District Attorney or Deputy District Attorney.

³ The definition of "crime of violence" for admission purposes can be found in the Crime of violence is defined by the Drug Court Violent Crime list, adapted from the Statewide pre-trial work group definitions of crimes of violence. A copy may be found in the La Crosse County Drug Treatment Court Policy and Procedures

⁴ Will need a copy of the relevant criminal complaint to see if the burglary involved a residence.

⁵ Firearm is defined a weapon which acts by the force of gunpowder. It is not necessary that the firearm was loaded or capable of being fired. See, WIS JI-Criminal 1343 Possession of a Firearm - 941.29(1m) (Wisconsin Jury Instructions - Criminal (2020).

⁶ May need to review factual basis of felony convictions to see if a firearm is involved, if possible.

⁷ The original alleged weight is what is to be considered, not any agreed reductions for purposes of plea agreement.

⁸ A facsimile firearm is defined here as a BB gun or Airsoft-type gun.

APPENDIX II

To: Medical Providers
From: La Crosse County Drug Treatment Court

Your patient is providing you with this letter because he or she is a Drug Treatment Court participant.

The La Crosse County Drug Treatment Court provides integrated Drug Treatment Court supervision and substance abuse services to a diverse population in La Crosse County to reduce drug related crimes, better utilize jail resources, and improve the quality of life of substance abuse offenders resulting in increased community safety and improvement of the quality of life in the whole community.

The Drug Treatment Court Team requests that physicians prescribing medication(s) to a participant attempt to prescribe medication that will not pose a risk to the participant's recovery from addiction. The Team is aware that this is not always possible but asks that alternatives be explored prior to prescribing a habit-forming medication.

Thank you for your time and consideration. If you have further questions, please feel free to contact the Coordinator at 789-4895.

Respectfully,

Drug Treatment Court Coordinator

APPENDIX III

STATE OF WISCONSIN

CIRCUIT COURT

LA CROSSE COUNTY

State of Wisconsin

CONSENT AND ORDER RETURNING
CASE TO SUBSTITUTED JUDGE

vs.

(Defendant/Respondent name)

Case No. (Case Number)

The defendant _____ hereby requests pursuant to sec. 971.20 (11) that the criminal action and all pertinent records be transferred back to the Honorable _____ (substituted judge) to allow for participation in the La Crosse County (drug) (OWI) Court. The defendant understands and agrees that the aforementioned judge has full authority to act in this case consistent with Wisconsin law and treatment court policies and procedures.

Defendant

Defendant's Attorney

Consent to Return Action to Substituted Judge

The undersigned agree that the aforementioned matter shall be transferred back to the Honorable _____ to allow for treatment court participation with the judge having full authority to act consistent with Wisconsin law and treatment court policies and procedures pursuant to sec. 972.20(11).

Prosecutor

Assigned Judge

Substituted Judge

Order Returning Action to Substituted Judge

Pursuant to sec. 972.20(11), Wis. Stats., and upon the consents set forth above, the aforementioned matter is transferred back to _____ to allow for participation in the La Crosse County (OWI) (Drug) Court.

Dated this ____ day of _____, 20 .

Circuit Judge, Branch
Assigned Judge

APPENDIX IV

Pre-Trial Drug Treatment Court Letter

Hello Attorney _____,

My name is Jodie Muth and I am the Drug Court Coordinator for La Crosse County. Based on pretrial screening tools, (name), may be eligible for Drug Court. I have attached the eligibility criteria and legal screener for your information if you would like this client to be considered. Their legal history will be screened through the District Attorney's office after receiving all necessary documents. Best practice suggests that clients should be referred and screened and begin the program within 50 days of an arrest/violation. If considering Drug Court, please submit the information in a timely manner.

If your client is also under supervision with the Department of Corrections and is interested in pursuing Drug Court as a Formal Alternative to Revocation or response to their violations, please contact the agent of record as soon as possible to discuss this option.

Please let me know if you have any questions.

Thank you!

APPENDIX V

LA CROSSE COUNTY DEPARTMENT OF HUMAN SERVICES POLICY AND PROCEDURES

POLICY TITLE: Drug Treatment Court Re-Admission Procedure

PURPOSE: To identify the process of re-admission for a Drug Treatment Court participant if previously expelled or graduated or expelled for absconding from the program.

POLICY/PROCEDURE:

- A. A Drug Treatment Court participant who has absconded from the program for more than 30 days could be expelled if the team decides this is an appropriate outcome. Expulsion for absconding could occur in less than 30 days at the team's discretion. The team may consider factors including but not limited to reports the participant is committing crimes in the community or is a danger to self or others.
 - 1. Upon request for re-admission the former participant will be asked to specifically address the behaviors that led to absconding from the program and outline their plan to comply with program expectations and requirements.
 - 2. The team will review this information and notify the former participant of the decision regarding re-admission.
 - 3. There is no appeal procedure regarding the team's decision. At the Drug Treatment Court Coordinator's discretion an interview may be conducted to gather additional information to be shared with the team
- B. A Drug Treatment Court participant who requests re-admission if previously expelled or graduated:
 - 1. In either instance of expulsion (other than for absconding) or graduation the former participant will be allowed to request referral for re-admission into the program.
 - 2. The team will consider readmission on a case-by-case basis. Factors considered may include but are not limited to what treatment is available that may not have been available previously; the former participant's age upon first entry into the program; the time elapsed since graduation or expulsion; and whether readmission is being requested on the same criminal case for which they were originally accepted into the program.
 - 3. There is no appeal procedure regarding the team's decision.

APPENDIX VI

PROCEDURES FOR DUE PROCESS HEARING

- **PARTICIPANT RIGHTS**

- The participant who is alleged to have committed a violation(s) warranting an extended incarceration sanction shall be entitled to:
 - Notice of the violation and/or allegations used as the basis for the extended incarceration
 - To be present at the due process evidentiary hearing
 - The right to call their own witnesses
 - The right to cross-examine witnesses
 - The right to factual findings
 - The right to counsel (see below for additional information)
- If a participant wishes to knowingly, intelligently, and voluntarily waive their right to a due process hearing they:
 - Have a right to be present during a waiver of the due process hearing
 - Must be informed of their right to a due process hearing
 - Not be under the influence of any substances which could impact their ability to understand the waiver of the due process hearing
- [Due to the COVID-19 pandemic and local court rules, a participant may appear for their due process hearing via videoconference]

- **RIGHT TO COUNSEL**

- The representative from the State Public Defender functions as a team member of the La Crosse County Drug Treatment Court; thus, to avoid any conflicts of interest, this team member will not represent the participant in the due process hearing
 - The Defense Counsel Team Member can provide limited information to participants:
 - How to apply for Public Defender representation
 - The procedures for due process hearing
 - The violations / allegations against the participant
 - Possible sanctions that are faced by the participant
- The participant is entitled to counsel to assist them with an evidentiary hearing
- Should the participant wish to have counsel for an evidentiary hearing, they will be required to apply to the La Crosse State Public Defender's office.

- The State Public Defender will appoint counsel to the participant if they qualify
 - If the participant does not qualify, they may apply for counsel through the court
 - The participant may choose to hire their own counsel
- The Due Process hearing may be adjourned to a later date to give the participant and their defense counsel adequate time to prepare
- If the participant wishes to waive their right to counsel and proceed pro-se, the court must ensure that the participant knowingly, intelligently, and voluntarily waives their right to an attorney⁹
- A participant who has waived their right to counsel may nevertheless re-assert that right¹⁰
- **DISCOVERY**
 - The participant and their attorney are entitled to the records related to the violations, which may include the test results, the reports of the testing lab, the procedures of the testing lab, etc.
 - If the violation(s) involve or include non-drug test violations (behavioral / other rules violations), the participant’s counsel may request such records from the appropriate reporting agency
 - Waivers or releases may be required in order for participant’s counsel to receive certain protected or otherwise confidential information
- **STANDARD OF PROOF**
 - The allegations of violations by the participant must be established by the State by preponderance of the evidence
- **EVIDENTIARY STANDARDS**
 - If the violation involves drug testing results, the standard of proof for the drug test results must have an indicia of “sufficiently reliable”¹¹
 - There must be a clear chain of custody for the samples and opportunity for timely confirmation testing¹²
 - Hearsay is permissible in a due process hearing¹³

¹ Iowa v. Tovar, 541 U.S. 77, 92 (2004)

² Robinson v. Ignacio, 360 F.3d 1044 (9th Cir. 2004)

³ See e.g., *People v. Dorcent*, 29 Misc.3d 1165, 909 N.Y.S.2d 618 (2010) (SCRAM Meets Frye Test of scientific reliability for admission in court); *In re E. M.*, 728 N.W.2d 853 (Iowa App. 2007) (sweat patch reliable, unless evidence of environmental contamination). *But also see e.g., Wilcox v. State*, 258 S.W.3d 785, 785 (Ark. Ct. App. 2007) (explaining that the test was not reliable because the pH level and temperature was not established)

⁴ <https://www.watcp.org/wp-content/uploads/2013/07/WATCP-Wisconsin-Treatment-Court-Standards-Publication-Revised-2018.pdf>

⁵ See *Taylor v. State*, CR-15-0354 (Ala. Crim. App. 9/9/16)(equating that a due process hearing is similar to a probation revocation hearing and therefore is not criminal in nature, thus formal rules of evidence not necessarily applicable)

- **HEARING PROCEDURES**

- The Due Process hearing must be held on the record
- The hearing may be held at a time other than the usual prescribed drug court meetings (currently Thursday afternoons at 3:30PM)
- The State shall present its witness(es) for each of the violation(s)/allegation(s) of the participant
- The participant has a right to cross-examine the witnesses brought against them
- After the close of the State's evidence, the participant and their counsel may present their own witnesses, subject to cross-examination by the state
- At the end of the hearing, both the State and the participant's attorney may make closing statements to the presiding judge

POTENTIAL OUTCOMES

- Depending on the outcome of the evidentiary hearing and whether any of the violations alleged or reasons for incarceration were deemed to be founded or unfounded:
 - The original jail sanction may be imposed
 - The original jail sanction may be reduced
 - The participant will not be incarcerated
- Time spent incarcerated due to a sanction will NOT count toward phase advancement.
- Furthermore, participants who were positive for drugs or alcohol during the period since their last appearance in Drug Treatment Court, or who are in jail during the Drug Treatment Court session, will not be entitled to participate in any in-Drug Treatment Court incentives.