



# SUPREME COURT OF APPEALS OF WEST VIRGINIA

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## Juvenile Drug Court Policy and Procedure Manual Division of Probation Services

### 1. Introduction.

#### 1.1 Overview.

The West Virginia Juvenile Drug Court Program is a cooperative effort of the juvenile justice, social service, substance abuse treatment, law enforcement, and education systems in the state. This program seeks to divert non-violent juvenile offenders exhibiting alcohol or substance abuse behavior from the traditional juvenile court process to an intensive, individualized treatment process. The objectives are to provide treatment and accountability in order to prevent/reduce future Court involvement for youth involved in Juvenile Drug Court by addressing their substance abuse issues and improving individual functioning of the participants and their families.

Juvenile Drug Courts are initiated through legislative funds, grant funds, and other funds made available to the Supreme Court of Appeals of West Virginia Administrative Office. Counties selected for juvenile drug courts have demonstrated support from relevant stakeholders in their county, including their circuit judges.

The decision to divert a substance abusing juvenile into this program is a decision to prioritize the treatment of the juvenile (tempered with accountability) ahead of the punishment of the juvenile. Best practices denote that traditional methods of detention or other apparent punitive methodology have proven insufficient to address the treatment needs of the participants.

#### 1.2 Statute.

The West Virginia Legislature formalized the Juvenile Drug Court (“JDC”) system by passing West Virginia Code § 49-4-703 (originally, § 49-5-2b), which provides:

Juvenile drug courts shall be designed and operated consistent with the developmental and rehabilitative needs of juveniles as defined in this article. The Supreme Court shall provide uniform referral, procedure and order forms that shall be used in juvenile drug courts. The Supreme Court is further authorized to appoint appropriate hearing officers in those jurisdictions which choose to operate a juvenile drug court. Hearing officers for juvenile drug courts shall be limited to current or senior status circuit court judges or family court judges.

Effective Date:	2019 03-01
Revision Date:	2019 03-01
Review Date:	2019 03-01

The Supreme Court, through its Division of Probation Services, has promulgated appropriate forms pursuant to this statute that are available on the Supreme Court's intranet site. Please contact the assigned Juvenile Drug Court Probation Officer for more information.

Additionally, this Policies & Procedures Manual constitutes the Supreme Court's promulgation of policy forms pursuant to the statute.

## **2. Juvenile Drug Court Structure.**

### **2.1 Brief Overview**

A juvenile drug court (JDC) is a docket within a juvenile court to which selected delinquency cases, and in some instances, status offenders are referred for handling by a designated judge. The youth referred to this docket are identified as having struggling with alcohol and/or illicit drug use. The juvenile drug court judge maintains close oversight of each case through frequent (often weekly) status hearings with the parties involved. The judge both leads and works as a member of a team that comprises representatives from treatment, juvenile justice, social services, school and vocational training programs, law enforcement, probation, the prosecution, and the defense. Together, the team determines how best to address the substance abuse and related problems of the youth and his or her family that have brought the youth into contact with the justice system. The goals of the juvenile drug court are to:

- Provide immediate intervention, treatment, and structure in the lives of juveniles who use drugs through ongoing, active oversight and monitoring by the drug court judge.
- Provide juveniles with skills that will aid them in leading productive substance-free and crime-free lives—including skills that relate to their educational development, sense of self-worth, and capacity to develop positive relationships in the community.
- Strengthen families of drug-involved youth by improving their capability to provide structure and guidance to their children.
- Promote accountability of both juvenile offenders *and* those who provide services to them.

Most communities that establish juvenile drug courts initiate these programs to provide intensive judicial intervention and supervision of juveniles and families involved in substance abuse—a level of intervention not generally available through the traditional juvenile court process.

The juvenile drug court is a unique, community-based approach that builds strong community partnerships and enhances the capacity of these partners to assist in the habilitation of substance-abusing youth.

Juvenile drug courts depend on the involvement of many organizations that traditionally have not worked together in the juvenile justice process. These organizations need to be identified and engaged in the initial planning of the program. Broad-based interdisciplinary planning is critical to identify and secure the community resources that can provide ongoing support for the program. The multidisciplinary nature of the JDC model, which incorporates the training, expertise, and perspective of differing professionals begins at the planning stage. The contributions that these professionals can make in offering complementary insights in each case must inform the process from the beginning and continue throughout the program.

## **2.2 Objectives and Guidelines Statements for Juvenile Drug Courts**

In 2016, the Office Juvenile Justice and Delinquency Prevention (OJJDP) in conjunction with the National Association of Drug Court Professionals (NADCP) developed updated JDC Objectives and Guideline Statements aimed at simplifying the previous iteration of the 16 Key Strategies of JDC. These 7 JDC Objectives and Guidelines Statements will continue to serve as the skeletal foundation on which all West Virginia Juvenile Drug Court programs shall continue to operate.

**Objective 1.** Focus the JDC philosophy and practice on effectively addressing substance use and criminogenic needs to decrease future offending and substance use and to increase positive outcomes.

*Guideline 1.1.* The JDC team should be composed of stakeholders committed to the court's philosophy and practice, and to ongoing program and system improvement. The team should include collaborative relationships with community partners.

*Guideline 1.2.* The roles for each member of the JDC team should be clearly articulated.

*Guideline 1.3.* The team should include participants from local school systems, with the goal of overcoming the educational barriers JDC participants face.

*Guideline 1.4.* The JDC should ensure that all team members have equal access to high-quality regular training and technical assistance to improve staff capacity to operate the JDC and deliver related programming effectively. Such training and technical assistance should focus on:

- The nature of substance use disorders and the dynamics of recovery.

- Staff skill development and effective case management.
  - Screening and assessment for substance use and criminogenic needs, particularly relating to the development of treatment plans.
  - Adolescent development and the developmental perspective for juvenile justice programming.
  - Cultural competence in working with youth and families.
  - Family engagement and working with caregivers through a trauma-informed lens.
  - The use of effective contingency management strategies (e.g., incentives and sanctions).
  - The purpose of each intervention implemented for JDC participants, the evidence of its value, and how it aligns with the JDC’s mission.
  - The effective use of evidence-based practices (that address co-occurring mental health issues and other co-occurring issues such as family dysfunction) in substance use treatment.

*Guideline 1.5.* JDCs should be deliberate about engaging parents or guardians throughout the court process, which includes addressing the specific barriers to their full engagement.

*Guideline 1.6.* JDCs should provide court-certified or licensed onsite interpreters for parents or guardians with limited English proficiency and for those with a hearing deficiency. In addition, all documents should be translated into the native language of non-English-speaking youth and parents or guardians.

**Objective 2.** Ensure equitable treatment for all youth by adhering to eligibility criteria and conducting an initial screening.<sup>1</sup>

*Guideline 2.1.* Eligibility criteria should include the following:

- Youth with a substance use disorder.
- Youth who are 14 years old or older.
- Youth who have a moderate to high risk of reoffending.

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<sup>1</sup> Objective 2 reflects the updated objectives developed by the Office Juvenile Justice and Delinquency Prevention (OJJDP) in conjunction with the National Association of Drug Court Professionals (NADCP). JDCs should ensure that eligibility criteria result in equity of access for all genders, racial, and ethnic groups and ensure access to all youths in compliance with applicable laws, regulations and court policies designed to prohibit discrimination.

*Guideline 2.2.* Assess all program participants for the risk of reoffending using a validated instrument.

*Guideline 2.3.* Screen all program participants for substance use using validated, culturally responsive screening assessments.

*Guideline 2.4.* Potential program participants who do not have a substance use disorder and are not assessed as moderate to high risk for reoffending should be diverted from the JDC process.

*Guideline 2.5.* JDCs should ensure that eligibility criteria result in equity of access for all genders; racial and ethnic groups; and youth who are lesbian, gay, bisexual, transgender, queer or questioning, intersex, and gender non-conforming (LGBTQI–GNC) and Two-Spirit

**Objective 3.** Provide a JDC process that engages the full team and follows procedures fairly.

*Guideline 3.1.* JDCs should work collaboratively with parents and guardians throughout the court process to encourage active participation in (a) regular court hearings, (b) supervision and discipline of their children in the home and community, and (c) treatment programs.

*Guideline 3.2.* The judge should interact with the participants in a nonjudgmental and procedurally fair manner.

*Guideline 3.3.* The judge should be consistent when applying program requirements (including incentives and sanctions).

*Guideline 3.4.* The JDC team should meet weekly to review progress for participants and consider incentives and sanctions based on reports of each participant’s progress across all aspects of the treatment plan.

**Objective 4.** Conduct comprehensive needs assessments that inform individualized case management.

*Guideline 4.1.* Needs assessments should include information for each participant on:

- Use of alcohol or other drugs.
- Criminogenic needs.
- Mental health needs.
- History of abuse or other traumatic experiences.
- Well-being needs and strengths.
- Parental drug use, parental mental health needs, and parenting skills.

*Guideline 4.2.* Case management and treatment plans should be individualized and culturally appropriate, based on an assessment of the youth's and family's needs.

**Objective 5.** Implement contingency management, case management, and community supervision strategies effectively.

*Guideline 5.1.* For each participant, the application of incentives should equal or exceed the sanctions that the JDC applies. Incentives should be favored over sanctions. *Guideline 5.2.* Participants should feel that the assignment of incentives and sanctions is fair:

- Application should be consistent; i.e., participants receive similar incentives and sanctions as others who are in the court for the same reasons.
- Without violating the principle of consistency described above, it is also valuable to individualize incentives and sanctions.

*Guideline 5.3.* Financial fees and detention should be considered only after other graduated sanctions have been attempted. Detention should be used as a sanction infrequently and only for short periods of time when the youth is a danger to himself/herself or the community, or may abscond.

*Guideline 5.4.* Ongoing monitoring and case management of youth participants should focus less on the detection of violations of program requirements than on addressing their needs in a holistic manner, including a strong focus on behavioral health treatment and family intervention.

*Guideline 5.5.* A participant's failure to appear for a drug test and otherwise tampering with drug test results should be addressed with immediate, graduated sanctions.

*Guideline 5.6.* The JDC team should be prepared to respond to any return to substance use in ways that consider the youth's risk, needs, and responsivity.

**Objective 6.** Refer participants to evidence-based substance use treatment, to other services, and for prosocial connections.

*Guideline 6.1.* The JDC should have access to and use a continuum of evidence-based substance use treatment resources—from in-patient residential treatment to outpatient services.

*Guideline 6.2.* Providers should administer treatment modalities that have been shown to improve outcomes for youth with substance use issues. These modalities include, but are not limited to, the following:

- Assertive continuing care. Programs that provide integrated and coordinated case management services for youth after they are discharged from outpatient or inpatient treatment, including home visits, client advocacy for support services, and integrated social support services.
- Behavioral therapy. Programs based on operant behavioral principles that use incentives to reward abstinence and/or compliance with treatment.
- Cognitive behavioral therapy. Programs based on theories of classical conditioning that focus on teaching adolescents coping skills, problem-solving skills, and cognitive restructuring techniques for dealing with stimuli that trigger substance use or cravings.
- Family therapy. Programs based on ecological approaches that actively involve family members in treatment and address issues of family functioning, parenting skills, and family communication skills.
- Motivational enhancement therapy. Programs that use supportive and non-confrontational therapeutic techniques to encourage motivation to change based on clients' readiness to change and self-efficacy for behavior change.
- Motivational enhancement therapy/cognitive behavioral therapy. Programs that use a combination of motivational enhancement and cognitive behavioral therapy techniques.
- Multiservice packages. Programs that combine two or more of these approaches. These programs use a combination of behavioral therapy, cognitive behavioral therapy, family therapy, motivational enhancement therapy, pharmacotherapies, and/or group and mixed counseling in a comprehensive package.

*Guideline 6.3.* Service providers should deliver intervention programs with fidelity to the programmatic models.

*Guideline 6.4.* The JDC should have access to and make appropriate use of evidence-based treatment services that address the risks and needs identified as priorities in the youth's case plan, including factors such as trauma, mental health, quality of family life, educational challenges, and criminal thinking.

*Guideline 6.5.* Participants should be encouraged to practice and should receive help in practicing prosocial skills in domains such as work, education, relationships, community, health, and creative activities.

**Objective 7.** Monitor and track program completion and termination.

*Guideline 7.1.* Court and treatment practices should facilitate equivalent outcomes (e.g., retention, duration of involvement, treatment progress, positive court outcomes) for all program participants, regardless of gender, race, ethnicity, or sexual orientation.

*Guideline 7.2.* A youth should be terminated from the program only after the JDC team has carefully deliberated and only as a last resort after full implementation of the JDC’s protocol on behavioral contingencies.

*Guideline 7.3.* Each JDC should routinely collect the following detailed data:

- Family-related factors, such as family cohesion, home functioning, and communication.
- General recidivism during the program and after completion, drug use during the program, and use of alcohol or other drugs after the program ends.
- Program completion and termination, educational enrollment, and sustained employment.
- Involvement in prosocial activities and youth-peer associations.

**3. Objective 1. Focus the JDC philosophy and practice on effectively addressing substance use and criminogenic needs to decrease future offending and substance use and to increase positive outcomes.**

**3.1 JDC Structure**

JDC structure consists of three major parts: intensive supervision by the judiciary (the JDC Judge and probation officer), treatment services, and community-based organizational support. The intensive supervision includes more frequent face-to-face contacts with the Court and the probation officer, as well as high frequency of drug testing. Treatment services are tailored to the specific needs of substance-abusing juveniles, including, but not limited to, mental health treatment and family counseling. Community-based organizational support includes further family involvement services and a focus on the juvenile participants’ educational needs.

When seeking to initiate a JDC program, any circuit or family court judge who wishes to do so must seek prior review and authorization from the Justices of the Supreme Court. Requests, via an application process, shall be submitted to Division of Probation Services’ State Drug Court Coordinator for a detailed review. After this review, the request will be forwarded to the Administrative Director for inclusion on the agenda for an upcoming



Administrative Conference of the Supreme Court. If approved by the Supreme Court, a JDC program can be implemented in conformity with the following unified protocols. West Virginia's JDC programs are not "build your own" programs. They are implemented and developed consistent with a defined and set protocol that must be followed to allow the program as a whole to be evaluated for efficacy. However, this Policy and Procedures governing JDC programs serves as a guide for presiding JDC Judges, probation officers, and other invested stakeholders; the JDC Judges has ultimate discretion and flexibility to mold the local program to the jurisdiction as necessity dictates. Any major deviation(s) from the outlined parameters of this Policy and Procedures Manual require the presiding JDC Judge, or their designee, to consult with the State Drug Court Coordinator to confer and affirm that said deviation(s) meld with current best practices, legal protections, etc.

### **3.2 JDC Planning and Evaluation (P&E) Team.**

Every JDC program must have a planning and evaluation team ("P&E" Team) consisting of, but not limited to, a prosecutor/assistant prosecutor, a public defender/defense attorney, a treatment provider representative, the Juvenile Drug Court Probation Officer ("JDCPO"), a law enforcement representative, an education representative, a representative from the local Bureau of Juvenile Services ("BJS") facility or youth reporting center (if there is a facility/center in the area), a DHHR case worker/supervisor, family resource network representative (if available in the area), interested community members and/or organizations (including those interested stakeholders from the faith-based communities), a representative from a substance abuse recovery program (if available in the area), and the presiding JDC Judge. The P&E Team should ensure that all members understand the role of the P&E Team and the roles of the various members.

This team serves as a voluntary committee and will not receive compensation for participation in the program. The P&E team shall meet at least no less than twice yearly and will serve in the capacity as the project planning and evaluation team for the local JDC program. A primary role of the P&E team is to identify local collateral resources and organizations that can provide ongoing support for the participants and their families engaging both traditional and nontraditional organizations in developing community networks and other supports for youth and families. In addition, establishing mechanisms for program and participant oversight and accountability to ensure that program goals are achieved and the program is implemented as planned is another important role. (Note: The Circuit Clerk does not have to be a member of the P&E team, but must be included in the initial planning of the local program to clarify matters regarding the filing of JDC cases).

P&E teams are to have an annual meeting, which shall serve as one of the two required meetings per annum, where the team conducts an intensive review of the program. These annual meetings should include the development and ongoing pursuit of a strategic plan for the program, comprising strategic goals that will achieve that plan. The P&E team should review progress toward those strategic goals, and possibly readjust those goals or the plan, if conditions require. The meeting should also include a community resource mapping exercise, which should be done at least once annually. The P&E team should also review their program data on at least an annual basis as part of a discussion to strengthen the program.

### **3.3 Treatment Team**

In the Treatment Team, a spectrum of professionals with varying training and experience are able to provide a more comprehensive analysis and approach to resolving the participants' issues. It is important that this team work together and that it communicate effectively. The best outcomes result when all points of view are heard and considered. The Treatment Team is the core of a successful JDC program. The JDC Treatment Team is the supervising committee for admission and treatment matters for JDC participants. Every JDC program must have a treatment team, which consists of, but is not limited to, the JDC Judge (who generally acts as Chair of the Treatment Team), the Juvenile Drug Court Probation Officer, the treatment provider, a prosecutor/assistant prosecutor, law enforcement (e.g. Bailiff/Court Marshal) and a public defender /defense attorney (a more extensive description of Treatment Team members is included below). The treatment team meets prior to drug court hearings to discuss specifics of the status of cases for current participants and to make recommendations to the presiding JDC Judge. The individualized case plan and treatment plan for each participant should guide the team's review of each participant's progress. The frequency of staffing meetings may vary depending on the different phases of the program. Treatment team members should make every effort to be present for both staffing meetings and Court Hearings but in the event that a member(s) cannot attend, said member(s) should consult with the JDC Probation Officer for updates as necessity dictates.

Decisions regarding final admission, treatment, and termination for participants are discussed by the Treatment Team. The JDC Judge has the only authority to override a decision made by the Treatment Team regarding said matters. However, it is important that the participant knows who the team members are and that they communicate during hearings and other activities; this sentiment may be conveyed by the presiding JDC Judge and/or the JDC Probation Officer.

The Treatment Team is the central group that directs the interaction of a JDC program with its participants. The Treatment Team shall conduct a staffing meeting prior to each JDC Hearing to discuss and provide updated information regarding each JDC participant that is expected to attend the following Hearing. At this meeting, the appropriate members of the Treatment Team will recommend appropriate incentives or sanctions to be applied based on participants' progress as well as any recommendations for treatment planning adjustments. The final decision regarding treatment is made by the treatment provider. At no point during the duration of the JDC program shall the Court impose any forms of treatment onto the participant or their family. Any such recommendation for treatment (e.g. modification of prescription or treatment dosage, family counseling sessions, etc.) shall be made by the treatment provider(s). The JDC Judge may then order the participant to follow the individualized treatment plans and goals set forth by the providers and approved by the Treatment Team.

Treatment Team Members are also to participate in interdisciplinary education as to the values, goals, and operating procedures of both the treatment and justice system components of the JDC program. Treatment Team Members must understand both the overall mission/purpose of the Treatment Team and the roles of its individual members. Treatment Teams are also to review the efficacy of current treatment modalities and recommend and approve changes in treatment as the need for change arises or if certain modalities do not have the desired effect. Any changes in treatment must be evidence based and determined by the treatment provider. The effectiveness or lack thereof should be closely monitored. The following section shall describe the individual stakeholders on the Treatment Team and their respective roles.

1. JDC Judge

Pursuant to the Juvenile Drug Court Statute set forth above, JDC programs shall be presided over by a current or senior status Circuit Judge or Family Court Judge as requested and approved by the Chief Circuit Judge and as appointed by the Chief Justice of the Supreme Court in an Administrative Order of Appointment. The JDC Judge serves as the "CEO" of the JDC program and its leader. The JDC Judge has the chief responsibility to reinforce by example and direction the Treatment Team's adherence to the purpose and mission of the drug court, their adherence to the 7 Objectives and Guideline Statements, and their understanding and command of evidence based practices and therapeutic principles.

The duties of the JDC Judge include but are not limited to:

- Select team members from each discipline who are culturally competent and familiar with the population from which juvenile drug court participants will be selected and extend invitation to take part in JDC program;
- Participate in the interview process for new JDC program staff;
- Appoint a Planning & Evaluation Committee and serve as the Chair of that Committee;
- Represent the JDC program in the community;
- Oversee creation and maintenance of local Policies & Procedures and Participant Handbook;
- Maintain role as team leader while promoting a productive work environment where each team member can participate without fear;
- Facilitate the Treatment Team staffing meetings;
- Advocate for effective, graduated, incentives & sanctions, promoting a ratio of at least 4 incentives for every 1 sanction in keeping in line with JDC best practices;
- Exercise final authority regarding sanctions, incentives, and other Court action if consensus cannot be met by the Treatment Team;
- Preside over court sessions for the JDC program;
- Modify incentives & sanctions to be applied in cases where information obtained during Hearings merit a change;
- Ensure the JDC program's adherence to best practices through quality control, both within the program and facilitating quality control with the Supreme Court of Appeals of West Virginia Administrative Office;
- Participate in drug court related statewide trainings/meetings provided by the Supreme Court's Administrative Office, specifically, the Division of Probation Services;
- Review and participate in policy and procedure recommendations for JDC programs; and,
- Share information regarding the efficacy of Juvenile Drug Courts with local civic organizations, other members of the judiciary, the community at large, and media sources.

- Other duties the JDC Judge see as necessary and vital to carry out the mission of JDC.

Consistent statements from participants in numerous drug courts nationwide identify praise (or disapproval) from the Drug Court Judge as the most meaningful incentive (or sanction). The JDC Judge has therefore a special ability to influence the behavior of the participants by what she or he says from the Bench during JDC Hearings.

## 2. Juvenile Drug Court Probation Officer

The JDCPO is responsible for the overall administrative work, coordination of activities, and participant supervision for the local JDC Program. The work involves extensive planning, organizing, coordinating, and monitoring of activities of the program, and specifically includes working directly with program participants and their families, members of the P&E Team, the Treatment Team, various judicial staff members, and creating and maintaining relationships with the community at large. The duties and qualifications for the Juvenile Drug Court Probation Officer position are set forth fully in “Appendix A: Juvenile Drug Court Job Description.”

Other primary duties of the JDCPO include, but are not limited to:

- Conduct initial interviews/intake for youth and families to determine program eligibility;
- Refer eligible juveniles to treatment provider for clinical assessments following the intake and risk/needs assessment but prior to the admission discussion with the JDC Treatment Team;
- Assist in selecting JDC Treatment Team members who will work well with the JDC program;
- Work with team to create appropriate incentives and sanctions;
- Coordinates day-to-day activities of JDC program;
- Perform home visits, school visits, and curfew checks with participants;
- Conduct drug testing for program participants as referenced in the JDC Protocol;
- Provide guidance and supervision for all JDC participants;
- Work closely with treatment provider in order to identify and provide comprehensive services for JDC participants and families;

- Assure consistency of incentives and sanctions while ensuring each participant is treated as an individual;
- Work with participants, parents, other social service agencies, and the community to develop and enhance incentive and sanction options for the program;
- Provide aftercare planning and coordination for each JDC participant throughout the phases of the program;
- Assist JDC participants in finding employment and education opportunities as well as other core services;
- Work closely with Board of Education and school personnel to ensure participants' school attendance and performance improves.
- Work closely with the treatment provider to establish and update participant case plans;
- Complete and submit the required financial, progress, statistical, and evaluation reports. Also monitor funding and expenses of the local JDC program, such as tracking purchases of;
- Maintain complete and updated case files, and ensure that all required information is entered into the data management system identified by the Division of Probation Services, including the WVOCMS database;
- Assist in drafting memoranda of understanding related to JDC program and ensuring that they are followed;
- Preparation and updating of the local Policies & Procedures Manual and Participant Handbook, ensuring that it is consistent with state law, regulation, and Court rules;
- Maintain cooperative relationships with treatment agencies, community organizations, social service agencies, local school personnel, criminal justice professionals, and other agencies represented on the P&E Team and Treatment Team;
- Coordinate with the State Drug Court Coordinator to provide local training to the P&E Team and Treatment Team members, local criminal justice officials, and other community agencies/organizations;
- Educate referral sources and the community on eligibility standards and JDC program goals;

- Facilitate community presentations, coordinates community service, promote program integrity, develop community resources, monitor quality assurance, collect data and work closely with the Treatment Team and the program evaluator;
- Develop and maintain an inventory of community resources that address the needs of juveniles who use or abuse drugs and/or alcohol;
- Work non-traditional hours to ensure random drug screens, home and field visits, and curfew checks are performed; and,
- Perform additional various diversified tasks and assignments as may be required in direct relations with the operation of a JDC program.

### 3. Juvenile Drug Court Case Manager

The position of JDC Case Manager is a temporary court position. JDC Case Managers may be approved by the Division of Probation Services upon request and with justification by the Chief Probation Officer and/or the JDC Judge. JDC Case Managers will not be considered for JDC programs which are not consistently carrying an average caseload of 15 JDC participants for Part-Time status and 25 JDC participants for Full-Time status during the previous six months. The Division of Probation Services conducts twice a year reviews to ascertain average caseloads to warrant the need for case managers as necessity dictates. The job description and qualifications of the JDC Case Manager are set by the Division of Probation Services and all minimum requirements for any candidate for this position must be met prior to submission for approval to the State Drug Court Coordinator.

JDC Case Managers are required to perform the full range of client case management services, including data entry, drug testing, and assistance with home/school visits. JDC Case Managers are not probation officers and do not have the authority to search homes or lockers without a probation officer present. JDC Case Managers shall work under the direction and supervision of the JDC Judge and/or JDCPO (as well as the Chief Probation Officer). Due to the nature of the duties, non-traditional work hours may be required. As this is a temporary, hourly position, monthly invoicing is also required. The duties and qualifications for the Case Manager position are set forth fully in “Appendix B: Juvenile Drug Court Case Manager Job Description.”

### 4. A Prosecutor/Assistant Prosecutor

A representative of the Prosecuting Attorney’s office is especially qualified to promote community safety concerns on the JDC Treatment Team by

maintaining eligibility standards while participating in a non-adversarial environment which focuses on the benefits of therapeutic program outcomes. The prosecution representative also has a special role and perspective on monitoring participants' progress to define parameters of behavior that allow continued program participation and should suggest effective incentives and sanctions for program compliance.

5. A Public Defender or member of the Criminal Defense Bar

The defense representative is especially qualified to evaluate the participants' legal situations and ensure that the participants' legal rights are protected. Also, he or she may advise the Treatment Team on the participants' legal rights, legal options, program conditions and sentencing outcomes while developing a relationship with the participants that promotes their long term best interest. The defense representative must remain cognizant, however, that the participants are not the defense representative's clients. Indeed, if a client of the defense representative is admitted to the JDC program, ethical considerations forbid the defense representative from participating as a Treatment Team member with regard to client participants. A defense representative should not even be present during Treatment Team discussions regarding any of his or her clients. The defense representative also has a special role and perspective to advocate appropriate and effective incentives and sanctions for program compliance or lack thereof.

6. The JDC Treatment Provider(s).

The treatment provider is especially qualified to ensure that the participant receives the highest level of care available by all contracted and ancillary service providers. He or she should also ensure that participants are evaluated in a timely and competent process and that any placement occurs in an expedited manner. The treatment provider should also assist the JDC PO and JDC Judge in developing post program services, client outreach, mentor programs, and alumni associations. The treatment provider's input with regard to the selection of appropriate and effective sanctions, consistent with the participants' needs is also essential.

The treatment provider will have training in substance abuse and adolescent development with appropriate license and certification and have the capacity to bill for his or her services. It is also the responsibility of the treatment provider to conduct the clinical assessment and provide a psychosocial history report for each juvenile referral to the program. The treatment provider will be expected to be able to provide group counseling and individual and family therapy (structured in cooperation with the juvenile participant's school during in-school or after school hours) in each phase as outlined in this Policies and Procedures Manual and to address co-



occurring disorders including, but not limited to, depression or anger management. If appropriate, the treatment provider may make appropriate referrals for chronic mental illness to licensed mental health professionals if requested by the Judge. The treatment provider must also participate in JDC Treatment Team meetings to discuss issues related to the juvenile participants as well as participate in quarterly planning and evaluation meetings to discuss issues related to the JDC program. The treatment provider shall prepare a brief progress report for the JDC PO weekly on all applicable participants currently under their respective care.

The treatment provider will provide services to JDC participants regardless of their ability to pay, and will pursue all available alternative funding for payment for treatment services provided before seeking payment for such services from the SCAWVO. Sources for alternative payment for such services include, but are not limited to, an Order (pursuant to *West Virginia Code* § 49-4-108) requiring the Department of Health and Human Resources to pay for treatment services, state or federal funding (such as Medicaid or the Affordable Care Act), or private insurance.

#### 7. Other Treatment Team Members

The following are recommended as additional Treatment Team members:

- A representative from Division of Juvenile Services (preferably from the local Youth Reporting Center, if one is located in the area);
- A law enforcement officer (generally a Prevention Resource Officer or other Juvenile Officer);
- The Chief Probation Officer and a Juvenile Probation Officer
- Representative school personnel (e.g. Attendance Director, School Based Probation Officer, if applicable, etc.); and
- A Department of Health & Human Resources caseworker.
- Others as determined and approved by the presiding JDC Judge

The Treatment Team should also, whenever possible, include active participation from other key educational professionals in the region, to maximize the Team's ability to serve its participants' educational needs. Also, while programs may not make any form of religious activity mandatory for their participants, this does not mean that representatives of faith-based organizations may not participate in treatment teams or provide services to a JDC Program.

All Team Members are responsible for respectfully contributing to the education of peers, colleagues, the judiciary and the community as to the nature and efficacy of JDC. They are also all expected to be knowledgeable about gender, age and cultural issues that may impact participants' success, and to remain informed about substance use disorder, alcoholism and pharmacology generally so that they may apply that knowledge to facilitate participant compliance in a therapeutically appropriate manner. For any intervention used by a JDC program, all of the Treatment Team should understand the purpose of the intervention, and be educated in its value and how it fits into the JDC's mission.

### **3.4 Training for JDC professionals.**

All treatment team members (especially the JDC Judge, the JDCPO, and the treatment stakeholders) are required to attend regular training so that their knowledge and skills to address the needs of the juvenile participants remain at the highest level, based upon the best and most current research and information. Regular training of all JDC staff will not only improve their skill development and effective handling of the cases, but will also maintain the appropriate focus on the JDC mission. Training may be a combination of national training (such as the annual conference of the National Association of Drug Court Professionals), state training(s) (such as the biennial West Virginia Drug Court Conferences), and local training opportunities (such as JDC Stakeholder Meetings) that assist personnel in their JDC duties. It is always helpful for training to reinforce the importance of the collaborative nature of Juvenile Drug Court. JDC programs should evaluate the training needs of the Treatment Team and if need be, JDC Probation Officers should reach out to the State Drug Court Coordinator to conduct JDC refresher trainings or other issue-specific trainings/discussions that will aid and strengthen the program as a whole.

Staff should receive cross-training so each member of the team understands and appreciates the role and expertise of the other members of the team. For example, it is essential that the JDC Judge, the JDCPO, and the entire Treatment Team should know the goal of each treatment intervention. It may also be advisable to provide information and training regarding the JDC system, its procedures, and practices outside of the Treatment Team, to the Planning and Evaluation Committee, key sources of referrals, and to the community at large, to enhance community support and understanding of the JDC program.

While the Division of Probation Services will continue to identify and communicate training opportunities to JDC programs, it is the responsibility of the JDC program to actively seek out training resources that can improve their performance. Special effort should be made to seek training on key drug

court concepts, such as best practices in evidence-based treatment, drug testing and analysis, and the correct application of incentives and sanctions. Treatment Team members should therefore sign up for newsletters, listservs, webinars, or e-mail updates from national training organizations.

### **3.5 Ethical considerations for treatment team and participant interaction.**

In order to avoid any appearance of impropriety and/or potential conflict of interest, a Treatment Team member shall physically remove her or himself from the Treatment Team meeting for any discussion, decision process, or any recommendation regarding an JDC participant when that Team member or their spouse, parent or child wherever residing:

- Is related by blood or marriage to a participant;
- Has a personal relationship with a participant or any close family member(s) of a participant; or,
- Has a financial interest or relationship with a participant or any close family member(s) of a participant.

**Under no circumstances is a Treatment Team member to initiate such a relationship with a participant or any close family member(s) of a participant during their participation in JDC.**

Additionally, it is important that the JDC Judge maintain a balance between the role as caring authority figure and the role of Judge. The Judge needs to gain the participant's trust but also must resist being perceived as the participant's friend. Therefore, ongoing group social activities that include the Judge, court staff and participants should be discouraged (e.g., softball teams, bowling teams, or other events occurring on a regular basis.). This does not mean that periodic events may not occur as incentives or as group community service activities as appropriately identified by the treatment team.

While JDC programs are permitted to accept donations to be used to fund JDC operations, events, and benefits to participants, the receipt and maintenance of such funds must not violate any of the statutory or ethical rules governing judicial officers and employees. Any such funds received must be maintained by a person who is not a judicial employee. In the alternative, a non-profit agency or local business that serves on the P&E or Treatment Team may serve as the fiscal agent. **Judicial officers and employees cannot handle or maintain such funds.**

Additionally, to ensure that both Treatment Team members and JDC participants are protected from interactions or communications which are or could be perceived as harassment or abuse, Treatment Team members shall avoid being alone with any JDC participants, unless it is unavoidable or customary to the Treatment Team member's profession (e.g., individual counseling with a JDC treatment provider).

Moreover, fraternization (i.e., romantic or physical relationships) between JDC participants should be discouraged and mitigated appropriately by the JDC Treatment Team. This does not mean that positive peer relationships or friendships that support recovery are to be discouraged among participants.

**4. Objective 2. Ensure equitable treatment for all youth by adhering to eligibility criteria and conducting an initial screening.**

Given the large population of youth who can potentially benefit from the intensive services of a juvenile drug court, one of the major tasks in its planning is to determine the characteristics and backgrounds of the youth who will be served by the program. To define the target population, the planning team needs to look at both the charge and its related behavior. The size and makeup of potential drug court participants may be quite broad. A clearly defined target population makes it more likely that the program will maintain and achieve its goals and objectives.

Juvenile drug court and its associated treatment and interventions are designed for a specific population defined by risk and need levels. Admitting juveniles who are not at the appropriate risk/need levels not only results in ineffective intervention for those juveniles, but can actually do active harm. Placing juveniles with a higher risk level group of peers, giving them interventions that are not necessary, and putting them in treatment that does not fit their needs will actually increase the likelihood that a participant's substance use may progress to substance use disorder. It can also increase the likelihood of future juvenile or even criminal offenses.

WV Juvenile Drug Courts are designed for those youth who demonstrate a high risk to continue their substance abuse and criminal behaviors.

**4.1 Admissions.**

Youth eligible for admission to a JDC program may be referred to the program by a magistrate, probation officer, judge, school personnel, law enforcement officer, parent, or DHHR representative. When chief probation officers become aware, pursuant to West Virginia Code, § 49-4-719(b), that a juvenile appropriate for juvenile drug court has been brought before the Court for juvenile proceedings, the chief should refer the juvenile for

consideration to the JDC program. These and any referrals should be directed to the JDCPO. Each youth referred to a JDC program shall undergo a dual assessment for program eligibility:

- The JDCPO will conduct an intake with potential participants and a parent/guardian to explain the drug court program and policies and to complete an initial screen for appropriateness of admission to the program;
- After initial intake, if the referred youth is appropriate for the program, the Treatment Provider will complete a Youth Level of Services/Case Management Inventory (YLS-CMI), the Juvenile Automated Substance Abuse Evaluation (“JASAE”) and any other assessments deemed necessary.

#### 1. Admission Levels

JDC programs may, at the discretion of the JDC Judge and Treatment Team, accept participant admissions from varying stages in the juvenile justice system: prior to any petition pursuant to a pre-petition diversion, once a petition has been signed but before it is filed, upon the filing of a petition but before adjudication, following adjudication but before disposition, and upon disposition. It is recommended that probation officers should be encouraged to make referrals for juveniles under probation supervision who are failing drug screens or who are identified as having substance abuse issues. Referrals prior to the filing of a petition are pursuant to West Virginia Code, § 49-4-702a. As a practical matter, JDC programs should be mindful that referrals made prior to the filing of a petition will require a Court Order from the JDC Judge for the participant to remain in the program more than six months, and cannot remain in a JDC program for more than one year. As will be discussed later, it should be noted that the juvenile participant’s admission level can place limitation on the imposition of detention as a sanction (which, for any participant should be used sparingly).

#### Pre-petition Diversion.

The JDCPO receives a referral or complaint based upon a chargeable offense without a juvenile petition. There must be a chargeable offense in order for the youth to be eligible for participation in a JDC program. Participation is voluntary and requires the consent of the youth and his or her parent/guardian following a dual assessment and determination of eligibility for admission to the JDC program. If the youth refuses to participate or is terminated from the program, a formal petition may be initiated. If the youth successfully completes the program the complaint may be destroyed.

*a) Signed, but non-filed petition.*

The JDCPO receives a signed petition that has not been formally filed with the Circuit Clerk and is being held in abeyance pending the youth's participation in the JDC. Participation is voluntary and requires the consent of the youth and his or her parent/guardian following a dual assessment and determination of eligibility for admission to the JDC program. Because the petition was never formally filed, the petition may be destroyed when the youth successfully completes the program. If the youth refuses to participate in the program or is terminated, the petition may be formally filed and proceed through the juvenile system.

*b) Filed petition (Pre-Adjudication).*

A petition has been filed with the Circuit Clerk, but it has not proceeded through the juvenile system and/or the Judge makes a referral prior to adjudication. Participation is voluntary by the youth and requires the consent of the youth and his or her parent/guardian. At completion of JDC, the petition may be dismissed. If the youth refuses to participate in the program or is terminated, the youth will return to Court for adjudication.

*c) Filed petition (Post-Adjudication).*

The Judge can make referral to JDC following adjudication, but prior to a disposition. Participation may be voluntary or non-voluntary by the youth and parent/guardian. At completion of JDC, the petition may be dismissed. If the youth refuses the program or is terminated, the youth would return to Court for disposition.

*d) Disposition.*

After adjudication, the Circuit Court Judge may order the youth to participate in the JDC as a part of formal disposition, typically as a condition of probation. Participation is non-voluntary by youth and parent/guardian. When the youth completes the program, the Judge would discharge the youth from the JDC program and may or may not discharge the youth from regular probation at this point. If the Judge chooses to continue regular probation, aftercare services by the JDCPO could be ordered for a period of up to six months in addition to regular probation supervision. If the youth fails to complete the JDC program, the youth would return to Circuit Court for modification of the earlier dispositional order. In addition, this entry level would include post-dispositional referrals from a probation officer.

## Target Population

The West Virginia Juvenile Drug Court Program combines the efforts of the juvenile justice, social service, law enforcement, and education systems in the state to divert nonviolent offenders with substance abuse issues from traditional court process and reduce future court involvement by providing treatment and intensive supervision. Juvenile drug courts seek to improve individual functioning, increase family self-sufficiency, and improve overall coping strategies for both. West Virginia's JDC system is intended as a program of early intervention to address the specific needs of substance-abusing youth with a program of intensive supervision and evidence-based treatment. However, consistent with the OJJDP Guidelines (2016), it is important that JDC programs consider potential participants for admittance on a case-by-case basis depending on the youth's age, risk level, substance use, and treatment and services available in the program.

West Virginia's JDC programs are designed to admit substance-abusing juveniles between 13 and 17 years old who have been charged with or adjudicated of an offense that forms the basis for a petition. The offense must be a that which, if the juvenile were an adult, be considered a misdemeanor or a non-violent felony offense that is drug/alcohol related. A non-violent offense is defined as an act that does not involve the use of a weapon or firearm or an act that does not result in serious bodily injury to the victim necessitating medical treatment. Violent offenses may include, but are not limited to, robbery or malicious wounding, but this determination is at the discretion of the Prosecutor and/or the presiding JDC Judge. A juvenile with a previous violent offense(s) may be considered for admission to the JDC program on a case-by-case basis by the Treatment Team. Youth charged with sex offenses or with a previous sex offense **shall not** be admitted to a JDC program. Youth charged with delivery of controlled substance offenses are not necessarily prohibited from the program. The Treatment Team must closely review such a youth's assessment results and the recommendation from the treatment professional to determine the origin of the behavior, the level of substance abuse and whether the program can adequately address the needs of the individual youth. It is strongly recommended these referrals be handled on a case-by-case basis and caution be used in determining the appropriateness of each youth for admission to the program.

JDC programs should not admit a participant unless his or her clinical assessments demonstrate substance abuse or high risk for substance use disorder. (Note: Youth assessed with substance use disorder may be more appropriate for in-patient or residential treatment first, followed by a possible referral to the JDC program after completion and discharge from that treatment program. Teams should take care to consider each of these referrals

on a case-by-case basis and are cautioned that such referrals have met with mixed results. Youth in in-patient or residential treatment should not be active cases in JDC programs and their time spent in these treatment programs cannot be counted toward phase or program completion).

JDC participants who drop out or are terminated from the program are not necessarily prohibited from a second opportunity to participate in the program. In such cases, a new referral should be made and considered on a case-by-case basis by the Treatment Team. However, a second opportunity to participate in the JDC is prohibited for a former JDC graduate.

**5. Objective 3. Provide a JDC process that engages the full team and follows procedures fairly.**

**6.1 Phases**

Both treatment and supervision in JDC programs are organized into phases that dictate how each should be applied to participants. The Administrative Office of the Courts recognize that not every JDC program will be able to operate uniformly given that different programs have more/less available services that could assist them. Ultimately, this Policy will allow individual programs the latitude needed to operate as an efficient JDC program at the discretion of the local Court. If a JDC program elects to make changes to the overall structure of the JDC phase system, said program shall consult with the State Drug Court Coordinator, or their designee, to work out the best possible solution for the program while maintaining the integrity of the JDC as a whole. The following phase lengths are the minimum standard for all JDC programs:

- Phase I - 6 weeks;
- Phase II - 10 weeks;
- Phase III - 8 weeks; and,
- Phase IV - Up to 4 weeks (at the discretion of the Court) (this phase comprises preparation for graduation).

The minimum program length is 28 weeks. The average program length is 32 weeks but may vary according to the youth's success in the program. Program participants must complete each phase in order to graduate the program.

While some forms of Community Service will be used as a sanction throughout the JDC program, Community Service can also be a required program component as determined by the local JDC program. Indeed, based upon the strengths and interests of the participant, certain types of community service opportunities could be offered as incentives. Treatment



Team members should remain mindful that community service can work as an incentive, a part of treatment, or a sanction, and its purpose will largely result from the needs and strength of the participant and should make sure that the participants understand the purpose of any community service they are performing.

### *Phase I*

The following are the minimum guidelines of Phase I:

- Drug testing: No less frequently than twice per week on a random basis;
- Meet with Drug Court Probation Officer:
  - Participants shall be seen outside of the JDC setting face to face contacts (i.e. Office Visits and JDC Hearings) no less than four (4) times per month at the discretion of the Court.
  - These contacts shall include: Home, School, Agency, Employment (if applicable), and/or Field.
- Court Appearance once a week for both participant and parent (youth and at least one parent/guardian (See section XIV. Strategy 12: Family Engagement regarding family non-compliance);
- Counseling (subject to change based on initial assessment):
  - Participants, and their families, shall be expected to follow any and all treatment plans, recommendations, etc. by the treatment provider(s);
- Participants, and their families, shall be actively involved and participating in all treatment modalities, sessions, etc.
  - *Note: Division of Probation Services (DPS) approved parenting group sessions may substitute for family inclusive counseling sessions at the discretion of the treatment provider;*
- Education: Identify any educational deficit experienced by the participant (*this is an individual determination intended to address deficits resulting from substance abuse and should be directed not at achieving a general minimal standard, but correcting any specific educational issues experienced by the individual participant*);
- Begin to establish Aftercare Plan.

The following are the minimum criteria required to advance from Phase I to Phase II:

- Participant has been involved with JDC for a minimum of six (6) weeks.
- Consistent negative substance abuse screenings, at the discretion of the Court;
- Shall be actively participating and engaged in any and all treatment

- Must meet, or be on track to meet programmatic and treatment goals set forth for this Court phase;
- Parent/guardian actively participating in family inclusive and/or parenting group sessions as required; and,
- Youth and parent or legal guardian must attend/participate in Juvenile Drug Court appearances as directed by the Court. (Note: the first drug court appearance is used as intake and to review terms and conditions of the program and therefore is not counted as a drug court appearance towards advancement criteria).

### *Phase II*

The following are the minimum guidelines of Phase II:

- Drug testing no less than twice per week on a random basis;
- Meet with Drug Court Probation officer:
  - Participants shall be seen outside of the JDC setting (i.e. Office Visits) no less than three (3) times per month at the discretion of the JDC PO and/or the Court.
- These contacts shall include: Home, School, Agency, Employment (if applicable), and/or Field.
- Court Appearance every other week for both participant and parents (youth and at least one parent guardian);
- Counseling (subject to change based on initial assessment):
  - Participants, and their families, shall be expected to follow any and all treatment plans, recommendations, etc. by the treatment provider(s);
  - Participants, and their families, shall be actively involved and participating in all treatment modalities, sessions, etc.
  - *Note: Division of Probation Services (DPS) approved parenting group sessions may substitute for family inclusive counseling sessions at the discretion of the treatment provider;*
- Education: Begin work on addressing any educational deficit of the participant (*this could include school enrollment, seeking alternative schooling, GED program enrollment, engaging in remedial education, or any educational need of the participant*);
- Re-evaluate Aftercare Plan and make specific contacts.

The following are the minimum criteria required to advance from Phase II to Phase III:

- Participant has been involved with JDC for a minimum of ten (10) weeks.
- Consistent negative substance abuse screenings, at the discretion of the Court;

- Shall be actively participating and engaged in any and all treatment
- Must meet, or be on track to meet programmatic and treatment goals set forth for this Court phase;
- Parent/guardian actively participating in family inclusive and/or parenting group sessions as required; and,
- Youth and parent or legal guardian must attend/participate in a minimum of twice a month Juvenile Drug Court appearances as directed by the Court.

### *Phase III*

The following are the minimum guidelines of Phase III:

- Drug Testing no less than twice per week on a random basis;
- Meet with Drug Court Probation Officer:
  - Participants shall be seen outside of the JDC setting (i.e. Office Visits) no less than twice per month at the discretion of the JDC PO and/or the Court.
- These contacts shall include: Home, School, Agency, Employment (if applicable), and/or Field.
- Court Appearance: Once a month for both participant and parents (youth and at least one parent/guardian). Additional appearances can be required at the discretion of the Court;
- Counseling (subject to change based on initial assessment):
  - Participants, and their families, shall be expected to follow any and all treatment plans, recommendations, etc. by the treatment provider(s);
  - Participants, and their families, shall be actively involved and participating in all treatment modalities, sessions, etc.
- Education: Demonstrate success in addressing any of the participant's educational deficits to the satisfaction of the Treatment Team;
- Begin implementation of Aftercare Plan;
- Document contact with aftercare services in case file;

The following are the minimum criteria required to advance from Phase III to Phase IV:

- Participant has been involved with JDC for a minimum of eight (8) weeks.
- Consistent negative substance abuse screenings, at the discretion of the Court;
- Shall be actively participating and engaged in any and all treatment
- Must meet, or be on track to meet programmatic and treatment goals set forth for this particular Court phase;

- Parent/guardian actively participating in family inclusive sessions as required; and,
- Youth and parent or legal guardian must attend/participate in once a month, minimum, Juvenile Drug Court appearances as directed by the Court.

*Phase IV – / Aftercare*

The following are the minimum guidelines of Phase IV:

- No less than one (1) Drug screen weekly;
- Meet with Drug Court Probation Officer:
  - Participants shall be seen outside of the JDC setting (i.e. Office Visits) no less than once per month at the discretion of the JDC PO and/or the Court.
  - Office visits with JDC PO at discretion of the Court and/or the JDC PO.
- Reassessments as necessity dictates;
- Finalize aftercare plan;
  - Treatment providers, in conjunction with JDC PO, should work with participant on relapse prevention plan and discuss strategies to mitigate juvenile, and criminal, justice system re-involvement.

The following are the minimum criteria required for JDC Participant to officially graduate:

- Participant has been involved with JDC for a minimum of up to four (4) weeks at the discretion of the Court for this Phase.
- Continual consistent negative substance abuse screenings, at the discretion of the Court;
- Shall meet, any and all, programmatic and treatment goals that are feasible to achieve excluding on-going treatment services post-JDC participation;
- Youth and parent or legal guardian must attend/participate in a minimum of one JDC Court sessions for this Phase as directed by the Court prior to Graduation ceremony (e.g. final, official JDC Court appearance).
- Conduct exit interview with participant (either through the JDC Judge, Probation, Treatment Team, and/or a hybrid approach as determined by the Court);
- Provide parent and participant surveys;
- Plan graduation event; and,

The participant and his or her parent or guardian are to decide whether the graduation ceremony is open to the public, and must be given the option for

a private ceremony, if they prefer. If they choose a public ceremony, then the JDCPO should obtain an appropriate consent (Form SCA-JDC-127) from the participant and his or her parent or guardian.

Following graduation, the JDC program will do the following:

- Case disposed or a non-filed petition destroyed (can be done at the actual graduation ceremony if approved by Judge);
- Establish a plan for participant and/or their families to keep connected with their treatment providers for post-JDC treatment participation if needed, desired, and/or applicable.
- 2 year tracking for recidivism. JDCPO will maintain statistics in database and report to the Division of Probation Services.

Recidivism, in this context, is defined as a subsequent filed petition for a juvenile offense or a subsequent arrest for a serious adult criminal offense (carrying a sentence of at least one year) that results in the filing of a charge.

## **5.2 Supervision structure.**

Juvenile drug courts are a judicial program. The involvement of Judges and Court personnel is crucial to achieving best results and engaging the accountability necessary for successful Juvenile Drug Court programs. The judge's involvement in and supervision of youth participation in the juvenile drug court is essential. One of the hallmarks of the juvenile drug court—in contrast to adult courts or other juvenile courts—is the personal relationship between each youth and the judge. Often, the judge is the only constant authority figure in the youth's life, providing the structure and support that are otherwise absent.

Frequent court hearings provide an open forum where everyone involved in a case can gather to share information, discuss issues, and reach consensus on the next step(s) toward a youth's successful rehabilitation and completion of the juvenile drug court program. Hearings also provide leadership and team building opportunities for juvenile drug court staff. For most cases, an open hearing is appropriate, but the unique circumstances of some cases may warrant an adjustment to the open court procedure. For example, to avoid conflicts between a parent and youth during an open court session, it may be necessary for the JDCPO to report sensitive issues during a staff meeting.

## **5.3 Treatment Team Staffing Meetings.**

At Treatment Team staffing meetings, the Team should review the progress of the individual participants including the following:

- Treatment attendance and participation;

- Drug testing results;
- Compliance with the JDC program terms and conditions;
- School attendance;
- Behavior at home and school;
- Parent participation;
- Any other progress or lack thereof, including progress toward individual goals;
- Sanctions and Incentives (when needed);
- Requests for phase advancements (if the local JDC program requires application to advance); and,
- Applications for Graduation (if the local JDC program requires applications to graduate).
- The JDC Judge and Treatment Team should be knowledgeable youth culture, language, and attitudes.

Treatment providers should focus their discussion on information pertinent to the participants' JDC compliance issues and should be mindful of their ethical standards to avoid unnecessarily sharing confidential information that does not contribute to addressing the pertinent issues. When discussing decisions regarding JDC participants at staffing meetings, it is important that all members of the Treatment Team should be given an opportunity to be heard. Treatment Teams will ideally collaborate and act based on informed consensus. Team members should keep discussion on topic. While the team should try to reach a consensus regarding each participant, the JDC Judge has the final determination regarding sanctions, incentives, and other Court action if consensus cannot be met.

#### **5.4 Juvenile drug court hearings.**

One of the central components of Drug Court operations is the conduct of regular Hearings where the progress of participants is discussed, incentives and sanctions are imposed, and participants have direct interaction with the JDC Judge. The drug court model can accommodate a wide range of judicial approaches from stern to lenient or from formal to informal. The tone and atmosphere of a JDC Hearing will and should vary from program to program based upon the JDC Judge and Treatment Team. It is essential, however that the JDC Judge be sure to maintain consistency of the messages sent to participants (and their parents). The Judge should interact with the participants and their parent or guardian in a nonjudgmental and procedurally fair manner. Responses to participants can and should be individualized, but the overall approach should be consistent.

While it may seem counterintuitive, a nonjudgmental judicial style, coupled with a consistent application of fair procedures is essential in the context of a Juvenile Drug Court. In the Juvenile Drug Court, the most effective strategy for a Judge is to apply the principles of behavior modification, and the most effective component of behavioral modification is positive reinforcement that appropriately increases the

self-esteem of the participant. Applied appropriately, the JDC Judge can provide much-needed structure and fill in gaps in the necessary emotional support of his or her juvenile participants.

One of the important strengths of the JDC program is its ability to engage participants' families. It is therefore important that if a parent or guardian attends a JDC Hearing, the JDC Judge should interact directly with the parent or guardian at the Hearing. This will allow the Judge to gather necessary information, as well as foster candor and trust between the JDC, the participant, and the participant's family. At the JDC Hearings, the JDC Judge and Treatment Team should acknowledge the weekly accomplishments of the participants and comment on how those accomplishments relate to the participant's individual program expectations and goals, including their progress toward phase advancement and graduation.

When incentives/sanctions are customized to the individual, the rationale for the different response should be explained to other participants. JDC Judges and Treatment Teams should use strength-based approaches that utilize an awareness of individual participants' personal strengths, skills, and interests in the choice of incentives and sanctions as much as possible. With regard to the imposition of sanctions in particular, JDC Judges and Treatment Teams should always consider that participants' perceived certainty of a sanction has a strong relationship with the sanction's deterrent effect. The parent, guardian, or other approved parental representative should attend each Hearing with the participant. The Judge and the Treatment Team should conduct Court sessions at times that accommodate the needs of participants and parents. At times, these hearings may be done over a video or teleconference to enhance participation.

#### *5.4.1 Basic due process requirements.*

Participants in drug courts, who are subject to termination that could lead to imprisonment and incarceration as a sanction (as well as other sanctions that could affect their liberty or property interests such as home confinement and confiscation of personal cell phones), clearly have liberty and property interests that require protection of the participants' constitutional due process rights.

When imposing certain sanctions, particularly termination or detention (or any sanction that affects a liberty or property interest of a JDC participant), Constitutional Due Process requirements necessitate that the drug court must provide the participant with some level of due process, though the nature of the procedures required vary depending on whether the context is a termination or a lesser sanction.

#### *5.4.2 Termination due process requirements.*

In the context of a termination from drug court, courts have been consistent that the necessary due process that should be afforded to participants to ensure that their due process rights are not violated are the same as those required in a Hearing for revocation of probation. Therefore, before terminating a participant, unless the participant signs a written waiver, an ADC Judge should conduct a Hearing that conforms to the specific requirements for a Probation Revocation Hearing and provides the necessary due process of law to offenders as has been set forth by the Supreme Court of Appeals of West Virginia:

The specific due process rights that must be protected include the participants' right to:

- Written notice of claimed violations (the reasonability of notice may vary depending on the severity of the sanction to be imposed: the more severe the sanction, the more notice should be provided);
- Disclosure of the evidence against him or her;
- An opportunity to be heard and present evidence;
- The right to confront and cross-examine witnesses; and,
- A neutral and detached hearing body (this will usually be the JDC Judge).

In order to ensure that the participant's right to cross-examine witnesses and present evidence are truly protected, it is necessary that participants be afforded the right to have their counsel present at Termination Hearings.

### *5.4.3 Sanction due process requirements.*

The specific requirements of due process necessary in the context of imposing sanctions in drug court are much less clear. Presently, there has not been a controlling opinion mandating that a full Hearing is necessary prior to the imposition of sanctions (including incarceration) in drug court. Indeed, at least one factor that has been considered in this context is that drug courts require a consent by the participants to submit it to the sanctioning process of the court. Such a consent is utilized in West Virginia adult drug courts. This is arguably a written waiver that authorizes the utilization of such procedures in a fashion that does not offend the participants' due process rights.

However, some other courts have sounded a cautionary note on these issues. When considering whether sanctions imposed in a drug court necessitate a full Hearing in order to protect the participants' due process rights, one point the courts rely upon especially is the amount of incarceration being imposed. The more incarceration



time being imposed, the more serious the liberty interest of the participant, and the due process requirements will be more rigorous. Therefore, while it is not clear that Hearings need to be utilized in order to protect the due process rights of participants in the sanction context, it is worth noting that utilizing incarceration only as a last resort, only for short periods of time, and not on numerous occasions throughout the participants' tenure in drug court all reduce the likelihood that imposing incarceration as a sanction will violate a participant's due process rights.

## **5.5 JDC supervision.**

The JDCPO is responsible for the supervision of the JDC participants. The Chief Probation Officer, other Probation Officers who work with juveniles, law enforcement, and any JDC Case Manager may assist the JDCPO with some of the duties of supervision, where appropriate or necessary, but it is the JDCPO's responsibility to ensure that JDC participants are supervised effectively and appropriately. In the event that field supervision on JDC participants is cumbersome or difficult to achieve pursuant to the outlined minimum requirements set forth in each Phase listed above, the JDC PO should contact the State Drug Court Coordinator for assistance.

As previously indicated, West Virginia's JDC programs utilize intensive supervision of their participants. This means that JDCPO's are responsible for meeting regularly, in person, with their participants and their parent/guardian, drug testing their participants, conducting visits to participants' homes, schools, places of employment, and other appropriate locations, searching participants' homes (where appropriate), reviewing their computer, e-mail, social media, and other electronic communications, monitoring their participants' progress in counseling/treatment, as well as that of their parent/guardian, monitoring their participants' progress in school and/or employment, and keeping the JDC Judge and Treatment Team appropriately informed regarding all such matters. JDCPO's are also required to work non-traditional hours to ensure these duties are performed.

JDC programs and JDCPO's should also fully understand the philosophy behind supervision in a JDC program. The purpose of intensive supervision in this context is to closely monitor all conduct of the juvenile participants. Therefore, while it is essential that the program detect any noncompliance with the program on the part of participants so that it can be addressed with an appropriate therapeutic sanction, it is even more important that the JDCPO identify compliant behavior so that it can be reinforced with an appropriate incentive. As discussed in the section on incentives, positive reinforcement of compliant and exemplary conduct is even more important than the negative reinforcement of noncompliant behavior. It is therefore essential for a probation officer to "catch" a participant doing the right thing than it is to "catch" them doing the wrong thing. One important limitation on a JDCPO's supervision authority is that a JDCPO may not arrest JDC participants, even when such participants are on probation.

It should also be noted that JDCPO's will often share supervision of JDC participant with another Juvenile Probation Officer (the originating JPO). Both the originating JPO and the JDCPO have supervision responsibilities and authorities. It is essential the JPO and the JDCPO communicate effectively to the extent legally possible.

**6. Objective 4. Conduct comprehensive needs assessments that inform individualized case management.**

This includes personalized assessment of gender, cultural competency, etc.

**6.1 Case planning.**

JDC participants and their families often present a variety of complex challenges, beyond the juvenile participant's substance abuse. Identifying and addressing these challenges requires a coordinated and comprehensive approach, specifically targeted at the needs of individual participants and their families. This is why it is essential that JDC programs are multi-disciplinary in nature so that they can address the complete spectrum of participant needs. This especially includes participants' mental health needs, even though addressing substance abuse issues is the primary function of JDC treatment. Where mental health issues co-occur with substance abuse issues, it is almost impossible to successfully address either without addressing both. This coordinated and comprehensive approach begins with case planning.

The first part of case planning is the completion of a comprehensive assessment of each participant and family's needs by qualified professionals. Based upon the assessments conducted, the JDCPO, assisted by JDC Treatment Team (especially the treatment provider) should develop a written, individualized, strengths-based treatment plan, matching the needs of the participant and his or her family with available services to, taking into consideration the least restrictive environment for treatment, the best use of limited resources, the cost-effectiveness of the chosen treatment(s), and the best potential for participant success. As the participant progresses, this plan can be revised if additional needs are identified. The Treatment Team should develop the treatment plan collaboratively with the participant and his or her parent or guardian. Progress toward the goals outlined in the Treatment Plan should inform discussions of the participant's progress (or lack thereof) during the program.

The assessments require re-assessment as circumstances and necessity dictates. This plan should tailor treatment to the developmental needs of the participant, and be developed consistent with the participant's gender, life history, cultural background, and living situation. The correct conduct and application of the YLS/CMI will facilitate case management that will address the participant's dynamic risk factors. Case management must also be sufficiently flexible from participant to participant

so that each participant's treatment plan is trauma informed and sensitive to any weaknesses or vulnerabilities of the participant.

## **6.2 Gender-appropriate services.**

Female and male participants will have differing characteristics and experiences which will result in some variances in their respective program needs. Treatments will need to be crafted to take such differences into account. Effective services for both males and females must also recognize the significance of emerging sexual identities and sexual experimentation, and how this affects their interactions with peers and adults.

Females are much more likely to be victimized by sexual and physical abuse. They are more likely to attempt suicide. Females' substance use or abuse often has more serious emotional and physical consequences than males' substance use or abuse. As their substance use or abuse appears more often to be an emotional escape, they will have a greater need to learn strategies that can help them cope with emotional stress. Young females are more likely to engage in substance use or abuse as a result of sexual abuse, domestic violence, other trauma, or relationship issues. In designing services to help young females build positive relationships with their counselors and the JDC Treatment Team, the Team's approach should be mindful of gender-specific issues, and should apply incentives and sanctions in a gender-responsive fashion. Typically, young females:

- Desire more verbal engagement;
- Are more likely to question rules and ask for explanations;
- Are more likely to request and accept help; and,
- Need to learn how to develop and maintain appropriate, healthy boundaries in relationships.

Males are more likely to experience learning disabilities and Attention Deficit Hyperactivity Disorder (ADHD) and, consequently, tend to be at greater risk of dropping out of school. Males will experience an increase in testosterone 10 to 20 times higher than girls, causing heightened aggression, increased sexual drive, physical risk-taking, and anger issues. Young males are more likely to engage in substance use or abuse as a result of a family history of drug use, self-medication for ADHD and learning disabilities, or risk-taking. When attempting to engage young males in positive relationships with their counselors and the JDC Treatment Team, the Team should bear in mind that young males tend to:

- Need encouragement to express their feelings;
- Often repress emotion at the cost of losing their ability to connect with others compassionately; and,
- Often express emotion through action rather than words (e.g., teasing, wrestling, or taking on a task). These nonverbal expressions need to be recognized.

The Treatment Team should also be familiar with LGBTQI (Lesbian, Gay, Bisexual, Trans, Questioning, and Intersex) terminology, culture, and slang, and utilize LGBTQI-sensitive language. The Treatment Team should also develop a resource list for LGBTQI youth, including the identification of any local networks that provide support to parents, families, and friends of LGBTQI youth.

Tailoring interventions to differing male and female needs does not mean, in an educational, training, or vocational context, that either males or females should be limited to traditional male or female areas of interest or occupations. JDC programs should not be influenced by gender stereotyping, which can especially be an issue for female participants. When connecting participants with educational, training, or vocational services, JDC programs should be guided by the individual participants' specific strengths, interests, and needs, not their gender.

### **6.3 Cultural Competence**

Culture is a system of shared meanings that is transmitted from one generation to another. Culture is central to human wellbeing because it provides a general design for living and patterns for interpreting reality. Cultures differ in their languages, values, codes of behavior, customs, beliefs, knowledge, symbols, myths and stories, and institutions. Without an understanding of these differences, drug court professionals may attach erroneous meanings to behaviors they do not understand. They may also fail to acknowledge the strengths inherent in a youth's culture that might be used to facilitate progress in treatment.

As participant outcomes are dependent upon an individualized approach that takes full consideration of the specific issues faced by each participant and disproportionate treatment of various demographic groups is an issue of significant concern, JDC programs must take care to address all their participants in a culturally appropriate manner. JDC programs' treatment of their participants should include attention to their participants' racial and ethnic backgrounds, any gender issues, and the special experiences of LGBTQI participants. Programs should be careful that their assessment of referrals and treatment of cases translates into equal access of all groups to the program, equivalent retention of all groups for the duration of the program, and fair treatment in Court no matter what the youths' background or cultural issues maybe.

JDC programs must be able to serve the needs of all of the specialized populations they will encounter, including an ability to serve needs arising from their participants' experiences with trauma. This also may require adapting interventions to the specific cultures of participants and their families.

When necessary to meet the needs of participants or their families, JDC programs should seek the assistance of non-English or sign language interpreters through the Supreme Court's Access to Justice Division.

**7. Objective 5. Implement contingency management, case management, and community supervision strategies effectively.**

**7.1 Incentives and sanctions.**

Incentives & Sanctions, along with frequent, random, and observed drug testing, and close monitoring and supervision, “are the hallmarks of drug courts.” Model State Drug Court Legislation: Monograph Series 5, National Drug Court Institute, p. 28, May 2004. Incentives and sanctions are one of the essential components of any drug court program. It is important to understand that, in the context of a drug court program sanctions are not intended as punishments, but rather a behavior modification tool. Used effectively, incentives and sanctions will promote participants’ ability to account for their own actions.

The effectiveness of incentives and sanctions are keyed to the individual and therefore vary from drug court to drug court and individual to individual. Incentives and sanctions can be more accurately described as positive and negative reinforcement of compliant or non-compliant behavior by the participant.

Incentives and sanctions can best achieve the intended changes in behavior when the JDC Treatment Team has identified specific goals for their use with the intention of developing the participants’ competencies and skills. Factors in selecting such goals include: a participant’s developmental level, interests, strengths, weaknesses, treatment plan, as well as the participant’s life history, cultural background, and living situation. To maximize the effectiveness of incentives and sanctions, they should be applied in a way that is immediate, predictable, and consistent. It is essential that incentives and sanctions be applied in a way that is, “individualized,” meaning that they are specifically targeted at the strengths and deficits of each participant. This sort of specifically-targeted motivation is much more likely to facilitate the sort of self-reflection on the part of the participant necessary to achieve genuine change in his or her life. It is also essential that incentives and sanctions be appropriately applied in a graduated fashion and be proportional to the participants’ achievements or non-compliance.

*7.1.1 Decision Process*

Applying basic principles, the treatment team should identify any conduct that merits an incentive or sanction. The treatment team then, as a group, should arrive at a decision of the appropriate incentive or sanction to apply. The JDC Judge has the final say on whether an incentive or sanction should be applied, as well as which incentive or sanction should be applied, but this decision should be made with the consultation of the treatment team.

Certain behaviors will consistently be worthy of an incentive (progress in treatment, compliance with the program and school, family engagement in the program, especially treatment), and other behaviors will consistently deserve a sanction (absence from events required by the program or school, positive drug screens, non-compliance with the program or school, or a new offense).

The key concepts to be kept in mind when deciding upon incentives and sanctions are:

- Sanctions should not be painful, humiliating, or injurious;
- Responses are in the eyes of the participant;
- Responses must be of sufficient intensity;
- Responses should be delivered for every target behavior;
- Responses should be delivered immediately;
- Undesirable behavior must be reliably detected;
- Responses must be predictable and controllable;
- Responses may have unintentional side effects;
- Behavior does not change by punishment alone; and,
- The method of delivery of the response is as important as the response itself.

Participants should not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements, but simply are not responding to the treatment interventions. A failure to respond to treatment interventions, without noncompliance with treatment or program requirements suggests that it may be necessary to reassess the individual and adjust the treatment plan accordingly. Adjustments to treatment plans must be based on the recommendation of duly trained treatment professionals. Juvenile Drug Court programs also must carefully balance the fair application of incentives and sanctions with an individualized application of incentives and sanctions. The decision-making process for the application of incentives and sanctions should be consistent, but it likely will not result in identical outcomes. It is therefore important that, at a JDC Hearing, when an incentive or sanction is being applied, the participants and their parents and guardians should understand the decision-making process and be able to perceive that it was applied consistently and fairly. They should see that while two participants may have committed the same offense, for example a positive drug screen, they could still fairly receive different sanctions if one participant is only beginning the program and another one is close to completion. Full communication of why and how sanctions being imposed is crucial.

### *7.1.2 Incentives*

National Research is consistent that incentives are more significant than sanctions in achieving consistent long-term behavioral change in participants. It is recommended that all Drug Courts' range of incentive options should be greater

than the range of available sanctions (4 incentives to every 1 sanction has been recommended as best practice by national drug court organizations). Similarly, the application of incentives should equal or exceed, for each participant, the number of sanctions imposed. Keep in mind that incentives do not have to be tangible or monetary in nature.

Possible incentives include, but are not limited to:

- Public, peer and court recognition (e.g. verbal praise);
- Extended curfew ;
- Judge for the day
- Move to next phase in program;
- Peer mentor to new drug court participant;
- Participant of the month certificate;
- Sobriety token/bracelet/key chain (and points for carrying);
- Birthday cards/Christmas cards from Treatment Team;
- Praise from family;
- Stars on a JDC chart;
- Academic recognition;
- Apprenticeship in field of interest;
- Choice of community service to build community involvement;
- Credit toward any fines;
- Leadership role in program;
- Leave court early;
- Cap & gown graduation;
- Co-facilitate group;
- Reduce community service hours;
- Restore driving privileges (where legally permissible);
- Recognition and praise from team for entire family who has stayed on task and are reaching goals;
- Allowed to attend extracurricular school or community events;
- Tickets for sporting events, movies, water park, amusement park, etc.;
- Recommendation letters from team members for jobs;
- Display of essays, pictures, etc.;
- Assistance in pursuing personal/professional goals;
- Provide skill development/training;
- Provide tools of a trade;
- Program report cards;
- Reserved parking for youth and family who received participant of the month (or other significant achievement);
- Become a mentor after graduation; or,

- Family engagement activity - dinner out, amusement park, water park, bowling, etc.

### *7.1.3 Sanctions.*

An accountability-based graduated sanction process must be applied in drug courts. Graduated sanctions need to be administered quickly and must be appropriate responses to non-compliant actions.

Graduated sanctions should be a multi-tiered continuum of interventions that allows the JDC to carefully match its sanction and treatment response to each participant's offense severity, level of risk, and service needs.

An initial sanction (or sanctions) should impose discomfort on a participant and convey that infractions will be observed and bear consequence(s). A Drug Court needs to be certain, however, that such sanctions are not so severe that they seem overly harsh or unfair to the participant and trigger defiance or leave the treatment team no room to increase intensity of sanctions if necessary. Detention, because of its propensity to disrupt treatment, its likelihood of increasing the chances of future incarcerations, and its erosion of the savings in public funding generated by the JDC system, should be used seldom if at all. Detention is best utilized as a penultimate, one-time sanction; a "last chance" before termination.

One important factor to consider when determining the appropriate severity of a sanction to be applied is whether the infraction constitutes a failure to attain Proximal or Distal goals. Proximal goals are the initial, more immediate goals or behaviors necessary for a participant to achieve in order to make ultimate successes possible. Examples of proximal goals, even at Phase I would include attendance and truthfulness. Distal goals are the ultimate behaviors sought to be achieved in Drug Court programs. Examples of distal goals at the beginning of JDC would include achievement of life goals (graduation, employment), and abstinence. Therefore, a failure of a new participant to achieve a proximal goal is grounds for (appropriate) sanction early in participation, while failure to achieve a distal goal (early in participation) may not be.

JDC programs should be especially careful when evaluating how to respond to a relapse. The Treatment Team should consider whether their response has taken into consideration the individual juvenile's risk, need, and responsivity issues. Programs should also be careful to differentiate between treatment interventions and sanctions. Effort should be made to make sure that the participant understands that certain uncomfortable or restrictive forms of treatment are not being imposed as a sanction in response to noncompliance, but rather a treatment required to address that juvenile's needs. Additionally, treatment interventions (such as counseling) must not be increased or imposed as a sanction. Every effort should be made so the participants are not given the impression that treatment is a punishment. Make



certain that changes in a youth's treatment regimen come from the treatment provider at the recommendation of the team. Be cautious about making changes in a youth's treatment plan from the bench, especially if the infraction is a treatment related issue.

According to research, throughout JDC programs nationally, sanctions are applied most frequently as a result of programmatic noncompliance (including failure to attend JDC Hearings), failed drug screens (including failure to appear for a drug screen), and the commission of a new offense.

Possible Sanctions include, but are not limited to:

- Verbal reprimand;
- Increase court appearances;
- Write essay;
- Verbal presentation to Treatment Team in court;
- Assign reading list with report;
- Structured study time;
- Keep a time journal;
- Team round-table with participant and parent;
- Behavior contract;
- Apology to JDC Judge & Treatment Team;
- Restrict driving privileges;
- Increase curfew checks;
- Earlier curfew hour;
- Requirement to have JDC Participant sit in on criminal hearings as determined by the presiding Judge.
- Return or forfeit prior incentives;
- Remove personal privileges, cell phones, gaming systems, computer time, , TV, etc.;
- Ban activities;
- Restrict peer association;
- Clean Treatment Team meeting room/jury room/court room;
- Work after school and on school breaks;
- Assign community service and/or increase community service hours;
- Weekend work detail;
- Increase supervision;
- House arrest;
- Electronic monitoring;
- Out of home placement (this can be a sanction, safety decision or part of treatment);
- Delay advancement into next phase;
- Repeat Phase;

- Contempt hearing;
- No dismissal of charges;
- Extend probation;
- Detention; or,
- Termination.

#### *7.3.4 Detention.*

As noted above, Detention should be used only seldom (if at all) as a sanction in JDC programs. By removing a JDC participant from his or her home or school, the participant's treatment and education are both being disrupted. Indeed, decreasing the use of detention in the juvenile justice system was a specific goal of certain provisions of revisions to the juvenile code (e.g. West Virginia Code, § 49-2-1002(a)(8)). Further, studies indicate that any incarceration, even for one day, has a likelihood of increasing the chances of future incarcerations. One of the benefits of West Virginia's JDC system is its ability to address juvenile offenders' substance abuse needs and reduce recidivism at a substantially lower cost than traditional juvenile justice strategies. Each detention, however, comes with significant costs. The use of detention too often or for too long therefore will make JDC programs both less effective and more expensive.

The supposition that detention has therapeutic value or that confinement serves as a deterrent for delinquency is not supported by research. Research shows instead that there is no value in detention as a deterrent and that juvenile detention has critical, long-lasting consequences for court-involved juveniles. Juveniles who are detained or more likely than their counterparts to be formally charged, adjudicated, and committed to an institution. Undeniably, whether a juvenile is detained is a strong predictor of recidivism among juveniles. Half or more of all released juveniles are later re-incarcerated in juvenile detention or adult correctional facilities.

Thus, detention is a sanction that should be sparingly applied, if used at all. It is the last choice sanction in a Juvenile Drug Court, only exceeded in severity by termination from the program. If it must be used, detention should be employed only for a short period (1-2 days) and not more than once per participant. This should occur over a weekend so as to not interfere with education or treatment. In terms of motivational impact, sending a juvenile to detention on a weekend, for some participants, imposes a sanction that may be more meaningful to the participant, depriving them of (relatively) free time, as opposed to time they would have been in school.

The differing nature of JDC participants within JDC programs makes the imposition of detention as a sanction a complex measure, requiring individualized analysis. Pre-Petition participants cannot be detained. Pre-disposition, post-petition participants

and post-disposition participants may be detained, so long as appropriate due process (outlined above) is followed.

Additionally, participants in a JDC program solely for a status offense should not be detained. If a Treatment Team determines that a status offending participant must be detained, such a participant may not be detained at a hardware secure facility. They may only be detained at a staff-secure facility or at a non-secure facility such as a shelter (if one will consent to this purpose). Pursuant to *West Virginia Code*, §49-4-712(g), as of January 1, 2016, status offenders may not be detained in a Division of Juvenile Services facility.

A more detailed discussion of how detention may be used in West Virginia's JDC system may be found in the Memorandum of Law prepared by John M. Hedges, Esq., attached hereto as Appendix C.

### *7.3.5 Termination.*

Termination is the ultimate sanction available in a JDC program. If a participant is terminated, the JDC Treatment Team is deciding that, for either clinical, legal, or programmatic reasons, the JDC program cannot be successfully applied to a specific participant at that time.

A termination for clinical reasons will result from a participant's inability to successfully engage with treatment. When considering termination for clinical reasons, a Treatment Team should consider several questions. Have treatment resources been exhausted? Have all appropriate levels of care been utilized? Does the participant wish to continue in the program? Would continued participation undermine the effectiveness of the program? The Treatment Team must also give particular attention to the analysis and opinion of a treatment provider when considering termination for clinical reasons.

A termination may also result from legal non-compliance when a participant engages in conduct that could or does result in a new juvenile charge. When considering termination for legal non-compliance, a Treatment Team should consider the following questions. Would the new charge render the participant ineligible to participate in Juvenile Drug Court? Is the new charge associated with relapse?

Finally, a termination may result from conduct that might not rise to the level of a new chargeable offense, but is nevertheless not compliant with programmatic terms and conditions of the juvenile's JDC participation. In such cases, the Treatment Team should analyze the following issues. Have appropriate re-assessments been utilized? Have all available graduated sanctions been utilized? Would continued participation undermine the effectiveness of the program?

If the decision is made to terminate a participant, the participant must be afforded the procedural due process protections outlined above, including the benefit of counsel preparing for and attending a Termination Hearing.

#### **7.4 Community supervision and engagement.**

There are many ways in which a JDC program needs to be connected to its community. Strong connections between the program and the larger community will benefit both the program itself, and, more importantly, the participants.

Community engagement will provide opportunities for the participants to develop pro-social skills in various contexts: school, home, friends and peers, health, and personal expression. Creating linkages between the JDC program and the community is essential to finding opportunities for the participants to receive coaching and guidance in various life skills beyond what the formal drug court program can directly provide. Community engagement will foster mentoring, as well as possible education, employment, and volunteer opportunities.

Community linkages are also important for the program itself. A strong relationship between the program and the community will engage community leaders who will be able to help the program seek funding, and will provide a wider and more extensive range of information about the ways that the community and its resources can contribute to the program.

The JDC Planning & Evaluation Team can function as the central nexus between the JDC program and its community. The JDC Judge and the JDCPO should commit themselves to ensuring that key members of the community who can facilitate this community engagement are active members of the P&E Team. Additionally, JDC programs can also provide information and training regarding the JDC system, its procedures, and practices outside of the Treatment Team, to the Planning and Evaluation Committee, key sources of referrals, and to the community at large, to enhance community support and understanding of the JDC program.

In many jurisdictions, community organizations offer an array of support services, recreational opportunities, and treatment and educational programs for youth and their families. To the extent that the juvenile drug court can incorporate these resources in its comprehensive interventions, the court can be more effective in meeting the varied needs of the youth it serves. By building partnerships with a wide variety of local resources—agencies, businesses, service organizations, art councils, and the faith community—the court can create the much needed network of community support for youth and families. To collaborate successfully with outside agencies and organizations, the court needs to define clearly the services that will be provided, maintain continuous and open communication, and monitor service quality.

Juvenile participants' likelihood of success, both within and beyond the JDC program, is enhanced by ensuring the participants are fully connected with Educational programs, which include schools, alternative schools, vocational centers, special education programs, Board of Education approved home school or high school equivalency programs. JDC Treatment and supervision strategies for their participants must encompass the participants' educational needs.

Forging educational linkages will require the engagement of educational representatives by the JDC Treatment Team. Key educational personnel should be part of the P&E Team and the JDC Treatment Team, because their participation greatly improves the Team's ability to assure that the JDC participants are engaged fully in their education. Additionally, the JDC program should ensure that the appropriate agreements and consents are in place to access appropriate information and work with educational personnel for the best interests of the participants. Educational partnerships could also coordinate testing resources (to avoid duplication of assessments where possible), address truancy issues, access alternate educational environments (when necessary), and incorporate responses to school disciplinary issues into the JDC incentive & sanctions system. School attendance and improved performance are central to the JDC program.

Additionally, JDC Judges and Treatment Teams should participate in school-related activities and present information regarding the JDC program and substance use disorder awareness at local schools.

## **8. Objective 6. Refer participants to evidence-based substance use treatment, to other services, and for prosocial connections.**

Treatment is the core function of Juvenile Drug Court. It should therefore incorporate and carefully integrate case planning, treatment, and supervision so that the criminogenic needs of the juvenile participants are effectively addressed.

### **8.1 Treatment.**

Juvenile Drug Courts are to assist youth who have been, assessed as having a moderate or high risk for with substance abuse or high risk for substance abuse or dependency and are in early involvement with juvenile delinquency.

All JDC treatment providers are expected to use an evidence-based risk and needs assessment, for example - the Youth Level of Service Case Management Inventory (YLS/CMI) and the Juvenile Automated Substance Abuse Evaluation ("JASAE") as well as other evidence-based treatment modules, including (but not limited to):

- Pathways to Self-Discovery and Change
- Lasting Family Connections
- Trauma Focused Cognitive Behavior Therapy (TF-CBT)

- Functional Family Therapy (FFT)
- Motivational Enhancement Therapy/Cognitive Behavior Therapy (MET/CBT);
- Multidimensional Family Therapy (MDFT);
- Multi-Systemic Therapy (MST);
- Seven Challenges
- Relapse Prevention Therapy (RPT)

When making decisions regarding treatment issues for JDC participants, the observations and judgments of the treatment professional(s) on the Treatment Team should be given special weight. The participant's gender, life history, and cultural background should be factored into treatment decisions. Ultimate decisions regarding sanctions or termination, even for reasons relating to treatment issues, must finally reside with the JDC Judge, however.

It is the responsibility of the treatment provider(s) on the JDC Treatment Team to ensure that the participant receives the highest level of care available, at a reasonable cost, by all contracted and ancillary service providers. He or she should also ensure that participants are evaluated in a timely and competent process and that any placement occurs in an expedited manner. The treatment provider should also assist the JDCPO and JDC Judge in developing post program / aftercare services, client outreach, mentor programs, and alumni associations. The treatment provider's input with regard to the selection of appropriate and effective sanctions, consistent with the participants' needs is also essential. A JDC treatment provider shall have completed training in substance abuse and adolescent development and must be licensed or certified by their appropriate state licensing authority. If the treatment provider is contracted directly with the Supreme Court, the designated therapist must have billing capability for services.

The treatment provider will provide services to JDC participants regardless of their ability to pay and the JDCPO and the treatment provider(s) on the JDC Treatment Team are responsible for ensuring that, before any invoice for payment for treatment services is submitted to the SCAWVO for payment, any such services are not eligible for payment by an alternate payor (such as private insurance, Social Security, Medicaid, Medicare, or other benefits for which the recipient of services is eligible), and the invoice submitted is only seeking compensation for services which cannot be paid by any alternate payor.

While JDC programs are programs targeted toward substance abusing youth, the possibility that a JDC participant could overdose on an opiate is of concern. It should be noted that under West Virginia Code, § 16-46-3(b), JDCPO's, treatment providers, or other JDC Treatment Team member could be eligible to be issued a prescription for an opioid antagonist to maintain for use in the event that the JDC Treatment Team member could intervene in an overdose. The cost of filling such prescriptions could be paid from any donations made it to the JDC program, or borne

by the participants (or any treatment funding for which they are eligible, such as Medicaid). It must be noted that, in the event a JDC Treatment Team member administers an opioid antagonist, the law requires that the member must remain with the juvenile and ensure they receive appropriate emergency care.

## **9. Objective 7. Monitor and track program completion and termination.**

The juvenile drug court needs to gather short- and long-term information about the program's effectiveness. With this information, the drug court teams can learn from the program's experience and adjust procedures and revise plans to make the program more effective in serving youth and their families. To ensure that information is gathered, the planning team needs to devise a system to monitor and evaluate the program. *Monitoring* is an immediate, day-to-day view of the program, and *evaluation* is a longer review—looking back at what the program has accomplished during a specified time period. Process (*which assesses whether the program has completed the work it set out to do*) and outcome (*which focuses on whether and how the program's activities have affected the problem that they were intended to*) impact evaluations need to be integral to program planning and implementation.

Monitoring and evaluation are essential to JDC success. Ongoing monitoring and evaluation make it possible to validate (or challenge) the best practices that guide the formation of JDC policies and procedures and to ensure that proven practices are being implemented correctly. Monitoring and evaluation take primarily three forms: the maintenance of program information in the WVOCMS database, regular written and verbal reporting, and regular meetings between JDC programs and the Division of Probation Services' QA personnel. This also includes JDC programs' self-evaluations.

### **9.1 WVOCMS**

The first level of monitoring and evaluation comprises the ability to review the JDC information maintained in the database. Utilizing fully and effectively the database, which also serves as a case management utility, will make every other part of monitoring and evaluation simpler and more productive. The database used by JDC programs is the West Virginia Offender Case Management System ("WVOCMS"), sometimes also referred to as the "Probation Database." Access to this database is available to all JDCPO's (and case managers as requested to the State Drug Court Coordinator by a JDC Judge and/or the Chief Probation Officer).

All cases must be created in the main WVOCMS system per the procedure outlined in the WVOCMS user guide NOTE: Only JDCPO's and their Chief Probation Officers (and approved case managers) have access to the JDC tab within the WVOCMS, per written request and approval by the Division of Probation Services.

JDCPO's must use the WVOCMS. It is essential for appropriate case management and data collection. It provides an easily-accessible source for case information. It can be used to prepare reports. It can be accessed by the Division of Probation Services' QA personnel to review program information in order to respond to requests for information (from the Supreme Court's Justices and Administrative Director, from grant providers, from the legislative or executive branches, from media, or from researchers). Being able to provide such information quickly and reliably is essential to report to the legislature and support efforts to seek grant funding. Furthermore, using the database helps make sure that information is maintained in a way that is consistent within a JDC program among successive JDCPO's as well as ensuring that the information is consistent among various JDC programs.

Data which should be collected in the database include (but are not limited to) family-related factors (such as the family cohesion, home functioning, and communication), recidivism (both during the program and following the program for two years), graduation, termination, educational enrollment, and participant involvement in pro-social activities and peer associations. This information needs to be gathered because it is highly relevant to analyzing participant success and failures in the program. For instance, improvements in a participants' family issues are closely associated with better outcomes in JDC programs. Similarly, increasing pro-social activities is a good marker of better success for juvenile participants.

## **9.2 Reports**

In addition to the ongoing entry of data into the database, programs are at various times required to provide reports. Many of these reports are generated in whole or in part from WVOCMS. Therefore, maintaining your information in WVOCMS will greatly simplify and streamline your reporting. The following reports are required:

- Program Description Questionnaire (first 2 years of operation)
- Program Fidelity Checklist (first 2 years of operation)
- Youth Participant Exit Questionnaire
- Parent/Guardian Exit Questionnaire
- Parent Group Exit Survey

## **9.3 Program reviews.**

Finally, monitoring evaluation can take on the more engaged approach of Program Reviews. The purpose of the Program Review is to determine progress the JDC program has made toward achieving program goals, determine the JDC program's compliance with statewide protocol and local policy and practice, identify any technical assistance needs the JDC program has, and provide guidance of future enhancements and program sustainability.



The Program Review may consist of the following:

- Visit (in person or via video or teleconference) with JDCPO
- Meet the Treatment Team members
- Observe Treatment Team Meeting
- Observe JDC Court Proceedings
- Tour of location where treatment services are provided
- Verify Treatment Provider Credentials
- Verify Treatment Curricula – Must be Evidence Based
- Verify All Assessments Used – Must be Evidence Based

The Program Review will include a Program Update of the following information:

- Number of current participants in the program
- Number referred, interviewed, pending interview
- Number of youth refused or who were NOT accepted and why
- Number of youth who were terminated or dropped out, with the reasons for such.
- Any notable changes since last visit.

A review of the Program Records will also be part of the Program Review, and will include verification of the following:

- Are OCMS data appropriately captured and entered in a timely manner (e.g. pictures of JDC Participants on the database, Activity Notes, current drug screens, etc.) ?
- Is the JDC in compliance with program requirements?
- Are progress reports submitted in a timely manner?
- Does the Treatment and P&E Teams meet as required?

The Program Review will check if JDC program invoices/expenses are submitted to the Court in a timely manner and whether expenditures coincide with the approved program budget. It must be confirmed that there is a written, formal contract outlining the specific work to be performed by the service provider on file. Finally, JDC program training will be reviewed to note whether and what training the JDC Staff attended since the last reporting period and whether that training was a benefit to the program.

When funding and timing make it appropriate, the Court may also access the resource of objective third-party evaluation of JDC programs. This is not a common occurrence, but it is necessary to conduct a more thorough and in-depth evaluation than would otherwise be possible. All monitoring and evaluation done are for the purpose of ensuring that the drug court programs are doing the best job they can do

based upon both the best available research and information, as well as the practical realities faced by the programs in their communities.

## **10. Drug testing.**

Drug Testing is an essential component of the intensive supervision required for a JDC program. It must be conducted in a way that is reliable and legally appropriate.

### **10.1 Quality assurance.**

Drug testing in JDC programs must be:

- Scientifically valid: Drug testing that employs proven methods and techniques and is accepted by the scientific community;
- Therapeutically beneficial: The testing provides an accurate profile of participant's drug use and offers rapid results;
- Legally defensible: Testing methods that are able to withstand evidentiary challenge and has been scrutinized by legal/judicial review; and,
- Frequent, random, and observed.

Drug testing must be consistent with this Manual and the Drug Testing Protocol promulgated by the Division of Probation Services. Staff should be trained to strictly adhere to each step of the process in order to maintain the integrity of the urine collection and drug testing process.

### **10.2 Drug testing specimens.**

The following samples can be used for the detection of substance use:

- Urine;
- Sweat;
- Breath; and,
- Saliva.

Urine specimens generally contain high concentrations of drugs, provide evidence of both recent and past usage and are a good analytical specimen.

### **10.3 Drug testing protocol.**

JDC participants are entitled to scientifically reliable testing. As such, stringent protocols should be followed in order to insure the integrity of sample collection

and testing. Participants should be clearly informed of the consequences for lying about drug use.

For sample collection procedures, please refer to the Probation Drug Testing Protocol available on the Supreme Court Intranet on the Probation tab. The JDCPO will give the donor a brief explanation of both oral and urine screening procedures, prior to the collection of the initial specimen. The explanation shall include the collection process and a clear statement that consequences of a refusal to provide a specimen or the presence of an adulterated or substituted specimen can provide the basis for a violation of probation. If a participant fails to submit to required drug testing or attempts to dilute, adulterate, or tamper with a drug test in any way, the JDC Treatment Team should respond with immediate, graduated sanctions, determining the appropriate sanction based on the factors discussed in greater detail in the discussion of Incentives and Sanctions below. Note that if a participant fails to report for a required drug screen early in the program, this is a significant indicator that the juvenile is at high risk to fail in the program.

In every instance of a positive screen or in the instance of a pre-screen admission, the JDCPO is to make every effort to obtain the signature of the donor on a signed Voluntary Admission Form, preferably in the presence of a witness, which shall be considered an “offender admission/confirmation.”

#### **10.4 Drug test interpretation.**

Drug test results are tools that can be used as one of the many indicators of a participant’s program compliance. A positive drug screen should trigger a response by the court but the severity of the response should be tempered if the participant is compliant with all other program requirements. Conversely, if a participant’s test is negative, but he/she is not compliant in other aspects of the program, the possibility that the samples are unreliable should be considered.

Drug test results should always be interpreted qualitatively, that is as positive or negative. Drug concentrations or levels are of little or no interpretive value as quantitative levels can be influenced by many factors such as age, exercise, salt intake, water intake, etc. If the metabolites detected are below the designated cut-off levels, then it is likely that such factors can impact the test results to a degree that renders them too unreliable to be a basis for sanction decisions. As such, where any decision regarding sanctions based upon the outcome of a drug test is being made within a JDC Program by any member of the Treatment Court Team, **ONLY** the qualitative result should be considered, and, in any event, where the qualitative result is negative such a decision **MAY NOT** be based upon any quantitative result.

Creatinine levels should always be noted. Abnormal creatinine levels should be reviewed to determine:

- Possible physiological causes;
- If no physiological causes, the court may want to increase the frequency of testing; and/or,
- Are there other indicators of drug use (e.g. missed appointments, lateness)?

Courts should be cautious about sanctioning participants based solely on “abnormal” creatinine levels as a small percentage of the population will test at low levels without water loading.

To help insure the reliability of testing, each drug court should establish a written policy that participants are responsible for what they put in their bodies. This should include notifying a drug court team/staff member immediately if a physician prescribes medication for them. Participants should notify drug court staff if they are taking any over the counter medications as many medications can affect drug test results. In addition, certain substances, which may be legal but may impair the judgement of a participant, such as kratom and energy drinks, may also be banned.

### **10.5 Drug testing frequency.**

Drug testing should be frequent, random and observed, no less often than twice per week on a random basis for the entirety of the JDC program. Random testing accomplishes two goals: It limits the participants’ ability to “plan ahead” and it provides participants with a tool to employ in the face of peer pressure to use, “I can’t. I could be tested at any time.” It is essential that this testing must be as close to truly random as possible in order to achieve this goal. Under a random testing process, each participant should have an equal chance to be tested each time testing is done, and the tests must be distributed randomly and evenly throughout the days of the week, resulting in each participant having a 2 in 7 chance of being tested on any given day. This means that a JDC program must be capable of conducting drug screens seven days a week, including on Saturdays, Sundays, and holidays. A testing gap on the weekends or holidays presents an obvious temptation to participants to attempt to evade detection. Unless testing is truly random, a twice weekly testing frequency is not sufficient to reliably detect usage.

### **10.6 Prescription medications.**

While in JDC, participants are prohibited from taking any mood or mind altering drugs or any narcotic medications. To that end, all JDC participants are required to notify their treating physicians that they are in a substance abuse treatment program as drug court participants. All JDC participants are required to present notification in writing to their physicians. The notification will ask the physician to confirm whether or not a non-mood/mind altering or non-narcotic medication is available and suitable for use in the treatment of the participant’s medical condition.

If, after notification, a physician prescribes a mind/mood altering or narcotic medication, the JDC program may not prohibit the participant from taking the medication. However, the drug court should take all necessary steps to insure that the participant is taking the medication as prescribed, including doing pill counts. Additionally, if it appears that the participant will not be able to achieve and maintain a drug free status, the drug court team should consider whether or not continued participation in the drug court program is in the best interest of all program participants and program integrity.

## **11. Confidentiality.**

The nature of JDC programs makes them subject to several legal requirements that their proceedings and records be confidential. In order to design and supervise the best treatment plan for each youth, the entire juvenile drug court team needs information about his or her progress in the program. At the same time, the team must honor federal and state confidentiality laws that are designed to protect the privacy of minors and their families. This assurance of confidentiality is important for more than just legal reasons; it is more likely that substance abusers will seek treatment that facilitates their recovery by encouraging honesty. The challenge for the juvenile drug court team is to adhere to confidentiality policies and procedures that will give team members access to the information they need without violating the privacy rights of youth and their families.

### **11.1 Federal regulation.**

The most significant legal authority governing confidentiality in drug courts is set forth in the Federal Regulations at 42 CFR Part 2. These regulations were adopted to protect the confidentiality of Alcohol and Substance Abuse Treatment records. Covered information acquired by affected programs (such as West Virginia's JDC programs) is confidential, subject to exceptions set forth in the regulations.

Treatment information is defined as all records and information relating to "the identity, diagnosis, prognosis, or treatment of any patient" in a substance abuse program. While information defined as confidential by these regulations may be communicated as needed within the JDC Treatment Team, disclosure outside the Treatment Team may occur in the following situations:

- With the voluntary and informed written consent of the participant;
- In response to a valid Court Order; or,
- To medical personnel to the extent necessary to meet a bona fide medical emergency.

Also, information that does not disclose a participant's identity may be shared with qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation.

Additionally, disclosures may be made without consent in the course of a medical emergency, in order to report crimes on the premises or crimes against the Drug Court staff. Disclosures must be made when necessary to comply with state child abuse laws and when necessary to meet a duty to protect others (i.e., to warn of imminent, serious harm).

Confidential information is identified in the regulations as information that sets forth:

- The identity of a patient in a substance abuse program;
- The diagnosis of a patient in a substance abuse program;
- The prognosis of a patient in a substance abuse program; or,
- The treatment of a patient in a substance abuse program.

Examples would include (but are not limited to) any information or records:

- Identifying someone as a Drug Court participant;
- Setting forth drug testing results;
- Providing notes or records from therapy; or,
- Noting sanctionable activities.

As noted, when a participant consents, a JDC may disclose confidential information about a participant to parties included in the consent. Under West Virginia law, unless that participant is a "mature minor," the parent or guardian must also consent to such a disclosure.

An Order permitting the disclosure of confidential information about a participant will be appropriate only where a Court has made certain requisite findings. Where the information to be disclosed is a confidential communication made by a participant to JDC personnel in the course of diagnosis, treatment, or referral for treatment, in order to disclose such information, the Court must find:

- The disclosure is necessary to protect against an existing threat of death or serious bodily injury;
- The disclosure is necessary to an investigation or prosecution of an "extremely serious crime," such as homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse or neglect; or

- The disclosure is made in connection with litigation or an administrative proceeding in which the participant has offered testimony or other evidence relating to the confidential communication.

Where the information to be disclosed constitutes patient records for noncriminal purposes, the Court must find:

- Other ways of obtaining the information are not available or would not be effective; and
- The need for the disclosure and public interest outweigh the potential injury to the patient and the doctor-patient relationship.

Where the information to be disclosed constitutes patient records for criminal purposes, the Court must make all of the following findings:

- The crime involved is extremely serious;
- The records must be reasonably likely to disclose information of substantial value to the investigation/prosecution;
- Other ways of obtaining the information are not available or would not be effective; and
- The need for the disclosure and public interest outweigh the potential injury to the patient and the doctor-patient relationship.

In such cases, if law enforcement is seeking the disclosure, then the Participant must have the representation of independent counsel.

## **11.2 West Virginia law regarding confidentiality of juvenile records.**

The Confidentiality of records regarding juvenile proceedings in West Virginia, including JDC programs, is set forth primarily at West Virginia Code, § 49-5-103. This statute first provides that, “Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.”

Authorized disclosures include:

- Certain required disclosures to schools, identified in West Virginia Code, § 49-5-103(c);
- Authorized disclosures to Courts, identified in West Virginia Code, § 49-5-103(d)(1);
- Authorized disclosures to the public based upon the nature of the crime and age of the juvenile, identified in West Virginia Code, § 49-5-103(d)(2)-(4);
- Authorized disclosures to certain identified parties based upon written petition and court order, as per West Virginia Code, § 49-5-103(d)(5);

- Authorized disclosures to the Probation Officer upon request as per West Virginia Code, § 49-5-103(d)(6);
- In response to a valid federal subpoena as per West Virginia Code, § 49-5-103(d)(7), and
- Authorized disclosures to the Division of Juvenile Services for the purpose of case planning as per West Virginia Code, § 49-5-103(d)(8).

Please note, however that the statute's provision that any probation officer may, without a court order, access relevant juvenile case information contained in any electronic database maintained by or for the Supreme Court of Appeals and share it with any other probation officer in the same or a different circuit subpoena in West Virginia Code, § 49-5-103(d)(6) does not give all juvenile probation officers access to JDC records that would be confidential under federal regulation. In such instances, any attempt by a probation officer outside the Treatment Team to access a JDC participant's confidential treatment information must be handled pursuant to the regulations, as would any outside request.

### **11.3 Practical guidelines for confidential JDC information.**

The JDCPO must obtain the appropriate consent(s) at intake. Thereafter, the JDCPO is to maintain the JDC file separate from the originating probation file (if there is one). The JDCPO must make sure that Treatment Team Meetings, JDC Hearings and all discussions regarding JDC participants are exclusive to authorized persons. The JDCPO should also make sure that all authorized persons who have access to confidential information relating to Drug Court participants have executed an appropriate confidentiality agreement. All drug court records must be maintained under at least 2 separately keyed locks.

No Treatment Team member should communicate confidential information to unauthorized persons unless authorized to do so by a valid Court Order, a Consent or Release authorizing such a disclosure signed by the participant, or when such a communication is necessary for the emergency care of the participant.

If a JDCPO or other Treatment Team member receives any sort of request or subpoena for confidential information from a person not authorized to access such confidential information, that person should notify the JDCPO (if the person is not the JDCPO), the Chief Probation Officer, the State Drug Court Coordinator, and Counsel to the Division of Probation Services, who will work with you to appropriately respond to the request.

## **12. Administration.**



The JDC programs are administered by the Division of Probation Services (“DPS”). JDC program operating funds come, in large part, from the Supreme Court of Appeals of West Virginia's budget. DPS, therefore is responsible for (among other things) interacting with national agencies and associations involved with drug court programs as well as other federal and state agencies, coordinating and participating in drug court research projects and initiatives and providing technical assistance and training on drug court issues.

DPS will also work with JDCPOs and Judges in each Circuit to implement and support the operation of their drug court programs, and will:

- Provide guidance to the judicial circuits on issues affecting the operation of their drug courts;
- Develop and implement statewide drug court policies and procedures based upon research to identify the best evidence-based practices and state of the art procedures;
- Monitor and review all operations of the Juvenile Drug Courts, including data entry into the probation database system; and,
- Review and process annual budget requests submitted by each Drug Court including processing request for travel and training

**Juvenile Drug Court Implementation:** Any circuit or family court judge who wishes to develop a new Juvenile Drug Court or a new, special track (such as a track for a different risk level) within an existing court shall seek prior review and authorization from the Supreme Court. Requests should first be submitted to the State Drug Court Coordinator, with the Division of Probation Services for a detailed review and after review will be forwarded to the Administrative Director for inclusion on the agenda for an upcoming Administrative Conference.

**Juvenile Drug Court Closure:** If the leadership of a Juvenile Drug Court program or an existing special track within an existing court wishes to close the program or track, the Judge shall send written notice at least 30 days prior to closing to the State Drug Court Coordinator, stating the reasons for the closure. The Court must also provide a transition plan for each of the participants currently enrolled in the program at the time of closure.

### **12.1 Budgeting.**

DPS is responsible for review and approval of JDC budgets. The following is an outline of the structure of a budget for a JDC program (These budgets are an estimate and there are other court expenses for which the DPS is responsible):

- Salary and benefits (funded by the Supreme Court of Appeals of West Virginia West Virginia, “SCAWVWV”);
- Treatment service MOU’s and case management contracts;

- Equipment (funded by the SCAWV);
- Drug Testing (funded by the SCAWV);
- Statewide Travel (for required trainings/meetings);
- Local Travel (necessary for supervision);
- Incentives (\$3,000); and,
- Food at P&E Team meetings and JDC graduations (\$1,000).

Budgeted funds are expended based upon a Memorandum of Understanding (“MoU”) between the DPS and service providers. No monthly invoicing will be required if services are being provided by a local Youth Reporting Center. Alternatively, invoicing is to be completed as indicated in the relevant MOU. Any invoices sent to the DPS should be sent as soon as possible to facilitate swift payment.

Separate Drug testing accounts are set up for the JDC programs and will be monitored by DPS on at least a quarterly basis. An emergency JDC Treatment fund is also available through the DPS for participants that do not have an alternative method of payment. As previously stated, all available payment resources must be exhausted first.

## 12.2 Reporting.

It is the JDCPO’s responsibility to verify that the information contained in the below stated reports is accurate and supported by any necessary documentation (which it is the JDCPO’s responsibility to maintain).

### *Program Evaluation Reports*

<b>Evaluation Activity</b>	<b>Timeframe</b>	<b>Responsible</b>
Complete Program Description Questionnaire as a group	<b>Existing program update annually by August 30. New programs update by Dec 30. (notification &amp; forms will be sent from AO)</b>	JDCPO with input from <b>Treatment</b> Team
Complete Program Fidelity Checklist as individuals	<b>Existing programs by October 30 each year. New programs by Dec 30.</b>	Each JDC <b>Treatment</b> Team Member

	<i>(notification &amp; forms will be sent from AO)</i>	
Enter new case in WVOCMS	Need to be <b>entered within 14 days of petition referral receipt</b>	JDCPO
Enter demographic and intake information into case created in WVOCMS	Need to be entered <b>within 14 days of referral</b> to JDC	JDCPO
Enter assessment information (including YLS-CMI, JASAE, & CANS at intake and exit) in West Virginia Offender Case Management System	<b>Within 14 days after assessment report is received</b> by JDC probation officer	JDCPO
Enter appropriate case information in West Virginia Offender Case Management System	Daily	JDCPO
Enter exit information in West Virginia Offender Case Management System	<b>Within 14 days of exit.</b> All exit types must be recorded.	JDCPO
Provide all P&E Meeting Minutes to DPS	<b>Within 14 days of meeting taking place</b>	JDCPO
Provide Exit Questionnaire to each youth participant	<b>Upon exit</b> regardless of reason	JDCPO
Provide Exit Questionnaire to each participant's Parent/Guardian	<b>Upon exit</b> regardless of reason	JDCPO

Other Periodic JDC Evaluation Surveys/Questionnaires	As requested by the Division of Probation Services	JDCPO Treatment members and/or participants. and/or Team and/or
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### 12.3 Financial accounting.

#### 12.3.1 Incentive purchases.

Each local JDC program is provided a limited amount of funds for program incentives each fiscal year. JDC programs will use the local probation office’s P-Card for all incentive purchases. Each fiscal year, every JDC program will be provided with \$2,000 specifically for program incentives (including graduation gifts) and \$1,000 for the purchase of food and refreshments at the quarterly P&E meetings and at graduation ceremonies. No increases to the \$2,000 incentives/\$1,000 food budget will be approved.

JDC programs must use an approved incentive program. Any revisions to the initial approved incentive program must also be submitted for approval.

Invoices and/or receipts must be sent to the State Drug Court Coordinator as quickly as possible (scanned and emailed invoices/receipts are preferred). NOTE: Write the **Program Name** (i.e. Cabell Co. JDC), **Project # 10709**, and “[County Name] Org # \_\_\_\_” (i.e. Cabell Co Org #9999), on the invoice/receipt before sending. A list of County Org numbers can be provided by the local P-Card holder.

Make sure the County’s P-Card Log indicates **Project # 10709 and “County Org #”** beside EACH Juvenile Drug Court purchase to ensure proper coding and payment at the state level. The P-Card Log process continues as normal by the P-Card holder. The State Drug Court Coordinator does not receive this information.

Incentives must be logged on an on-going basis and in two different ways. First, when items are purchased for use as incentives for the program all purchases or items donated for incentives must be tracked within the JDC Program. The dispersal of the individual incentives per participant is logged in the JDC database under the incentive section of each participants database file.. BE ADVISED, the preference is not to accept cash donations, but rather have the donator purchase items for the program. Court employees can NOT accept or handle any money. If money donations are received, arrangements must be made with a local non-profit organization, a non-government team member, the circuit clerk’s office, or the county clerk’s office to serve as the fiscal agent for the donated funds for the JDC program.

Local programs shall monitor their incentive purchases on a monthly basis to prevent over expending allocated funding in this budget category.

When submitting an invoice for food provided at the designated Planning and Evaluation (P&E) Team meetings, the payment process will remain the same as mentioned in the subsequent sections d and e with the addition of submitting a list of attendee names with the invoice. *Be advised the invoice for food will not be processed without the attendee list.*

### *12.3.2 Travel and training expenses.*

Completed travel expense account forms must be submitted (should be scanned and emailed) to the State Drug Court Coordinator for processing and payment. The form must be signed by the JDC Coordinator and a local supervising authority before submission to the AO. **Project # 10709** and **County Org #** must be noted on the top of the form.

Out of state training requires pre-approval by the Administrative Director. A detailed request must be sent in writing, with a copy to the State Drug Court Coordinator.

Education benefits must also be pre-approved by the State Drug Court Coordinator. JDCPO's must submit a request to receive education benefits prior to attending the classes, trainings, etc. A detailed request must be sent in writing using an Application for Education Benefits form and attaching an agenda/description of the specific training.

#### NOTES:

- *Travel Expense Form can be found on the SCAWV website at: <https://intranet.courtswv.gov/forms/ACGeneral/TravelExpenseForm.pdf>*
- *State Travel Regulations can be found at: <https://intranet.courtswv.gov/CourtPolicies/Policies/Finance/Finance-Travel.pdf>*
- *Per Diem Rates can be found at: <http://www.gsa.gov/portal/category/21287>*

### *12.3.4 Equipment purchases.*

The AO may purchase laptops and cell phones for each JDCPO. The Chief Probation Officer must submit a completed a computer equipment request form that is signed by the JDC Judge or the Chief Circuit Court Judge. This form is to be properly completed (sent via email) to the State Drug Court Coordinator for approval and submission to the IT department. The IT department will not process

the request without approval from the Division of Probation Services. The form can be found on the Court's website.

All JDCPOs must be accessible in the field at all times. The policy for requesting a Court-issued cell phone is to submit a letter signed by the Judge and the Chief Probation officer to The Director of Probation Services. If approval is given a cell phone issued to the JDCPO is specific to that officer and to no one else. The cell phone number must be provided to the Director and the State Drug Court Coordinator at DPS. If the JDCPO assigned to the Court-issued phone leaves the JDC position, the phone must be returned to the Division. The phone cannot be reassigned to a different officer. In the event the JDCPO chooses to use their personal cell phone in lieu of a Court issued cell phone, a monthly reimbursement of \$29.99 may be approved. The cell phone number must be provided to the Director and the State Drug Court Coordinator at DPS. Reimbursement will require the JDCPO to complete an Employee Reimbursement Form (**not** the travel expense sheet) and provide a copy of the first page of each monthly bill attached to the reimbursement request form. The form and the back-up documentation should be sent to the State Drug Court Coordinator via email each month. The aforementioned form is provided on the Court's website.

### *12.3.5 Drug testing accounts.*

Each JDC has a specific drug testing account set up with Alere Toxicology (*lab urinalysis, Oral Fluid Intercept devices, and GC/MS confirmations*) and Redwood Toxicology Services (*instant urine cups*). The JDC accounts are separate accounts with the County Probation Department and will be labeled Juvenile Drug Court. The monthly master bill is sent directly to the State Drug Court Coordinator at the Division of Probation Services for approval and payment. After approval the bill will be forwarded to the Department's Administrative Assistant for appropriate coding and payment. The local probation office should also get a copy of the JDC drug testing invoice for their review and records.

The State Drug Court Coordinator within the DPS is responsible for getting the drug court drug testing accounts set up for each drug court program with each vendor. The Chief PO shall notify the State Coordinator of the name, physical address, mailing address, office phone number, office fax number, and email address of the new JDCPO as soon as possible so the State Drug Court Coordinator can notify the vendor and begin the process. This must be done with all new hires whether it is the implementation of a new program or the hiring of a new officer in an existing program. In addition, the State Drug Court Coordinator **needs to be notified immediately when a JDCPO leaves the position so the account's primary contact can be changed until the time a new JDCPO is hired.**

### *12.3.6 Treatment services.*

Each JDC will have limited funds for treatment services. However, **treatment services will be paid by the SCAWV as a last resort**. All other sources of payment must be exhausted first including the Order for payment of services by DHHR. In addition, there must be an approved MOU on file at the AO for each JDC program. The MOU is signed by AO staff and the local treatment provider working with the JDC program. Treatment providers must adhere to the payment process in the approved MOU for their services.

When the SCAWV approves payment for treatment services, a copy of a detailed invoice must be submitted to the State Drug Court Coordinator for review and approval. The invoice must be for services approved in the MOU on file. The invoice will be coded by the State Drug Court Coordinator and sent to the Accounting Dept. for payment.

### *12.3.7 Case Managers.*

All DPS-approved Case Manager's will be required to submit a completed and detailed monthly invoice to the JDCPO (or Chief PO) to review and approval. The monthly invoice must be signed by both the case manager and a direct supervisor and then sent directly to the State Drug Court Coordinator for processing and payment. *NOTE: temporary employees, whether full or part time, are not paid for their lunchtime, or days off*

Any drug court case manager (SCAWV approved) who has not already been issued a Court email account and has not been given access to the Drug Court Tab of the OCMS, will require permission from the State Drug Court Coordinator. The JDCPO or the Chief PO will be required to complete a request form and submit it via email for review. This form will be provided to each JDC program upon request.

The JDCPO (or the Chief PO) must notify the State Drug Court Coordinator immediately when a case manager resigns or is terminated from the position. The State Drug Court Coordinator will disable all Court related accounts in which the case manager has access (such as email account, database account, etc.) as soon as possible. **THIS IS VERY IMPORTANT!**

## **12.4 Other periodic reporting.**

### *Drug Court Meetings*

JDCPOs are required to attend the statewide drug court conference (usually held every even year (i.e. 2020, 2022, etc.)

During the years without a drug court conference, JDCPOs may be required to attend a state-wide networking meeting, designated Drug Court workshops at the Probation Officer Conferences, and may also be required to complete a written periodic report and provide oral presentations on the results of the report to meeting participants. A hard copy of the report will be filed in the individual JDC program files at the Division of Probation Services.

In addition, there may be periodic drug court specific training workshops and/or technical assistance training events held that will require participation from the JDCPO's. Notification from the Division of Probation Services will be provided to the JDCPO's on such events/opportunities.



### *Program Reviews*

Court staff will conduct **at least one on-site review** visit to each program during a fiscal year. Visits will be more frequent for programs in the development stage. Court staff will review the progress of the local program and the work of the JDCPO and will observe a JDC Treatment Team staffing meeting, a P&E team meeting, and drug court proceeding. **JDCPO's may be required to complete a written periodic report and orally present the results of the report during the site visit.** A hard copy of the report will be filed at the Division of Probation Services.

### *Database Development, Maintenance, and Training*

The JDCPO is responsible for ensuring that all necessary information is timely inputted into the appropriate database(s). The databases used by West Virginia's JDC system are essential for case management. They are also the best means for providing an easily-accessible source for case information both within the JDC program and between the JDC program and the DPS. The databases are also able to quickly prepare many mandatory reports.

In addition, the JDC-related databases will provide the DPS with information that will be used to evaluate JDC programs. Databases are the simplest and most cost-effective means of collection and analysis of the necessary information. The sound evaluation of JDC programs is essential to report to the legislature and support efforts to seek grant funding.

### *Quality Assurance*

It is the responsibility of the State Drug Court Coordinator or designee to monitor JDC programs to ensure that appropriate services and supervision are being provided to participants in compliance with the appropriate procedures.

The evaluation of these quality assurance factors is based primarily upon the following:

- Program Description Questionnaire;
- Program Fidelity Checklist;
- WVOCMS;
- Youth Participant Exit Questionnaire;
- Parent/Guardian Exit Questionnaire;
- Parent Group Exit Survey;
- Information gathered or collected during program reviews; and,
- Other relevant evaluation surveys.

These documents are intended to obtain information regarding the following questions:

- Collaborative Planning: How does the JDC program engage all stakeholders in creating an interdisciplinary, coordinated, and systemic approach to working with youth and their families?
- Teamwork: How does the JDC program develop and maintain an interdisciplinary, non-adversarial work team?
- Clearly Defined Target Population and Eligibility Criteria: Describe your a) referral, b) intake and c) assessment processes.
- Judicial Involvement & Supervision: How is the JDC Judge involved in supervising the JDC?
- Monitoring and Evaluation How are the participants monitored and evaluated for success in the program
- How does the JDC program identify areas for program improvement?
- How does the JDC program build partnerships with community organizations to expand the range of opportunities available to youth and their families?
- Comprehensive Treatment Planning: How does the JDC program tailor interventions to the complex and varied needs of youth and their families? Please provide any treatment protocols/procedures.
- Developmentally Appropriate Services: How does the JDC program tailor treatment to the developmental needs of adolescents?
- Gender-Appropriate Services: How does the JDC program design treatment to address the unique needs of each gender?
- Cultural Competence: How does the JDC program create policies and procedures that are responsive to cultural differences and train personnel to be culturally competent?

The quality assurance efforts of the DPS will also comprise visits to JDC programs. These visits are intended to determine progress made toward achieving program goals, compliance with statewide protocol and local policy and practice, to identify technical assistance needs, and to provide guidance of future enhancements and program sustainability.

The Program will begin with a visit with JDCPO and a tour of location where treatment services are provided to the participants (if possible). The Coordinator will also meet the Treatment Team and observe a Treatment Team staffing meeting and a JDC Hearing. During this visit, documentation will be reviewed to verify treatment provider credentials, treatment curricula and verify all assessments used (curricula and assessments must be evidence based).

A Program Review will also include a program update, which will verify the number of current participants in the program, the number referred, interviewed, pending interview, the number of youth who were NOT accepted or refused, the number of youth who were terminated or dropped out, with reasons for termination/D.O., and any notable changes since last visit.

When reviewing program records, the database will be reviewed to determine whether adequate program records are maintained, utilized, and current. In addition, compliance with program requirements will be assessed, the timeliness of progress reports submittal, if Treatment and P&E Teams are meeting as required, and,? The Program Review will also include a review of JDC program financial records to confirm that invoices/expenses are being provided to the court in a timely manner and that expenditures coincide with the approved program budget. The Coordinator will verify that for professional services being provided to the JDC program, a written, formal contract outlining the specific work to be performed by the service provider is on file. Finally, any training during reporting period will be discussed.