The Supreme Court of Ohio

CHAMBERS OF
CHIEF JUSTICE MAUREEN O'CONNOR
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COLUMBUS, OH 43215-3431

October 25, 2021

Senator Nathan Manning
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Chairman Manning, Vice-Chair McColley, and Ranking Member Thomas:

I am writing today regarding recent testimony concerning SB 207, which would amend the eligibility criteria for the Hamilton County Drug Court.

As has been pointed out numerous times, the Hamilton County Drug Court is the only drug court in the state that is created in statute. Established in 1995, this court was leading the way for specialized dockets in Ohio at that time. But a lot has changed since 1995.

Since then, more than sixty common pleas drug courts have been certified by the Supreme Court of Ohio. Each of these certified drug courts operates under the Supreme Court of Ohio's Specialized Docket Standards as well as their own local judgment to best serve their jurisdictions.

In early 2021, the National Drug Court Institute ("NDCI") conducted a review of the Hamilton County Drug Court. This review was conducted in consultation with Hamilton County officials and with the Supreme Court of Ohio. I have attached a copy of the review to this letter.

The foremost observation of the NDCI was simple: The Hamilton County Drug Court is letting in the wrong people.

As the NDCI notes, drug courts are best utilized when they serve a "high-risk, high-need" population. Under the current structure in Hamilton County, most of the drug court's case load is made up of low-risk defendants. This bill eliminates the portion of the current statute that is restricting the court's ability to operate. By allowing the Hamilton County Drug Court to operate like other drug courts around the state, SB 207 would maximize the court's effectiveness and allow it to modernize.

I am concerned that this bill is being painted as allowing some type of escape from punishment. Maintaining the option for a defendant to enroll in drug court is not a "get out of jail free" card. Drug court is intensive, effective, and can still result in a prison sentence should the participant abandon their treatment.

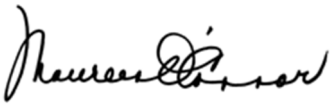
Under current law, defendants with any history of violent behavior cannot be placed in the Hamilton County Drug Court. It is the only drug court in the state that operates this way. If a person is charged with drug possession today, an assault charge from 10 years ago should not serve as a blanket disqualification from drug court. Instead, that individual should be assessed by the Court, Prosecutor, and medical professionals to determine if drug court would be the right option.

By indiscriminately ruling out drug court for anyone with a history of violence, the law rules out what might ultimately be the best way to stop that person from reoffending.

This is not to say that every case is appropriate for a drug courts — not all are. But this decision should be made at the local level and be based on a thorough assessment, not with the broad strokes of the current statute. This legislation, by allowing the Hamilton County Drug Court to appropriately serve a high-risk population and become certified, would also open the door to grant funding opportunities.

I thank you for the opportunity to comment on Senate Bill 207, and thank you for your continued service for the state of Ohio.

Warm Regards,



Maureen O'Connor
Chief Justice

Background and Overview

An NDCI review process was conducted with the Hamilton County Adult Drug Court on April 27-30, 2021, by Carolyn Hardin, chief of training and research, and NDCI consultants Judge Robert Russell, Marie Lane, and Marie Crosson. This report summarizes the key findings of the review process based on current operations.

Summary of Best Practices

The following practices that follow the 10 Key Components of Drug Court and NADCP's Adult Best Practice Standards (Volume I 2013, Volume II 2015) have been implemented by this treatment court. They are based on research demonstrating that programs that engage in these practices have more positive outcomes than programs that do not. Congratulations on your treatment court's achievements in these areas! A full set of practices implemented by this treatment court is included as an attachment with this report.

1. There is a written policy and procedure manual for the treatment court program. It will need to be revised to include the proposed recommendations outlined in this report.
2. Four defense attorneys are part of the treatment court team (attending staffing and court).
3. The treatment court offers mental health treatment.
4. The treatment court provides (or partners with service providers who provide) participants with legally prescribed psychotropic or addiction medication (MAT).

Priority Recommendations

After a careful review of this program, it was determined that the Hamilton County Drug Court Program is not following the Ten Key Components of Drug Courts or the AdultDrug Court Best Practice Standards; therefore, it is not a drug court. If the intent is to implement the drug court model, the program is encouraged to attend training as soon as possible.

The following section lists several areas in your treatment court that are not currently aligned with best practices. These are areas that could benefit from enhancements. A full set of practices and whether or not they are implemented by your treatment court are included as an attachment to this report. Additional recommendations are listed at the end of this report.

1. **The program should revise its target population.** This court was established in 1995 and mirrored the requirements of Treatment In lieu of Conviction (Ohio Revised Code Section 2951.041) as it existed at that time. The legislation further reflected the operational theory of drug courts during this time, i.e., drug courts were diversionary in nature and targeted first offenders.

In 1998, the Court of Common Pleas enacted Court Rule 35, which created the Court Guided Addiction Treatment Program. This court rule changed the structure of the Drug Court Program by automatically assigning all felony four and felony five drug offenses to the program, creating an "opt-out" versus "opt-in" program.

In 2000, the state legislature specifically repealed R.C. 2951.041 as it existed and replaced it with the new 2951.041, Intervention in Lieu of Conviction (ILC). And, since 2000, this intervention in lieu of conviction statute has been amended 14 times. The current statute still prohibits a previous felony conviction of violence, but the number of prior nonviolent offenses, including trafficking offenses, is not prohibited. Felony 3 drug possessions and felony five drug trafficking offenses are also eligible for ILC.

The program is serving low-risk offenders. The Adult Drug Court Best Practice Standards, Standard I-Target Population clearly outlines that drug courts should target offenders for admission who are addicted to illicit drugs or alcohol and are at substantial risk of reoffending or failing to complete a less intensive disposition, such as standard probation or pretrial supervision. These individuals are referred to as high-risk and high-need offenders. If a drug court cannot target only high-risk and high-need offenders, the program needs to develop alternative tracks with modified services to meet the risk and need levels of its participants. In addition, the recommended supervision levels for high-risk offenders are significantly more intense than for low-risk offenders, which could be counterproductive (i.e., poor participant outcomes) and excessively costly.

In addition, Standard 2(B) of Ohio's Specialized Docket Standards provides that a specialized docket shall generally target individuals with a moderate to high risk for recidivism and a high need for treatment. If a specialized docket is unable to target only high-risk and high-need offenders, the docket should use alternate tracks with modified services to meet the risk and need levels of its participants.

2. **The program should allow other charges in addition to drug charges.** Treatment court programs are designed with intense supervision appropriate for high-risk individuals. Participants with other criminal charges, in addition to drug charges, tend to be at higher risk. Research has shown that programs that admit participants with other charges in addition to drug charges have significantly lower recidivism and higher cost savings.

   In addition to the legislative changes to Intervention in Lieu of Conviction, Ohio's felony sentencing law has also vastly changed since the creation of the drug court. A prior felony conviction of violence and prior drug trafficking offense does not preclude an offender in Ohio to a community control sentence. Yet, they currently preclude participation in the Hamilton County Drug Court program.

3. **The program should use a validated risk assessment tool to determine eligibility**. The court is administering the ORAS, a validated risk assessment tool, but does not use the ORAS for eligibility or placement. The treatment agencies do not use a standardized clinical assessment to determine treatment needs and care levels across the board. The program should immediately implement the use of standardized assessment tools to determine eligibility and placement. Appropriate staff should be trained in the administration of these tools. This change will help determine an individual's risk and need and the services related to treatment and supervision appropriate to the identified risk and need. Standardized assessments are vastly more reliable than subjective criteria (such as attitude or openness to treatment) or professional judgment alone (such as trying to predict what factors lead to success). The use of the validated risk and clinical assessments should take place before placing justice-involved individuals in the drug court program.

4. **All key team members should attend staffing and court.** The program needs to ensure that the judge, coordinator, prosecutor, defense counsel, probation officer, treatment provider, and law enforcement representative attend all staffing and court meetings. To maximize efficiency, it is important to have all key team members present at staffing meetings. Each team member views, interacts with or discusses a participant from a different perspective. They may also see the person at a different time than most of the team, which may offer additional useful information for the team to draw on in determining court responses that will change participant behavior. It appeared that pre-court staff meetings were recently added to this program.

   The drug court model requires drug courts to hold pre-court staff meetings-commonly referred to as staffings or case reviews -to review participant progress, develop a plan to improve outcomes, and prepare for status hearings in court. This is where incentives and sanctions are discussed and where the team advises the judge on how to respond to behavior in a focused and effective way. Not every participant is discussed in every meeting; however, staffings are held frequently enough at a minimum bi-weekly to ensure the team has an opportunity to consider the needs of each case.

   Standard 6 (D) of Ohio's Specialized Docket Standards provides that the treatment team shall hold regular meetings prior to the status review hearings to evaluate participant progress, develop plans to improve individual outcomes and prepare for the status review hearings.

5. **The program should use validated, standardized assessments to determine the level or type of services needed.** Drug courts generally screen clients and then refer them to a clinical evaluation if needed. The purpose of the screening is to determine if there is a possible substance use problem. The assessment is a process for defining the nature of the substance use problem, choosing a diagnosis, and developing specific treatment recommendations.

   This assessment provides comprehensive information to help determine the individualized care a person will need to be successful. It helps to set the foundation for each participant's case

plan. When a person's needs are being met, he or she is more likely to be successful (in the program and beyond). It is recommended that the providers working with the drug court all use standardized, validated clinical screening and assessment tools and that staff is properly trained to administer the tools. A screen can be conducted by any non-clinical person and should not be used to determine treatment need or level of care.

The program needs to develop a process that outlines the screening and assessment process. It is unclear how individuals are referred to the different treatment providers for an assessment. It was noted that a standard recommendation is for offenders to be sentenced to ADAPT for a two-week assessment. Residential assessment, whether locked or unlocked, is not a service level outlined in *The ASAM Criteria*. There are no criteria or other clinical justification for placing an individual in a residential setting for the purposes of assessment, even if the person is suspected of experiencing severe substance use disorder/addiction. Residential/inpatient treatment is only warranted after a thorough outpatient assessment has determined that the addicted individual can only be treated effectively and safely in such a setting. While ongoing assessment always continues once the individual is placed into residential treatment, this should only occur for individuals already assessed to require residential treatment. For example, the Global Appraisal of Individual Needs (GAINS) is among the most comprehensive tools for assessing substance use disorders and co-occurring substance use and mental health disorders. The full version includes 1,606 items. The creators estimate that the time required to administer the questionnaire is 60 to 120 minutes, with additional time required to score the responses and generate recommendations.

The Eighth Amendment of the U.S. Constitution allows for reasonable bail and prohibits cruel and unusual punishment. Jail is not treatment. In Hoffman v. Knoebel, 894 F.3d 836 (7th Cir. 2018), a class-action lawsuit was filed against treatment court officials concerning unlawful detention practices. The case was ultimately dismissed, but on technical, procedural grounds. The court had harsh words for the treatment court, including its practice of jailing participants while awaiting inpatient bed placements, stating there is "no justification" for the practice. Despite dismissing the lawsuit, the court concluded, "We have no doubt plaintiffs' constitutional rights were violated."

6. **The drug court should work with two or fewer treatment agencies or have a treatment representative that oversees and coordinates treatment from all agencies.** Work on moving to a model in which the treatment court uses at most two core treatment agencies, or establish a communication system that designates a single entity (one of the providers or a different organization, as appropriate) to oversee and coordinate treatment services as well as communication with the rest of the team. Referrals to ancillary services as needed are still appropriate on an individual basis.

   In the past couple of months, the team has implemented pretrial meetings (normally referred to in drug courts as staffings), including the treatment providers, probation, judge, bailiff, court coordinator, and public defenders. It is unclear if the team has the clients sign a release of

information that includes the treatment providers who are not receiving treatment services. For example, it was unclear if the UMADOP clients are aware that the ADAPT treatment counselors are hearing that clients report. The program needs to ensure that the client signs a release of information that outlines the people in the staffing to listen to that client's confidential information. If this is not being done, this is a breach of 42 CFR.

7. **The drug court should offer a continuum of care for substance abuse treatment (detoxification, outpatient, intensive outpatient, day treatment, residential).** Treatment courts that offer a range of services along the continuum of care have significantly better outcomes than programs that do not. It is important to ensure that the treatment and services available fit all participants' risk and need levels. It was clear that Hamilton County has access to a wide range of treatment services, but most of these services appear to be in a locked facility. One major concern is that based upon the ORAS scores, the vast majority of the people in the drug court are low-risk individuals. Research is clear that mixing participants with different risk or need levels together in treatment groups or residential facilities can make outcomes worse for the low-risk or low-needs individuals by exposing them to antisocial peers or interfering with their engagement in productive activities, work, or school. According to the Adult Drug Court Best Practice Standards, Relying on in-custody substance use disorder treatment can reduce the cost-effectiveness of a Drug Court by as much as 45% (Carey et al., 2012). Most studies have reported minimal gains from substance use disorder treatment within jails or prisons (Pearson & Lipton, 1999; Pelissier et al., 2007; Wilson & Davis, 2006). Placing a participant in custody might be appropriate to protect public safety or punish willful infractions such as intentionally failing to attend treatment sessions; however, in-custody treatment will rarely serve the goals of treatment effectiveness, cost-effectiveness.

8. **The program treatment providers should administer evidence-based, manualized behavioral or cognitive treatment interventions.** As described in Volume I of the Adult Drug Court Best Practice Standards, research has shown that outcomes are significantly improved when interventions are carefully documented in treatment manuals, providers are trained to deliver the interventions reliably (according to the manual), and fidelity to the treatment model is maintained throughout the process. It was unclear what manualized treatment, if any that Talbert House administered.

   Studies have shown that in addition to enabling better outcomes, licensed or certified staff members are more likely to have positive views of adopting evidence-based practices. Continued oversight is also paramount, as providers implement evidence-based practices more regularly when they receive substantial initial training, continued refresher trainings, and regular supervision and feedback from their agency.

   Standard 4 (E) of Ohio's Specialized Docket Standards provides that coordinated treatment and other rehabilitative services shall meet the individualized needs of the participants and incorporate evidence-based strategies for the participant population being served by the docket. Treatment and services shall be trauma-informed, gender-responsive, and culturally

appropriate and shall effectively address co-occuring disorders. Whenever possible, service providers should have separate tracks for specialized docket participants.

Additional Observations

TEAM TURNOVER: The judge, bailiff, court administrator, court coordinator, prosecutor, two of the public defenders, and most of the clinical team is new to drug court.

SUCCESSES, ACCOMPLISHMENTS OR INNOVATIVE PRACTICES

- The court's greatest strength is its multidisciplinary team that cares deeply about helping participants. Except for law enforcement, all recommended professional disciplines are included in the team, and all team members actively communicate with one another.

ADDITIONAL CONCERNS AND RECOMMENDATIONS

- **The program routinely revokes the bond of individuals and remands them to ADAPT for two weeks for a clinical assessment.** It is excessive for individuals to be incarcerated for two weeks to complete a clinical assessment. Adult Best Practice Standard V (B) states, " Participants are not incarcerated to achieve clinical or social service objectives. Most standardized assessments may take up to two to four hours. It is a concern that low-level offenders are being incarcerated for an assessment. Likewise, it was stated that the offenders are not receiving jail time credit for the time spent in ADAPT. The team should review the attached 2016 case from Hamilton County regarding a juvenile facility. This juvenile facility was not a lockdown facility, but the court found that it was sufficiently restrictive that the juveniles were entitled to credit off any DYS incarceration. It is recommended that the program cease detaining individuals in a locked facility for the purpose of obtaining a clinical assessment.

  In addition, Standard 13 of Ohio's Specialized Docket Standards provides that a specialized docket shall comply with their participants' constitutional and statutory rights. All certified specialized dockets shall comply with the "Constitutional and Due Process Guidance Document issued by the Commission on Specialized Dockets." This document can be located at https://www.supremecourt.ohio.gov/JCS/specDockets/

- **The program does not have a client contract.** A client contract should be developed that describes to participants a clear understanding of what benefits and burdens they are undertaking by entering the program. Standard 3(D)(1) of Ohio's Specialized Docket Standards provides that before entering a specialized docket, each participant shall receive and agree to the terms and conditions set forth in a detailed, written participation agreement and participant handbook outlining the requirements and process of the specialized docket.

  Defense counsel reviews the participation agreement with the client and ensures that the client fully understands. Both the participant and the defense attorney should sign the document in acknowledgment. Many programs file this signed agreement with the Clerk of Courts to document as part of the official court record.

- **The program should develop or revise the Memorandum of Understanding (MOU) between the treatment court team members (and/or the associated agencies).** It is essential to have an MOU between the various agencies that clearly state each team member's roles and duties in the treatment court program. This can also ensure agreement as to how they will communicate with each other (e.g., that they WILL communicate with each other), what information will be shared, etc. The MOU can be used as a training tool for new team members and can serve as a reminder of the purpose of their collaboration for treatment court. Sample MOU can be found at https://www.ndci.org/resource/sample-documents/

  In order for the team to make informed and fair decisions about their response to participant behavior, it is crucial that all necessary information be provided to the team. Consider adding language to your existing MOU that outlines how the team members will communicate with each other (e.g., that they WILL communicate with each other), what information can or will be shared, etc.

- **The program will need to update the written policy and procedure manual and participant handbook.** A policy manual helps to ensure that all partners are operating under the same assumptions—and also helps in clarifying roles, responsibilities, and expectations. The policy manual can also be used as a part of the training process for new team members, providing relevant information associated with their role on the team and learning program processes. The treatment court team should collaboratively develop and agree on all aspects of court operations (mission, goals, eligibility criteria, operating procedures, performance measures, drug testing, and program structure guidelines) within this manual. The manual should be written after the team is provided training on the drug court model.

  Standard (1)(C) of Ohio's Specialized Docket Standards requires a program description containing written policies and procedures that demonstrate compliance with all specialized docket certification requirements. It further provides that the judge should incorporate national best practices for the particular type of docket and participants to be served. And, as previously noted, Standard 3(D)(1) requires that each participant receive a participant's handbook prior to admission into the program.

- **The program should provide all members of the drug court team with training in the drug court model.** "Research has determined that Drug Courts are more effective when they provide introductory tutorials for new hires. A multisite study of approximately seventy Drug Courts found that programs were over 50% more effective at reducing recidivism when they routinely provided formal orientation training for new staff (Carey et al., 2012). Typically, the tutorials provide a "Reader's Digest" orientation to the Ten Key Components of Drug Courts (NADCP, 1997) and synopsis of best practices associated with each component." The program is highly encouraged to provide regular (yearly) training to team members on the treatment court model and provide training to new team members on the treatment court model and their specific role

as soon as possible after the new member joins the team. Research has demonstrated that regular training for team members is related to greater reductions in recidivism and higher cost savings. On-going training is essential.

Standard 11 of Ohio's Specialized Docket Standards requires the ongoing professional education of the treatment team members.

- **Provide case management services**. Case management is a process whereby the client's needs are identified and services are coordinated and managed systematically. The primary elements of case management include assessment, case planning, service connection, monitoring, and review. It is recommended in treatment courts that someone has the responsibility of helping the clients navigate the treatment court program. The Adult Drug Court Best Practice Standards Volume I, Standard V, specify at least the minimum amount of individual treatment (one-on-one sessions) that each participant will receive in the first phases of treatment. Standard VI in Volume II of the Adult Drug Court Best Practice services instructs treatment courts to address clients' needs based upon their risk assessment and clinical assessment. No one was responsible for helping the clients navigate the program or build the needed skills to mitigate criminal risk factors.

  In a typical drug court, participants are assigned a probation officer or case manager that develops a written case plan based upon the risk assessment. The case plan based upon the risk assessment and the treatment plan is integrated to ensure no duplication of services.

  Standard 4 of Ohio's Specialized Docket Standards details the treatment and ancillary services that are to be provided to all participants.

- **The program should develop a phase structure.** Most drug court programs create phase structures, which ultimately prescribe what a participant must complete to progress to the next phase. The Hamilton County Drug Court does not have a court phase structure. Court phases should be based upon the risk and need the level of the target population. Drug courts tend to belong, rigorous programs, lasting 12 to 18 months. Ultimately, the phase structures are intended to help participants reach their long-term goals and objectives set for them in more manageable increments, so phase progression is part of the discussion in pre-status meetings, ensuring everyone on the team, as well as the participants, know the status. Each participant should be provided a detailed plan of what would be required to progress through the phase structures to commencement/graduation based on their identified risk and needs. Using a standard supervision process based solely on phase structures and not taking into account risk and need assessment information can lead to under-or over-supervision of individuals, each of which can have unintended consequences (Marlowe, 2012). In most drug courts, participants sign a phase agreement per phase.

  Standard 5(B) of Ohio's Specialized Docket standards provides that a specialized docket shall include a clearly defined structure for progression through the docket. The progression shall include all of the following:

1) The minimum length of time, if any, that shall be spent achieving any particular phase;
2) The nature and frequency of court appearances, supervision meetings, and other attendance requirements;
3) Realistic and concrete behavioral-based requirements for the court, case management, substance monitoring, and treatment objectives that shall be satisfied before advancing;
4) The process for advancing to the next phase, including any applications, if any, that shall be completed.

- **The program should review its drug-testing protocols.** Many drug courts modified their drug testing protocols during the pandemic. However, drug testing should be random and unpredictable. There is a routine practice in the Hamilton County Drug Court to assign participants to Monday, Wednesday, and Friday drug testing schedules. As noted in the Drug Court Judicial Benchbook, "For testing to correctly assess the drug use patterns of program participants, it is crucial that samples be collected in a random, unannounced manner. The more unexpected and unanticipated the collection regime, the more accurately the testing results will reflect the actual substance use of a drug court client population. . . . If clients never know when they are going to be tested, then opportunities for them to use drugs during known testing gaps are reduced. . . . Some testing protocols mistake frequency for thoroughness. Believing that testing three to four times per week (e.g., Monday, Wednesday, Friday) is equally sufficient and effective coverage may be erroneous because it is on a predictable schedule. Courts that relinquish the element of surprise do so at their own risk and may fall victim to creative clients who may find opportunities to subvert the program's objectives."

  Drug testing should occur on weekends and holidays. Despite budget constraints, the program should consider increasing the testing frequency to ensure that participants are not using substances outside of the current drug testing schedule. Suppose weekend or holiday testing does not occur. In that case, this can result in opportunities for participants to use, knowing that a specific number of days will pass before the next possible test. Substances that have shorter detection windows, such as alcohol or cocaine, may then be used without the program's knowledge. Although testing may be difficult to do seven days per week, having the ability to test one day per weekend, and testing one or two weekends per month, would greatly increase the amount of coverage on participants and substantially reduce the amount of time during which participants believe testing will not occur.

  It should be noted that just because a participant assigned to the Monday, Wednesday, and Friday drug test schedule test positive for a particular substance does not mean they need residential treatment. A drug testing schedule is also not a clinical assessment of treatment need in general.

  Standard 9 of Ohio's Specialized Docket Standards sets forth the detailed requirements for substance monitoring, including written policies and procedures for sample collection, sample analysis, and result reporting.

Specific TA Recommendations

It is recommended that the team participate in an adult drug court foundational training that would include the following topics. All of the recommended training can be provided by NDCI**.**

- What is an adult drug court
- Team roles ad responsibilities
- Targeting and eligibility – identifying the drug court population
- Developing the entry process
- Developing alternative tracks
- A Team Members Guide to Effective Drug Court Treatment: A 5 Point Checklist
- Defining treatment and the continuum of care model
- Incentives, Sanctions, and Therapeutic Adjustments
- A Blueprint for Phases
- Community Supervision

Best Practices Table

A table with a list of research-based best practices and whether or not this program has implemented each practice is included as an attachment to this report. Your team should review this list both to understand and appreciate those best practices that have been successfully implemented (to ensure the program continues to engage in those practices) and to determine whether there are any practices not described in this report where the program may want to make improvements in the future.

Recommended Next Steps

The results of this TA review can be used for many purposes, including 1) improvement of program structure and practices for better participant outcomes (the primary purpose), 2) grant applications to demonstrate program needs or illustrate the program's capabilities, and 3) requesting resources from boards of county commissioners or other local groups; 4) Requesting training and TA from NDCI.

- ☐ **Distribute copies of the report** to all members of your team, advisory group, and other key individuals involved with your program.
- ☐ **Set up a meeting** with your team and steering committee, etc., to discuss the report's findings and recommendations. Ask all group members to **read the report** prior to the meeting and **bring ideas and questions**.
- ☐ During the meeting(s), **review each recommendation**, and discuss any questions from the group.
- ☐ Contact NDCI staff Carolyn Hardin at chardin@nadcp.org to develop the next steps.