

**MARATHON COUNTY OWI COURT  
POLICIES AND PROCEDURES  
MANUAL**

**January 1, 2011**

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## DRUG COURT TEAM

<p><b>The Honorable Greg Huber</b>  Presiding Circuit Court Judge  Marathon County Circuit Court  500 Forest Street  Wausau, WI 54403  715-261-1350  715-261-1319 (fax)</p>	<p><b>The Honorable Jill Falstad</b>  Circuit Court Judge  Marathon County Circuit Court  500 Forest Street  Wausau, WI 54403  715-261-1335  715-2611332 (fax)</p>
<p><b>Ken Heimerman</b>  District Attorney  Marathon County District Attorney's Office  500 Forest St.  Wausau, WI 54476  715-261-1111  715-261-1100 (fax)</p>	<p><b>Liesle Dille</b>  Corrections Field Supervisor  Wisconsin Probation and Parole- Marathon County  500 Forest St.  Wausau, WI 54403  715-261-1636</p>
<p><b>Suzanne O'Neill</b>  Attorney Manager  State Public Defender  370 Grand Ave.  Wausau, WI 54403  715-842-1603  715-848-0639 (fax)</p>	<p><b>Chad Billeb</b>  Lieutenant  Marathon County Sheriff's Department  500 Forest St.  Wausau, WI 54403  715-261-1888  <a href="mailto:Chad.billeb@co.marathon.wi.us">Chad.billeb@co.marathon.wi.us</a></p>
<p><b>Ronda Zastrow</b>  Marathon County Sheriff's Department  Jail Program Coordinator  500 Forest St.  Wausau, WI 54403  715-261-1790  715-261-1713 (fax)  <a href="mailto:ronda.zastrow@co.marathon.wi.us">ronda.zastrow@co.marathon.wi.us</a></p>	<p><b>Andrea Gallela</b>  Director of AODA Programs  North Central Health Care  1100 Lakeview Dr.  Wausau, WI 54403  715-848-4455  715-845-6050(fax)  <a href="mailto:info@norcen.org">info@norcen.org</a></p>
<p><b>Laura Yarie</b>  Justice Systems Coordinator  Marathon County Administration  500 Forest St.  Wausau, WI 54403  715-261-1191  715-261-1515 (fax)  <a href="mailto:layarie@co.marathon.wi.us">layarie@co.marathon.wi.us</a></p>	<p><b>Paul Martin</b>  Associate Professor of Mathematics  University of Wisconsin – Marathon County  518 S. 7<sup>th</sup> Avenue  Wausau, WI 54401  715-261-6272  715-261-6333 (fax)  <a href="mailto:paul.martin@uwc.edu">paul.martin@uwc.edu</a></p>

## **MISSION STATEMENT**

The Marathon County OWI Court provides increased community safety through intensive supervision of OWI offenders. The program assesses at risk individuals who are alcohol dependent and provides them and their families with treatment and education to end the cycle of alcohol abuse. Through intervention, education and rehabilitation we will prevent repeat OWI offenses.

## **GOALS AND OBJECTIVES**

**GOAL 1: To promote self-sufficiency by reducing alcohol abuse through OWI Court Treatment.**

**Objective #1:**

At least 85% of participants in OWI Court services will reduce the frequency of alcohol use as measured by urinalysis testing results and success with G4-S compliance.

**Output Measures:**

Number of tests conducted

Number of positive urinalysis tests

Number of days sobriety on G4-S

**Objective #2:**

At least 65% of the eligible participants will complete the program successfully.

**Output Measures**

Number of offenders eligible to graduate

Number of offenders completing the program

**Objective #3:**

All of the participants who successfully graduate will have a long-term sobriety plan.

**Output Measures:**

Number of long-term sobriety plans developed

**GOAL 2: To provide an integrated program of alcohol treatment, alcohol abuse education, and rehabilitation services.**

**Objective #1:**

All of the participants referred will be actively receiving alcohol abuse treatment at any given time as measured by treatment provider verification reports.

**Output Measures:**

- Number of participants referred to treatment
- Number of participants participating in substance abuse treatment

**Objective #2:**

At least 80% of the participants who have completed OWI Court will be employed, in school or obtaining an advanced degree upon graduation as measured by case management employment verification reports.

**Output Measures**

- Number of participants employed full-time
- Number of participants employed part-time
- Number of participants in school full-time

**Objective #3:**

At least 95% of the graduates with less than a high school degree will earn a HSED as measured by educational verification reports.

**Output Measures:**

- Number of participants with less than high school degree
- Number of participants earning a GED during the program

**GOAL 3: To promote public safety by reducing recidivism.**

**Objective #1:**

At least 95% of the participants who graduate from the program will not be rearrested within one year post graduation.

**Output Measures**

- Number of persons re-arrested within six months post graduation.
- Number of persons re-arrested within one year post graduation.
- Number of "Operating While Intoxicated" (OWI) violations.

**GOAL 4: To examine the cost-effectiveness of the program thereby demonstrating cost savings to the taxpayer.**

**Objective #1:**

To increase savings to the taxpayer by reducing costs to the criminal justice system by 10 percent.

**Output Measures:**

- Costs per arrest
- Costs of crime-related court and legal costs

Costs of incarceration in jail and prison  
Costs of substance abuse treatment

**Objective #2:**

At least 95% of participants who graduate from the program will not have child abuse/neglect allegations filed or require out of home placement for their children within one year post graduation.

**Output Measures**

Number of persons with investigations of child abuse or neglect  
Cost of child abuse or neglect investigations  
Number of out of home placements required  
Cost of out of home placements

**STRUCTURE/ MODEL**

A post-conviction structured OWI court will be utilized to best meet the needs of participants.

**TARGET POPULATION**

Qualifiers

Resident of Marathon County  
18 years of age or older  
4<sup>th</sup>, 5<sup>th</sup> or 6<sup>th</sup> OWI offense  
Assessed dependent on alcohol  
Voluntarily agree to abide by court rules  
Accept responsibility for their actions with a guilty plea

Disqualifiers

Prior violent convictions  
7<sup>th</sup> offense or higher

May Disqualify

Prior failure in the program  
Weapons offense  
Prior record of OWI homicide / or great bodily harm  
Misdemeanor violent convictions

## ELIGIBILITY CRITERIA

An offender is eligible to participate in the Marathon County OWI Court if:

- ❖ The defendant is a resident of Marathon County;
- ❖ The defendant is charged with a felony offense of operating while under the influence of alcohol in Marathon County;
- ❖ The defendant is willing to comply with the OWI Court Program rules;
- ❖ The defendant is found, through use of a screening tool, to be a person who is addicted to alcohol;
- ❖ The defendant is able to physically participate in treatment activities (within guidelines of the American with Disabilities Act); and
- ❖ The defendant's criminal record check must disclose"
  - ❖ No prior violent felony convictions.

Eligibility criteria can be waived at the discretion of the team on a case by case basis.

## ENTRY PROCESS

Referrals may be made by the District Attorney's office, probation agent, defense attorney, Jail Program Coordinator or treatment professional.

Defendants interested in the program shall have their referral source complete a referral form and submit it to the Coordinator/Treatment Case Manager. The OWI Court Team will hold a small staffing to determine eligibility for participation. Once the team is in agreement to considering the defendant the Coordinator/Treatment Case Manager will meet with the defendant to explain all expectations of the court and orientate them to the process. If the defendant decides to proceed, they will be formally assessed for the program by the Coordinator/Treatment Case Manager. All assessment information will be presented back to the team for acceptance or denial to the program. If the team approves the defendant's acceptance into the program and the defendant agrees to participate, a plea hearing will be scheduled to occur as soon as possible.

The defendant will:

- ❖ Enter a plea of guilty to the relevant charges and be sentenced;
- ❖ Be scheduled for OWI Court hearings on a regular basis;
- ❖ Participate in a treatment program, based on the completed assessment;
- ❖ Submit to drug and alcohol testing on a scheduled and/or random basis;
- ❖ Submit to visits at home and/or work by assigned Probation Officers, AODA Counselors, Drug Court personnel, or law enforcement officers.

Note: a defendant meeting the qualifications for the Marathon County OWI Court program does not have a "right" to admission to the program. **Entry to the program is the** decision of the OWI Court Team. This decision will be made prior to the defendant's plea hearing.

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## **PHASES**

### **MARATHON COUNTY ADULT OWI TREATMENT COURT PHASES**

The Marathon County OWI Court Program shall consist of three phases. The OWI Court Judge, upon recommendation of the OWI Court Team, shall determine promotions to a higher phase.

Participant shall complete the recommended treatment services in each phase before transfer to the next phase.

Participant shall cooperate with office and home visits as directed by the OWI court case manager and the OWI court team.

Participant shall avoid any premises where alcohol is the primary source of the income.

Participant shall not associate with any person or place where alcohol or illegal drugs are being used.

Call for color for UA testing. These calls must be made within this time or a missed test will be counted as a positive. Any call outside of the time frame will be counted as a positive result.

Participant shall call the treatment service providers for excused absence *prior* to all appointments. For example, if faced with an unavoidable conflict, contact the service provider in advance of the time for the appointment to reschedule. Failure to do so will be treated as a missed appointment and be subject to sanction.

#### **Phase 1: Participants shall:**

- Complete mandatory jail time.
- Complete a minimum of 90 days in OWI Treatment Court.
- Attend court sessions weekly.
- Attend weekly sessions with OWI Treatment Case Manager
- Demonstrate decreasing use by negative urinalysis results/G4-S monitoring
- Demonstrate consistent compliance with OWI treatment court
- Establish payment plan for OWI court fees, treatment fees, and other court obligations



- Complete the first level of treatment services as recommended by the primary treatment provider and monitored by the OWI court team.
- Provide verification of attendance of (3) self-help meetings a week.
- Curfew of 10:00 p.m.
- Present a written request to the OWI court team to request transfer to the next Phase.

**Phase 2: Participants shall:**

- Complete minimum of 120 days in OWI Court Treatment Court.
- Attend court sessions every other week
- Demonstrate decreasing use by negative urinalysis and breathalyzers.
- Demonstrate consistent compliance with OWI treatment court requirements and other benchmarks as required by the OWI court team.
- Demonstrate consistent payments toward drug court fees, treatment fees, and other court obligations.
- Complete the recommended level of treatment services as recommended by the primary treatment provider and monitored by the OWI court team.
- Provide written verification of attendance at a minimum of 3 self-help meetings a week.
- Become actively involved in obtaining HSED, job skills training, volunteer work, or employment search as appropriate for the participant and monitored by the OWI court team.
- Present a written request to the OWI court team to request transfer to the next phase.

**Phase 3: Participants shall:**

- Complete a minimum of 150 days in OWI Treatment Court.
- Attend all court appearance as ordered (5-6).
- Maintain complete abstinence with 100% negative urinalysis and breathalyzers for a total of 365 days.
- Demonstrate consistent compliance with OWI treatment court requirements and other benchmarks as required by the OWI court team.
- Demonstrate full payment of OWI court fees and good faith effort toward treatment fees and other court obligations.
- Complete the recommended level of treatment services as recommended by the primary treatment provider and monitored by the OWI court team.
- Provide written verification of attendance at a minimum of 3 self-help meetings per week.
- Obtain HSED, job skills training or obtain and maintain employment or volunteer work as appropriate for the participant and monitored by the OWI court team.
- Provide an aftercare plan as recommended by the OWI court team.
- Attend a pre-graduation interview with the OWI court team to discuss the ability to live a responsible, drug/alcohol free lifestyle without supervision

**\*Participants time in OWI court does not count toward Phase Advancement while serving a jail sentence longer than 14 days or while in Inpatient treatment longer than 10 days. OWI court time will begin if or when participant is placed on the home monitoring system.\***

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## **GRADUATION CRITERIA**

Participants must complete at least twelve (12) months of the Marathon County OWI Court program to be considered eligible for graduation. The OWI Court team must approve any exceptions. The OWI Court team must approve candidates for graduation.

Once a participant is approved for graduation, a graduation ceremony will take place in the final OWI court session. Family members, friends, sponsors, and other supportive individuals are encouraged to attend the graduation ceremony.

The OWI Court Coordinator will obtain the graduate's input through an exit interview or survey with the graduate. Results will be maintained in the OWI Court Tracking System.

## **ALUMNI ASSOCIATION**

Upon graduation, all OWI Court graduates will be invited to join the Alumni Association. The rules of the Alumni Association will be established by the members of the Alumni Association with the approval of the OWI Court Team.

## **SANCTIONS AND INCENTIVES**

Sanctions in Marathon County OWI Court may include, but are not limited to, the following:

- ◆ An essay writing assignment or workbook
- ◆ Increased drug testing
- ◆ Increased attendance at OWI Court sessions
- ◆ Placement in an earlier OWI Court phase or repetition of a phase
- ◆ Community service assignments
- ◆ Curfew restrictions
- ◆ Loss of privileges; for example, driver's license, fishing license, etc.
- ◆ Imposition of suspended court fees
- ◆ Warrant for arrest
- ◆ Team round table with team
- ◆ Jail time
- ◆ Dismissal from the OWI Court program
- ◆ Verbal or written apologies to judge and group
- ◆ Peer Review
- ◆ Stay during complete OWI court
- ◆ Verbal warning by the Judge

Incentives in Marathon County OWI Court may include, but are not limited to, the following:

- ◆ Applause/Special Recognition
- ◆ Gift Cards
- ◆ Certificates of recognition and/or completion
- ◆ Fishbowl Drawings
- ◆ Advancement to the next OWI Court phase
- ◆ Decrease in drug testing
- ◆ Decrease mandatory attendance at support groups and/or meetings
- ◆ Curfew reductions
- ◆ Gain of privileges; for example, driver's license or fishing license.
- ◆ Decrease attendance at OWI Court sessions
- ◆ Reduction in program fees
- ◆ Program recognition ceremony and membership in Alumni Group
- ◆ Sobriety and drug free living
- ◆ Priority during court

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### **TERMINATION CRITERIA**

Regardless of the method by which a participant enters the Marathon County OWI Court, termination may occur for various reasons including, but not limited to:

- Noncompliance with rules and procedures.
- Arrest and/or conviction on new OWI charges. Assaultive, violent crimes or behaviors will result in termination. All new arrests and/or convictions will be determined on a case by case basis, by the OWI Court Team.
- Any issue or behavior that would have disqualified the participant from original eligibility.

## **Process for expulsion**

Any member of the OWI Court Team may make a Motion for Expulsion. The Motion for Expulsion will be discussed at the next staffing of the Team and termination will be decided by majority vote. The Judge does not vote on termination.

**A OWI Court participant does not have the option to quit or remove him or herself from the OWI Court program. Successful completion or expulsions are the only methods by which a participant may leave OWI Court.**

## **DRUG TESTING PROTOCOL**

### All Phases

- ◆ Type of alcohol and drug screening will be based on individual profile of alcohol and drug use history. Basic screening will monitor for alcohol, THC, methamphetamine, cocaine, benzodiazepine, amphetamine and opiate use. Urine or oral drug screens will be used for all drugs. Alcohol screening may also include breathalyzer, G4-S unit.
- ◆ Urine/Saliva screenings that show a positive result will be sent to the state laboratory, through probation, for confirmation of use and type of drug used.
- ◆ Probation officers may also drug test. For participants receiving treatment, treatment staff may also drug test.
- ◆ All alcohol and drug screening will be a witnessed collection with direct observation of urine/ saliva collections.
- ◆ As a key component to OWI Court, any team member may require a drug screening at any time and for any reason.
- ◆ Upon request, the participant must comply with the drug screening procedure. If a sample is not produced, is not of sufficient quantity, or is adulterated in any way, it will be treated as a positive sample for the presence of unauthorized drugs or alcohol and reported to OWI Court.
- ◆ Prior to delivering a test sample, the participant will be asked whether or not the test will be positive. Participant acknowledgement that a sample will be positive will be considered a positive test and reported as such. If a participant indicates that a test will be negative, but the test is positive, the participant will be asked for confirmation of drug use. If requested a fresh sample will be sent to the laboratory for confirmation.

- ◆ Drug screening will include random testing throughout the duration of the OWI Court program.
- ◆ Participants who are receiving treatment for methamphetamine addiction will be drug screened a minimum of twice a week throughout the length of their participation in the OWI Court program.
- ◆ Participants who are charged with new criminal charges will be screened.

### **Phase One**

Minimum screening will occur twice a week in addition to the possibility of a random screening.

### **Phase Two**

Minimum screening will occur once a week in addition to the possibility of random screening.

### **Phase Three**

Minimum screening will occur on a random basis.

## **Visitors to the Court**

Visitors may be allowed to attend OWI Court sessions. All visitors must request permission to attend court one week prior to the date they would like to attend. Requests can be submitted to the OWI Coordinator/Case Manger. Those approved to attend by the OWI Court team will be notified. A list of approved visitors will be posted on the courtroom door each day a court sessions takes place. No visitors will be allowed to enter the OWI Court session without prior approval from the team. Visitors will be required to sign a confidentiality agreement at each session. Visitors may be asked to leave court at any time.

## **ETHICS AND CONFIDENTIALITY**

The participant's identity and privacy will be protected consistent with federal confidentiality laws (42 United States Code (USC) Section 2990dd-2, and the regulations implementing these laws at 42 Code of Federal Regulations (CFR), Part 2) and Wisconsin law. OWI courts and confidentiality laws are designed to achieve the shared goal of encouraging substance abusers to obtain and remain in treatment. The Marathon County OWI Court can only function if information is shared among team members.

The goals of the Marathon County OWI Court and confidentiality laws are compatible; both seek to help substance abusers overcome their drug addiction, for the benefit of the users themselves and society at large. If a situation exists where Marathon County OWI Court practice conflicts with confidentiality laws, then the law prevails. Marathon County OWI Court will eliminate any unnecessary conflict by obtaining the participant's consent for information disclosure. The participant will be asked to sign a waiver authorizing the transfer of information among all participating agencies.

Valid consent from a participant allows the use of information in a manner that would otherwise violate federal regulations regarding confidentiality. Individuals referred to OWI treatment programs by the criminal justice system do not have a right to revoke their consent until successful completion of the program. Participants must be informed that their consent is irrevocable but not permanent.

First, the participant should have an opportunity to consult with a lawyer before signing the form. The lawyer should not necessarily present the form to the participant, as this may give the impression that the lawyer is trying to obtain the participant's consent rather than assisting the participant in deciding whether to consent.

Second, whoever presents the form should review it with the participant, with particular attention to the possibility that the participant is illiterate or cannot read or comprehend the language in which the waiver is printed. If the participant cannot understand or read English, a translator will assist the person reviewing the form. Typically, the OWI Court Coordinator will be the person obtaining signed copies of confidentiality forms and consent to disclose private information forms. The OWI Court Coordinator will maintain copies of all signed forms in each participant's OWI Court file.

Third, regulations require that the participant be advised, orally and in writing that federal law protects the confidentiality of treatment records. The notice must cite Section 290dd-2 and the implementing regulations (Sections 2.1 through 2.67 of Title 42 of the Code of Federal Regulations) and state that

- a) Treatment information is ordinarily kept confidential;
- b) It is a crime to violate this confidentiality requirement, which the participant may report to appropriate authorities;
- c) Federal law does not protect information relating to crimes committed on the premises of the program, crimes against program personnel or the abuse or neglect of a child

The participant may be asked to re-execute the consent. The re-execution should occur as soon as the court is satisfied that the participant is not suffering from any effects of being under the influence of alcohol and other drugs or the withdrawals associated with drug use. Routine re-execution is required when a new entity joins the drug court team.

Title 42, Section 2.31(a) of the Code of Federal Regulations lists nine elements that must be included in a written consent:

1. The specific name or general designation of the program or person permitted to make the disclosure
2. The name or title of the individual or the name of the organization to which disclosure is to be made.
3. The name of the OWI Court participant.
4. The purpose or need for the disclosure.
5. How much and what kind of information is to be disclosed.
6. The signature of the patient or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 2.15 in lieu of the patient.
7. The date which the consent is signed.
8. A statement that the consent is subject to revocation at any time **except** to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.
9. The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

**Note: The eighth element**, concerning the revocation of consent, should not be included in consent forms in criminal OWI courts, but it must be included in juvenile and family drug court waivers. See 42 C.F.R. § 2.35.



A general medical release form or any consent form that does not contain all of the elements listed above and herein, is not acceptable.

## **The General Rule**

Federal confidentiality laws and regulations protect any information about an offender if the offender has applied for or received any AOD-related services from a program that is covered under the law. Services applied for or received can include assessment, diagnosis, individual counseling, group counseling, treatment or referral for treatment. The restrictions on disclosure apply to any information that would identify the offender as an alcoholic or other drug abuser, either directly or by implication. The general rule applies from the time the offender makes an appointment. It applies to offenders who are mandated into treatment as well as those who enter treatment voluntarily. It also applies to former clients or patients. The rule applies whether or not the person making an inquiry already has the information, has other ways of getting it, has some form of official status, is authorized by State law, or comes armed with a subpoena or search warrant.

## **Sharing Confidential Information**

Information that is protected by Federal confidentiality regulations may always be disclosed after the offender has signed a proper consent form. The regulations also permit disclosure without the offender's consent in several situations, including medical emergencies, program evaluations and communications among program staff. Offenders who refuse to sign consent forms permitting essential communications can be excluded from treatment or provided treatment temporarily in the hope that resistance to signing the consent forms will evaporate as treatment proceeds.

All members of the OWI Court Team must hold information discussed during pretrial interviews, assessment, OWI Court Team staffing meetings, OWI court status hearings, and treatment sessions in confidence.

No test results or statements made by participants during the above mentioned proceedings – other than pleas of guilty or statements made at termination hearings – shall be admissible against participants in any prosecution other than in drug court proceedings to prove a violation of drug court rules, to establish grounds for termination of a defendant from the drug court program, or to prove a violation of probation based upon termination of a defendant from the drug court program. However, evidence which is discovered either routinely in the course of a criminal investigation, shall not be inadmissible because such

evidence is also disclosed or discovered during pretrial interviews, assessment, treatment, or drug court proceedings.

Evaluators, researchers, or personnel from other courts visiting the OWI Court staffing and court hearings are required to sign a confidentiality agreement that is kept on file by the OWI Court Coordinator.