

Information-Sharing Best Practices: From Confidentiality to Progress Reports

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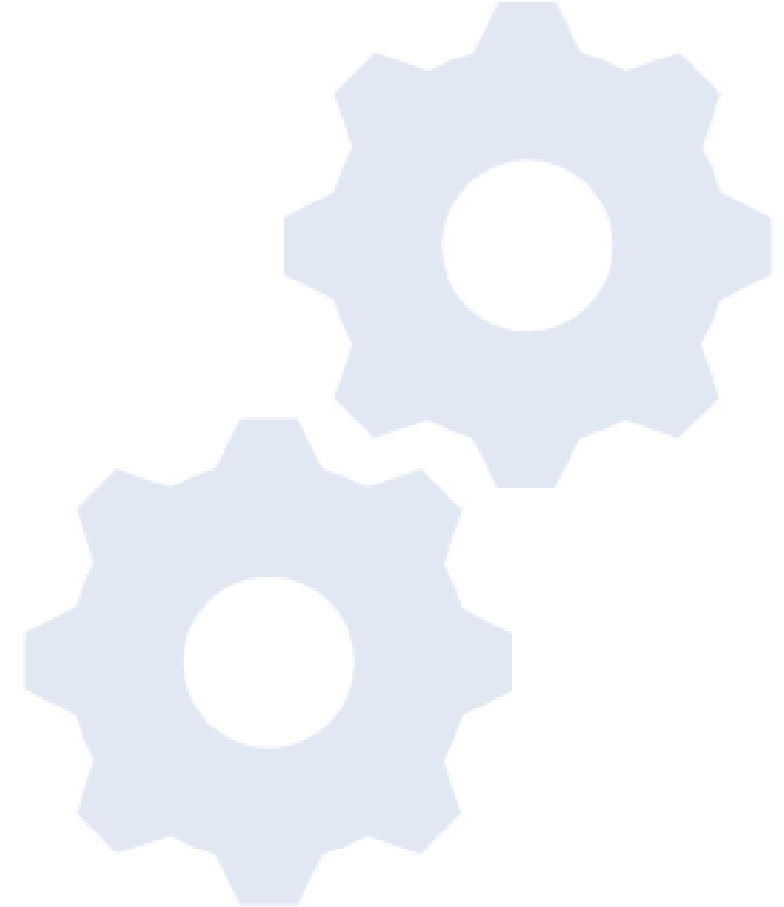
Disclaimer

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Outline

- Information-Sharing Protocols
 - Communication Protocols
 - MOUs
 - Privacy and Confidentiality
- Staffing
 - Progress Reports
 - Structure of the Staffing
- Program Monitoring



Information Sharing – To what end?



Info regarding our Participant

History Prior to Wellness Court

- Court
- Behavioral Health
- Social Services

Current Demographics and Assessments

Progress in Wellness Court week-to-week

Experience Post-Discharge

Info Regarding Our Wellness Court: Baseline Considerations



Court

Current Criminal and Civil
Caseloads / Recidivism

Drugs of Choice

Time between arrest/event →
arraignment → hearing → referral
→ entry

Retention in Wellness Court



Social Services

Current occurrences of
maltreatment

Length of stay in out-of-home care

Timeliness of reunification and
permanency

Percent of re-entry

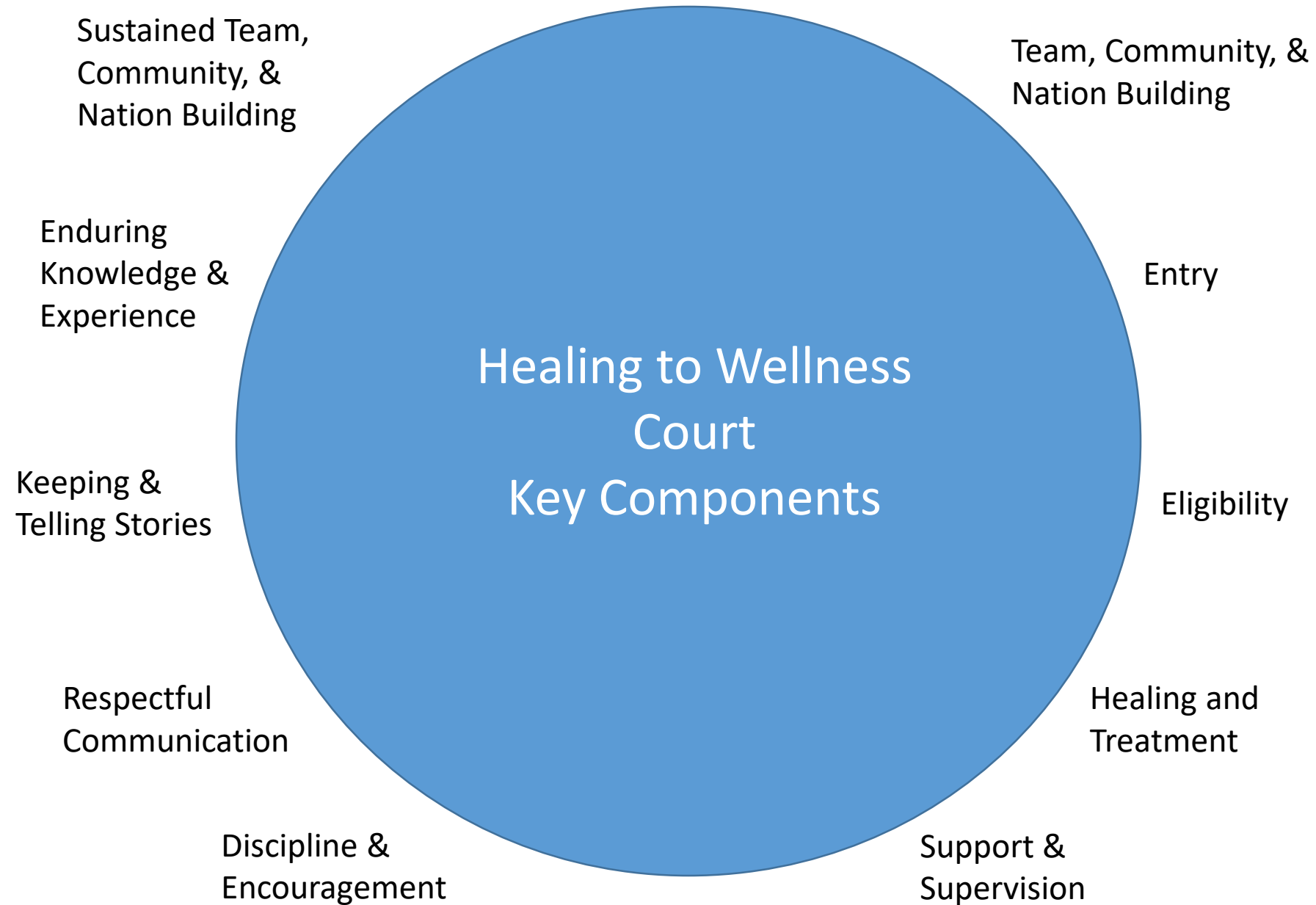


Treatment

Time from referral to treatment

Retention

Length of stay





Information Sharing Protocols |



Information-Sharing

- Providing quality relapse support, resources, and case management depends on
 - Information sharing between team members
 - Regular contact between judges and participants
- Courts that use email to communicate have improved cost savings

A blue speech bubble graphic with a white border, containing the text "What are we sharing?".

What are we
sharing?

Team members contribute relevant

- insights,
- observations, and
- recommendations

based on their

- professional knowledge,
- training, and
- experience.

Non-adversarial model

- Non-adversarial: Waive rights to
 - A speedy trial
 - Refuse to provide self-incriminating information
 - Judge as player vs. referee
- Team members retain their
 - Professional roles and responsibilities
 - Professional ethical obligations

- **Professional Training**

Legal and constitutional issues, judicial ethics, evidence-based substance use disorder and mental health treatment, behavior modification, and community supervision.

- **Length of Term**

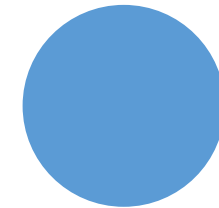
No less than two consecutive years.

- **Consistent Docket**

Participants ordinarily appear before the same judge.



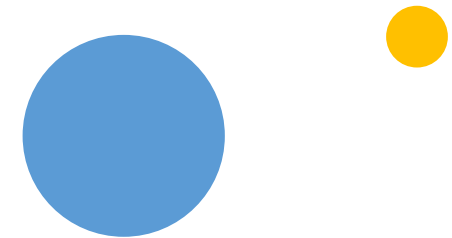
Judicial Notice – The Standards



- **Regularly Attend Pre-Court Staff Meetings**
- **Frequency of Status Hearings**
No less than every two weeks during Phase 1
After treatment engagement, can be reduced, but no less than every four weeks.
- **Court Interactions Should Be At Least Three Minutes**
- **Team Decision Making**
Judge considers the perspectives of all team members.
The Judge explains the rationale for such decisions to team members and participants.



Judicial Notice – The Standards





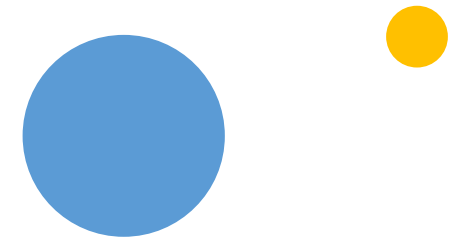
Protocol Structure

- What information is **minimally necessary**?
 - Compliance with requirements,
 - Areas warranting attention,
 - *And* positive performance
- When does this information need to be disseminated?
- Are there standardized reports that should be used?
- How will information be disseminated (e.g. email, secure web portal, paper)?

- Sometimes ... participants disclose infractions only to defense
 - Disclosure Tension: Participant's stated legal interests vs. Participant's best interests
 - Defense representative's trustworthiness and credibility with the team?
- Articulate defense counselor's role at the outset.
 - Participants have a right to know whether conversations are confidential
 - Team members have a right to know whether some information may not be available



The Defense Counselor



Team Memorandums of Understanding (MOUs)

Succession and team member buy-in

Signed by executives

Detail structure process for sharing information

- E.g. Weekly email reports; entry into centralized data system or sharing of agency-data system
- States the minimum expectations of each team member agency

Team MOUs / “Business Associate Contracts”

- HTWC Mission and Goals
- Roles of the Parties
 - All Members, e.g. develop and enhance the HTWC, attend staffing and hearings, collect HTWC data
 - Specific Roles
 - Designated team member(s)
 - HTWC specific duty, e.g. determine eligibility, conduct assessment, draft case plan, conduct drug testing
 - **Information-sharing expectation**, e.g. “Provide data and information regarding target population.”
 - “Confidential information may not be redisclosed to additional parties outside of the Wellness Court without the express written permission of the participant and may not be used to prosecute new charges against the participant.”
- Term of the MOU
- General Provisions, e.g. modifications, termination, governing law
- Signatures

Information Sharing Protocols

Meets the information needs of the team members for informed decision-making and treatment planning

Conforms to confidentiality laws and regulations, protecting privacy and due process



Confidentiality

What is Confidential Information?

Info that identifies a patient as an alcohol or drug user

Info related to treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral.

- 42 CFR Part 2



- Treatment professionals *can* share confidential treatment information with criminal justice professionals pursuant to
 - a voluntary, informed, and competent WAIVER of a patient's confidentiality and privacy rights (45 C.F.R. §164.502(a))
- OR
- pursuant to a court order (45 C.F.R. §164.512(e)).

Need for Written Consent

- Health and Insurance Portability and Accountability Act of 1996 (HIPAA)
 - Disclosures are permitted with **written authorization**
- Drug and Alcohol Federal Confidentiality Laws, 42 CFR Part 2
 - Restricts the disclosure and use of info of about individuals in federally assisted drug or alcohol abuse treatment programs
 - Authorizes “redisclosure” (e.g. sharing info amongst team members) with **written consent**
- Likely Wellness Court is not considered a *covered entity* or *program*, but treatment provider is



Need for Written Consent

- HIPAA and 42 CFR Part 2
 - Protects patient-identifying information
 - Protected “patient records” includes any information, written *or oral*
 - Disclosure of confidentiality information requires written consent/authorization
 - 42 CFR 2.32 requires a **notice** with certain elements. [Find them here.](#)
 - 42 CFR 2.31 requires certain elements for **consent**. [Find them here.](#)
 - One consent form can be used to satisfy both HIPAA and 42 CFR Part 2
 - A multiparty authorization is permissible if the purpose for the disclosure is the same for all parties (e.g. a Wellness Court team)



HIPAA ORDER

IN THE _____ COURT

_____, STATE OF _____
(County, District)

Case No. _____

People of the
State of _____

Plaintiff,

v.

Defendant.

ORDER RE:

Limited Release of
Specific Substance
Abuse Treatment Records

This matter is before the court for consideration of the limited release of specific substance abuse treatment records. The court makes the following findings:

1. On _____, the defendant was accepted into/referred to the
(Date)
_____ Drug Court.

2. As a condition of participation in the drug court program, the defendant must attend substance abuse treatment and the drug court team must monitor the defendant's progress in substance abuse treatment.

3. The defendant has voluntarily and knowingly signed a HIPAA and 42 C.F.R. Part 2 compliant release.

4. The information necessary to monitor the defendant's progress in substance abuse treatment includes:

defendant's diagnosis, defendant's urinalysis results, defendant's treatment attendance or nonattendance, defendant's cooperation with treatment, defendant's progress in treatment, and defendant's prognosis. This treatment information is the minimum necessary to carry out the purpose of the disclosure. *See* 45 C.F.R. §165.502(b)(11) and 42 C.F.R. § 2.13(a).

It is therefore ordered that:

1. (_____) shall provide to the members of the
Name of treatment provider
drug court team (as reflected in the HIPAA/42 C.F.R. Part 2 Consent to Release Form or team member replacements) the following information:

defendant's diagnosis, defendant's urinalysis results, defendant's treatment attendance or nonattendance, defendant's cooperation with treatment, defendant's progress in treatment, and defendant's prognosis.

2. The named treatment provider shall continue to provide the treatment information until defendant's successful completion of or termination from the drug court program or further court order, whichever shall first occur.

3. The drug court team shall not redisclose the information received pursuant to this Order, except as may be provided by law.

SO ORDERED this ____ day of _____, 20__.

Judge

**CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION:
CRIMINAL JUSTICE SYSTEM REFERRAL**

I, _____, authorize (initial whichever parties apply):
(Name of defendant)

☐ [The ABC Alcohol and Drug Treatment Program]
(Name or general designation of program making disclosure)

☐ [The Probation Department] employees supervising my case

☐ [The Case Managers] employees supervising my case

☐ _____ ☐ _____
(Name of the appropriate drug court) (Name of prosecuting attorney)

☐ _____ ☐ _____
(Name of criminal defense attorney) (Other)

to communicate with and disclose to one another the following information
(nature and amount of the information as limited as possible):

_____ my diagnosis, urinalysis results, information about my attendance
or lack of attendance at treatment sessions, my cooperation with
the treatment program, prognosis, and

The purpose of the disclosure is to inform the person(s) listed above of my attendance and progress in treatment.

I understand that my alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. Parts. 160 & 164. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

[Specify the date, event, or condition upon which this consent expires. This could be one of the following:]

_____ There has been a formal and effective termination or revocation of my release from confinement, probation, or parole, or other proceeding under which I was mandated into treatment, or

_____ (Specify other time when consent can be revoked and/or expires)

I understand that I might be denied services if I refuse to consent to a disclosure for purposes of treatment, payment, or health care operations, if permitted by state law. I will not be denied services if I refuse to consent to a disclosure for other purposes.

I recognize that my review hearings are held in an open and public courtroom and it is possible that an observer could connect my identity with the fact that I am in treatment as a condition of participation in drug court. I specifically consent to this potential disclosure to third persons.

I understand that if I refuse to consent to disclosure or attempt to revoke my consent prior to the expiration of this consent, that such action is grounds for immediate termination from drug court.

I have been provided a copy of this form.

I acknowledge that I have been advised of my rights, have received a copy of the advisement, and have had the benefit of legal counsel or have voluntarily waived the right to an attorney. I am not under the influence of drugs or alcohol. I fully understand my rights and I am signing this Consent voluntarily.

Dated: _____ Signature of Drug Court Participant

Witness: _____ (position)

**PROHIBITION ON REDISCLOSURE
OF CONFIDENTIAL INFORMATION**

This notice accompanies a disclosure of information concerning a client in alcohol/drug treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is **NOT** sufficient for this purpose. The federal rules restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

Minimally Necessary

- The scope of the disclosure must be limited to the minimum information necessary to achieve the intended aims of the disclosure (45 C.F.R. §§164.502(b) & 164.514(d)).
- Ensure
 - progressing adequately in treatment and
 - complying with other conditions of the program

Minimally Necessary?

Assessment results pertaining to a participant's eligibility for Drug Court and treatment and supervision needs

Attendance at scheduled appointments

Drug and alcohol test results, including efforts to defraud or invalidate said tests

Attainment of treatment plan goals, such as completion of a required counseling regimen

Evidence of symptom resolution, such as reductions in drug cravings or withdrawal symptoms

Evidence of treatment-related attitudinal improvements, such as increased insight or motivation for change

Minimally Necessary?

Attainment of Drug Court phase requirements, such as obtaining and maintaining employment or enrolling in an educational program

Compliance with electronic monitoring, home curfews, travel limitations, and geographic or association restrictions

Adherence to legally prescribed and authorized medically assisted treatments

Procurement of unauthorized prescriptions for addictive or intoxicating medications

Commission of or arrests for new offenses

Menacing, threatening, or disruptive behavior directed at staff members, participants or other persons

The Informed Consent Document

- Specify what data elements may be shared
- with whom
- for what authorized period of time
 - Expiration can be predicated upon an event, such as discharge from Wellness Court
- what steps participants must take to revoke consent
- Recipients of confidential information must be put on notice that they are only permitted to redisclose information to additional parties under carefully specified and approved conditions (*see MOU*).

Can I share? Must I share?

- Confidentiality and privacy rights belong to the participant, not to staff.
- Failing to abide by a valid confidentiality waiver could, under some circumstances, be a breach of a staff person's professional responsibilities to the participant.
- A team member who remains silent in staffings or defers habitually to group consensus may be violating his or her professional obligations to participants and to the administration of justice.



Pre-Court Staffing Meeting |

Progress Reports

- How is information shared for the progress report?
 - Centralized data system, emailed the day before, individual tracking
- When is the report shared? Can team members read ahead of time?
- Note the participant's weekly progress, *program* progress, and family status
 - Incentives and Sanctions
 - Drug tests
 - Attendance
 - Phase / # of Days Sober
 - Treatment progress
 - Long-term goal progress (housing, education, projects)
 - Children status
- The Standard: Timely and Reliable Data Entry
Staff members are required to record information concerning the provision of services and in-program outcomes within forty-eight hours of the respective events.

Sample Participant Progress Report

Name:

Phase:

Start Date:

Case Information			
Triggering Offense			
Deferred Sentence			
Prior Convictions/Cases			
Employer		Shift	
Driver's License	[Yes/No]	Diploma or GED	
Moved Phases	[Phase/Date]	Days of Sobriety	

Family			
Spouse/Partner			
Children: Ages/Placements			
Roommates/Family in the Home			

Treatment								
[Treatment requirements and notes here]								
Drug Testing								
Date								
Result								
Substance								

Other Weekly Requirements
[E.g., community service]

Incentives	
Date	Incentive(s)
	[Describe incentive and notes]

Sanctions		
Date	Sanction(s)	Status
	[Describe sanction and notes]	[Completed/incomplete; notes]

Our Systems – by design

Complaints that

- Forced to repeat the same info to different professionals
- Forced to comply with excessive and inconsistent mandates stemming from different agencies



System Walk-Throughs

- Have you ever walked inside
 - Behavioral Health?
 - Social Services?
 - TANF?
 - Vocational Rehab?
 - The In-Patient Center?
- Have you ever completed their in-take forms?
- Have you ever called the hotlines?
- Have you ever scheduled an appointment?

Staffing – Who Should Be There?

Front-line staff

- Judge – Court sees better criminal justice outcomes with their presence
- Direct reps. vs. Liaisons
- Support services – when is it too many?

Steering Committee?

- Discussion on Efficiency
- The need for other department/agency participation
- Referral challenges

Discuss Each Participant

Treatment and Support Service Needs

- Clinical service needs: mental health, medical/dental care, trauma services
- Support services: housing, education, vocational training, parenting

Incentives and Sanctions

Family's progress and accomplishments vs. just their problem areas

- Quality and frequency of visitation/parenting time
- Status of the children
- Status or need for other clinical and support services for children
- Status of partner/spouse
- Status or need for other clinical and support services for partner

Progress and accomplishments vs.
just their problem areas

Behavioral change vs. just
attendance or compliance

Useful updates vs. gossiping

Problem solving vs. problem
reporting

Progress and
Desired
Behavioral
Changes

The background of the slide features a series of thin, curved lines in shades of gray, creating a sense of motion and depth. These lines are more prominent on the left side and fade towards the right.

Closed staffing?

- Presumptively closed
- Due Process?
So long as no final decisions are reached concerning disputed facts or legal issues in the case
- Judge recites in open court what decisions, if any, were made during the staffing.
- Contested matters must be addressed and resolved in open court during status hearings or related due process hearings such as termination hearings or probation violation hearings.



Monitoring the Program

Monitoring Standard

- The Wellness Court continually monitors participant outcomes during enrollment in the program, including
 - attendance at scheduled appointments,
 - drug and alcohol test results,
 - graduation rates,
 - lengths of stay, and
 - in-program technical violations and new arrests.



Monitoring and Evaluation

- **Electronic Database**
Information relating to the services provided and participants' in-program performance is entered into an electronic database.

Statistical summaries from the database provide staff with real-time information concerning the Wellness Court's adherence to best practices and in-program outcomes.

- **Intent-to-Treat Analyses**
Outcomes are examined for all eligible participants who entered the Drug Court regardless of whether they graduated, withdrew, or were terminated from the program.

	January 2019	February 2019
HTWC Capacity		
1. Number of participants the HTWC can serve at this time		
2. Number of participants at the end of this month		
HTWC Referrals and Eligibility		
1. Number of new criminal cases in jurisdiction		
2. Number of cases in which defendant was positively screened for substance use		
3. Number of referrals to HTWC		
HTWC Enrollment		
1. Number of enrollments this month		
2. Number that declined to participate		
3. Number of other status (e.g. participant still thinking out it, team still reviewing)		
HTWC Discharges		
1. Number of discharges from HTWC		
2. Of those discharged, the number that were:		
a. Graduations		
b. Other “successful” discharge		
c. “Neutral” discharge		
d. Termination, drop-out, or other “unsuccessful” discharge		

Sharing Information beyond Wellness Court

- If parallel court – how share information with dependency court?
- If transfer agreement – how share information with other jurisdiction





Thank you!