

# The Role of the Prosecutor in Drug Courts



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# A Very Different Role

- An effective prosecutor in a drug court has a different mindset
  - Therapeutic approach
  - Teamwork with the judge, defense attorney, and the drug court team
  - Works toward recovery and productive citizenship rather than incarceration
  - Belief in the effectiveness of alternative courts

# Drug Court Prosecutor Core Competencies

- A drug court prosecutor helps to identify and select offenders who should participate in the program; he/she obtains prior criminal histories of offenders, participates in team meetings and attends non-adversarial court proceedings.
- NDCI and NDCAP have identified 9 core competencies

# Competency 1:

Participates fully as a Drug Court team member, committing him or herself to the program mission & goals and works as a full partner to ensure their success

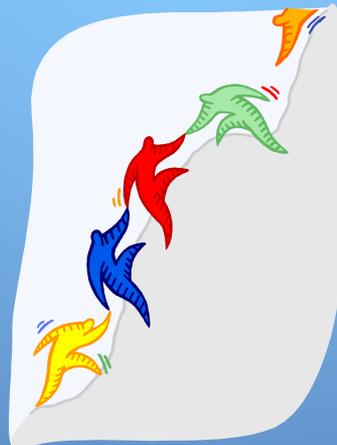
- Promptly conducts legal screens on offenders recommended to drug court
- Assists in executing all participant waivers and contracts
- Advocates for prompt sanctions in response to negative client behavior
- Protects integrity for drug court program by monitoring effectiveness of community supervision
- Maintains up-to-date record of participant performance
- Moves for dismissal of participant from program based on factual history of non-compliance (when appropriate)



# Competency 2:

The prosecutor, while in Drug Court, participates as a team member, operating in a non-adversarial manner, promoting a sense of unified team presence

- Attends regularly scheduled court staffings
- Solicits information regarding participant progress, or lack thereof, from all team members
- Share information regarding status of the drug court and individual clients with drug court team members
- Maintains up-to-date record of participant performance



**Competency 3:** As part of a Drug Court team, in appropriate non-court settings (i.e. staffings), the prosecutor advocates for effective incentives and sanctions for program compliance or lack thereof.

- Attends regularly scheduled staffings
- Requests appropriate incentives and sanctions, based on participant behavior
- Researches efficacy of drug court's behavior modification techniques
- Argues for swift response to participant behavior
- Maintains up-to-date record on prior incentives and sanctions given to assure consistency



**Competency 4:** Ensures community safety concerns by maintaining eligibility standards while participating in a non-adversarial environment which focuses on the benefits of therapeutic program outcomes.

- Moves for dismissal of drug court participants who no longer meet eligibility criteria
- Monitors participant behavior for compliance and continued eligibility



# Competency 5:

Monitors offender progress to define parameters of behavior that allow continued program participation and suggest effective incentives and sanctions for program compliance

- Attends regularly scheduled staffings
- Solicits information from team members regarding client compliance
- Vehemently encourages sanctions for client noncompliance and seeks incentives for client compliance
- Files motions or other legal document in order to remove noncompliant participants
- Offers encouragement to participants while reminding them of consequences of noncompliance



**Competency 6:** Is knowledgeable about addiction, alcoholism and pharmacology generally and applies that knowledge to respond to compliance in therapeutically appropriate manner.

- Continues to research effective treatment modalities
- Conducts regular quality assurance to ensure appropriate treatment
- Attends and actively participates in all court sessions and staffing



**Competency 7:** Is knowledgeable of gender, age, and cultural issues that may impact the offender's success

- Continues to attend training opportunities to inform team members about cultural competence



# Competency 8: Contributes to the team's efforts in community education and local resource acquisition

- Assist in researching any potential funding streams



# Competency 9: Contributes to education of peers, colleagues and judiciary in the efficacy of Drug Courts

- Oversees integrity of drug court program through quality assurance
- Disseminates information about drug court as frequently as possible



# What does all this mean to me as a prosecutor?



Practical ways to be a proactive Prosecutor

# #1: Encouraging Applicants

- Become active in pre-screening defendants and encouraging application to drug court
  - Work with Court Services or other agency at the jail to pre-screen possible applicants
  - Notify the arraignment judge and/or fellow prosecutors that a person might be a good candidate for an alternative court
  - Scan intake or charges ready to be filed for potential candidates and have a way to ‘flag cases’

## #2: Educate your office & other prosecutors

- Write articles for local criminal law publications
- Try to encourage the administration to allow new attorneys to shadow you for a day or two
- Hold training events for all assistant district attorneys in your office
  - Who are good candidates for the program
  - Admission procedures
  - Get a group associated with alternative courts to provide lunch

# #3: Encourage graduation and pro-social behavior

- Orientation speech
- Reminders at review docket

Holidays

Warning if you see trends (i.e. spice)

- Be present in staffing and at review docket
- Congratulate participants at promotions & encourage continued compliance
- Attend graduations



## Research confirms that the presence of the prosecutor at staffing and review dockets matters

- Courts where the prosecutor attended staffing meetings had an average graduation rate of 58% versus 43% in courts where attendance occurred only occasionally or not at all.
- For drug courts where the prosecutor attended drug court sessions, graduation rates were higher (55% v. 46%) and there was substantial improvement in lowering outcome costs relative to their comparison group.)
  - NPC Research March 2008  
[http://www.npcresearch.com/Files/NIJ\\_Cross-site\\_Final\\_Report\\_0308.pdf](http://www.npcresearch.com/Files/NIJ_Cross-site_Final_Report_0308.pdf)

# Wrapping it up

- Maintain a mindset of working with your team on therapeutic approaches toward recovery and productive citizenship, rather than incarceration
- Continue to educate yourself about best practices, addiction, alcoholism, and pharmacology
- Make efforts to educate peers, colleagues, the judiciary, and the community on the efficacy of Drug Courts
- Seek ways to encourage more applicants
- Be present at staff meetings and at court reviews as much as possible
- Encourage pro-social behavior and graduation

# Frequently Asked Questions

- If a participant tests positive on UA, should the sanction be uniform, and should it always be jail time?
- If a participant is non-compliant to the degree that they are eligible for revocation, should all other options be ignored?
- If the participant has been guilty of a violent act or offense in the past, should they automatically be ineligible for a treatment court?

# Resources and Training Opportunities

- National Drug Court Institute: Prosecutor training: This four-day, comprehensive training is designed for prosecutors looking to gain more in-depth information on their role in Drug Court. Understanding the requirements of Federal confidentiality laws and knowing what information can be disclosed and when is it crucial the role of a Drug Court Prosecutor. Dana A. Jenkins, Project Director, Phone 571-384-1868; Email: [djenkins@ndci.org](mailto:djenkins@ndci.org).
- The Proactive Prosecutor in Alternative Courts, Tammy Wescott, Assistant District Attorney, Director of Alternative Courts, Tulsa County, Oklahoma, NADCP, 18<sup>th</sup> Annual Training Conference, May 30, 2012 to June 2, 2012.
- Ethical Issues for Attorneys in Drug Court: Who's Team am I on? Hon. Peggy Fulton Hora (ret.), NADCP, 18<sup>th</sup> Annual Training Conference, May 30, 2012 to June 2, 2012.