Constitutional and Other Legal Issues in Drug Court:
a webliography
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I. Cases holding that mandating individual to Alcoholics Anonymous/Narcotics Anonymous (AA/NA) is a violation of the First Amendment

Sundquist v. State, 122 F. Supp. 3d 876 (D. Nebraska 2015) (Sundquist may have agreed to participate in A.A. as a term of his probationary license. But that choice — to participate in A.A. or lose his livelihood — may have been the result of state-sponsored coercion rather than a voluntary choice. See *Jackson*, 747 F.3d at 541. At this stage of litigation, it is too early to say that by agreeing, Sundquist has forfeited his claim. In sum, the Court finds that Sundquist has alleged a plausible claim under the Establishment Clause, and that defendants Vierk and Schuldt are not entitled to qualified immunity, because the rights sought to be vindicated implicate firmly grounded Constitutional principles.)
https://scholar.google.com/scholar_case?case=16871371844519358192&q=747+F.+3d+537+&hl=en&as_sdt=4006

Jackson v. Nixon, 747 F. 3d 537 (8th Cir. 2014) (Concluding that based on the allegations in the complaint, Randall Jackson has pled facts sufficient to state a claim that a parole stipulation requiring him to attend and complete a substance abuse program with religious content in order to be eligible for early parole violates the Establishment Clause of the First Amendment.)
https://scholar.google.com/scholar_case?case=4167135450736042917&q=747+F.+3d+537+&hl=en&as_sdt=4006

Hazle v. Crofoot, 727 F.3d 983 (9th Cir. 2013) (noting with approval the granting of summary judgment for plaintiff on his claim that forcing him into a 12 step religious based treatment program, when he was an atheist, was a violation of the First Amendment and granting a new trial on Plaintiffs' request for compensatory damages. Instead of a retrial, the matter was reportedly settled with the state paying $1M and the treatment agency $925K, see http://www.sacbee.com/news/local/crime/article2768782.html)

http://scholar.google.com/scholar_case?case=11927802176043308693&q=+Hazle+v.+Crofoot&hl=en&as_sdt=4006

Hazle v. Crofoot, 2:08-cv-02295-GEB-KJM (E. D. Calif. 4-6-2010) (granting summary judgment for plaintiff on his claim that forcing him into a 12 step religious based treatment program, when he was an atheist, was a violation of the First Amendment) http://lifering.org/another-first-amendment-case-hazle-v-crofoot-2010/

Norton v. Kootenai County, CV09-58-N-EJL (D. Idaho 9-11-2009) (where claimant originally asked to go to facility that used AA, and never notified his probation officer of his religious objection to going to AA meetings, no First Amendment violation) http://scholar.google.com/scholar_case?case=18349691828430296020&q=norton+v.+Kootenai&hl=en&as_sdt=2,6

Thorne v. Hale, No. 1:08cv601 (JCC), 2009 WL 980136 (E.D. Va. 2009) http://scholar.google.com/scholar_case?case=9882479498204455501&q=Thorne+v.+Hale&hl=en&as_sdt=2,6 (holding that a valid § 1983 civil rights claim was presented in the complaint, where the complaint stated that Hale and Killian were to some extent responsible for implementing the treatment regimen which included mandatory participation in AA/NA); Compl. at 15, Thorne v. Hale, No. 1:08cv601 (JCC), 2009 WL 980136 (E.D. Va. Mar. 26, 2009) (claiming that Killian "was responsible for all recommendations to Drug Court for treatment and clinical matters," including "substance abuse issues."); *id.* at 76 (claiming that Thorne was "subjected to the State religions of AA and NA by . . . [the] directors" of the Drug Court and the RACSB); *id.* at 89 (alleging due process deprivations by the "Directors" of the RACSB and the Drug Court). Members of the drug court ultimately prevailed in the *Thorne v. Hale* litigation, when the trial court granted summary judgment on the basis of absolute judicial immunity and dismissed the case. *Id.* The Fourth Circuit affirmed the granting of the summary judgment motion. *Thorne v. Hale*, No. 09-2305, WL1018048 (4th Cir. Mar. 19, 2010) http://scholar.google.com/scholar_case?case=9925630720285928564&q=Thorne+v.+Hale&hl=en&as_sdt=2,6 *Thorne v. Hale* is noteworthy, even in light of the dismissal, because the initial dismissal motion was denied and because, when coupled with *Hanas v. Inner City Christian Outreach*, the authority makes it patently clear that First Amendment violations can have consequences for drug court staff. *Id. Hanas*, 542 F. Supp. 2d at 683.

Hanas v. Inner City Christian Outreach, 542 F. Supp. 2d 683, 683 (E.D. Mich. 2008) (holding that the drug court program manager and the drug court consultant were liable for actions related to referral to faith based program, when they knew of participant's objections while in the program, and when the program denied the participant the opportunity to practice his chosen faith – Catholicism) http://scholar.google.com/scholar_case?case=5458674509981881408&q=542+F.+Supp.+2d+683&hl=en&as_sdt=2,6

Americans United v. Prison Fellowship, 509 F.3d 406, 406 (8th Cir. 2007) (holding that a state supported non-coercive, non-rewarding faith based program violated the Establishment Clause of the U.S. Constitution because an alternative was not available).
http://scholar.google.com/scholar_case?case=16504921941152222 95&q=509+F.3d+406&hl=en&as_sdt=2,6

Inouye v. Kemna, 504 F.3d 705, 705 (9th Cir. 2007) (concluding that parole officer had lost qualified immunity because he forced AA on Buddhist)
http://scholar.google.com/scholar_case?case=6773570865128492755&q=504+F.3d+705&hl=en&as_sdt=2,6

In re Garcia, 24 P.3d 1091, 1091 (Wash. Ct. App. 2001) (given the non-religious classes available to Garcia, we conclude that DOC did not coerce him into participating in a religious program)
http://scholar.google.com/scholar_case?case=2996807561227974850&q=24+p3d+1091&hl=en&as_sdt=2,6

Bausch v. Sumiec, 139 F. Supp. 2d 1029, 1029 (E.D. Wis. 2001) (an offender cannot be said to have freely chosen a religiously-oriented treatment program as an alternative to revocation unless a meaningful secular alternative is also offered)
http://scholar.google.com/scholar_case?case=17450274633821327793&q=139+f+supp+2d+1029&hl=en&as_sdt=2,6

Alexander v. Schenk, 118 F. Supp. 2d 298, 300 n.1 (N.D. NY 2000) (The sincerity of Plaintiff's professed religious beliefs has no bearing on the Constitutional issue of whether Defendants coerced him into participating in religion or its exercise.)
http://scholar.google.com/scholar?hl=en&as_sdt=2%2C6&q=118+F.+Supp.+2d+298&btnG=Search

Yates v. Cunningham, 70 F. Supp. 2d 47, 49 (D.N.H. 1999) (injunctive relief was moot remedy and damages barred by immunity, when defendant sought order barring defendants from conditioning early release or parole on a prisoner's attendance at AA-based programs, and forcing defendants to recognize Rational Recovery as a viable alternative to AA-based programs)
http://scholar.google.com/scholar?hl=en&q=70+F.+Supp.+2d+47&btnG=Search&as_sdt=2%2C6&as_ylo=&as_vis=0

Arnold v. Tenn. Bd. of Trs., 956 S.W. 2d 478, 484 (Tenn. 1997) (mandating a religious based 12 step program without a secular alternative violates the Establishment Clause)
http://scholar.google.com/scholar_case?case=9142022272374642798&q=956+sw+2d+478&hl=en&as_sdt=2,6

Warner v. Orange County Dep't of Prob., 115 F.3d 1068, 1068 (2d Cir. 1997), *aff'd*, 173 F.3d 120 (2d Cir. 1999), *cert. denied*, 528 U.S. 1003 (1999) (holding that the county governmental agency violated the Establishment Clause by requiring DUI probationer to participate in A.A.)

http://scholar.google.com/scholar_case?case=17331435830841493108&q=115+f3d+1068&hl=en&as_sdt=2,6

Warburton v. Underwood, 2 F. Supp. 2d 306, 316-318 (W.D.N.Y 1998) (The emphasis placed on God, spirituality and faith in a "higher power" by twelve-step programs such as A.A. or N.A. clearly supports a determination that the underlying basis of these programs is religious and that participation in such programs constitutes a religious exercise. It is an inescapable conclusion that coerced attendance at such programs therefore violates the Establishment Clause.)
http://scholar.google.com/scholar_case?case=5059904284110410724&q=2+F.+Supp.+2d+306&hl=en&as_sdt=2,6

Griffin v. Coughlin, 673 N.E.2d 98, 98 (N.Y. 1996), *cert. denied*, 519 U.S. 1054 (1997) (holding that conditioning desirable privilege – family visitation – on prisoner's participation in program that incorporated Alcoholics Anonymous doctrine was unconstitutional because it violated the Establishment Clause)
http://scholar.google.com/scholar_case?case=2268165578140839775&q=673+ne2d+98&hl=en&as_sdt=2,6

Kerr v. Farrey, 95 F.3d 472, 479-80 (7th Cir. 1996) (holding that the prison violated the Establishment Clause by requiring attendance at Narcotics Anonymous meetings which used "God" in its treatment approach)
http://scholar.google.com/scholar_case?case=17688666629648849733&q=95+f3d+472&hl=en&as_sdt=2,6

II. Cases discussing providing a secular alternative as an option will validate a referral to religious based programs like AA/NA as a component of treatment

Americans United v. Prison Fellowship, 509 F.3d 406, 406 (8th Cir. 2007) (holding that a state supported non-coercive, non-rewarding faith based program violated the Establishment Clause of the U.S. Constitution because an alternative was not available).
http://scholar.google.com/scholar_case?case=16504921941152222295&q=509+F.3d+406&hl=en&as_sdt=2,6

Turner v. Hickman, 342 F. Supp.2d 887 (E. D. Calif. 9-30-2004) (granting injunction in prisoners favor, which removed any non-compliance with NA from his record and required secular option, even though secular alternative now available because without injunction "it would leave defendants free to return to their old ways.")
http://scholar.google.com/scholar_case?case=16036211204263324049&q=342+F.+Supp.2d+887+&hl=en&as_sdt=2,6

Freedom from Religion Foundation, Inc. v. McCallum, No. 00-C-617-C (W. D. Wis. 2002) (no First Amendment violation, when secular alternative available)
http://scholar.google.com/scholar_case?case=3528166872035728027&q=Freedom+from+Religious+Foundation+v.+McCallum&hl=en&as_sdt=2,6

In re Garcia, 24 P.3d 1091, 1093 (Wash. Ct. App. 2001) (holding that mandating attendance AA/NA classes does violate the Establishment Clause. But where, as here, alternative classes without religious-based content are provided, there is no constitutional violation.)
http://scholar.google.com/scholar_case?case=2996807561227974850&q=24+p3d+1091&hl=en&as_sdt=2,6

O'Connor v. California, 855 F. Supp. 303, 308 (C.D. Cal. 1994) (finding that the Establishment Clause was not violated because the DUI probationer had several choices of programs, including self-help programs that are not premised on monotheistic deity)
http://scholar.google.com/scholar_case?case=4837802521823530663&q=855+F+Supp+303&hl=en&as_sdt=2,6

III. Cases holding that attendance at AA/NA does not establish a cleric-congregant relationship subject to protection by an evidentiary privilege

Cox v. Miller, 296 F.3d 89, 89 (2d Cir. 2002) (holding that a confession to murder in an AA meeting was not protected by cleric-congregant privilege, despite 5th step requiring participant to admit to God, other human beings, and themselves the exact nature of their wrongs).
http://scholar.google.com/scholar_case?case=16388801987438325 46&q=296+f.3d+89&hl=en&as_sdt=2,6

U.S. v. Schwensow, 151 F.3d 650 (7th Cir. 1998) (AA volunteer phone operators, were not counselors or therapists)
http://scholar.google.com/scholar_case?case=18404562741141638 04&q=151+F.3d+650+&hl=en&as_sdt=2,6

State v. Boobar, 637 A.2d 1162 (Me. 1994) (under Maine evidentiary privilege statute, therapist-patient privilege not apply to AA peer group sessions)
http://scholar.google.com/scholar_case?case=10544480860195650665&q=637+A.2d+1162+&hl=en&as_sdt=2,6

IV. Cases holding that place restrictions on the drug court participant are constitutional, when reasonably related to rehabilitative needs.

State v. Klie, 174 P.3d 358 (Hawaii 2007) (supporting a prohibition against entering Waikiki area)
http://scholar.google.com/scholar_case?case=13951758958137159 75&q=174+P.3d+358+&hl=en&as_sdt=2,6

People v. Rizzo, 842 N.E.2d 727, 727 (Ill. App. Ct. 2005) (factors often used in determining whether the restriction is reasonable include whether the defendant has a compelling need to go through/to the area; a mechanism for supervised entry into the area; the geographic size of the restricted area, and the relationship between the restriction and the rehabilitation needs of the offender.)
http://scholar.google.com/scholar_case?case=16907582701113798578&q=842+N.E.2d+727&hl=en&as_sdt=2,6

State v. Wright, 739 N.E.2d 1172, 1172 (Ohio Ct. App. 2000) (reversing prohibition of entering any place where alcohol is distributed, served, consumed, given away, or sold because it restricted the defendant from grocery stores and the vast majority of all residences)
http://scholar.google.com/scholar_case?case=14175778422370973989&q=739+N.E.2d+1172&hl=en&as_sdt=2,6

Johnson v. State, 547 So. 2d 1048, 1048 (Fla. Dist. Ct. App. 1989) (prohibiting defendant from being near high drug areas)
http://scholar.google.com/scholar_case?case=10772295071446563 36&q=547+So.+2d+1048&hl=en&as_sdt=2,6

People v. Pickens, 542 N.E.2d 1253, 1253 (Ill. App. Ct. 1989) (prohibition against entering town of Champaign, Ill. reasonably related to rehabilitation)
http://scholar.google.com/scholar_case?case=18256720868183093258&q=542+N.E.2d+1253&hl=en&as_sdt=2,6

People v. Beach, 195 Cal. Rptr. 381, 385 (Cal. Ct. App. 1983) (holding unconstitutional defendant's banishment from the community where she has lived for the last 24 years)
http://scholar.google.com/scholar_case?case=11210170199089986765&q=195+Cal.+Rptr.+381&hl=en&as_sdt=2,6

Oyoghok v. Municipality of Anchorage, 641 P.2d 1267, 1267 (Alaska Ct. App. 1982) (conditioning probation on not being within a two block radius in an area where red light area existed)
http://scholar.google.com/scholar_case?case=17835708344206218711&q=641+P.2d+1267&hl=en&as_sdt=2,6

State v. Morgan, 389 So. 2d 364, 364 (La. 1980) (prohibiting entrance into the French Quarter)
http://scholar.google.com/scholar_case?case=18412931191564067908&q=389+So.+2d+364&hl=en&as_sdt=2,6

V. Cases finding association restrictions constitutionally permissible, when reasonable related to rehabilitative needs of the offender

People v. Amparan, No. F064011, Court of Appeals of California, Fifth District, Filed July 1, 2013. NOT SELECTED (probation terms in drug court, including association restrictions were not unconstitutionally vague)
http://scholar.google.com/scholar_case?case=7927684534390405129&q=People+v.+Amparan&hl=en&as_sdt=4006&as_ylo=2012

Malone v. State 2012 Ark. App. 280, (Opinion Delivered April 25, 2012) (The court said Malone had previously been afforded leniency and ordered to drug court. As a condition of that sentence she was prohibited from consorting with felons. However, as the trial court noted, after completing the alternative program, she once again involved herself with known felons, such as Sparks. The court then concluded that because "she put herself back in a position to be involved with people that she was already trained and educated on through Drug Court not to be with . . . she does not earn the right to get a probationary sentence.)
http://scholar.google.com/scholar_case?case=11217054474686359874&q=malone+v.+state&hl=en&as_sdt=2,6&as_ylo=2011

In the Interest of C.K., Case No. 2D12-633, District Court of Appeal of Florida, Second District (Opinion filed May 4, 2012)(failure to give notice of FDTC hearing which limited parental contact was a due process violation)
http://scholar.google.com/scholar_case?case=3238082331107867402&q=in+the+interest+of+c.k.+&hl=en&as_sdt=2,6&as_ylo=2011

U.S. v. Burroughs, 613 F.3d 233 (D.C. Cir. 2010) (incidental or non-intentional contact not prohibited)
http://scholar.google.com/scholar_case?case=599722183776122879&q=613+F.+3d+233&hl=en&as_sdt=2,6

State v. Allen, 370 S.C. 88, 634 S.E.2d 653 (2006) (probation condition prohibiting association with a person with a criminal record, courts generally have upheld such a condition on the ground it is related to the crime for which the offender was convicted, is intended to prevent future criminal conduct, or bears a reasonable relationship to an offender's rehabilitation.)

http://scholar.google.com/scholar_case?case=18852229606917370 80&q=634+SE2d+653&hl=en&as_sdt=2,6

State v. Hearn, 128 P.3d 139, 139 (Wash. Ct. App. 2006) (prohibiting the association with drug users or dealers is constitutional)
http://scholar.google.com/scholar_case?case=16161245602456155 24&q=128+P.3d+139&hl=en&as_sdt=2,6

Andrews v. State, 623 S.E.2d 247, 247 (Ga. Ct. App. 2005) (restricting drug court participant from associating with drug users and dealers)
http://scholar.google.com/scholar_case?case=52059521924261630 45&q=623+S.E.2d+247&hl=en&as_sdt=2,6

People v. Jungers, 25 Cal. Rptr. 3d 873, 873 (Cal. Ct. App. 2005) (prohibiting contact with wife)
http://scholar.google.com/scholar_case?case=15954520665729455455&q=25+Cal.+Rptr.+3d+873&hl=en&as_sdt=2,6

Commonwealth v. LaPointe, 759 N.E.2d 294, 294 (Mass. 2001) (could not reside with minor children)
http://scholar.google.com/scholar_case?case=15524343799341747754&q=759+N.E.2d+294&hl=en&as_sdt=2,6

People v. Forsythe, 43 P.3d 652, 652 (Colo. App. Ct. 2001) (prohibiting unsupervised contact with his own children)
http://scholar.google.com/scholar_case?case=14003547176721631980&q=43+P.3d+652&hl=en&as_sdt=2,6

Jones v. State, 41 P.3d 1247, 1247 (Wyo. 2001) (prohibiting contact with persons of disreputable character)
http://scholar.google.com/scholar_case?case=6188025760707692673&q=41+P.3d+1247&hl=en&as_sdt=2,6

Dawson v. State, 894 P.2d 672, 672 (Alaska Ct. App. 1995) (holding the restriction of unsupervised contact with drug using wife was too broad)
http://scholar.google.com/scholar_case?case=16436654163384621832&q=894+P.2d+672&hl=en&as_sdt=2,6

Birzon v. King, 469 F.2d 1241, 1242 (2d Cir. 1972) (cannot associate with persons who have criminal records)
http://scholar.google.com/scholar_case?case=6547241192210409724&q=469+F.2d+1241&hl=en&as_sdt=2,6

VI. Cases holding search waivers constitutional, when person is convicted or a probationer, but search waivers for individuals on bond are of questionable validity

US v. Laurent, 861 F. Supp. 2d 71 (ED New York 2011) (collecting cases where an indictee may also be subject to pre-trial release conditions that infringe upon his constitutional rights, provided that there has been an independent judicial determination that such conditions are necessary.)
https://scholar.google.com/scholar_case?case=16120120759376631462&q=450+F.3d+863&hl=en&as_sdt=4006

Sanders v. Bishop, 1:06-cv-01264 OWW GSA (E .D. Calif. 12-29-2008) (collecting cases reflecting search waivers permissible in probation and parolee cases)
https://casetext.com/case/sanders-v-bishop-2

Butler v. Kato, 154 P.3d 259, 259 (Wash. Ct. App. 2007) (following United States v. Scott, 450 F.3d 863, 863 (9th Cir. 2006) (concluding that a search waiver is probably improper when a person is on bond))
http://scholar.google.com/scholar_case?case=15344871443403158607&q=154+P.3d+259&hl=en&as_sdt=2,6

Samson v. California, 547 U.S. 847, 847 (2006) (holding consent to search by parolee negated necessity of establishing reasonable suspicion, but search could not be for harassment)
http://scholar.google.com/scholar_case?case=17220659428349538 66&q=547+US+843&hl=en&as_sdt=2,6

State v. Kouba, 709 N.W. 2d 299, 299 (Minn. Ct. App. 2006) (recognizing that a waiver is sufficient in probation cases)
http://scholar.google.com/scholar_case?case=6867446763890264530&q=709+nw2d+299&hl=en&as_sdt=2,6

United States v. Scott, 450 F.3d 863, 863 (9th Cir. 2006) (concluding that a search waiver is probably improper when a person is on bond)
http://scholar.google.com/scholar_case?case=17249677936936962934&q=450+F.3d+863&hl=en&as_sdt=2,6

State v. McAuliffe, 125 P.3d 276, 276 (Wyo. 2005) (recognizing complete waiver, but search must be reasonable)
http://scholar.google.com/scholar_case?case=19301189800031089 97&q=125+P.3d+276&hl=en&as_sdt=2,6

State *ex rel.* A.C.C., 44 P.3d 708, 708 (Utah 2002) (recognizing waiver in juvenile case, but limited case to the facts)
http://scholar.google.com/scholar_case?case=36329372684923351 49&q=44+P.3d+708&hl=en&as_sdt=2,6

State v. Ullring, 741 A.2d 1065, 1065 (Me. 1999) (holding that a search waiver as a condition of bond is constitutional)
http://scholar.google.com/scholar_case?case=10662697661772089280&q=741+A.2d+1065&hl=en&as_sdt=2,6

Terry v. Superior Court, 86 Cal. Rptr. 2d 653, 653 (Cal. Ct. App. 1999) (holding that a 4th Amendment waiver is an improper condition in diversion case, without statutory authority)
http://scholar.google.com/scholar_case?case=16317550683045148909&q=86+Cal.+Rptr.+2d+653&hl=en&as_sdt=2,6

In re York, 40 Cal. Rptr. 2d 308, 308 (Cal. 1995) (4th Amendment waiver is an improper condition in diversion case, without statutory authority)
http://scholar.google.com/scholar_case?case=5597993191794072232&q=40+Cal.+Rptr.+2d+308&hl=en&as_sdt=2,6

VII. Cases holding that terms of bond or terms of probation which include non consumption of alcohol or mandatory drug testing are proper, when related to defendant's rehabilitation, protection of the public or assuring defendant appearance in court.

US v. Laurent, 861 F. Supp. 2d 71 (ED New York 2011) (collecting cases where an indictee may also be subject to pre-trial release conditions that infringe upon his constitutional rights, provided that there has been an independent judicial determination that such conditions are necessary.)
https://scholar.google.com/scholar_case?case=16120120759376631462&q=450+F.3d+863&hl=en&as_sdt=4006

Idaho v. Doe, 233 P.3d 1275 (Idaho 2010) (Requiring parents to undergo drug testing as part of daughter's juvenile probation is a violation of the parent's 4th Amendment rights)
http://scholar.google.com/scholar_case?case=17810226680105918166&q=233+P.3d+1275+&hl=en&as_sdt=2,6&as_ylo=2010

Strickland v. State, 300 Ga. App. 898, 686 S.E.2d 486 (2009) (Restrictions placed on Strickland's driving privileges and the requirements that she install an ignition interlock device in her vehicle and submit to a DUI court evaluation are not punishment. Considering Strickland's three prior convictions for driving while under the influence, these measures are rationally related to an alternative purpose as they are designed to prevent Strickland from being a danger to the community by committing future acts of driving under the influence while she was awaiting trial.)
http://scholar.google.com/scholar_case?case=17920401401836155O&q=686+S.E.2d+486++&hl=en&as_sdt=2,6

United States v. Jordan, 485 F.3d 982, 982 (7th Cir. 2007) (holding that alcohol use restrictions as part of supervised release should be based upon need).
http://scholar.google.com/scholar_case?case=10009141278686589 24&q=485+F.3d+982&hl=en&as_sdt=2,6

United States v. Scott, 450 F.3d 863, 863 (9th Cir. 2006) (Government did not demonstrate a pattern of "drug use leading to nonappearance" in court, nor point to an individualized determination that Scott's drug use was likely to lead to his nonappearance, thus drug testing as a condition of bond inappropriate)
http://scholar.google.com/scholar_case?case=17249677936936962934&q=450+F.3d+863&hl=en&as_sdt=2,6

Payne v. State, 615 S.E. 2d 564, 564 (Ga. Ct. App. 2005) (no alcohol as condition of probation upheld)
http://scholar.google.com/scholar_case?case=15841504885106944066&q=615+S.E.+2d+564&hl=en&as_sdt=2,6

State v. Patton, 119 P.3d 250, 250 (Ore. Ct. App. 2005) (non consumption of alcohol as term of probation must be based on demonstrated need—here not met)
http://scholar.google.com/scholar_case?case=4341407262452124117&q=119+P.3d+250&hl=en&as_sdt=2,6

State v. Jakubowski, 822 A.2d 1193 (Maine 2003) (Requiring drug court as condition of post-conviction bond is statutorily permissible)
http://scholar.google.com/scholar_case?case=14185944122907253400&q=jakubowski&hl=en&as_sdt=4,20

Commonwealth v. Williams, 801 N.E. 2d 804, 804 (Mass. App. Ct. 2004) (The judge at a probation surrender hearing could lawfully impose as a condition of probation that the defendant not consume or possess any alcohol during the term of his probation, where the condition was reasonably related to the goals of sentencing and probation.)
http://scholar.google.com/scholar_case?case=17136605954479821616&q=60+Mass.+App.+Ct.+331&hl=en&as_sdt=2,6

Steiner v. State, 763 N.E. 2d 1024, 1024 (Ind. Ct. App. 2002) (Trial court must make an individualized determination that the accused is likely to use drugs while on bail before it is reasonable to place restrictions on the individual based on that contingency.)
http://scholar.google.com/scholar_case?case=3185681085113932020&q=763+N.E.+2d+1024&hl=en&as_sdt=2,6

Carswell v. State, 721 N.E.2d 1255, 1255 (Ind. Ct. App. 1999) (alcohol prohibition based upon rehabilitation needs of offender)
http://scholar.google.com/scholar_case?case=5394307604850318105&q=721+N.E.2d+1255&hl=en&as_sdt=2,6

People v. Beal, 70 Cal. Rptr. 2d 80, 80 (Cal. Ct. App. 1997) ("Based on the relationship between alcohol and drug use, we conclude that substance abuse is reasonably related to the underlying crime and that alcohol use may lead to future criminality where the defendant has a history of substance abuse and is convicted of a drug-related offense." Thus, use of alcohol prohibition proper probation condition.)
http://scholar.google.com/scholar_case?case=5803711455835558205&q=70+Cal.+Rptr.+2d+80&hl=en&as_sdt=2,6

Oliver v. U.S., 682 A.2d 186, 192 (D.C. Cir. 1996) (upholding drug testing conditions)
http://scholar.google.com/scholar_case?case=8854569729931380371&q=682+A.2d+186&hl=en&as_sdt=2,6

Martell v. County Court, 854 P.2d 1327, 1327 (Colo. Ct. App. 1992) (holding that if a condition of bail is to refrain from the use of alcohol or drugs, supervision may include drug or alcohol testing)
http://scholar.google.com/scholar_case?case=8210509155482599900&q=854+P.2d+1327&hl=en&as_sdt=2,6

Berry v. Dist. of Columbia, 833 F.2d 1031, 1035 (D.C. Cir. 1987) (If the trial court finds that drug testing and treatment are only required when there is an individualized determination that an arrestee will use drugs while released pending trial, then the District's testing program will more likely than not be found reasonable. Individualized suspicion should be based on evidence of prior drug use, such as drug-related convictions or self-reported drug use.)
http://scholar.google.com/scholar_case?case=8918620314307081176&q=833+F.2d+1031&hl=en&as_sdt=2,6

VIII. Knowing and intelligent waivers of statutory and constitutional rights, including the right to appeal, to accede to a stipulated fact trial, provide search waivers or right to recuse the judge can be proper terms of drug court entry.

State v. Lepianka, Not Selected for Official Publication (N.J. Super. App. Div., 2015) (Failure to fully advise as to deportation consequences does not constitute a knowing and intelligent waiver)
https://scholar.google.com/scholar_case?case=7401659282859098783&hl=en&lr=lang_en&as_sdt=40006&as_vis=1&oi=scholaralrt

State v, Fleming, 774 SE 2d 594 (Georgia 6/29/15) (neither by agreement or statute is defendant entitled to credit on her sentence for time spent in drug court)
https://scholar.google.com/scholar_case?case=15418254017212920731&q=State+v,+Fleming,&hl=en&as_sdt=4,11&as_ylo=2015

People v. McCaslin, 2014 IL App (2d) 130571 NOT SELECTED FOR PUBLICATION (Ill. App. 12-11-2014) (Defendant waived his right to appeal as part of entry to drug court, so appeal from termination from drug court dismissed)
http://scholar.google.com/scholar_case?case=2488113690728503205&q=PEOPLE+v.+McCASLIN,+&hl=en&as_sdt=4,14&as_ylo=2014

State v, Fox, 2013 S.D. 40 (2013) (an agreement in which a defendant gives up his right to voluntarily enter a plea of his or her choice as a condition of participating in a diversion drug court is unenforceable.)
http://scholar.google.com/scholar_case?case=17593126924461118634&q=2013+S.D.+40+&hl=en&as_sdt=4006&as_ylo=2013

Perry v. State, No. 39A01-1312-CR-517. (Ind. App. 2014) (Person in drug court on electronic home monitor not entitled to credit for time served while on monitor)
http://scholar.google.com/scholar_case?case=14936439008697572626&q=%22drug+court%22&hl=en&as_sdt=4006&as_ylo=2014

State v. Hewson, 178 Wn. App. 1043 (2014) (Due process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. A defendant in drug court who agrees to have his guilt determined based on documentary evidence does not waive his right to have that determination established beyond a reasonable doubt, but such proof can be established by documentary evidence.)

http://scholar.google.com/scholar_case?case=14864113986346750810&q=state+v.+hewson&hl=en&as_sdt=4,247,248

State v. Calvin, 839 NW 2d 181 (Iowa 2013) (Accordingly, we remand the case to the district court to modify its sentencing order to grant Calvin credit for time served in residential treatment at the IRTC and in the county jail as punishment for violations of the drug court program, but not for time served in the county jail for contempt.)

https://scholar.google.com/scholar_case?case=9370445764810836636&q=State+v.+Calvin,+12-0618+&hl=en&as_sdt=4006

People v. Brignolle, 2013 NY Slip Op 23330, 971 N.Y.S.2d 866 (10-1-2013) (Court permits entry into diversion drug court, without entry of plea, because of potential deportation consequences)

http://scholar.google.com/scholar_case?case=3930779160877520989&q=brignolle&hl=en&as_sdt=4,33

People v. Ramirez, No. C071056. Court of Appeals of California, Third District, Lassen, Filed June 18, 2013. NOT SELECTED (waiver of pre-sentence confinement credit consisting of sanction jail time imposed in drug court was knowing and voluntary)
http://scholar.google.com/scholar_case?case=6061127280995073507&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

State v. Orlando, 2013-Ohio-2335 (Ohio App. 6-6-2013) (plea agreement was violated when defendant not granted drug court, as offered by prosecutor as a plea inducement)
http://scholar.google.com/scholar_case?case=12903254065513948331&q=2013-Ohio-2335+&hl=en&as_sdt=4006

State v. Washington, Iowa Supreme Court (6/7/2013), (When the district court asks the defendant a question at sentencing and then imposes an adverse sentencing consequence unrelated to any legitimate penological purpose of the inquiry because the defendant invoked his Fifth Amendment rights, the defendant has been improperly penalized.)
http://scholar.google.com/scholar_case?case=10682793435505243951&q=Kenneth+washington+&hl=en&as_sdt=4,16

Missouri v. Frye, 132 S. Ct. 1399, 566 US __, 182 L. Ed. 2d 379 (U.S. 3-21-2012) (To show prejudice, under Strickland v. Washington, where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability both that they would have accepted the more favorable plea offer had they been afforded effective assistance of counsel and that the plea would have been entered without the prosecution's canceling it or the trial court's refusing to accept it, if they had the authority to exercise that discretion under state law.)

http://www.supremecourt.gov/opinions/11pdf/10-444.pdf

Padilla v. Kentucky, 559 U.S. ____, 130 S. Ct. 1473 (2010) (not informing defendant of possible deportation consequences is a potential ineffective assistance of counsel issue under Strickland v. Washington)
http://scholar.google.com/scholar_case?case=16837631125059475725&q=PADILLA+v.+KENTUCKY&hl=en&as_sdt=2,6

Stearns, T. "Examining the Consequences of a Conviction After Padilla v. Kentucky and State v. Sandoval" SEATTLE JOURNAL FOR SOCIAL JUSTICE, Vol. 9, Issue 2 (2011)
http://www.law.seattleu.edu/Documents/sjsj/2011spring/Stearns.pdf

People v. Andrews, 2011 NY Slip Op 31216 (NY: Supreme Court 4/21/2011-unpublished) (Padilla not retroactive and defendant not establish that but for counsel's deficient performance a different result would have occurred)
http://scholar.google.com/scholar_case?case=14222768588421686699&q=2011+NY+Slip+Op+31216&hl=en&as_sdt=2,10

U.S. v. Carrion, 488 F. 2d 12 (1st Cir 1973) (In entering a guilty plea: "The right to an interpreter rests most fundamentally, however, on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment")
http://scholar.google.com/scholar_case?case=13087475945315073 23&q=488+F.+2d+12+&hl=en&as_sdt=4006

Maxwell Alan Miller, et al., Finding Justice in Translation: American Jurisprudence Affecting Due Process for People With Limited English Proficiency Together With Practical Suggestions, 14 Harv. Latino L. Rev. 117 (2011)

John A. Martin, et al., What Does the Intersection of Language, Culture, and Immigration Status Mean for Limited English Proficiency Assistance in the State Courts?, Center for Public Policy Studies (Oct. 2012)

Zumberge v. State, 236 P. 3d 1028 (Wyo. 2020) (Court must accommodate hearing impairment where brought to attention of the court or obvious.)
http://scholar.google.com/scholar_case?case=17134888756030809152&q=236+P.+3d+1028++&hl=en&as_sdt=4006

People v. Huggins, (not published) (Calif. 4th App. Dist. 9/30/11) (Defendant waived the benefits of Prop. 36 by his guilty plea and waived incarceration credits received for sanction as deduction from his sentence upon revocation)

People v. Barker, (Court of Appeals of California, First District) (August 31, 2011) (not selected for publication) (The record clearly establishes that a condition of Barker's felony probation was participation in drug treatment as ordered by the probation department, regardless of whether this was also a condition of diversion in his separate misdemeanor case or cases. Thus, the time Barker spent in treatment as a condition of his probation in this felony case qualified for credit against his felony sentence unless that credit is otherwise prohibited.)
http://scholar.google.com/scholar_case?case=11867520615768536623&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt&ct=alrt&cd=2

State v. Drum, 225 P.3d 237, 237 (Wash. 2010) (holding that a drug court contract was not equivalent to a guilty plea, but more akin to a deferred prosecution, and that a court must still make a determination of the legal sufficiency of the evidence to convict, irrespective of stipulation by the parties)
http://scholar.google.com/scholar_case?case=11067924550223522959&q=state+v.+drum&hl=en&as_sdt=2,6

State v. Dimaggio, No. 2011-156, Supreme Court of New Hampshire (April 10, 2012) (drug court program was neither a day reporting center nor home confinement –therefore defendant not entitled to credit for all time in drug ct program, although he was entitled to jail days imposed as sanctions for non-compliance)
http://scholar.google.com/scholar_case?case=18127903474312515265&q=state+v+dimaggio&hl=en&as_sdt=2,6&as_ylo=2011

House v. State, 901 N.E.2d 598 (Ind. Ct. App. Feb. 2, 2009) (defendant may waive the right to credit time as part of a written drug court agreement)
http://scholar.google.com/scholar_case?case=5401919562924145701&q=901+N.E.2d+598+&hl=en&as_sdt=2,6

People v. Black, 176 Cal. App. 4th 145 (2009) (holding that the defendant waived pre drug court incarceration credit to enter drug court program)
http://scholar.google.com/scholar_case?case=17703845735546858485&q=176+Cal.App.4th+145+&hl=en&as_sdt=2,6

Commonwealth v. Fowler, 930 A.2d 586, 586 (Pa. 2007) (holding that because defendant voluntarily entered program, he was not entitled to pre-sentence credit for time spent in inpatient program)
http://scholar.google.com/scholar_case?case=10913321852532383580&q=930+A.2d+586&hl=en&as_sdt=2,6

Commonwealth v. Gaddie, 239 S.W.3d 59, 59 (Ky. 2007) (holding that the court did not have jurisdiction to increase suspended sentence from 180 days to 1 year, even though the defendant agreed to modification in order to enter drug court)
http://scholar.google.com/scholar_case?case=15129951583560838491&q=239+S.W.3d+59&hl=en&as_sdt=2,6

Laxton v. State, 256 S.W. 3d 518, 518 (Ark. Ct. App. 2007) (holding that drug court participant was not entitled to "sanction" jail time as credit because such credit was not included in the contract)
http://scholar.google.com/scholar_case?case=16796061654080227047&q=256+S.W.+3d+518&hl=en&as_sdt=2,6

Louis v. State, 994 So.2d 1190, 1190 (Fla. Dist. Ct. App. 2007) (determining whether there was ineffective assistance of counsel for not advising client of drug court)
http://scholar.google.com/scholar_case?case=17836792021192447555&q=994+So.2d+1190&hl=en&as_sdt=2,6

People v. Conway, 845 N.Y.S.2d 545, 545 (N.Y. App. Div. 2007) (addressing the waiver of appeal).
http://scholar.google.com/scholar_case?case=18157854041859373096&q=845+N.Y.S.2d+545&hl=en&as_sdt=2,6

People v. Byrnes, 813 N.Y.S. 2d 924, 924 (N.Y. App. Div. 2006) (waiver of right to appeal)
http://scholar.google.com/scholar_case?case=13243565773349794334&q=813+N.Y.S.+2d+924&hl=en&as_sdt=2,6

State v. Colquitt, 137 P. 3d 892, 892 (Wash. Ct. App. 2006) (in a stipulated fact trial, prosecution must still prove the charged elements beyond a reasonable doubt)
http://scholar.google.com/scholar_case?case=42746612378677806 97&q=137+P.+3d+892&hl=en&as_sdt=2,6

State v. Jones, 131 Wash. App. 1021, 1021 (Wash. Ct. App. 2006) (addressing a search waiver)
http://www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=bdjcdj&searchTerm=eKeL.eLZa.aadj.edEc&searchFlag=y&l1loc=FCLOW

State v. Melick, 129 P.3d 816, 816 (Wash. Ct. App. 2006) (waiver that permitted a stipulated fact trial)
http://scholar.google.com/scholar_case?case=7254395478518791758&q=129+P.3d+816&hl=en&as_sdt=2,6

Wilkinson v. State, 641 S.E.2d 189, 189 (Ga. Ct. App. 2006). (As part of her drug court contract the defendant waived her ability to contest a search and move for recusal of the drug court judge.)
http://scholar.google.com/scholar_case?case=8885167188246864611&q=641+S.E.2d+189&hl=en&as_sdt=2,6

People v. Anderson, 833 N.E.2d 390, 394-95 (Ill. App. 2005) (defendant agreed not only to the substance of the evidence but to its sufficiency as well. Because a stipulation to the sufficiency of the evidence is tantamount to a guilty plea and the defendant needed to be properly advised)
http://scholar.google.com/scholar_case?case=12870013841436880117&q=833+N.E.2d+390&hl=en&as_sdt=2,6

State v. Bellville, 705 N.W.2d 506, 506 (Iowa Ct. App. 2005) (holding that the defendant must know he has the right and is surrendering the right to appeal before it can be said that he waived the right to appeal)
http://scholar.google.com/scholar_case?case=8104022691962493291&q=state+v.+bellville&hl=en&as_sdt=2,6

Wall v. State, No. 212, 2005 Del. LEXIS 17 (Del. 2005) (waiver of right to appeal)
http://courts.delaware.gov/opinions/download.aspx?ID=55470

Smith v. State, 840 So.2d 404, 404 (Fla. Dist. Ct. 2003) (ineffective assistance of counsel not to inform defendant of drug court as an option)
http://scholar.google.com/scholar_case?case=8458523441787824160&q=840+So.2d+404&hl=en&as_sdt=2,6

Adams v. Peterson, 968 F.2d 835, 835 (9th Cir. 1992) (holding that a showing of a knowing, voluntary and intelligent waiver must be present and that the full Boykin v. Alabama, 395 U.S. 238, 238 (1969) inquiry is not necessary to implement waivers to a stipulated fact trial)
http://scholar.google.com/scholar_case?case=6592191120294148377&q=968+F.2d+835&hl=en&as_sdt=2,6

IX. Generally, termination from drug court requires notice, a hearing and a fair procedure

Neal v. State, 2016 Ark. 287 (Ark. Sup. Ct. 6/30/16) (Citing *Laplaca* and *Staley, infra* , Ark. Sup. Ct. holds: "[T]he right to minimum due process before a defendant can be expelled from a drug-court program is so fundamental that it cannot be waived by the defendant in advance of the allegations prompting the removal from the program.")
https://scholar.google.com/scholar_case?case=10248754056601852209&q=neal&hl=en&as_sdt=4,71&as_ylo=2016

Idaho v. Keene, 2016 Unpublished Opinion 595 (Ida. App 7/13/16) (Much like probation revocation, it is appropriate for the drug court to consider a multitude of factors in making its discharge determination; thus, it was appropriate to consider Keene's lack of progress and honesty issues in deciding to discharge Keene from drug court. See Upton, 127 Idaho at 275, 899 P.2d at 985. As such, there was no due process violation that occurred in Keene's discharge from drug court.)
https://scholar.google.com/scholar_case?case=10226041807268465249&q=2016+Unpublished+Opinion+595+&hl=en&as_sdt=4,13&as_ylo=2016

People v. Shipp, 2016 NY Slip Op 3304 (NY: Appellate Div., 4th Dept. 2016) (Inasmuch as defendant's failure to appear in court after his termination from drug treatment "constituted a proper basis for the court's finding of noncompliance, it was unnecessary for the court to inquire into defendant's complaints about the suitability of the [treatment] program and the circumstances of his termination)
https://scholar.google.com/scholar_case?case=6118356463266500818&q=fiammegta&hl=en&as_sdt=40006

State v. Kelifa, Not Selected for Publication (Wash. App., 2015) (Court rejects arguments that closed drug court staffing meetings preceding his termination violated constitutional rights to a public trial and to be present at all critical stages of a prosecution citing State v. Sykes, 182 Wn.2d 168, 339 P.3d 972 (2014))
https://scholar.google.com/scholar_case?case=8863457670511077816&q=kelifa&hl=en&as_sdt=4,181,247&as_ylo=2015

State v. Mayfield (Iowa App., 2015) (defendant's assertion that counsel's failure to require record stated an ineffective assistance claim under *Strickland*.)
https://scholar.google.com/scholar_case?case=13523461619044045085&q=State+v.+Mayfield+&hl=en&as_sdt=4,181&as_ylo=2015

Parsons v. McCann, (D. Neb. 2015) (Court denies in part 42 U.S.C. § 1983 action stemming from plaintiff Dakota Parsons' 29-week stay in the Douglas County Corrections Center while he was a participant in Young Adult Court, allegedly without a probable cause hearing, without being charged with an offense, and without the opportunity to be released on bond.)
https://scholar.google.com/scholar_case?case=6547750496671614618&q=Parsons+v.+McCann+(D.+Neb.,+2015)&hl=en&as_sdt=3,15,25,247&as_ylo=201

State v. LeClech, Washington Court of Appeals, NOT SELECTED (6/15/15) (Where defendant asserted due process violation for not being permitted to be present at staffing, Appellate court rejected assertion finding he had waived right to be present and further noted: The Washington and United States Constitution guarantee a criminal defendant's `fundamental right to be present at all critical stages of a trial.'" Washington courts analyze alleged violations of a defendant's right to be present by applying federal due process jurisprudence. This court reviews de novo a claimed violation of the right to be present. A defendant's right to be present at a proceeding is required "whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge."' However, this right is not absolute. "`[T]he presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence." Thus, the right is not triggered when a defendant's "`presence would be useless, or the benefit but a shadow.'….Just as closed staffings are critical to the success of drug court in the context of public trial rights, the presence of the defendant at staffings would frustrate the collaborative purpose of drug court. In this setting, LeClech does not establish a violation of his right to be present.)
https://scholar.google.com/scholar_case?case=15552841217808260528&q=state+v.+LeCLECH&hl=en&as_sdt=4006

State v. Snow, Not Selected for Publication, 32144-4-III (Wash. App. 12-9-2014)(defendant's due process rights were not violated during termination procedure, including relying on reports reflecting dilute drug samples, particularly where he did not contest testing result)
http://scholar.google.com/scholar_case?case=12875010920879774023&q=state+v.+snow&hl=en&as_sdt=4,14,247&as_ylo=2014

Tate v. State, 2013 OK CR 18, 313 P.3d 274 (2013) (We find that this due process guarantee is also applicable to mental health court termination proceedings. Therefore, a mental health court participant must be sufficiently apprised as to the evidence and the grounds upon which his or her participation in the mental health court is terminated. See ***Hogar***, 1999 OK CR 35, 990 P.2d at 899 (applying this same rule to drug court termination proceedings).
https://scholar.google.com/scholar_case?case=5469050606281120565&q=313+P.3d+274+&hl=en&as_sdt=4006

Sonnier v. State, 334 P. 3d 948 (Okla. Court of Criminal Appeals 2014) (This Court has held that a defendant who is terminated from participating in a diversionary program is entitled to due process)

https://scholar.google.com/scholar_case?case=4405251104268084530&q=313+P.3d+274+&hl=en&as_sdt=4006

State v. Kong, 315 P.3d 720 (Haw. 2013) Defendant's self-termination from drug court was voluntary)
http://scholar.google.com/scholar_case?case=3564059598590596309&q=state+v.+kong&hl=en&as_sdt=2006

State v. Workman, 22 Neb. App. 223 (2014) (The minimal due process to which a parolee or probationer is entitled also applies to participants in the drug court program. This minimal due process includes (1) written notice of the time and place of the hearing; (2) disclosure of evidence; (3) a neutral fact finding body or person, who should not be the officer directly involved in making recommendations; (4) opportunity to be heard in person and to present witnesses and documentary evidence; (5) the right to cross-examine adverse witnesses, unless the hearing officer determines that an informant would be subjected to risk of harm if his or her identity were disclosed or unless the officer otherwise specifically finds good cause for not allowing confrontation; and (6) a written statement by the fact finder as to the evidence relied on and the reasons for revoking the conditional liberty. The standard of proof for termination from drug court participation is preponderance of the evidence.)
https://scholar.google.com/scholar_case?case=26476884739382434 55&q=22+Neb.+App.+223+&hl=en&as_sdt=4006

State v. Bishop, 429 N.J. Super. 533 (2013), affirmed, *per curiam* , 10/21/15, (Recognizing that both drug court and traditional court defendants should be similarly treated upon probation revocation, the court said: "The carrot-and-stick approach is integral to the Drug Court concept. Prison-bound offenders are given an opportunity to be diverted from a state prison sentence if they are willing to avail themselves of the rehabilitative opportunities available in Drug Court in an effort to free themselves from the recurring cycle of drug dependency and criminal activity. The legislative history of the 1999 amendments includes the Report to the Governor by the Attorney General on the Need to Update the Comprehensive Drug Reform Act of 1987, December 9, 1996. That document "call[ed] for new ways to support drug court programs. One way is to provide judges with new legal tools with which to 'leverage' addicts into treatment." Id. at 18 (emphasis added). The legislation that followed created special probation, as distinguished from regular probation, and established the new resentencing provision applicable upon revocation of special probation……. The ultimate motivation or leverage, a tool needed to enable Drug Courts to operate effectively, is the threat of the substantial sentence that would have been imposed originally if the defendant were not admitted to Drug Court through special probation.")
http://scholar.google.com/scholar_case?case=6443566629236988868&q=429+N.J.+Super.+533+&hl=en&as_sdt=4006&as_ylo=2013

Tennessee v. Creech, Court of Criminal Appeals of Tennessee, at Nashville. Filed April 26, 2013. (any unilateral termination from drug court was harmless in light of full blown evidentiary hearing on probation revocation)
http://scholar.google.com/scholar_case?case=12862234935892919 08&q=Tennessee+v.+Creech+&hl=en&as_sdt=4006&as_ylo=2012

Gibson v. Kentucky, No. 2011-CA-001368-MR.,Court of Appeals of Kentucky, Rendered: January 18, 2013. NOT TO BE PUBLISHED (Finding that the defendant was accorded due process in his termination form drug court, the appellate court observed the following to be a proper trial court consideration in termination: "Gibson's unwillingness or inability to adopt basic tenants of Drug Court, such as honesty, constituted continued "addict thinking" and reflected negatively on Gibson's ability to remain compliant and crime-free within the community."

http://scholar.google.com/scholar_case?case=5659361949627107451&q=No.+2011-CA-001368-MR&hl=en&as_sdt=4006&as_ylo=2013

Gross v. State of Maine, Superior Court case # CR-11-4805 (2/26/13)(drug court procedures relating to termination violative of due process and, therefore, unconstitutional. Drug Court participant entitled to: notice of the termination allegations and the evidence against him, right to call and x-examine witnesses, a hearing at which he is present, a neutral magistrate, written factual findings and the right to counsel. Here, the drug court team discussed the termination decision during the termination hearing, without defendant's presence or that of his counsel. That procedure coupled by the fact the Superior Court felt that the drug court judge should have recused, resulted in a finding of constitutional infirmity. Moreover, the appellate court ruled the defendant did not, arguably could not prospectively waive his rights, citing *LaPlaca* and *Staley*.

https://docs.google.com/a/jaginc.com/file/d/0B3rjtxVPOqL7a01CeEZPT1RkSFU/edit?pli=1

People v. Woodall, D062005 (Cal. App. 6-3-2013)(defendant not per se entitled to an arrest warrant/sworn affidavit for a probation violation-the touchstone being reasonableness, nor is defendant entitled to a PC determination on a probation revocation proceeding unless he will be incarcerated for some lengthy time before a hearing.)
http://scholar.google.com/scholar_case?case=12495672069753791277&q=PEOPLE+v.+WOODALL,+D062005+&hl=en&as_sdt=4006&as_ylo=2013

Arizona v. Tatlow, No. 1 CA-CR 11-0593, Court of Appeals of Arizona, Division One, Department C. (December 4, 2012) (no Federal Confidentiality Law, 42 CFR, part 2 violation

for judge to take judicial notice of violations of treatment obligations at probation revocation hearing)
http://scholar.google.com/scholar_case?case=18145047738948527281&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

Arizona v. Perez Cano, No. 1 CA-CR 11-0473 Court of Appeals of Arizona (September 20, 2012) UNPUBLISHED (Defendant did not prove drug court termination hearing violated Federal Confidentiality Law and judge was not required to recuse)
http://scholar.google.com/scholar_case?case=41699715552187449 81&q=perez+cano&hl=en&as_sdt=4,67,185&as_ylo=2008

Grayson v. Kentucky, No. 2011-CA-000399-MR. Court of Appeals of Kentucky UNPUBLISHED (June 29, 2012) (defendant not denied due process in drug court termination hearing because she received notice of the evidence against her and judge not required to recuse.)
http://scholar.google.com/scholar_case?case=16272897103924913248&q=Grayson+v.+Kentucky&hl=en&as_sdt=4,185&as_ylo=2008

Tornavacca v. State, 2012 Ark. 224 (2012) (Although the majority finds that defendant's due process rights were not violated during his drug court termination hearing, the dissent finds that status hearing where the initial decision was made to remove defendant from drug court violated his due process rights because he did not get to contest the allegations then although he was represented by counsel and a termination hearing 4 months later did not cure the due process violation)
http://scholar.google.com/scholar_case?case=5259011488869936538&q=tornavacca&hl=en&as_sdt=2,6&as_ylo=2011

People v. Freeman, No. E052780, Court of Appeals of California, Fourth District, Division Two, UNPUBLISHED (1/23/12) (Defendant surrendered his right to a drug court termination hearing in his drug court contract and waived his right to have a record of drug court proceedings and the presumption of proper proceedings was not overcome, therefore defendants termination and sentence was upheld.)
http://scholar.google.com/scholar_case?case=11586198439532533891&q=people+v.+freeman&hl=en&as_sdt=2,6&as_ylo=2011

State v. LaPlaca**,** 27 A.3d 719 (New Hampshire 2011) (Even where program manual provided: "Any violation of the terms and conditions of the [Program] shall result in the imposition of sanctions, without hearing, by the court as deemed fair and appropriate, consistent with statutory authority and the descriptions as outlined in the [Program] policy manual. The defendant waives any right(s) to any and all hearings. Termination of participation in the [Program] shall result in the imposition of the suspended prison sentences and fines without hearing. The defendant shall affirmatively waive any and all rights to a hearing", waiver pre-

notice of allegations was not enforceable. Court relied upon Staley v. State, 851 So.2d 805 (Fla. Dist. Ct. App. 2003) Failure to provide the participant a pre termination hearing was a violation of due process in the context of removal from drug court and imposition of a suspended sentence. The court left for another day whether such pre hearing waiver was valid for the drug court sanctioning process)
http://scholar.google.com/scholar_case?case=8615789828453592685&q=state+v.+laplaca&hl=en&as_sdt=4006&as_ylo=2010

People v. Sharrieff, No. E052552.Court of Appeals of California, Fourth District, Division Two. Filed April 30, 2013. NOT SELECTED FOR PUBLICATION, (defendant may prospectively waive right to probation revocation hearing)
http://scholar.google.com/scholar_case?case=14908880073895063144&q=People+v.+Sharrieff&hl=en&as_sdt=4006

State v. Shambley, 281 Neb. 317 (2011) (Drug court program participants are entitled to the same due process protections as persons facing termination of parole or probation.)
https://scholar.google.com/scholar_case?case=6580022467069018400&q=281+neb+317&hl=en&as_sdt=4006

Bonn v. Commonwealth, No. 2009-CA-002304-MR. (Court of Appeals of Kentucky. May 6, 2011) UNPUBLISHED (Defendant not entitled to continuance of drug court termination hearing to obtain an expert who could testify that defendant's 3 positive drug tests were due to sexual contact with cocaine users and sweat from barbershop customers)
http://scholar.google.com/scholar_case?case=14593808404681940420&q=bonn+v.+commonwealth&hl=en&as_sdt=2,6&as_ylo=2010

People v. Fiammegta, 14 N.Y.3d 90, 923 N.E.2d 1123 (2010) (where defendant was under suspended sentence on condition of completion of treatment program and he is discharged based upon alleged criminal activity, the court "was not required to conduct an evidentiary hearing in this case, or to determine by a preponderance of the evidence that defendant was guilty of the thefts of which he was accused. But the judge should have considered defendant's argument that he was kicked out of the program based on thin evidence of wrongdoing after inadequate investigation; and he should have allowed defendant to submit letters and testimony or affidavits from his mother and girlfriend about the money they claimed to have sent him.")

http://scholar.google.com/scholar_case?case=13711217569628627099&q=fiammegta&hl=en&as_sdt=2,10

Gosha v. State, 927 N.E.2d 942, 942 (Ind. Ct. App. 2010) (Court explained that termination from drug court requires the written notice of the claimed violations, the disclosure of the evidence against the defendant, the opportunity to be heard and present evidence, the right to confront and cross-examine witnesses, and a neutral and detached judicial officer)
http://scholar.google.com/scholar_case?case=12877292895770376697&q=927+N.E.2d+942&hl=en&as_sdt=2,6

Harris v. Commonwealth, 689 S.E.2d 713 (Va. 2010) (participation in drug court implicates a due process liberty interest and at termination and ultimate sentencing defendant has a right to be heard)
http://scholar.google.com/scholar_case?case=10155157023036820145&q=689+S.E.2d+713&hl=en&as_sdt=2,6

People v. Kimmel, 24 Misc.3d 1052, 882 N.Y.S.2d 895 (2009) (holding that defendant not entitled to a hearing per se, but was entitled to make a statement and have counsel present--relying upon Torres v. Berbary, 340 F. 3d 63, 63 (2d Cir. 2003)).
http://scholar.google.com/scholar_case?case=15816833655240312621&q=882+N.Y.S.2d+895&hl=en&as_sdt=2,6

State v. Perkins, 661 S.E. 2d 366, 366 (S.C. Ct. App. 2008) (holding that termination decision not reviewable, but defendant entitled to notice and hearing on whether defendant violated conditions of his suspended sentence by being terminated from drug court).
http://scholar.google.com/scholar_case?case=15246391932440507513&q=661+S.E.+2d+366&hl=en&as_sdt=2,6

Lawson v. State, 969 So.2d 222, 222 (Fla. 2007) (holding that the right to receive adequate notice of the conditions of probation is in part realized through the requirement that a violation be substantial and willful, however, the court need not define how many violations it will take to constitute a willful violation)
http://scholar.google.com/scholar_case?case=16906687627413927846&q=969+So.2d+222&hl=en&as_sdt=2,6

State v. Rogers, 170 P. 3d 881, 881 (Idaho 2007) (holding that termination hearings required in drug courts, at least where defendant pled guilty and sentence deferred, reversing Court of Appeals decision that held that due process concerns were met by terms of drug court contract)
http://scholar.google.com/scholar_case?case=23223616915012748 22&q=170+P.+3d+881&hl=en&as_sdt=2,6

State v. Varnell, 155 P.3d 971, 971 (Wash. Ct. App. 2007) (defendant had unilateral right to terminate from drug court by contract, so no hearing required when defendant requests to terminate other than his request before the court to terminate)
http://scholar.google.com/scholar_case?case=11035032696909714921&q=155+P.3d+971&hl=en&as_sdt=2,6

People v. Anderson, 833 N.E.2d 390, 390 (Ill. App. Ct. 2005) (holding that drug court termination in a diversion court requires a hearing)
http://scholar.google.com/scholar_case?case=12870013841436880117&q=833+N.E.2d+390&hl=en&as_sdt=2,6

State v. Cassill-Skilton, 94 P.3d 407, 410 (Wash. Ct. App. 2004) (defendant entitled to a hearing when state moves to terminate.)

http://scholar.google.com/scholar_case?case=5425208029734396745&q=94+P.3d+407&hl=en&as_sdt=2,6

Staley v. State, 851 So.2d 805 (Fla. Dist. Ct. App. 2003) (purported waiver of right to adversarial hearing at termination in drug court contract violated due process) http://scholar.google.com/scholar_case?case=8592482668417733210&q=851+So.2d+805+&hl=en&as_sdt=2,6

People v. Woods, 748 N.Y.S.2d 222, 222 (2002) (holding that the defendant was not entitled to a hearing, but noting every review was a hearing in which the defendant had an opportunity to participate.) http://scholar.google.com/scholar_case?case=7007886361718095145&q=748+N.Y.S.2d+222&hl=en&as_sdt=2,6

Hagar v. State, 990 P.2d 894, 899 (Okla. Crim. App. 1999) (defendant was statutorily entitled to notice of the grounds for termination) http://scholar.google.com/scholar_case?case=5311017983618242880&q=990+P.2d+894&hl=en&as_sdt=2,6

X. Full constitutional rights do not apply to probation revocation hearing and, therefore, would not apply at a termination from drug court hearing.

State v. Watson, No. M2015-00108-CCA-R3-CD., (Tenn. Court of Criminal Appeals 2016) Drug court judge's decision to leave the termination decision to team was an abdication of responsibility and a violation of due process Citing Tennessee v. Stewart, No. M2008-00474-CCA-R3-CD Filed October 6, 2008 Unpublished Opinion) https://scholar.google.com/scholar_case?case=3342037656771735 5&q=Tennessee+v.+Stewart,+++No.+M2008-00474-CCA-R3-&hl=en&as_sdt=4006

Maggard v. Commonwealth , Not Selected for Publication , (Ky. App., 2015)(no due process violation when defendant terminated from drug court based upon certification of violations, prepared by a drug court employee, alleging Maggard had absconded from the Fayette County Drug Court Program; had dirty and/or diluted urine screens on four dates; six missed urine screens; and four other events of note: not having a meeting sheet; missing curfew; dishonesty-not maintaining employment; and her inability to produce a sample. Defendant had a hearing and had the ability to call witnesses. The fact that the court relied on hearsay did not constitute a due process violation citing US Supreme Court cases *Morrissey* and *Gagnon*.)

https://scholar.google.com/scholar_case?case=5826357990443835382&hl=en&lr=lang_en&as_sdt=40006&as_vis=1&oi=scholaralrt

State v. Tiedeken, Not Selected for Publication (N.J. Super. App. Div., 2015) (the New Jersey Drug Court Manual is recognized as an authoritative source for the operation of the Drug Court program. State v. Meyer, 192 N.J. 421, 431 (2007))

https://scholar.google.com/scholar_case?case=6984773125938929090&hl=en&lr=lang_en&as_sdt=40006&as_vis=1&oi=scholaralrt

Withers v. State, 15 N.E.3d 660 (Ind. App. 2014) (drug court did not violate due process by taking judicial notice of its own records including mental health treatment records in drug court revocation proceeding)
https://scholar.google.com/scholar_case?case=8993141210166245305&q=15+N.E.3d+660+&hl=en&as_sdt=4006

State v. Nichelin, 181 Wn. App. 1024 (2014)(Because the record demonstrates that the trial court had ample basis to find that Kratom is a mood-altering substance by a preponderance of the evidence presented at the hearing, and because the trial court explicitly relied on that evidence, Nichelin fails to establish a violation of his right to due process.)

http://scholar.google.com/scholar_case?case=17884284689721512772&q=state+v.+nichelin+washington&hl=en&as_sdt=4006&as_ylo=2014

Gibson v. Kentucky, No. 2011-CA-001368-MR.,Court of Appeals of Kentucky, Rendered: January 18, 2013.NOT TO BE PUBLISHED (Finding that the defendant was accorded due process in his termination form drug court, the appellate court observed the following to be a proper trial court consideration in termination: “Gibson's unwillingness or inability to adopt basic tenants of Drug Court, such as honesty, constituted continued "addict thinking" and reflected negatively on Gibson's ability to remain compliant and crime-free within the community.”

http://scholar.google.com/scholar_case?case=5659361949627107451&q=No.+2011-CA-001368-MR&hl=en&as_sdt=4006&as_ylo=2013

State v. Tatlow, 231 Ariz. 34, 290 P.3d 228 (2012) (Here, as in many drug court matters, Tatlow's participation in the program was a condition of his probation and release. [Federal Confidentiality Regulations] Section 2.35 plainly contemplates that failure to successfully complete a drug court program may result in the disclosure of adverse information to justice system personnel. Indeed, section 2.35(d) provides that such information may be "redisclose[d] and use[d]" to carry out official duties with regard to the participant's release from custody. (Emphasis added.) This provision makes clear that the trial judge was not required to forget

that she had terminated Tatlow from the drug court program. The court's judicial notice of its own order — whether considered a "redisclosure" of information to the court system or "use" of information by the court system — was therefore entirely proper.[4] The expiration of the Consent and Waiver could have operated to prevent use of information that came into the court's possession after it had expired, but it did not prevent use of information of which the court became aware during its effective period.)
http://scholar.google.com/scholar_case?case=18145047738948527281&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

Butler v. Indiana, No. 34A05-1109-CR-447 (Unpublished 4/11/12) (Evidentiary proof at drug court termination did not constitute due process violation.)
http://scholar.google.com/scholar_case?case=8858406513678380819&q=butler+v.+indiana&hl=en&as_sdt=2,6&as_ylo=2012

People v. Joseph, 785 N.Y.S.2d 292, 291 (N.Y. Sup. Ct. 2004) (In an appeal involving a drug court, a five part test was adopted to determine whether the evidence supporting termination from a treatment program was sufficiently reliable to meet due process requirements adopting Torres v. Berbary, 340 F.3d 63, 63 (2d Cir. 2003))
http://scholar.google.com/scholar_case?case=8676322654483651237&q=785+N.Y.S.2d+292&hl=en&as_sdt=2,6

State v. Johnson, 679 N.W.2d 169, 174 (Minn. Ct. App. 2004) (rules of evidence do not apply to probation revocation hearing)
http://scholar.google.com/scholar_case?case=11699197680025929940&q=679+N.W.2d+169&hl=en&as_sdt=2,6

State v. Foster, 782 A.2d 98, 98 (Conn. 2001) (4th Amendment not apply to probation revocation proceedings)
http://scholar.google.com/scholar_case?case=16497398243271220 60&q=782+A.2d+98&hl=en&as_sdt=2,6

State v. Scarlet, 800 So.2d 220, 222 (Fla. 2001) (4th Amendment exclusionary rule applies at probation revocation proceeding)
http://scholar.google.com/scholar_case?case=8717882806750225988&q=800+So.2d+220&hl=en&as_sdt=2,6

United States v. Gravina, 906 F. Supp. 50, 53-54 (D. Mass. 1995) (4th Amendment not apply to probation revocation proceedings)
http://scholar.google.com/scholar_case?case=12166583519651935514&q=906+F.+Supp.+50&hl=en&as_sdt=2,6

People v. Harrison, 771 P.2d 23, 23 (Colo. Ct. App. 1989) (court explained that the standard of proof is preponderance of the evidence, unless there is an allegation of a new crime.. If there is an allegation of a new crime, and the defendant has not been convicted, the standard of proof is beyond a reasonable doubt.)

http://scholar.google.com/scholar_case?case=5368684254462684044&q=771+P.2d+23&hl=en&as_sdt=2,6

Minnesota v. Murphy, 465 U.S. 420, 426-436 (1985) (Fifth Amendment not apply to probation revocation proceedings)
http://scholar.google.com/scholar_case?case=2775994573652860905&q=465+U.S.+420&hl=en&as_sdt=2,6
.
United States v. Mackinzie, 601 F.2d 221, 221 (5th Cir. 1979)(Miranda not apply to probation revocation proceedings)
http://scholar.google.com/scholar_case?case=8507540906635556222&q=601+F.2d+221&hl=en&as_sdt=2,6

XI. Drug testing results must be sufficiently reliable to meet due process standards

Miller v. Redwood Toxicology, ____F. Supp. 2d ___(D. Minn. 9/15/11) dismissal affirmed 688 F.3d 928 (8th Cir. 2012) (Discussing the reliability of Etg/Ets and cutoff levels)
http://scholar.google.com/scholar_case?case=13488999397762871792&q=miller+v+redwood+toxicology&hl=en&as_sdt=2,6&as_ylo=2010

People v. Bohrer, 952 N.Y.S.2d 375 (2012)(Smart Start ignition interlock device scientifically reliable)
http://scholar.google.com/scholar_case?case=8906179185944675567&hl=en&as_sdt=4006&kqfp=10684957718094962955&kql=266&kqpfp=4600480226009644106#kq

People v. Dorcent, 29 Misc.3d 1165, 909 N.Y.S.2d 618 (2010) (SCRAM meets the Frye test of scientific reliability for admission in court)
http://scholar.google.com/scholar_case?case=11293932443697667179&q=people+v.+dorcent&hl=en&as_sdt=2,6

Berry v. Nat'l Med. Servs., 205 P.3d 745, 745 (Kan. App. Apr. 3, 2009) (Etg testing)
http://scholar.google.com/scholar_case?case=17561217082784015127&q=205+P.3d+745&hl=en&as_sdt=2,6

Johnson v. State Med. Bd., 147 Ohio Misc.2d 121 (2008) (Etg testing, cutoff levels questioned)
http://scholar.google.com/scholar_case?case=993425448962203373&q=147+Ohio+Misc.2d+121+&hl=en&as_sdt=2,6

Perez-Rocha v, Commonwealth, 933 A.2d 1102 (Pa. Commw. Ct. 2007) (Etg testing, cutoff levels questioned)
http://scholar.google.com/scholar_case?case=15725020347115842535&q=933+A.2d+1102+&hl=en&as_sdt=2,6

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)
http://scholar.google.com/scholar_case?case=12988439933562287081&q=258+S.W.3d+785&hl=en&as_sdt=2,6

Louis v. Dep't of Corr., 437 F.3d 697, 697 (8th Cir. 2006) (Need not retest as confirmation for EMIT with independent method)
http://scholar.google.com/scholar_case?case=12450413905374202409&q=437+F.3d+697&hl=en&as_sdt=2,6

Louis v. Dep't. of Corr. Servs. of Neb., 437 F.3d 697, 697 (8th Cir. 2006) (assessing retest costs, if the retest is positive after defendant denied use)
http://scholar.google.com/scholar_case?case=12450413905374202409&q=437+F.3d+697&hl=en&as_sdt=2,6

United States v. Bentham, 414 F. Supp. 2d 472, 471 (S.D.N.Y. 2006) (sweat patch)
http://scholar.google.com/scholar_case?case=17578748263065899306&q=414+F.+Supp.+2d+472&hl=en&as_sdt=2,6

United States v. Meyer, 485 F. Supp.2d 1001, 1001 (N.D. Iowa 2006) (sweat patch reliable, unless evidence of environmental contamination)
http://scholar.google.com/scholar_case?case=5742983410421303264&q=485+F.+Supp.2d+1001&hl=en&as_sdt=2,6

Woods v. Wills, 400 F. Supp 2d 1145,(E.D. Mo. Oct. 27, 2005) (sweat patch reliable, unless evidence of environmental contamination)
http://scholar.google.com/scholar_case?case=12971176502323797464&q=1:03-CV+105&hl=en&as_sdt=2,6

Grinstead v. State, 605 S.E.2d 417, 417 (Ga. Ct. App. 2004) (non-instrumented testing reliability questioned without confirmation)
http://scholar.google.com/scholar_case?case=17392648954625691830&q=605+S.E.2d+417&hl=en&as_sdt=2,6

United States v. Gatewood, 370 F.3d 1055, 1055 (10th Cir. 2004) (holding that the use of drugs on pretrial release was relevant to defendant's acceptance of responsibility and that lying about use of drugs is grounds for denying downward departure from presumptive sentence)
http://scholar.google.com/scholar_case?case=14703836279539799 47&q=370+F.3d+1055&hl=en&as_sdt=2,6

Black v. State, 794 N.E.2d 561, 561 (Ind. Ct. App. 2003) (non-instrumented testing reliability questioned without confirmation)
http://scholar.google.com/scholar_case?case=5410950199642115340&q=794+N.E.2d+561&hl=en&as_sdt=2,6

Hernandez v. State, 116 S.W.3d 26, 44-46 (Tex. Crim. App. 2003) (citing 6 cases upholding fluorescein polarization immunoassay)
http://scholar.google.com/scholar_case?case=5377257528806301639&q=116+S.W.3d+26&hl=en&as_sdt=2,6

People v. Whalen, 766 N.Y.S.2d 458, 460 (N.Y. App. Div. 2003) (EMIT reliable, when second test with EMIT)
http://scholar.google.com/scholar_case?case=6448498300384318085&q=766+N.Y.S.2d+458&hl=en&as_sdt=2,6

United States v. Alfonso, 284 F.Supp.2d 193, 197-98 (D. Mass. 2003) (sweat patch reliable, unless evidence of environmental contamination)
http://scholar.google.com/scholar_case?case=5324155439452728671&q=284+F.Supp.2d+193&hl=en&as_sdt=2,6

United States v. Snyder, 187 F. Supp. 2d 52, 59-60 (N.D.N.Y. 2002) (sweat patch reliable, unless evidence of environmental contamination)
http://scholar.google.com/scholar_case?case=16344099023065420 28&q=187+F.+Supp.+2d+52&hl=en&as_sdt=2,6

State v. Kelly, 770 A.2d 908, 908 (Conn. 2001) (holding that the blood stain analysis by EMIT should have been confirmed by gas chromatography/mass spectroscopy)
http://scholar.google.com/scholar_case?case=8254258006697882741&q=770+A.2d+908&hl=en&as_sdt=2,6

United States v. Stumpf, 54 F. Supp. 2d 972, 972 (Nev. 1999) (sweat patch reliable, unless evidence of environmental contamination)
http://scholar.google.com/scholar_case?case=17823540438296982977&q=54+F.+Supp.+2d+972&hl=en&as_sdt=2,6

Jones v. State, 548 A.2d 35, 35 (D.C. 1998) (citing 6 jurisdictions that held EMIT to be reliable)
http://scholar.google.com/scholar_case?case=3900541343459715825&q=548+A.2d+35&hl=en&as_sdt=2,6

Nat'l Treasury Employees Union v. Von Raub, 489 U.S. 656, 656 (1989) (GC/MS is almost always reliable assuming proper storage, handling, measurement and collection techniques)
http://scholar.google.com/scholar_case?case=9123832187759361431&q=489+U.S.+656&hl=en&as_sdt=2,6

Thomas v. McBride, 3 F. Supp. 2d 989 (N.D. Ind. 1998) (chain of custody requirements)
http://scholar.google.com/scholar_case?case=10076728760393776936&q=3+F.+Supp.+2d+989+&hl=en&as_sdt=2,6

Anderson v. McKune, 937 P.2d 16, 18 (Kan. Ct. App. 1997) (non-instrumented testing reliability questioned without confirmation)
http://scholar.google.com/scholar_case?case=3803720127730400412&q=937+P.2d+16&hl=en&as_sdt=2,6

Willis v. Roche Biomedical Lab, 61 F.3d 313, 313 (5th Cir. 1995) (concluding that the on-site test was false positive for methamphetamine due to cold medicine consumption)
http://scholar.google.com/scholar_case?case=12433933361084631 51&q=61+F.3d+313,+&hl=en&as_sdt=2,6

People v. Toran, 580 N.E.2d 595, 597 (Ill. App. Ct. 1991) (relying on thin layer chromatography)
http://scholar.google.com/scholar_case?case=9290807607334186254&q=580+N.E.2d+595&hl=en&as_sdt=2,6

Lahey v. Kelly, 518 N.E.2d 924 (N.Y. 1987) (Need not retest as confirmation for EMIT with independent method)
http://scholar.google.com/scholar_case?case=6054580062340465673&q=518+N.E.2d+924+&hl=en&as_sdt=2,6

Spence v. Farrier, 807 F.2d 753, 756 (8th Cir. 1986) (EMIT reliable, when second test with EMIT)
http://scholar.google.com/scholar_case?case=17025001458909005001&q=807+F.2d+753&hl=en&as_sdt=2,6

Peranzo v. Coughlin, 608 F. Supp. 1504, 1504 (S.D.N.Y. 1985); aff'd, 850 F.2d 125, 126 (2d Cir. 1988) (Need not retest as confirmation for EMIT with independent method)
http://scholar.google.com/scholar_case?case=12311131227111850488&q=608+F.+Supp.+1504&hl=en&as_sdt=2,6

Wykoff v. Resig, 613 F. Supp. 1504, 1513-1514 (N.D. Ind. 1985), aff'd in unpub. opin., 819 F.2d 1143 (7th Cir. 1987) (chain of custody requirements)
http://scholar.google.com/scholar_case?case=13146196493329673384&q=613+F.Supp.+1504&hl=en&as_sdt=2,6

XII. Judicial Impartiality and Due Process

Minnesota v. Cleary, No. A15-1493 (Court of Appeals of Minnesota July 5, 2016.) (When the sole basis for revoking probation is a probationer's termination from drug court and the drug court judge participated in the drug court team's decision to terminate the probationer from drug court, a probationer is entitled to have a judge other than the drug court judge preside over the probation revocation hearing, because of the appearance of lack of impartiality)

https://scholar.google.com/scholar_case?case=4891538259008484620&q=mylo+cleary&hl=en&as_sdt=4,24&as_ylo=2016

State v. McGill, No. M2015-01929-CCA-R3-CD. (Tenn: Court of Criminal Appeals 7/18/2016) (Based on this Court's ruling in Donte Dewayne Watson, No. M2015-00108-CCA-R3-CD, 2016 WL 791563 (Tenn. Crim. App. Mar. 1, 2016), we conclude that there is no clear and unequivocal rule of law that a trial judge must recuse himself simply because he was also a member of a defendant's drug court team. There must be some proof in the record that the trial judge either received ex parte communications or was actively involved in the defendant's treatment in order to show that the trial judge was neither neutral nor detached. In this case, there is no proof in the record that the trial court judge was privy to any ex parte communications regarding the subject matter of Defendant's community corrections violation or that he relied upon information learned during the course of the drug court program without giving Defendant a fair chance for rebuttal.)
https://scholar.google.com/scholar_case?case=13142646625815210874&q=roy+mcgill&hl=en&as_sdt=4,43&as_ylo=2016

State v. Watson, No. M2015-00108-CCA-R3-CD., (Tenn: Court of Criminal Appeals 2016) Drug court judge's not required to recuse or a violation of due process distinguishing Tennessee v. Stewart, No. M2008-00474-CCA-R3-CD Filed October 6, 2008 Unpublished Opinion and State v. Brent R. Stewart, No. W2009-00980-CCA-R3-CD, 2010 WL 3293920 (Tenn. Crim. App. Aug. 18, 2010). and)
https://scholar.google.com/scholar_case?case=3342037656771735 5&q=Tennessee+v.+Stewart,+++No.+M2008-00474-CCA-R3-&hl=en&as_sdt=4006

Dominey v. State, Not Selected for Publication, (Tex. App., 2015) (defendant's allegations that the judge obtained information from an extrajudicial source was rebutted by defendant's own statements and no showing was made that the judge was anything but impartial in this deferred adjudication sentence)
https://scholar.google.com/scholar_case?case=3699325448087166049&hl=en&lr=lang_en&as_sdt=4006&as_vis=1&oi=scholaralrt

Gross v. State of Maine, Superior Court case # CR-11-4805 (2/26/13)(drug court procedures relating to termination violative of due process and, therefore, unconstitutional. Drug Court participant entitled to: notice of the termination allegations and the evidence against him, right to call and x-examine witnesses, a hearing at which he is present, a neutral magistrate, written factual findings and the right to counsel. Here, the drug court team discussed the termination decision during the termination hearing, without defendant's presence or that of his counsel. That procedure coupled by the fact the Superior Court felt that the drug court judge should have recused, resulted in a finding of constitutional infirmity. Moreover, the appellate court

ruled the defendant did not, arguably could not prospectively waive his rights, citing *LaPlaca* and *Staley*.
https://docs.google.com/a/jaginc.com/file/d/0B3rjtxVPOqL7a01CeEZPT1RkSFU/edit?pli=1

State v. Tatlow, 231 Ariz. 34, 290 P.3d 228 (2012) (no due process violation for judge to hear drug court termination and probation revocation)
http://scholar.google.com/scholar_case?case=18145047738948527281&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

IN RE: M.W. and Mi. W. Minor Children, 2012 Ohio 5075 (2012) (no due process violation to have dependency/neglect trial court judge also preside over drug court, where respondent is in both courts)
http://scholar.google.com/scholar_case?case=11004603746354874130&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

Arizona v. Perez Cano, No. 1 CA-CR 11-0473 Court of Appeals of Arizona (September 20, 2012) UNPUBLISHED (Judge was not required to recuse for drug court termination hearing.)
http://scholar.google.com/scholar_case?case=4169971555218744981&q=perez+cano&hl=en&as_sdt=4,67,185&as_ylo=2008

Grayson v. Kentucky, No. 2011-CA-000399-MR. Court of Appeals of Kentucky UNPUBLISHED (June 29, 2012) (Judge was not required to recuse for drug court termination hearing.)
http://scholar.google.com/scholar_case?case=16272897103924913248&q=Grayson+v.+Kentucky&hl=en&as_sdt=4,185&as_ylo=2008

Turner v. Arkansas, 2012 Ark. 357 (2012) (The fact that prosecutor and judge both received grant funding for drug court did not facially give rise to sufficient facts for recusal)
http://scholar.google.com/scholar_case?case=12983043408876007892&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

Tennessee v. Stewart, No. W2009-00980-CCA-R3-CD, Court of Criminal Appeals of Tennessee, (August 18, 2010) (It was a due process violation for drug court judge to hear probation revocation hearing.)
http://scholar.google.com/scholar_case?case=863473147460870417&q=W2009-00980-CCA-R3-CD&hl=en&as_sdt=4,185,235,236&as_ylo=2008

Ford v. Kentucky, and William E. Flener v. Kentucky, No. 2008-CA-001990-MR, No. 2009-CA-000889-MR, No. 2009-CA-000461-MR, 2010 Ky. App. Unpub. LEXIS 380 (Ky. Appellate Apr. 30, 2010) (holding that having same judge preside over drug court and revocation hearing is not a denial of right to impartial hearing/due process)
http://scholar.google.com/scholar_case?case=12724236459603888154&q=2009-CA-000889-MR&hl=en&as_sdt=2,6

MODEL CODE OF JUDICIAL CONDUCT R. 2.11 (2007). (If continuing on the case would create an appearance of impropriety, such non-recusal would implicate Canon 2 of the Canons of Judicial Conduct.)
http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_table_of_contents.html

Wilkinson v. State, 641 S.E.2d 189, 191 (Ga. Ct. App. 2006). (As part of her drug court contract the defendant waived her ability to move for recusal of the drug court judge.)

http://scholar.google.com/scholar_case?case=8885167188246864611&q=641+S.E.2d+189&hl=en&as_sdt=2,6

State v. Belyea, 160 N.H. 298, 999 A.2d 1080 (N.H. 2010) (holding that the defendant failed to show that a reasonable person would entertain significant concern about whether Judge Vaughan prejudged the facts or abandoned or compromised his impartiality in his judicial role on the drug court team)
https://scholar.google.com/scholar_case?case=9714928951977948426&q=999+A.2d+1080+&hl=en&as_sdt=4006

Inquiry of Baker, 74 P.3d 1077, 1077 (Or. 2003) (censuring judge for failing to disqualify herself from probation revocation hearing in which the events giving rise to the proceeding occurred at a restaurant in front of judge)
http://scholar.google.com/scholar_case?case=12636016921646631225&q=74+P.3d+1077&hl=en&as_sdt=2,6

Youn v. Track, 324 F.3d 409, 423 (6th Cir. 2003) (holding that the court's comments and rulings do not show bias when they were based upon evidence acquired during proceedings)
http://scholar.google.com/scholar_case?case=14923667187622779 70&q=324+F.3d+409&hl=en&as_sdt=2,6

Alexander v. State, 48 P.3d 110, 115 (Okla. Crim. App. 2002) ("Requiring the District Court to act as Drug Court team member, evaluator, monitor, and final adjudicator in a termination proceeding could compromise the impartiality of a district court judge assigned the responsibility of administering a Drug Court participant's program Therefore, in the future, if an application to terminate a Drug Court participant is filed, and the defendant objects to the Drug Court team judge hearing the matter by filing a Motion to Recuse, the defendant's application for recusal should be granted and the motion to remove the defendant from the Drug Court program should be assigned to another judge for resolution")
http://scholar.google.com/scholar_case?case=13350431775127602 61&q=48+P.3d+110&hl=en&as_sdt=2,6

United States v. Ayala, 289 F.3d 16, 27 (1st Cir. 2002) (stating that the standard is whether the facts, as asserted, lead an objective reasonable observer to question the judge's impartiality)
http://scholar.google.com/scholar_case?case=18134676221423814555&q=289+F.3d+16&hl=en&as_sdt=2,6

United States v. Microsoft, 253 F.3d 34, 117 (D.C. Cir. 2001) (holding that the judge's comments to the press while the case was pending demonstrated bias)
http://scholar.google.com/scholar_case?case=17987618389090921096&q=253+F.3d+34&hl=en&as_sdt=2,6

United States v. Bailey, 175 F.3d 966, 969 (11th Cir. 1999) (holding that recusal was not required where judge received facts from judicial source)
http://scholar.google.com/scholar_case?case=4134427899964583633&q=175+F.3d+966&hl=en&as_sdt=2,6

Edgar v. K.L., 93 F.3d 256, 259 (7th Cir. 1996) (holding that judge who received off the record briefings had extra judicial personal knowledge of facts)
http://scholar.google.com/scholar_case?case=12528096164268582940&q=93+F.3d+256,+&hl=en&as_sdt=2,6

Liteky v. United States, 510 U.S. 540, 555 (1994) (Usually the basis of recusal is due to partiality or bias acquired outside the context of the proceedings – or from an "extrajudicial source)
http://scholar.google.com/scholar_case?case=5020361090884494681&q=510+U.S.+540&hl=en&as_sdt=2,6

Lozano v. State, 751 P.2d 1326, 1326 (Wyo. 1988) (holding that the mere fact that probation revocation judge witnessed defendant in bar drinking in violation of her probation was not error, where the defendant freely admitted she was drinking in violation of probation)
http://scholar.google.com/scholar_case?case=9240559677541632490&q=751+P.2d+1326&hl=en&as_sdt=2,6

In re Murchison, 349 U.S. 133, 136-139 (1955) (recusing a judge because he could not detach himself from personal knowledge of secret grand jury proceedings)
http://scholar.google.com/scholar_case?case=5168959113714556385&q=349+U.S.+133&hl=en&as_sdt=2,6

XIII. Drug Court Sanctions and Due Process

Taylor v. State, CR-15-0354 (Ala. Crim. App. 9/9/16) (Sanctioning hearing using hearsay not due process violation. Concurrence: I realize that developing specific procedures for handling drug-court sanctions can be an arduous task — especially given the dearth of case law in this State addressing drug-court programs. I would encourage other drug-court judges in this State either to use or to develop a drug-court-sanction procedure similar to the one outlined in this Court's opinion (ie: provision of a hearing). I would also recommend to other drug-court professionals that they take advantage of the vast training resources and educational opportunities available through the National Association of Drug Court Professionals.)
https://scholar.google.com/scholar_case?case=13398551220856804 60&q=Taylor+v.+State&hl=en&as_sdt=4,1&as_ylo=2016

Kemper v. State, Ind: No. 82A01-1508-CR-1104.(Court of Appeals 2016) Not Selected for Publication (In an appeal of a drug court's imposition of a sanctions that the defendant thought were too harsh, the appellate court stated: Drug Court is a forensic diversion program akin to community corrections and probation. Withers v. State, 15 N.E.3d 660, 665 (Ind. Ct. App. 2014). Accordingly, we review a trial court's sentencing decisions for Drug Court violations for an abuse of discretion. Id. We will find an abuse of discretion only where the decision is clearly against the logic and effect of the facts and circumstances) https://scholar.google.com/scholar_case?case=5290707291317407883&q=15+N.E.3d+660+&hl=en&as_sdt=4006

Hoffman v. Jacobi (S.D. Ind., 9/29/2015)(Magistrate Judge recommends class certification on 42 USC §1983 damages and injunctive relief suit against Drug Court Judge and team for incarcerating participants for lengthy periods of time, while awaiting placement in drug treatment facilities. Plaintiffs allege that the decision to hold them in jail pending placement was made without counsel, hearing, consideration of bond, or other rights of due process. In 2016, the district denied certification and dismissed Judge Jacobi from the case because the court was no longer operational and Judge Jacobi was no longer on the bench) https://scholar.google.com/scholar_case?case=21333011931170763 06&q=Hoffman+v.+Jacobi+&hl=en&as_sdt=1fffffffffffffffffffffffffffffffe0800000000000

https://scholar.google.com/scholar_case?case=10696798948173191305&q=hoffman+v.+jacobi&hl=en&as_sdt=4006

Mississippi Commission on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss Supreme Court 5/21/2015) (Drug Court Judge removed from office for, *inter alia*, sanctioning individuals to jail without according due process of hearing. Judge Thompson's conduct of depriving participants in drug court of their due-process rights when he signed orders of contempt without the persons being properly notified of the charge of contempt or a right to a hearing, and by conducting "hearings" immediately after "staffing meetings" without adequate time for the persons to have proper counsel or evidence presented, violated Canons 1, 2A, 3B(1), 3B(2), 3B(4), 3B(8), and constitutes willful misconduct in office and conduct prejudicial to the administration of justice.) https://scholar.google.com/scholar_case?case=7698485659341277275&hl=en&lr=lang_en&as_sdt=4006&as_vis=1

Hoffman v. Jacobi, 4:14-cv-00012-SEB-TAB. (S.D. Ind. 10-17-2014) (denying a motion to dismiss lawsuit against a former Drug Court Judge, who was alleged to have incarcerated drug court participants for lengthy periods without due process of law. Even though the drug court has been discontinued, the federal district court did not find the matter moot nor subject to the *Younger* (Younger v. Harris, 401 U.S. 37(1971)) abstention doctrine, even though it involved the administration of another court. . In 2016, the district denied certification and dismissed

Judge Jacobi from the case because the court was no longer operational and Judge Jacobi was no longer on the bench)
https://scholar.google.com/scholar_case?case=8556326754332959649&q=hoffman+v.+jacobi&hl=en&as_sdt=4,334,335
https://scholar.google.com/scholar_case?case=10696798948173191305&q=hoffman+v.+jacobi&hl=en&as_sdt=4006
https://scholar.google.com/scholar_case?case=21333011931170763 06&q=hoffman+v.+jacobi&hl=en&as_sdt=4006

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Paley v. The Second Judicial District Court, 129 Nev. Adv. Op. No. 74 (2013) (Absent evidence of conduct that actually disrupts the court proceeding, a positive out-of-court drug test is not a sufficient basis for holding a party in contempt of court because no contemptuous conduct occurs in the "immediate view and presence" of the judge.)

http://scholar.google.com/scholar_case?case=15055334342846622 41&q=Paley+v.+the+second+judicial+&hl=en&as_sdt=4,29

In the Interest of C.K., Case No. 2D12-633,District Court of Appeal of Florida, Second District (Opinion filed May 4, 2012) (failure to give notice of FDTC hearing which limited parental contact was a due process violation)
http://scholar.google.com/scholar_case?case=3238082331107867402&q=in+the+interest+of+c.k.+&hl=en&as_sdt=2,6&as_ylo=2011

Commonwealth v. Nicely, 326 S.W.3d 441 (2010) (Ky. 11-18-2010) ("The dissent also expresses concern that a drug court sanction cannot be a modification of probation because the elements of due process normally accorded a defendant at a probation revocation hearing are not followed. For example, the defendant appearing before the drug court judge usually does not have counsel. However, defendants who enter drug court waive those rights while in the program, and upon discharge from the program, the defendant retains all those rights at any revocation hearing that follows.")
http://scholar.google.com/scholar_case?case=15489830948583567024&q=2009-SC-000313-DG+&hl=en&as_sdt=2,6

State v. Stewart, (Tenn. Crim. App. 8-18-2010) (Not Selected for Official Publication) (Having reviewed the record, we are additionally troubled by the four or five occasions where the defendant in this case was "sanctioned" to significant jail time by the drug court team during the two years he participated in the program.
Leaving aside (as we must) the obvious due process concerns attendant to any additional deprivation of the defendant's liberty that has been imposed through a collaborative, non-adversarial, and at times ex parte process rather than through a traditional adversarial evidentiary hearing, there is considerable tension between this outcome and the general guidelines under which drug courts should operate. The drug court program explicitly

recognizes that alcohol and drug addition "is a chronic, relapsing condition," that "many participants [will] exhibit a pattern of positive urine tests," and expressly contemplates that many participants will experience periods of relapse "[e]ven after a period of sustained abstinence.")

http://www.tsc.state.tn.us/sites/default/files/OPINIONS/TCCA/PDF/103/State%20vs%20Brent%20R.%20Stewart.pdf

Tyler T., 279 Neb. 806, 806 (2010) ("Given the therapeutic component of problem-solving-court programs, we are not prepared to say that each and every action taken in such a proceeding must be a matter of record. But we have no difficulty in concluding that when a judge of a problem-solving court conducts a hearing and enters an order affecting the terms of the juvenile's probation, the proceeding must be on the record. We agree with other courts which have held that where a liberty interest is implicated in problem-solving-court proceedings, an individual's due process rights must be respected.").
http://scholar.google.com/scholar_case?case=17378065910914785395&q=279+Neb.+806&hl=e n&as_sdt=2,6

Walker v. Lamberti, 29 So. 3d 1172, 1172 (Fla. Dist. Ct. App. 2010) (holding that a defendant who voluntarily agreed to participate in drug court cannot subsequently opt out to avoid jail–based drug treatment program)
http://scholar.google.com/scholar_case?case=7916778225516503126&q=29+So.+3d+1172&hl=en&as_sdt=2,6

Thorne v. Hale, No. 1:08cv601 (JCC), 2009 WL 980136 (E.D. Va. Mar. 26, 2009) http://scholar.google.com/scholar_case?case=14511436205170502440&q=thorne+v.+hale&hl=en&as_sdt=2,6 aff'd, Thorne v. Hale, No. 09-2305, WL1018048 (4th Cir. Mar. 19, 2010)(§1983 claimant was unsuccessful because of procedural requirements and absolute judicial immunity. However, the federal court makes staffings and the sanctioning process sound like a Star Chamber: "Thorne claims that, during the 'sanctions' hearings that followed his failure to adhere to the drug court's rules, the allegations against him, the testimony of witnesses, and the presentation of evidence violated his Sixth Amendment rights. Testimony, he asserts, was "made in secrete [sic] between the Drug Court and RACSB administrators, {Defendants Kelly Hale, Judith Alston and Sharon Gillian}," the RACSB, the Commonwealth's Attorney, and the state court judge, "to include whispered testimony to the presiding Judge at the bench, so as to exclude Plaintiff . . . from all measures of defense and redress commensurate with Due and Compulsory Process of Law.")

State v. Rogers, 170 P.3d 881, 881 (Idaho 2007) (holding that termination hearings are required in drug courts, at least where defendant pled guilty and his was sentence deferred, but also noting in dicta that such requirements are not required when sanctions are imposed)

http://scholar.google.com/scholar_case?case=2322361691501274822&q=170+P.3d+881&hl=en&as_sdt=2,6

Mullin v. Jenne, 890 So. 2d 543, 543 (Fla. Dist. Ct. App. 2005) (holding that jail can be used as a sanction for defendants who choose to remain in voluntary program)
http://scholar.google.com/scholar_case?case=14516095928609943544&q=890+So.+2d+543&hl=en&as_sdt=2,6

T.N. v. Portesy, 932 So. 2d 267, 267 (Fla. Dist. Ct. App 2005) (holding that a court cannot impose sanctions beyond those authorized by statute, even if agreed to by the juvenile drug court participant upon entry into program)
http://scholar.google.com/scholar_case?case=9560529572832022 20&q=932+So.+2d+267&hl=en&as_sdt=2,6

Diaz v. State, 884 So. 2d 299, 299 (Fla. Dist. Ct. App. 2004) (holding that jail cannot be used as a sanction in a pre-plea contractual drug court program because not authorized by statute)
http://scholar.google.com/scholar_case?case=18231853274861773698&q=884+So.+2d+299&hl=en&as_sdt=2,6

In re Miguel, 63 P.3d 1065, 1065 (Ariz. App. 2003). (Appellate Court appeared require a hearing when the juvenile defendants raised the due process issue and the possibility of jail or detention sanctions at a review hearing)
http://scholar.google.com/scholar_case?case=11334708554458060293&q=63+P.3d+1065&hl=en&as_sdt=2,6

See Staley v. State, 851 So. 2d 805, 805 (Fla. Dist. Ct. App. 2003) (concluding that waiver of hearing rights in a drug court contract impugns the integrity of the justice system and undermines public confidence in the judiciary)
http://scholar.google.com/scholar_case?case=859248266841773321 0&q=851+So.+2d+805&hl=en&as_sdt=2,6

Sandlin v. Conner, 515 U.S. 472, 472 (1995) (prisoner entitled to hearing on disciplinary proceedings could impact good or earned time)
http://scholar.google.com/scholar_case?case=15006749310236906628&q=515+U.S.+472&hl=en&as_sdt=2,6

Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973) (probationer entitled to preliminary and revocation hearing)
http://scholar.google.com/scholar_case?case=15952797368929450963&q=411+U.S.+778&hl=en&as_sdt=2,6

XIV. Equal Protection and Drug Courts

People v. Baldes ,___ Mich. ___ (Mich. Court of Appeals 2015) (prosecutor approval to admission to drug court not obtained and thus court placement vacated)
https://scholar.google.com/scholar_case?case=12340668595067920685&hl=en&lr=lang_en&as_sdt=40006&as_vis=1&oi=scholaralrt

State v. Maurer, 105 A. 3d 637 (NJ: Appellate Div. 2014) (The disparity in this case is highlighted by the fact that now offenders convicted of second-degree robbery armed with a non-deadly weapon are permitted to enter Drug Court while Track Two offenders like defendant, who
recently committed a third-degree drug offense and years earlier had been convicted of a weapons charge are barred entry. It is simply not fair that defendant's record would disqualify him under one track but not the other. There is no valid policy consideration to support that result and the distinction subverts, rather than supports, the policy to admit
drug-addicted offenders into the program.

Our opinion is supported by the Legislature's decision to remove the prosecutor's ability to object to a defendant's admission to Drug Court subject only to proof that his or her decision was a patent or gross abuse of discretion. By its action, the Legislature clearly evinced an intention to rely on a judge's discretion and ability to better determine admission
without continuing the prosecutor's right to veto.

Our decision does not, however, result in defendant's automatic admission to Drug Court; it only allows his application to be considered despite his earlier weapons offense. On remand, the court must now consider relevant factors specific to defendant, guiding Drug Court admission, including his dangerousness to the community while on probation, whether he is in fact drug dependent; and defendant's entire criminal history, including his weapons conviction, along with any other factor impacting this determination.)

https://scholar.google.com/scholar_case?about=15895072372026493130&q=state+v.+Maurer,++&hl=en&as_sdt=4,31

State v. DeGroat, NJ: Appellate Div. 2016 (Distinguishing *Mauer* above--- We conclude that Maurer is inapplicable to the case under review. Here, the statute and the Drug Court Manual conform, in that an individual convicted of aggravated assault would be ineligible for Drug Court under either Track One or Track Two. See N.J.S.A. 2C:35-14(a)(7); Drug Court Manual, supra, at 11, 16. Maurer presented a unique factual situation which highlighted an unjust disparity with "no valid policy consideration to support that result." Maurer, supra, 438 N.J. Super. at 418. We will therefore not divert from existing substantive law, court rules, and directives for this matter.)
https://scholar.google.com/scholar_case?case=7115869000857832897&q=state+v.+Maurer,++&hl=en&as_sdt=4,31

State v. Easley, 322 P.3d 296 (Idaho 3-28-2014) (Prosecutor’s veto of court’s ability to re-sentence convicted offender to mental health court violated Separation of Powers doctrine, because the prosecutor was making eligibility determinations for the mental health court post-judgment rather than pre-judgment, it was exercising judicial functions.)

http://scholar.google.com/scholar_case?case=8098825151632805579&q=state+v.+easley&hl=en&as_sdt=4,173,174

Amick v. Director of Revenue, SC93742 (Mo. banc 4-15-2014) (There is no equal protection violation in allowing DWI court graduates and participants the opportunity to obtain limited driving privileges while denying the same opportunity to non-participants because it is rationally related to the legitimate state interest in protecting the public from drunken drivers.) http://scholar.google.com/scholar_case?case=5986542354245282491&q=Amick+v.+Director+of++Revenue,+SC93742+(&hl=en&as_sdt=4006

State v. Waldenberg, 174 Wn. App. 163 (2013) (Spokane County's practice of allowing the prosecutor to make initial determinations of drug court eligibility does not constitute an unconstitutional delegation of judicial power to the prosecutor. The separation of powers doctrine is not violated.) http://scholar.google.com/scholar_case?case=12184283984125363123&q=State+v.+Waldenberg&hl=en&as_sdt=4006&as_ylo=2013

People v. Watford, 2012 NY Slip Op 22121, County Court of the City of New York, Monroe County (Decided April 25, 2012) (defendant entitled to diversionary drug court, citing detailed analysis of beneficial attributes of attending and finishing drug treatment) http://scholar.google.com/scholar_case?case=6973806422122888532&q=people+v.+watford&hl=en&as_sdt=2,6&as_ylo=2011

People v. Henry, C067258, Court of Appeals of California (July 17, 2012) UNPUBLISHED, (Although statute requires assessment of fees, termination of drug court cannot be sustained for non-payment without finding that defendant had ability to pay) http://scholar.google.com/scholar_case?case=4698019064054406138&q=william+andrew+henry&hl=en&as_sdt=4,102,103,185&as_ylo=2008

State v. Woodard, No. A-5980-09T1., Superior Court of New Jersey, Appellate Division, Not selected for Publication, (September 23, 2011) (the standard is high to overturn a prosecutor's rejection of an applicant for the Drug Court program, in this case, the Drug Court judge had an ample basis to conclude that the standard had been met and that there was no reliable evidence that defendant was a gang member who posed a substantial threat to the community, thus entry into drug Court approved) http://scholar.google.com/scholar_case?case=2828021777818903332&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt&ct=alrt&cd=0

People v. Ray Earl Webb, No. D056735 (Court of Appeals of California, Fourth District, Division One, March 15, 2011) UNPUBLISHED (defendant not denied due process or other constitutional rights when he was rejected for drug court because he was taking strong narcotic medicines which would interfere with his ability to participate in the drug court program)

http://scholar.google.com/scholar_case?case=16436553176787518078&q=people+v.+webb+D056735&hl=en&as_sdt=2,6&as_ylo=2010

People v. Tyler White, 2011 NY Slip Op 50731(U) (April 26, 2011) (Where defendant met all the criteria for entry into drug court, prosecution's opposition could not bar entry)
http://scholar.google.com/scholar_case?case=2678322008989042037&q=people+v.+Tyler+white&hl=en&as_sdt=2,6&as_ylo=2010

State v. Clarke/Dolan, 1 A. 3d 607 (N.J. 2010) (A plenary hearing in which one or more team members would testify is not required at the hearing on an appeal from the denial of entry into drug court. Although Drug Court judges have the discretion to permit witnesses to testify when a genuine issue of material fact needs to be resolved, an informal hearing is sufficient for the court to give full and fair consideration to the applicant's appeal.)

http://scholar.google.com/scholar_case?case=16774045878401343785&q=state+v+richard+clarke+new+jersey&hl=en&as_sdt=4,31&as_ylo=2006

People v. Forkey, 72 A.D.3d 1209, 1209 (N.Y. App. Div. 2010) (holding that the defendant is not entitled to hearing before being rejected for drug court)
http://scholar.google.com/scholar_case?case=2394863470723553619&q=72+A.D.3d+1209&hl=en&as_sdt=2,6

People v. Trask, 191 Cal.App.4th 387, 119 Cal.Rptr.3d 91 (2010) (a criminal defendant granted deferred entry of judgment may not be terminated from such diversion based solely on her inability to pay the fees of the program to which she has been referred.)
http://scholar.google.com/scholar_case?case=6286979435109239064&q=people+v.+trask&hl=en&as_sdt=2,6

Phillips v. State, 25 So. 3d 404, 404 (Miss. Ct. App. 2010) (defendant has no right to enter drug court)
http://scholar.google.com/scholar_case?case=7066713602381344l0&q=25+So.+3d+404&hl=en&as_sdt=2,6

State v. Saxon, No. A-1964-08T4, 2010 N.J. Super. Unpub. LEXIS 613, (N.J. Mar. 23, 2010) (holding that the defendant is not entitled to enter the drug court program)
http://lawlibrary.rutgers.edu/courts/appellate/a1964-08.opn.html

Evans v. State, 667 S.E.2d 183, 183 (Ga. Ct. App. 2008) (because defendant was a medical management problem because of his AIDS, it was not a denial of equal protection or a violation of ADA to refuse him admittance to drug court)
http://scholar.google.com/scholar_case?case=14734090817012837491&q=667+S.E.2d+183&hl=en&as_sdt=2,6

Krauel v. Florida, Case No. 08-14093-CIV-MARTINEZ-BANDSTRA.(United States District Court, S.D. Florida July 15, 2008) (Participation in the drug court program is discretionary and denial of entry is not a due process or equal protection violation because drug court does not

create a right that involves a liberty interest)
http://scholar.google.com/scholar_case?case=11342748024622767714&q=krauel&hl=en&as_sdt=2,6&as_ylo=2007

Lomont v. State, 852 N.E.2d 1002, 1002 (Ind. Ct. App. 2006) (holding that the lack of a drug diversion program in the relevant county does not treat the defendant unfairly or unequally, as compared to other defendants, because all defendants in that county do not have access to a drug diversion program)
http://scholar.google.com/scholar_case?case=10634231553776917425&q=852+N.E.2d+1002&hl=en&as_sdt=2,6

Jim v. State, 911 So. 2d 658, 658 (Miss. Ct. App. 2005) (no denial of equal protection to not offer drug court to all defendants when it is generally available in county)
http://scholar.google.com/scholar_case?case=6336285846165488 21&q=911+So.+2d+658&hl=en&as_sdt=2,6

State v. Jason G. Meyer, 192 N.J. 421, 930 A.2d 428 (N.J. 2007) (consistent with the Drug Court Manual and N.J.S.A. 2C:45-1, the trial court was vested with the discretion to admit defendant into Drug Court and to impose a probationary term with conditions that included defendant abiding by the "specific [drug] treatment plan determined by the [in-patient] facility and Drug Court Team)

http://lawlibrary.rutgers.edu/courts/supreme/a-121-05.doc.html

State v. Harner, 103 P.3d 738, 738 (Wash. 2004) (Court held that because each county needed to tailor its programs to meet fiscal resources and community obligations, the decision not to fund a drug court was rationally related to a legitimate governmental purpose)
http://scholar.google.com/scholar_case?case=17046119832988855016&q=103+P.3d+738&hl=en&as_sdt=2,6

In re Miguel, 63 P.3d 1065, 1074 (Ariz. Ct. App. 2003) (no equal protection violation to place defendant in drug court)
http://scholar.google.com/scholar_case?case=11334708554458060293&q=63+P.3d+1065&hl=en&as_sdt=2,6

People v. Espinoza, 132 Cal. Rptr. 2d 670 (Cal. Ct. App. 2003) (holding that an illegal alien status is proper consideration for denial of Prop. 36 referral to treatment)
http://scholar.google.com/scholar_case?case=15495280146353950321&q=132+Cal.+Rptr.+2d+670&hl=en&as_sdt=2,6

State v. Little, 66 P.3d 1099, 1099 (Wash. Ct. App. 2003) (not entitled to hearing before denial of admission to drug court)
http://scholar.google.com/scholar_case?case=5516248402618061904&q=66+P.3d+1099&hl=en&as_sdt=2,6

C.D.C. v. State, 821 So. 2d 1021, 1025 (Ala. Crim. App. 2001) (no due process violation to not offer defendant drug court)
http://scholar.google.com/scholar_case?case=3411563037590283217&q=821+So.+2d+1021&hl=en&as_sdt=2,6

Yemson v. United States, 764 A.2d 816, 819 (D.C. Cir. 2001) (appellant failed to show that his nationality and his immigration status served as the basis for the sentence he received, rather than his unlawful conduct)
http://scholar.google.com/scholar_case?case=8723770795581500397&q=764+A.2d+816&hl=en&as_sdt=2,6

People v. Cisneros, 100 Cal. Rptr. 2d 784, 784 (Cal. Ct. App. 2000) (holding that an illegal alien status is not automatic disqualification for drug court)
http://scholar.google.com/scholar_case?case=13426201880021338036&q=100+Cal.+Rptr.+2d+784&hl=en&as_sdt=2,6

Woodward v. Morrissey, 1999 OK CR 43, 991 P.2d 1042, 1045 (Okla. 1999) (prosecutor's power to veto diversion of case to Drug Court program)
https://scholar.google.com/scholar_case?case=5515063287087973698&q=991+P.2d+1042&hl=en&as_sdt=4006

State v. Shelton, 204 W. Va. 311, 512 S.E.2d 568 (1998) (Where defendant denied in home detention because he could not afford the monitor, and, thus, was remanded to jail to do his sentence, was a violation of equal protection to deny home detention based on indigency)
http://scholar.google.com/scholar_case?case=4657946178584909261&q=204+W.+Va.+311&hl=en&as_sdt=2,6

XV. Right to counsel and Drug Court

State v. Cramer, 299 P.3d 756 (Hawaii 2013) (Trial court abused its discretion in not allowing substitution of counsel at sentencing hearing after termination from drug court)
http://scholar.google.com/scholar_case?case=5692534825713854 42&q=state+v.+cramer&hl=en&as_sdt=4,12&as_ylo=2013

Gross v. State of Maine, Superior Court case # CR-11-4805 (2/26/13) (drug court procedures relating to termination violative of due process and, therefore, unconstitutional. Drug Court participant entitled to: notice of the termination allegations and the evidence against him, right to call and x-examine witnesses, a hearing at which he is present, a neutral magistrate, written factual findings and the right to counsel. Here, the drug court team discussed the termination decision during the termination hearing, without defendant's presence or that of his counsel. That procedure coupled by the fact the Superior Court felt that the drug court judge should have recused, resulted in a finding of constitutional infirmity. Moreover, the appellate court

ruled the defendant did not, arguably could not prospectively waive his rights, citing *LaPlaca* and *Staley*.
https://docs.google.com/a/jaginc.com/file/d/0B3rjtxVPOqL7a01CeEZPT1RkSFU/edit?pli=1

Rothegery v. Gillespie County, 554 U.S. 191 (2008) (A criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Attachment does not also require that a prosecutor (as distinct from a police officer) be aware of that initial proceeding or involved in its conduct.)

http://scholar.google.com/scholar_case?case=17120864675203183732&q=ROTHGERY+v.+GILLESPIE+COUNTY&hl=en&as_sdt=2,6

DeMillard v. State, 190 P.3d 128, 128 (Wyo. 2008) (probation modification proceedings not critical stage of proceedings and therefore no right to counsel)
https://scholar.google.com/scholar_case?case=16070132308746397076&q=190+P.3d+128&hl=en&as_sdt=4006

Indiana v. Edwards, 554 U.S. 164 (2008) (holding that a court may deny a person the right to self representation due to mental illness when they are not competent to conduct trial proceedings by themselves, even when the court finds that the person is competent to stand trial)
http://scholar.google.com/scholar_case?case=15676731200684587378&q=128+S.+Ct.+2379&hl=en&as_sdt=2,6

State v. Kouba, 709 N.W.2d 299, 299 (Minn. Ct. App. 2006) (a modification of the terms of probation is a critical stage of the proceedings, where the right to counsel attaches, at least where the modification adds significant terms to probation)
http://scholar.google.com/scholar_case?case=6867446763890264530&q=709+N.W.2d+299,+&hl=en&as_sdt=2,6

Iowa v. Tovar, 541 U.S. 77, 92 (2004) (searching inquiry before allowing waiver of counsel)
http://scholar.google.com/scholar_case?case=4555513456578047 47&q=541+U.S.+77&hl=en&as_sdt=2,6

Robinson v. Ignacio, 360 F.3d 1044 (9th Cir. 2004) (defendant who has waived his right to counsel may nonetheless re-assert that right)
http://scholar.google.com/scholar_case?case=14516804407868507657&q=360+F.3d+1044+&hl=en&as_sdt=2,6

State v. Thomas, 659 N.W.2d 217, 217 (Iowa 2003) (sentencing hearing is a critical stage of the proceeding and counsel should be present, absent a waiver)
http://scholar.google.com/scholar_case?case=4014745424476475512&q=659+N.W.2d+217&hl=en&as_sdt=2,6

Dunson v. Kentucky, 57 S.W.3d 847, 847 (Ky. Ct. App. 2001) (concluding that defendant's assertions that he was denied counsel were unfounded because he was never without counsel at any critical stage of the proceedings)
http://scholar.google.com/scholar_case?case=18625083662568758 06&q=57+S.W.3d+847&hl=en&as_sdt=2,6

State v. Sommer, 878 P.2d 1007, 1008 (N.M. Ct. App. 1994) (a modification of the terms of probation is a critical stage of the proceedings, where the right to counsel attaches, at least where the modification adds significant terms to probation)
http://scholar.google.com/scholar_case?case=17847396656303813069&q=878+P.2d+1007&hl=en&as_sdt=2,6

Brewer v. Williams, 430 U.S. 387, 401 (1977) (right to counsel attaches at every critical stage of the proceedings, after initiation of adversarial judicial proceedings)
http://scholar.google.com/scholar_case?case=8803339074305789315&q=430+U.S.+387&hl=en&as_sdt=2,6

Faretta v. California, 422 U.S. 806, 822 (1975). (Individual generally has the right to represent him/her self)
http://scholar.google.com/scholar_case?case=9816908874706840257&q=422+U.S.+806&hl=en&as_sdt=2,6

Gagnon v. Scarpelli, 411 U.S. 778, 787 (1973) (Probation and parole revocation proceedings are not considered a critical stage under the federal constitution. But every state requires counsel at probation revocation proceedings if the defendant so requests)
http://scholar.google.com/scholar_case?case=15952797368929450963&q=411+U.S.+778&hl=en&as_sdt=2,6

Argersinger v. Hamlin, 407 U.S. 25, 40 (1972) (right to counsel extends to all felony prosecutions and to misdemeanor prosecutions where incarceration is actually imposed)
http://scholar.google.com/scholar_case?case=4692183053006223940&q=407+U.S.+25,+&hl=en&as_sdt=2,6

Mempa v. Rhay, 389 U.S. 128, 128 (1967) (sentencing hearing is a critical stage of the proceeding and counsel should be present, absent a waiver)
http://scholar.google.com/scholar_case?case=4236784772942507978&q=389+U.S.+128&hl=en&as_sdt=2,6

XVI. Double Jeopardy and Drug Courts

DiMeglio v. State, 29 A.3d 663 (Md. App. 2011) (imposition of sanction for drinking and driving in DUI Court did not bar subsequent prosecution for DUI offense on double jeopardy grounds)

https://scholar.google.com/scholar_case?case=7974983138709174638&q=29+A.3d+663+&hl=en&as_sdt=4006

Doyle v. State, 302 S.W.3d 607, 607 (Ark. App. 2009) (double jeopardy not apply to revocation proceedings)
https://scholar.google.com/scholar_case?case=17727943780841691334&q=302+S.W.3d+607&hl=en&as_sdt=4006

In re O.F. 773 N.W.2d 206 (N.D. 2009) (imposition of drug court sanctions did not bar a subsequent prosecution and conviction for the identical conduct upon which the sanctions were based)
http://www.ndcourts.gov/_court/opinions/20090137.htm

United States v. Carlton, 442 F.3d 802, 809 (2d Cir 2006) (double jeopardy problem is avoided by treating post-revocation sanctions as part of the penalty for the initial offense.)

http://scholar.google.com/scholar_case?case=17523356549934771646&q=442+F.3d+802&hl=en&as_sdt=2,6

State v. Griffin, 109 P.3d 870, 870 (Wash. Ct. App. 2005) (license revocation in addition to criminal prosecution not double jeopardy)
http://scholar.google.com/scholar_case?case=9170420006282554354&q=109+P.3d+870,+&hl=en&as_sdt=2,6

United States. v. McInnis, 429 F.3d 1, 5 (1st Cir. 2005) (holding that double jeopardy does not apply to the revocation of supervised release because it is considered part of the original sentence)
http://scholar.google.com/scholar_case?case=15548817215263037173&q=429+F.3d+1&hl=en&as_sdt=2,6

People v. Lopez, 97 P.3d 223, 223 (Colo. Ct. App. 2004) *aff'd on other grounds*, 113 P.3d 713 (Colo. 2005) (holding that sentencing for deferred judgment violations, including positive urine tests, does not violate double jeopardy)
http://scholar.google.com/scholar_case?case=2924119049576698319&q=97+P.3d+223&hl=en&as_sdt=2,6,

C.H. v. State, 850 So.2d 675, 675 (Fla. 2003) (adding additional conditions to a defendant's probation, such as drug court, without a violation of probation violates double jeopardy)
http://scholar.google.com/scholar_case?case=9059680499599834556&q=850+So.2d+675&hl=en&as_sdt=2,6

One Car v. State, 122 S.W.3d 422, 422 (Tex. App. 2003) (Because the double jeopardy clause prohibits multiple criminal penalties for the same conduct, vehicle forfeitures and driver's

license revocations do not violate the double jeopardy clause)http://scholar.google.com/scholar_case?case=15906315651458382626&q=122+S.W.3d+422&hl=en&as_sdt=2,6

Witte v. United States, 515 U.S. 389, 405 (1995) (prohibition against being punished multiple times for the same offense does not prevent consideration of misconduct, upon imposition of the original sentence or upon re-sentencing)
http://scholar.google.com/scholar_case?case=5421751169894487412&q=515+US+389&hl=en&as_sdt=2,6

United States v. DiFrancesco, 449 U.S. 117, 129 (1980) (double jeopardy clause protects against a second prosecution for the same offense after either an acquittal or a conviction and multiple criminal punishments for the same offense.)
http://scholar.google.com/scholar_case?case=11573208396862749601&q=449+U.S.+117&hl=en&as_sdt=2,6

Breed v. Jones, 421 U.S. 519, 529 (1975) (the double jeopardy clause applies to any juvenile proceeding that has the potential to deprive the juvenile of liberty)
http://scholar.google.com/scholar_case?case=11038416852180519972&q=421+US+519&hl=en&as_sdt=2,6

XVII. Right to Treatment and Drug Courts

State v. Loomis, 2016 WI 68 (Wisc. 2016) (consideration of risk assessment, such as COMPAS, at sentencing is permissible, reliance on such a tool is violation of due process because it would be sentencing on group data and the Constitution requires individualized sentencing.)
https://scholar.google.com/scholar_case?case=3639846283240589146&q=2016+WI+68+&hl=en&as_sdt=4006

Watson v. Kentucky, _____F. Supp. 2d ____, (E.D. Kentucky 7/7/15)(At the hearing, Watson requested the state court take her off the conditional release terms or remove the "blanket prohibition on her taking Suboxone, Methadone or any other drugs that she needs" to treat her addiction. The state attorney clarified that there was not a blanket prohibition on MAT drug use, but that "it's generally the Court's practice to allow [MAT drug use] if the doctor will show [] medical need." The court agreed and instructed Watson to produce "medical proof and recommendations from a treating physician" that she needs to use MAT drugs as part of her treatment.. Watson also asked the state court to declare Kentucky's policy with regards to MAT drugs in violation of the Americans with Disabilities Act ("ADA"), the Rehabilitation Act. The state court denied Watson's request. At the hearing, Watson did not raise any other claims, constitutional or otherwise. Watson filed a complaint in federal court challenging the medication condition. She claims that conditioning her use of narcotics on a court's review of a doctor's note violates the ADA, the Rehabilitation Act, the Equal Protection and Due Process Clauses of the United States Constitution, and § 2 of the Kentucky Constitution. Watson asks

the Court to enjoin the Kentucky Administrative Office of the Courts from enforcing the medication condition. Held: *Younger v. Harris*, 401 U.S. 37 (1971) bars Watson's claims because they can be adequately dealt with in state court.)
https://scholar.google.com/scholar_case?case=13415211223492936144&hl=en&lr=lang_en&as_sdt=4006&as_vis=1&oi=scholaralrt

Reed-Kaliher v. Hoggatt, ___ Ariz. ___, 347 P.3d 136 (2015), (holding that § 36-2811(B)(1) prohibits a trial court from conditioning probation on refraining from possessing or using medical marijuana in compliance with Arizona Medical Marijuana Act).
https://scholar.google.com/scholar_case?case=5071707053816838875&q=Reed-Kaliher+v.+Hoggatt&hl=en&as_sdt=4006

Polk v. Hancock, ___ Ariz. ___, 347 P.3d 142 (2015) (holding that § 36-2811(B)(1) prohibits a trial court from conditioning probation on refraining from possessing or using medical marijuana in compliance with Arizona Medical Marijuana Act).
https://scholar.google.com/scholar_case?case=16235279754635670349&q=Reed-Kaliher+v.+Hoggatt&hl=en&as_sdt=4006

State v. Sykes, 339 P. 3d 972 (Wash. 12/18/14) (Adult drug courts are philosophically, functionally, and intentionally different from ordinary criminal courts. Based on their unique characteristics, we hold that adult drug court staff meetings are not subject to the open courts provision of article I, section 10 of the Washington State Constitution. Whether adult drug court staff meetings are presumptively open or closed is left to the discretion of the individual drug courts.)
https://scholar.google.com/scholar_case?case=13213565636167982721&q=339+P.+3d+972+&hl=en&as_sdt=4006

State v. Plouffe, 2014 MT 183, 329 P.3d 1255 (Mont. 2014) (Under statewide drug court protocols, defendant had to be honest and treatment providers could not use drug court disclosed information, such as drug testing with individuals not part of the drug court team. When non-team members obtained statements from the drug court participant under circumstances where he was in a penalty position, the statements were not admissible. Plouffe was impermissibly required to "choose between making incriminating statements and jeopardizing his conditional liberty by remaining silent," Fuller, 276 Mont. at 166-67, 915 P.2d at 816 (citing Murphy, 465 U.S. at 436, 104 S. Ct. at 1147), because Plouffe believed that he had to answer questions honestly in order to comply with Treatment Court rules.)
https://scholar.google.com/scholar_case?case=3328217416011371888&q=329+P.3d+1255+&hl=en&as_sdt=4006

Jackson v. Indiana, No. 48A05-1403-CR-106.Court of Appeals of Indiana (September 16, 2014) Not Selected for Publication (Defendants significant medical condition did not excuse him from complying with drug court conditions, including refraining from lying and continuing his contact with drug court)

http://scholar.google.com/scholar_case?case=6889241679432459147&q=%22drug+court%22&hl=en&as_sdt=4006&as_ylo=2014

State v. Schively, 323 P. 3d 1211 (Arizona Appeals, Division 1 5/13/14) (Insufficient evidence supported the superior court's conclusion that Shively "refused" drug treatment within the meaning of § 13-901.01(G). The only evidence offered at the hearing was that Shively used and possessed heroin while in a residential drug treatment program. But we have held that "evidence that one possessed or used drugs is not equivalent to evidence that one refused to participate in drug treatment.")
https://scholar.google.com/scholar_case?case=12575982168732015028&q=323+P.+3d+1211&hl=en&as_sdt=4006

Coats v. Dish Network , 303 P.3d 147 (2013)(even though Colorado has legalized marijuana, it is not a legal activity and employee can be fired for testing positive for marijuana.)
http://scholar.google.com/scholar_case?case=5645666895659223252&q=beinor+&hl=en&as_sdt=4006&as_ylo=2011

In re Joshua C., A136438 (Cal. App. 8-6-2013) NOT SELECTED for PUBLICATION (Analyzes factors to determine when medical marijuana use may be permitted as a condition of probation, relying on People v. Leal, 210 Cal.App.4th 829 (2012))

http://scholar.google.com/scholar_case?case=16692085637582644205&q=IN+RE+JOSHUA+C.,+&hl=en&as_sdt=4,5,33

Savage v. Maine Pretrial Services, Inc.., 2013 ME 9 (2013)
(Jody Savage appeals from a judgment dismissing Count I of her complaint alleging that the termination of her employment by Maine Pretrial Services was a violation of the Maine Medical Use of Marijuana Act (MMUMA or Act), 22 M.R.S. § 2421-2430-B (2012). She argues that her application for a license to operate a medical marijuana dispensary was "authorized conduct" within the meaning of the Act and her subsequent termination was thus a penalty prohibited by the Act. We affirm the trial court's judgment dismissing Count I of Savage's complaint.)

http://scholar.google.com/scholar_case?case=3544357637227309283&q=2013+ME+9+&hl=en&as_sdt=4006&as_ylo=2013

Tennessee v. Michelle Lee, No. M2011-01669-CCA-R3-CD. Court of Criminal Appeals of Tennessee, at Nashville. (Opinion Filed November 15, 2012) (recognizing in the termination of drug court and probation, the need to treat drug court participant who is engaged but still relapses more lenient than a participant who is not engaged.)
http://scholar.google.com/scholar_case?case=11539027907678214291&hl=en&lr=lang_en&as_sdt=2,10&as_vis=1&oi=scholaralrt

In re the matter of R.A., 280 P. 3d 366, 2012 OK CIV APP 65 (2012) ("Based upon our review of the record, this Court finds the three ISPs entered in this case failed to adequately address the actual "condition" Mother needs to correct — her mental illness. Mother's substance abuse clearly follows and flows directly from her mental health condition. Matter of C.R.T., , 66 P.3d at 1010. Mother's history of significant trauma leading her to need to self-medicate is a condition that the psychological evaluation and Ms. Wilburn both conceded could not be corrected "solely through the efforts of Mother" without "medical, psychiatric, and psychological intervention." Id., 66 P.3d at 1009. As such, termination of Mother's parental rights based upon a failure to correct conditions where Mother's mental health condition was not correctly identified and/or addressed by DHS constitutes a violation of Mother's substantive due process rights.[fn9]Id. ¶ 34 Additionally, the ISPs failed to effectively offer Mother the "opportunity to ameliorate [her] condition and to effectively defend against termination efforts" by failing to adequately address her mental illness. Matter of C.G. , 637 P.2d at 68. While evidence was presented to show Mother failed to correct the conditions stated in her ISPs, the ISPs failed to properly identify, address or offer services specifically directed to the recognized cause of Mother's substance abuse — her severe mental health issues. In failing to incorporate the information and recommendations garnered from Mother's November 2010 court-ordered psychological evaluation into her ISP, Mother was not afforded the full spectrum of procedural safeguards to guard against termination of her parental rights.")

https://scholar.google.com/scholar_case?case=6625873990736494751&q=2012+OK+CIV+APP+65+&hl=en&as_sdt=4006

People v. Watkins, No. 10CA0579, Court of Appeals of Colorado, February 2, 2012 (constitutional authorization to use medical marijuana did not trump statutory condition of probation prohibiting commission of crime including federal crime which includes use of marijuana)
http://scholar.google.com/scholar_case?case=23597237204706413&q=people+v.+watkins+colorado&hl=en&as_sdt=2,6&as_ylo=2012

Legal Action Center, "Legality of Denying Access to Medication Assisted Treatment In the Criminal Justice System" (LAC 12/1/11)
http://www.lac.org/doc_library/lac/publications/MAT_Report_FINAL_12-1-2011.pdf

Beinor v. ICAO, 262 P.3d 970 (Colo. App.2011) (constitutional authorization to use medical marijuana did not trump employer's prohibition against drug usage and firing w/o unemployment compensation benefits upheld)
http://scholar.google.com/scholar_case?case=16064864343417027827&q=beinor+&hl=en&as_sdt=2,6&as_ylo=2011

Harris v. Lake County Jail, No. C 09-3168 SI (pr), (N.D. Cal. 5-2-2011) (The Eighth Amendment claim of cruel and unusual punishment relating to medical treatment in an incarcerative setting requires that there be an objectively serious medical need. Harris does not, however, provide sufficient evidence to allow a reasonable jury to find that he suffered

degenerative disk disease or any other medical condition making it impossible for him to walk without the use of marijuana. Summary judgment granted)
http://www.scribd.com/doc/54933374/Harris-v-Lake-County-Jail-1983-MSJ

People v. Ray Earl Webb, No. D056735 (Court of Appeals of California, Fourth District, Division One, March 15, 2011) UNPUBLISHED (defendant not denied due process or other constitutional rights when he was rejected for drug court because he was taking strong narcotic medicines which would interfere with his ability to participate in the drug court program)
http://scholar.google.com/scholar_case?case=16436553176787518078&q=people+v.+webb+D056735&hl=en&as_sdt=2,6&as_ylo=2010

U. S. v. Small, ___F. Supp. 3d ___,Cause No. CR-10-91-BLG-RFC (D. Mont. 2010)
(defendant on pre trial release not entitled to use medical marijuana even with a prescription and even though Montana Supreme Court permitted state probationers to do so. The court noted: The right to use marijuana, however, is not a fundamental right and the authority of the United States to prohibit the use of marijuana has already been decided. Gonzales v. Raich, 545 U.S. 1 (2005); Raich v. Gonzales, 500 F.3d 850 (9th Cir. 2007))
http://scholar.google.com/scholar_case?case=6175907134988379568&q=Cause+No.+CR-10-91-BLG-RFC&hl=en&as_sdt=2,10&as_ylo=2009

Rogers, Fred, "On Prohibiting the Use of Medical Marijuana by Persons Granted Probation", Judges Journal, (Fall 2010)

http://qa.americanbar.org/content/dam/aba/migrated/divisions/Judicial/MO/MemberDocuments/JJ_Fall10.authcheckdam.pdf

People v. Beaty, 181 Cal.App.4th 644, 105 Cal.Rptr.3d 76 (2010) (the authorized use of medical marijuana does not by itself make a nonviolent drug offender unamenable to the treatment mandated by Prop. 36)
http://scholar.google.com/scholar_case?case=6200839042548447021&q=181+Cal.App.4th+644+&hl=en&as_sdt=2,6&as_ylo=2009

Mellender v. Dane County, ___F. Supp ___ (W. D. Wisc. 2006) (allegations that defendants exhibited deliberate indifference to his serious medical needs by discontinuing his methadone prescription and enforcing a policy that restricts inmates from receiving prescription methadone pass summary judgment standard)
http://scholar.google.com/scholar_case?case=4475349435844210 74&q=MELLENDER+v.+DANE+COUNTY+&hl=en&as_sdt=2,6

Sharp v. Weston, 233 F.3d 1166, 1172 (9th Cir. 2000) (due process clause of Fourteenth Amendment "requires states to provide civilly-committed persons with access to mental health treatment that gives them a realistic opportunity to be cured and released")
http://scholar.google.com/scholar_case?case=18203291363739853340&q=233+F.3d+1166&hl=en&as_sdt=2,6

Abdul-Akbar v. Department of Corrections, 910 F. Supp. 986, 1002 (D. Del. 1995) (Indeed, pretrial detainees and prisoners have no constitutional right to drug treatment or other rehabilitation)
http://scholar.google.com/scholar_case?case=17651616132818042793&q=910+F.+Supp.+986&hl=en&as_sdt=2,6

Monmouth County Corr. Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987) (to establish an Eighth Amendment violation, it must be established that the institution acted with deliberate indifference to the inmates serious medical needs. A medical need is "serious" if it is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.")
http://scholar.google.com/scholar_case?case=16596370929605603831&q=834+F.2d+326&hl=en&as_sdt=2,6

Youngberg v. Romeo, 457 U.S. 307, 317-19 (1982) (involuntarily committed persons have a constitutional right to minimally adequate treatment and training to ensure safety and freedom from undue restraint)
http://scholar.google.com/scholar_case?case=7713558129166322035&q=457+U.S.+307&hl=en&as_sdt=2,6

Norris v. Frame, 585 F.2d 1183, 1188 (3d Cir. 1978) (pretrial detainees had no constitutional right to receive the drug methadone, unless it was prescribed before their detention)
http://scholar.google.com/scholar_case?case=18088035694954188757&q=585+F.2d+1183&hl=en&as_sdt=2,6

Estelle v. Gamble, 429 U.S. 97, 104 (1976) (The Eighth Amendment's prohibition against cruel and unusual punishment places on prison officials an "obligation to provide medical care for those whom [they are] punishing by incarceration)
http://scholar.google.com/scholar_case?case=4755107314332030951&q=429+U.S.+97&hl=en&as_sdt=2,6

Cudnik v. Kreiger, 392 F. Supp. 305 (N.D. Ohio 1974) **(**it is a due process violation to prohibit the administration of prescribed methadone to pretrial detainees.)
http://scholar.google.com/scholar_case?case=5151385327624528362&q=392+F.+Supp.+305+&hl=en&as_sdt=2,6