

# Supreme Court of Kentucky

2006-01

**IN RE: ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE, PART XIII. DRUG COURT**

Pursuant to Sections 110(5)(b) and 116 of the Constitution of Kentucky, it is HEREBY ORDERED that the Administrative Procedures of the court of Justice are amended by the addition of the following Part XIII. Drug Court:

## **DEFINITIONS**

As used in these sections, unless the context otherwise requires:

- (1) "Addiction assessment" means a tool used by drug court staff to evaluate drug use history and drug dependency for purposes of determining whether a defendant will be considered for admission into drug court.
- (2) "Administrative discharge" means the discharge of a participant from drug court due to the participant's inability to complete drug court through no fault of his/her own.
- (3) "Aftercare" means the time period following successful completion of Phase III of the drug court requirements, during which the participant shall demonstrate the ability to maintain a drug-free, alcohol-free and crime-free lifestyle and may continue to receive treatment and other supportive services. For felony drug courts, aftercare is 180 days and for misdemeanor drug courts, a minimum of 90 days.
- (4) "Agreement of Participation" means the written agreement required to be signed by all potential drug court participants prior to the determination of eligibility for drug court.

- (5) "AOC Drug Court General Manager" means the AOC employee appointed by the AOC Director to support drug court, and administer and oversee its funding.
- (6) "AOC" means the Administrative Office of the Courts, the agency authorized by the Kentucky Supreme Court to support drug court and administer and oversee its funding.
- (7) "Approved local diversion procedures" means pretrial diversion procedures authorized by the Kentucky Supreme Court within each judicial circuit.
- (8) "COJ" means the Court of Justice.
- (9) "Drug court" means an alternative sentencing court program authorized by the Kentucky Supreme Court, combining case management, judicial oversight, treatment, and drug testing, including but not limited to, the implementation of curfews, sanctions, and incentives.
- (10) "Drug court graduation" means the public ceremony acknowledging the successful completion of Phases I, II and III of drug court. Aftercare may be required in some drug courts prior to graduation.
- (11) "Drug court judge with jurisdiction" means the drug court judge to whom the entire case is transferred for both drug court proceedings and all further criminal proceedings.
- (12) "Drug court judge" means a judge who, in addition to his/her regular judicial duties, conducts drug court sessions and staffings, monitors and reviews the participant's progress in drug court, imposes sanctions and incentives, and facilitates other components of drug court as identified and required by the AOC, consistent with these rules.
- (13) "Drug court staff" means personnel hired and employed by the AOC Drug Court Department who perform the daily operations of drug court, including but not limited to, providing case management for participants, attending drug court staffings and sessions, and coordinating drug testing.

- (14) “Drug court team” means the non-adversarial group that promotes public safety while acting in the best interest of the public and the participant; and, that determines the appropriate responses for a participant’s compliance or non-compliance with drug court requirements. While the drug court team determines appropriate responses for participant compliance or non-compliance, the drug court judge has the ultimate decision making authority. For adult drug courts, the drug court team is comprised of the drug court judge, drug court staff, law enforcement, prosecutor(s), defense counsel, and treatment provider(s). Optional members with each drug court may be representatives from the office of probation and parole, the circuit court clerk’s office, the community, and other ancillary agencies.
- (15) “Eligible offenses” means drug or drug-related offenses, excluding violent offenses and sexual offenses.
- (16) “Home visit” means the on-site appearance of drug court staff who is accompanied by a law enforcement or probation and parole officer at the participant’s home for the purpose of verifying stable, drug-free housing and/or curfews, among other verifiers.
- (17) “Incentives” means tangible or intangible rewards earned by participants for positive steps taken toward attaining a drug-free, crime-free lifestyle, and may include, but are not limited to, promotion to the next phase, certificates and tokens, decreased supervision, increased privileges and responsibilities, praise from the drug court judge and team, extended curfews, and other individual incentives approved by the drug court team.
- (18) “Involuntary termination” means the termination by the drug court judge of a participant from drug court due to the participant’s non-compliance with drug court’s requirements, rules, or conditions.
- (19) “Justice system case processing” means the manner in which a case is processed within the Kentucky COJ, as reflected in KyCourts II or the current COJ case management system.

- (20) "Notice of eligibility" means the document provided to the sentencing judge following the defendant's addiction assessment wherein a determination of eligibility or ineligibility for admission to drug court has been made.
- (21) "Non-AOC support personnel" means interns and volunteers, including but not limited to, other staff supplied by a city or county office or official not employed by the AOC Drug Court Department who work with the drug court.
- (22) "Phase" means a set of minimum and distinct criteria required of a drug court participant.
- (23) "Recovery program" means a long-term residential program for participants seeking recovery from alcohol or other drugs, which provides a setting for non-medical detoxification and utilizes peer-counseling and other counseling techniques.
- (24) "Referring judge" means the judge who refers a defendant to drug court.
- (25) "Sanctions" means the range of consequences imposed for the participant's failure to comply with the requirements or other conditions of drug court, which are appropriate, consistent and immediately applied. Sanctions may include, but are not limited to, admonishments from the judge, residential drug treatment, community service, phase demotion, increased group sessions, home incarceration, imprisonment in a detention facility, or termination from drug court.
- (26) "Sentencing judge" means the judge who sentences the defendant in the underlying criminal case; he/she may also be the referring judge.
- (27) "Session" means the scheduled appearance of the participant before the drug court judge, during which the progress of the participant is reviewed and discussed, and assignments, verifications, or other requested information is provided to the drug court judge by the participant.

- (28) “Staffings” means meetings held by the drug court team, including the drug court judge, prior to a drug court session, for the purpose of discussing the participants’ progress.
- (29) “Transfer for all further proceedings” means a transfer of the underlying criminal case to the drug court judge for both drug court proceedings and all further criminal proceedings.
- (30) “Transfer for drug court proceedings only” means a transfer of only the drug court component of a case to the drug court judge; upon successful completion or termination from drug court, the case does not remain with the drug court judge, but returns to the referring judge.
- (31) “Treatment provider” means an individual or agency licensed and/or certified to provide the treatment and counseling to drug court participants as specified by the AOC Drug Court Department.
- (32) “Voluntary termination” means the termination by the drug court judge of a participant from drug court, at the participant’s request, but only after a determination has been made that the request was knowingly and voluntarily made.

## **PART I. ADULT CRIMINAL DRUG COURT**

### **Section 1. Key Components of a Drug Court**

All drug court programs shall include the following key components as defined and required by the U. S. Department of Justice, Office of Justice Programs:

- (1) Drug courts shall integrate alcohol and other drug treatment services with justice system case processing;
- (2) Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights;
- (3) Eligible participants are identified early and promptly placed in the drug court program;
- (4) Drug courts provide a continuum of alcohol, drug, and other treatment and rehabilitative services;

- (5) Abstinence is monitored by frequent alcohol and other drug testing;
- (6) A coordinated strategy governs drug court responses to participants' compliance;
- (7) Ongoing judicial interaction with each drug court participant is essential;
- (8) Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;
- (9) Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations; and,
- (10) Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

## **Section 2. Mission Statement**

The mission of the Kentucky Drug Court is to protect public safety and reduce the recidivism rate of drug addicted offenders through an integrated approach that involves court supervision, substance abuse treatment services, education, employment and personal accountability, resulting in positive and long lasting life changes.

## **Section 3. Administrative Office of the Courts to Oversee Drug Court**

The AOC shall support drug courts statewide, and administer and oversee its funding. The AOC shall also be authorized to establish further policies and procedures relating to drug court.

## **Section 4. Drug Court Referral Process**

In those jurisdictions having a drug court, a defendant shall be referred to drug court through one of the following procedures:

- (1) An order of probation. A referral to drug court may be made at any time during probation, including a referral in lieu of revocation. A defendant who is referred to drug court by an order of probation shall have entered a guilty plea or been found guilty of an eligible offense(s). The sentencing judge, upon request

of the attorney for the defendant or another interested party, or, alternatively, sua sponte, may order a defendant to be referred to drug court for a determination of the defendant's eligibility.

(2) An order of diversion. A referral to drug court may be made utilizing approved local diversion procedures but only after an order of diversion has been entered.

(3) An order of contempt of court. Any judge may refer a person charged with contempt of court to drug court in lieu of being incarcerated on the contempt charge, but only after an order of contempt has been entered.

### **Section 5. Eligibility And Assessment**

(1) Upon receipt of a written order of referral from a judge, drug court staff shall determine whether a person is eligible for addiction assessment utilizing the following criteria. The person:

- (a) Shall be eligible for diversion or probation; or, shall have been found in contempt of court; and,
- (b) Shall not have previously graduated or been terminated from a Kentucky adult drug court; and
- (c) Shall not be a "sex offender" as defined by KRS 17.550; and,
- (d) Shall not be a "violent offender" as defined by federal regulation, 28 C.F.R. 93.3, as an offender who either:
  - 1. Is currently charged with or convicted of an offense during the course of which:
    - a. The person carried, possessed, or used a firearm or other dangerous weapon; or
    - b. There occurred the use of force against the person of another; or,
    - c. There occurred the death of or serious bodily injury to any person; without regard to whether proof of any of the elements described herein is required to convict; or,

2. Has previously been convicted of a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

(2) If a defendant is determined to be ineligible for addiction assessment, drug court staff shall inform the referring judge in writing utilizing the form prescribed by the AOC.

(3) If a defendant is determined to be eligible for addiction assessment, drug court staff shall thoroughly explain the drug court process and the agreement of participation to the defendant and request that the defendant sign the agreement of participation on a form prescribed by the AOC, with or without the presence of the defendant's attorney. If a defendant refuses to sign the agreement of participation, drug court staff shall notify the referring judge by utilizing the notice of eligibility form prescribed by the AOC. Refusal by the defendant to sign the agreement of participation shall render him or her ineligible for participation in drug court.

(4) Upon execution of the agreement of participation by the defendant, drug court staff shall complete an addiction assessment on a form prescribed by the AOC. After completing the assessment, drug court staff shall complete a notice of eligibility form on a form prescribed by the AOC. The addiction assessment, the notice of eligibility and any other pertinent information regarding the defendant shall be completed and submitted to the drug court team prior to the defendant's next scheduled court appearance.

### **Section 6. Admissibility into Drug Court**

Upon receipt of the addiction assessment, notice of eligibility and other pertinent information regarding the defendant, the drug court judge and team shall determine whether the person may be admitted into drug court. The drug court team shall provide input into the decision for admission; however, the drug court judge shall have the final decision-making authority over whether to admit an

eligible person into drug court. To determine admissibility, the drug court judge and team shall evaluate the following:

- (1) Current criminal charge(s)/conviction(s);
- (2) Past criminal conviction(s), if any;
- (3) Results of the addiction assessment;
- (4) Information regarding the victim(s), if any;
- (5) Defendant's willingness to participate; and,
- (6) Other relevant information as identified by the drug court judge and team members.

### **Section 7. Transfer of Case to Drug Court**

Upon a determination of admission to drug court, and upon the defendant's acceptance of the offer to enter drug court, the referring judge shall complete an order transferring the case to drug court. The order shall indicate whether the case shall be transferred for all further proceedings or for proceedings relating to drug court only. Cases may be transferred for all further proceedings only when transferred within the same circuit or district. Cases may only be transferred to a different circuit or district pursuant to Section 20 of these rules.

### **Section 8. Drug Court Participant Requirements**

- (1) A Drug Court shall consist of three phases as follows:
  - a. Phase I - stabilization phase;
  - b. Phase II - education phase; and,
  - c. Phase III - self-motivation phase.

Aftercare shall be required upon a drug court participant's completion of all three phases. The three phases shall take a minimum of twelve months to complete. Drug court, including the aftercare component, can be completed in a minimum of eighteen months for felony defendants and fifteen months for misdemeanor defendants.

- (2) Drug court participants shall adhere to the following minimum requirements during each phase as follows:

- (a) For Phase I, the participant shall:
- i. Provide at least three (3) random urine drug/alcohol screens per week;
  - ii. Attend at least three (3) clinical contact hours per week;
  - iii. Attend one court session per week;
  - iv. Obtain and/or maintain court-approved full-time employment, training or education;
  - v. Obtain and/or maintain court-approved housing;
  - vi. Make arrangements for payments of court obligations;
  - vii. Make at least one (1) weekly individual contact with drug court staff;
  - viii. Indicate an initial understanding of substance abuse treatment;
  - ix. Enroll and attend a self-help program, such as a 12-step program; and,
  - x. Remain drug-free for at least 30 consecutive days before consideration for promotion to the next phase.
- (b) For Phase II, the participant shall:
- i. Provide at least two random urine drug/alcohol screens per week;
  - ii. Attend two (2) clinical contact hours per week;
  - iii. Attend one (1) court session every two weeks;
  - iv. Maintain court-approved full-time employment, training or education;
  - v. Maintain court-approved housing;
  - vi. Continue paying court obligations;
  - vii. Make at least one individual contact with drug court staff per week;
  - viii. Indicate an appropriate understanding of recovery principles;
  - ix. Continue to attend self-help programs, such as a 12-step program; and,

- x. Remain drug-free for the final 90 days, consecutively, of this Phase before consideration for promotion to the next Phase.
- (c) For Phase III, the participant shall:
- i. Provide at least one random urine/drug screen per week;
  - ii. Attend one (1) clinical contact hour per week;
  - iii. Attend one (1) court session every three weeks;
  - iv. Maintain court-approved full-time employment, training or education;
  - v. Maintain court-approved housing;
  - vi. Continue paying court obligations;
  - vii. Make at least one (1) individual contact with drug court staff per week;
  - viii. Indicate an appropriate understanding of a recovery lifestyle;
  - ix. Continue to attend self-help programs, such as a 12-step program; and,
  - x. Remain drug-free for the full 90 days, consecutively, of this Phase, for a total of 180 consecutive days for both Phases II and III.

(3) Each drug court shall establish an aftercare component taking into account the availability of resources and the requirements of the drug court team. Each proposed aftercare component shall be submitted to the AOC Drug Court General Manager for approval no later than 180 days following implementation of drug court in a circuit or district. Within 30 days following the adoption of these Rules of Administrative Procedure, the aftercare components currently in effect in a circuit or district shall be submitted to the AOC Drug Court General Manager for review and approval.

(4) Drug court participants may be ordered to comply with additional requirements, which include, but are not limited to, the following:

- (a) Employment, school, and/or home visits by drug court staff (drug court staff shall be accompanied by a law enforcement officer or a probation and parole officer for any home visit);

- (b) Domestic violence counseling with a certified domestic violence treatment provider, or other types of counseling, as referred by drug court;
  - (c) Curfews as established by drug court; and,
  - (d) Medical and/or mental health referrals and subsequent treatment recommendations.
- (5) Random urine/drug screens: A copy of the urine/drug test results shall be *prima facie* evidence of their validity and content. Any chain of custody shall be waived and the results of the urine/drug tests shall be admissible as evidence in drug court.

### **Section 9. Incentives**

Incentives may be provided during drug court sessions and may include, but are not limited to, promotion to the next phase, certificates and tokens, decreased supervision, increased privileges and responsibilities, praise from the drug court judge and team, extended curfews, and other individual incentives approved by the drug court team.

### **Section 10. Sanctions for Non-compliance with Drug Court Requirements**

Each participant shall comply with the requirements and other conditions established by drug court. Failure to comply may result in the imposition of sanctions upon the participant by the drug court judge. Sanctions may include, but are not limited to, admonishments from the drug court judge, residential drug treatment, community service, phase demotion, increased group treatment, home incarceration, imprisonment in a detention facility, and termination from drug court. Graduated sanctions may be utilized for continuous noncompliance.

### **Section 11. Involuntary Termination from Drug Court**

- (1) The drug court staff or team may make a recommendation to the drug court judge that a participant be terminated from drug court due to the participant's non-compliance with drug court requirements or conditions. If the drug court judge agrees with the recommendation of termination, drug court staff

shall file a written affidavit of violations on a form prescribed by the AOC requesting the judge to terminate the participant from drug court. The participant shall be notified of the termination in the drug court session unless the participant has absconded. A notice of termination shall be signed by the drug court judge on a form prescribed by the AOC; and, a copy of the affidavit of violations shall be attached. Upon signature of the notice of termination by the drug court judge, the case shall be referred back to the appropriate circuit or district for further proceedings. The notice of termination shall be filed in the official record by the circuit court clerk in the receiving court.

(2) In the case of a participant who has absconded for a period of at least ten working days, drug court staff shall complete an affidavit of violations on a form prescribed by the AOC. A notice of termination shall be signed by the drug court judge on a form prescribed by the AOC; and, a copy of the affidavit of violations shall be attached. Upon signature of the notice of termination by the drug court judge, the case shall be referred back to the appropriate circuit or district for further proceedings. The notice of termination shall be filed in the official record by the circuit court clerk in the receiving court.

(3) The receiving judge shall schedule the case for a hearing on a criminal motion docket for further proceedings. The notice of termination and affidavit of violations shall be filed in the official record by the circuit court clerk in the receiving court, who shall serve notice of the notice of termination on the parties, their attorneys, and probation and parole.

(4) Upon involuntary termination, a participant shall be ineligible for further participation in any Kentucky drug court.

## **Section 12. Voluntary Termination**

Participants may petition the drug court judge for termination from drug court. If the drug court judge determines that the request is knowingly and voluntarily made, the drug court judge may terminate the participant from drug court on a form prescribed by the AOC and refer the case back to the appropriate circuit or district. The notice of termination shall be filed in the official record by the circuit

court clerk in the receiving court, who shall serve notice of the notice of termination on the parties, their attorneys, and probation and parole. The receiving circuit or district shall schedule a hearing on the criminal motion docket for further proceedings. Upon voluntary termination, the participant shall be ineligible for further participation in any Kentucky drug court.

### **Section 13. Administrative Discharge**

If a drug court participant cannot complete drug court, through no fault of his/her own, he/she may be administratively discharged. If the drug court team determines that administrative discharge is appropriate, the drug court staff shall complete an affidavit of administrative discharge to provide to the drug court judge and the drug court judge shall complete a notice of termination by administrative discharge on a form prescribed by the AOC and refer the case back to the appropriate circuit or district. The notice of termination shall be filed in the official record by the circuit court clerk in the receiving court, who shall serve notice of the notice of termination on the parties, their attorneys, and probation and parole. The receiving circuit or district shall schedule a hearing on the criminal motion docket for further proceedings. An administrative discharge does not make the participant ineligible to return to drug court at a later date.

### **Section 14. Successful Completion of Drug Court**

- (1) A participant shall be determined to have successfully completed drug court after having:
  - (a) Completed all three drug court phases;
  - (b) Completed aftercare;
  - (c) If feasible, paid all restitution owed. If the total restitution amount is too great to be paid in full while in drug court, then a reasonable amount as determined by the drug court team shall be paid prior to being determined to have successfully completed drug court; and,
  - (d) Paid all costs, fines or fees.

Further, there shall be no criminal charges pending against the participant.

(2) Upon successful completion of drug court, the sentencing judge or drug court judge with jurisdiction may:

- (a) Dismiss the underlying charge(s), if the participant was on diversion, but only when restitution, if any, has been paid in full; or,
- (b) Modify probation to be conditionally discharged if the participant was on probation or found in contempt of court, but only when restitution, if any, has been paid in full.

(3) A drug court graduation should be held for an eligible participant within 90 days of successful completion of Phase III of drug court as outlined above, but in no event shall a drug court graduation be held later than 210 days after successful completion of Phase III. Aftercare may be required in some drug courts prior to graduation.

### **Section 15. Drug Court Staffings**

(1) The drug court judge and drug court staff shall attend staffings prior to a drug court session. The prosecutor, defense attorney, and other drug court team members are encouraged to attend these staffings. Drug court staffings shall be confidential and non-team members shall not attend absent extraordinary circumstances. If there is an extraordinary need for a non-team member to attend, upon approval by the drug court judge, the non-team member shall be allowed to attend the staffing, but only after signing a confidentiality agreement.

(2) At drug court staffings, the drug court team shall discuss the following:

- (a) Whether to admit potential participants into drug court;
- (b) Appropriate sanctions for violations by current participants;
- (c) Achievements and phase advancement of participants who will appear at the drug court session; and,
- (d) Other pertinent issues relating to drug court.

### **Section 16. Drug Court Sessions**

A drug court judge shall conduct a drug court session as follows:

- (1) In a single-county circuit or district, one drug court session shall be conducted per week.
- (2) In a multi-county circuit or district, one drug court session should be held per week; however, if weekly sessions are not possible, a drug court judge shall conduct at least two drug court sessions per month. If non-weekly drug court sessions are held, then in any week in which a drug court session is not held, drug court staff shall meet with participants on the same day and time of the week that drug court meets when it is in session.

### **Section 17. Confidentiality**

- (1) Drug court proceedings shall be confidential and all proceedings shall be closed unless otherwise authorized by the drug court judge.
- (2) Documents contained in a participant's drug court case file shall be confidential and shall not be released other than those documents specified in Section 18 of these rules.
- (3) Due to the treatment component of drug court, drug court team members shall sign a confidentiality agreement.
- (4) Drug court team members shall comply with state and federal confidentiality laws regarding treatment information.

### **Section 18. Filing of Drug Court Documents**

Upon utilization of any of the following documents, a copy of such document(s) shall be filed by the drug court staff with the appropriate court clerk for entry into the court record of the underlying criminal offense:

- a. Order referring to drug court;
- b. Drug court notice of eligibility;
- c. Order transferring to drug court;
- d. Affidavit of violations; and,

- e. Orders of termination, graduation, or administrative discharge.

### **Section 19. Collection of Fees**

- (1) A reimbursement fee may be imposed by drug court for treatment services, the cost of a laboratory confirmation of a positive drug test, or other required services. The standards and policies relating to the payment of a reimbursement fee shall be established by the AOC.
- (2) Reimbursement fees shall be in the form of certified checks, cashier's checks or money orders, each of which shall be made payable to the Kentucky State Treasurer. At no time shall drug court staff accept cash from a participant.
- (3) No judge or drug court staff shall collect monies for use for drug court through forfeiture, plea agreements, sanctions, fees, fines or other costs, other than those referred to herein.

### **Section 20. Transfer of Cases Between Drug Courts**

- (1) Request for Transfer

A participant may request the transfer of only his or her drug court proceedings to a drug court in another circuit or district. If the drug court judge and team in the originating drug court approve the transfer request, the originating drug court staff shall initiate the transfer request. Upon a request for transfer for drug court proceedings only, the following procedures shall be utilized:

  - (a) The originating drug court staff shall contact staff in the receiving drug court to determine whether the participant will be accepted.
  - (b) If the receiving drug court judge and team do not agree to accept the participant, the receiving drug court staff shall notify the originating drug court judge.

- (c) If the receiving drug court judge and team agree to accept the participant, the receiving drug court staff shall notify the originating drug court judge and staff of the acceptance. The originating drug court staff or judge shall then contact the originating office of probation and parole to request that a transfer be initiated for the receiving office of probation and parole.
  - (d) The originating drug court judge shall order the transfer of drug court proceedings to the receiving drug court on a form prescribed by the AOC. The originating drug court staff shall send a copy of this transfer order to the receiving drug court staff and to both the originating and receiving offices of probation and parole.
  - (e) The participant shall contact the receiving drug court staff to make an appointment for orientation. This contact shall be made, and the appointment confirmed, in the presence of the originating drug court staff.
  - (f) The sentencing judge or originating drug court judge with jurisdiction shall retain jurisdiction over the underlying criminal case and shall handle all matters outside of the drug court proceedings. The receiving drug court judge shall handle all drug court proceedings, including sanctions for the participant's non-compliance with drug court.
- (2) Documents Required to Transfer a Case
- The originating drug court shall provide the following documents to the receiving drug court prior to the participant's arrival for orientation:
- (a) CourtNet criminal record;
  - (b) Addiction assessment;
  - (c) Pre-sentencing investigation;
  - (d) Initial orders referring and transferring the case to drug court;
  - (e) Notice of eligibility;
  - (f) Individual program plans;
  - (g) Final judgment;

- (h) Orders for restitution, child support, fines, fees, and other orders relating to financial obligations of the participant;
  - (i) Drug screening history;
  - (j) Written summary of participant's history in the originating drug court; and,
  - (k) Order of transfer between drug courts for drug court proceedings only.
- (3) Transfer Confirmation
- The receiving drug court staff shall confirm receipt of the transfer request within three working days, and shall initiate the following actions:
- (a) The receiving drug court staff shall meet with the participant at the previously scheduled time, and report the participant's attendance to the originating drug court.
  - (b) Unless the office of probation and parole has already completed a home visit, the receiving drug court staff shall visit the home of the transferring participant and confirm that it is an approved environment. No home visit shall be made unless and until a law enforcement officer or a probation and parole officer is available to accompany drug court staff to the home visit.
  - (c) Following completion of (a) and (b) above, the receiving drug court shall provide an official acceptance letter to the originating drug court and add the participant to its caseload.
  - (d) Upon receipt of the acceptance letter, the originating drug court shall remove the participant from its caseload.
- (4) Graduation/Termination/Administrative Discharge of a Transferred Participant
- (a) Upon successful completion of all three phases of drug court, the participant may be eligible for graduation; if so, he/she will be a graduate of the receiving drug court rather than the originating drug court.
  - (b) When the transferring participant has successfully met the requirements of drug court, including aftercare, the receiving drug court

staff shall send an official letter to the originating drug court, and to both the originating and receiving offices of probation and parole, acknowledging completion of all requirements. The letter shall include a request that the participant be placed on the docket of the sentencing judge or on the docket of the originating drug court judge with jurisdiction for either conditional discharge or formal dismissal of charges if pursuant to a diversion agreement.

(c) When a transferring participant is not able or fails to meet the requirements of drug court and is administratively discharged or terminated as a result, the receiving drug court staff shall send an official letter to the originating drug court and to both the originating and receiving offices of probation and parole acknowledging administrative discharge or termination, and requesting that the participant be placed on the docket of the sentencing judge or originating drug court judge with jurisdiction for further proceedings.

(d) Upon administrative discharge or termination, the participant shall be determined to have been administratively discharged or terminated from the receiving drug court rather than the originating drug court.

### **Section 21. Student Interns**

The AOC shall maintain a drug court student intern program. The AOC shall establish policies relating to the program and shall have the authority to approve the acceptance of any student intern working in a Kentucky drug court.

### **Section 22. Volunteers**

Volunteers may be permitted to serve in a limited capacity with the drug court. Volunteers shall not have responsibility for any aspect of the participants' supervision, treatment, or one-on-one interactions. All volunteers shall be required to sign a confidentiality agreement. The AOC shall establish policies relating to the use of volunteers.

### **Section 23. Drug Testing**

- (1) Drug testing shall be administered to all drug court participants on a frequent and random basis. Phase I participants shall be tested at least three times per week; Phase II participants shall be tested at least two times per week; and, Phase III participants shall be tested at least one time per week.
- (2) The AOC shall advertise for a vendor(s) to provide drug-testing services for drug court, utilizing policies and specifications as authorized by the AOC.
- (3) All drug court participants shall be required to make daily telephone contact, utilizing a toll-free telephone number, wherein a recording announces phase(s) and times for specimen collections for each individual drug court session.
- (4) Instant, laboratory, and other drug tests supplied by drug court shall be utilized for drug court participants only. Due to the cost of drug testing supplies, inventory of supplies shall be audited on a random basis.
- (5) An adulterated drug test shall be considered a positive drug test.
- (6) Medically supervised detoxification or treatment that will affect drug-testing by drug court staff on a temporary basis may be authorized by the drug court judge. However, medically supervised detoxification or treatment that will affect drug-testing by drug court staff beyond a 6-month period shall not be authorized and shall preclude a participant from initiating or continuing participation in drug court.
- (7) The AOC shall be authorized to establish further policies and procedures relating to drug-testing.

### **Section 24. Treatment Provider**

- (1) State personnel or state agencies shall be utilized for treatment or other needed services.
- (2) If state personnel or a state agency is unable to provide said treatment or other services, or it is not feasible for it to do so, an agency with which a Memorandum of Agreement may be executed shall be utilized for treatment or other needed services.

(3) If an agency with which a Memorandum of Agreement may be executed is unable to provide said treatment or other services, or it is not feasible for it to do so, a personal service contract shall be utilized for obtaining treatment or other needed services.

(4) The AOC shall maintain a list of authorized state providers for said treatment or other services.

(5) All contracts for treatment or other services shall be negotiated by and through the AOC utilizing the approved administrative policies and procedures established for same.

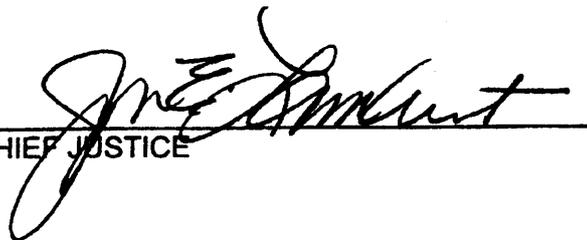
**Section 25. Drug Court Staff**

(1) All drug court staff is employed by the AOC and shall report to the AOC Drug Court General Manager or his or her designee, except for non-AOC support personnel. Such non-AOC support personnel shall be coordinated with the AOC Drug Court General Manager and shall further be subject to policies and procedures relating to drug court operations as established by the AOC. Further, non-AOC support personnel shall sign a confidentiality agreement and shall further comply with state and federal confidentiality laws regarding treatment information.

(2) Any participation in local court proceedings or activities outside of drug court sessions by drug court staff, in their capacity as drug court staff, shall first be authorized by the AOC.

(3) Drug court staff and non-AOC support personnel shall not transport drug court participants at any time.

ENTERED: January 9, 2006.

  
CHIEF JUSTICE