



Standard 4.10. Guidelines for diversion drug court programs

(a) Minimum components

The components specified in this standard should be included as minimum requirements in any pre-plea diversion drug court program developed under Penal Code section 1000.5.

(Subd (a) amended effective January 1, 2007.)

(b) Early entry

Eligible participants should be identified early and enter into a supervision and treatment program promptly.

- (1) A declaration of eligibility should be filed by the district attorney no later than the date of the defendant's first appearance in court.
- (2) Participants designated as eligible by the district attorney should be ordered by the assigned drug court judge to report for assessment and treatment supervision within five days of the first court appearance.

(c) Treatment services

Participants should be given access to a continuum of treatment and rehabilitative services.

- (1) The county drug program administrator should specify and certify appropriate drug treatment programs under Penal Code section 1211.
- (2) The certified treatment programs should provide a minimum of two levels of treatment services to match participants to programs according to their needs for treatment, recognizing that some divertees may be at the stage of experimenting with illicit drugs while others may be further along in the addiction's progression.
- (3) Each treatment level should be divided into phases in order to provide periodic reviews of treatment progress. Each phase may vary in length. It should be recognized that a participant is expected to progress in treatment but may relapse. Most participants, however, should be able to successfully complete the treatment program within 12 months.
- (4) Each pre-plea diversion drug court program should have an assessment component to ensure that participants are initially screened and then periodically assessed by treatment personnel to ensure that appropriate treatment services are provided and to monitor the participants' progress through the phases.
- (5) Treatment services should include educational and group outpatient treatment. Individual counseling, however, should be made available in special circumstances if an assessment based on acceptable professional standards indicates that individual counseling is the only appropriate form of treatment. Referrals should be made for educational and vocational counseling if it is determined to be appropriate by the judge.

(Subd (c) amended effective January 1, 2007.)

(d) Monitoring

Abstinence from and use of drugs should be monitored by frequent drug testing.

- (1) Alcohol and other drug (AOD) testing is essential and should be mandatory in each pre-plea diversion drug court program to monitor participant compliance.
- (2) Testing may be administered randomly or at scheduled intervals, but should occur no less frequently than one time per week during the first 90 days of treatment.
- (3) The probation officer and court should be immediately notified when a participant has tested positive, has failed to submit to AOD testing, or has submitted an adulterated sample. In such cases, an interim hearing should be calendared and required as outlined in (e)(4).
- (4) Participants should not be considered to have successfully completed the treatment program unless they have consistently had negative test results for a period of four months.

(Subd (d) amended effective January 1, 2007.)

(e) Judicial supervision

There should be early and frequent judicial supervision of each diversion drug court participant.

- (1) Each participant should appear in court before a specifically assigned diversion drug court judge within 30 days after the first court appearance. At this time the participant should provide proof of registration, proof of completion of assessment, proof of entry into a specific treatment program, and initial drug test results.
- (2) The second drug court appearance should be held no later than 30 days after the first drug court appearance. The third drug court appearance should be held no later than 60 days after the second drug court appearance.
- (3) A final drug court appearance should be required no sooner than 12 months from entry into treatment unless continued treatment is found to be appropriate and necessary.
- (4) Interim drug court appearances should be required within one week of the following: positive drug test results, failure to test, adulterated test, or failure to appear or participate in treatment.
- (5) At each drug court appearance, the judge should receive a report of the participant's progress in treatment and drug test results and should review, monitor, and impose rewards and sanctions based on the participant's progress or lack of progress.

(f) Sanctions and incentives

The drug court responds directly to each participant's compliance or noncompliance with graduated sanctions or incentives.

- (1) A clear regimen of incentives and sanctions should be established and implemented at each court hearing.
- (2) The suggested range of incentives should be as follows:

- (A) Encouragement;
 - (B) Advancement to next treatment phase;
 - (C) Reduction in diversion program fees (other than state-mandated fees);
 - (D) Completion of treatment and required court appearances and shortening of the term of diversion; and
 - (E) Other incentives the court may deem necessary or appropriate.
- (3) The suggested range of sanctions should be as follows:
- (A) Demotion to earlier treatment phase;
 - (B) Increased frequency of testing, supervision, or treatment requirements;
 - (C) Graduated length of incarceration for violating diversion order to abstain from use of illegal drugs and for nonparticipation in treatment; and
 - (D) Reinstatement of criminal proceedings.
- (4) A participant should be terminated from the pre-plea diversion drug court, and criminal proceedings reinstated, if the drug court judge, after a hearing, makes a final and specific finding and determination at any time during the period of diversion that the participant has:
- (A) Not performed satisfactorily in treatment;
 - (B) Failed to benefit from education, treatment, or rehabilitation;
 - (C) Been convicted of a misdemeanor that reflects the participant's propensity for violence; or
 - (D) Engaged in criminal conduct rendering him or her unsuitable for continued treatment.

(Subd (f) amended effective January 1, 2007.)

(g) National standards

In addition to meeting the minimum guidelines provided in this standard, courts are encouraged to look to the nationally accepted guidelines, *Defining Drug Courts: The Key Components*, developed by the National Association of Drug Court Professionals in cooperation with the Department of Justice, for further and detailed guidance in developing an effective diversion drug court program.

(Subd (g) amended effective January 1, 2007.)

Standard 4.10 amended and renumbered effective January 1, 2007; adopted as sec. 36 effective January 1, 1998.