

STATE OF MICHIGAN

IN THE 16th JUDICIAL CIRCUIT FOR THE COUNTY OF MACOMB

In Re: Order for the Establishment of a Driving While Impaired/Sobriety Treatment Court

Circuit Court Local Administrative Order #2021-07

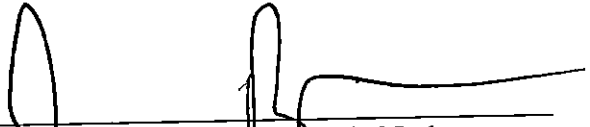
IT IS ORDERED:

This Administrative Order is issued in accordance with MCL 600.1060, et seq. The purpose of this Order is to establish a Driving While Impaired/Sobriety Treatment Court in the 16th Judicial Circuit Court upon approval by the State Court Administrative Office (SCAO). All policies and procedures comply with the statute and are consistent with the 10 Guiding Principles for DWI Courts promulgated by the National Drug Court Institute, a division of the National Association of Drug Court Professionals (see attachment A) as required by MCL 600.1084(2).

1. The Court has entered into a Memorandum of Understanding with each participating county prosecuting attorney in the circuit or district court district, a representative of the criminal defense bar, a representative of community treatment providers, and other key parties pursuant to MCL 600.1062. The memorandum of understanding describes the role of each party and is attached (Attachment B).
2. The Court has established eligibility criteria consistent with MCL 600.1064 and 600.1068.
3. In compliance with MCL 600.1064(3), no participant will be admitted until a complete preadmission screening and substance abuse assessment are completed.
4. All participants will sign a voluntary written agreement to participate in the program in conformance with MCL 600.1068(1)(d).
5. The Court will maintain case files in compliance with Retention and Disposal Schedule General Schedule #15 Circuit Court the Michigan Trial Court Case File Management Standards, and Part 2 of Title 42 of the Code of Federal Regulations to assure confidentiality of DWI court records.
6. The Court has established, as part of its program requirements, procedures to ensure compliance with MCL 600.1072 and 600.1074.
7. Pursuant to MCL 600.1078, the Court will provide the SCAO with the minimum standard data established by the SCAO for each individual applicant and participant of the DWI Court program.

8. The Court will use the Drug Court Case Management Information System (DCCMIS) to maintain and submit the minimum standard data as determined by the SCAO while receiving grant money from the SCAO.
9. In order to begin or continue operation of the DWI Treatment Court, the 16th Judicial Circuit Court will become certified by the State Court Administrative Office under MCL 600.1084.

Dated: 6-16-21



James M. Biernat, Jr. - Chief Judge
16th Judicial Circuit, Macomb County
Probate and 42nd Judicial District Courts

ATTACHMENT A

The 10 Guiding Principles of DWI Courts

Guiding Principle #1 – Target the Population: Targeting is the process of identifying a subset of the DWI offender population for inclusion in the DWI court program. This is a complex task given that DWI courts, in comparison to traditional drug court programs, accept only one type of offender: the person who drives while under the influence of alcohol or drugs. The DWI court target population, therefore, must be clearly defined, with eligibility criteria clearly documented.

Guiding Principle #2 – Perform a Clinical Assessment: A clinically competent objective assessment of the impaired-driving offender must address a number of biopsychosocial domains including alcohol use severity and drug involvement, the level of needed care, medical and mental health status, extent of social support systems, and individual motivation to change. Without clearly identifying a client's needs, strengths, and resources along each of these important biopsychosocial domains, the clinician will have considerable difficulty in developing a clinically sound treatment plan.

Guiding Principle #3 – Develop the Treatment Plan: Substance dependence is a chronic, relapsing condition that can be effectively treated with the right type and length of treatment regimen. In addition to having a substance abuse problem, a significant proportion of the DWI population also suffers from a variety of co-occurring mental health disorders. Therefore, DWI courts must carefully select and implement treatment practices demonstrated through research to be effective with the hard-core impaired driver to ensure long-term success.

Guiding Principle #4 – Supervise the Offender: Driving while intoxicated presents a significant danger to the public. Increased supervision and monitoring by the court, probation department, and treatment provider must occur as part of a coordinated strategy to intervene with repeat and high-risk DWI offenders and to protect against future impaired driving.

Guiding Principle #5 – Forge Agency, Organization, and Community Partnerships: Partnerships are an essential component of the DWI court model as they enhance credibility, bolster support, and broaden available resources. Because the DWI court model is built on and dependent upon a strong team approach, both within the court and beyond, the court should solicit the cooperation of other agencies, as well as community organizations, to form a partnership in support of the goals of the DWI court program.

Guiding Principle #6 – Take a Judicial Leadership Role: Judges are a vital part of the DWI court team. As leader of this team, the judge's role is paramount to the success of the drug court program. The judge must also possess recognizable leadership skills, as well as the ability to motivate team members and elicit buy-in from various stakeholders. The selection of the judge to lead the DWI court team, therefore, is of utmost importance.

Guiding Principle #7 – Develop Case Management Strategies: Case management, the series of inter-related functions that provides for a coordinated team strategy and seamless collaboration across the treatment and justice systems, is essential for an integrated and effective DWI court program.

Guiding Principle #8 – Address Transportation Issues: Though nearly every state revokes or suspends a person’s driving license upon conviction for a DUI offense, the loss of driving privileges poses a significant issue for those individuals involved in a DWI/drug court program. In many cases, the participant solves the transportation problem created by the loss of their driver’s license by driving anyway and taking a chance that he or she will not be caught. With this knowledge, the court must caution the participant against taking such chances in the future and to alter their attitude about driving without a license.

Guiding Principle #9 – Evaluate the Program: To convince “stakeholders” about the power of DWI court, program designers must design a DWI court evaluation model capable of documenting behavioral change and linking that change to the program’s existence. A credible evaluation is the only mechanism for mapping the road to program success or failure. To prove whether a program is efficient and effective requires the assistance of a competent evaluator, an understanding of and control over all relevant variables that can systematically contribute to behavioral change, and a commitment from the DWI court team to rigorously abide by the rules of the evaluation design.

Guiding Principle #10 – Create a Sustainable Program: The foundation for sustainability is laid, to a considerable degree, by careful and strategic planning. Such planning includes considerations of structure and scale, organization and participation, and, of course, funding. Becoming an integral and proven approach to the DWI problem in the community however is the ultimate key to sustainability.

Memorandum of Understanding 16th Judicial Circuit DWI/Sobriety Treatment Court

1. Parties

This agreement is made and entered into as of the date set forth below, by and between the following parties whose representatives have signed the agreement:

- a. 16th Judicial Circuit DWI/Sobriety Treatment Court
- b. 16th Judicial Circuit Court
- c. 16th Judicial Circuit DWI/Sobriety Treatment Court Judge
- d. Macomb County Prosecuting Attorney
- e. Michigan Department of Corrections Probation and Parole
- f. Macomb County Sheriff Department
- g. Defense Attorney
- h. Treatment Provider; Clinton Counseling
- i. 16th Judicial Circuit DWI/Sobriety Treatment Court Specialty Court Coordinator

2. Purpose

The purpose of this Memorandum of Understanding (MOU) is to describe duties and allocate responsibilities for members of the 16th Judicial Circuit DWI/Sobriety Treatment Court Team (hereinafter sometimes "DWI Court"). The MOU also establishes team member responsibilities and requirements for maintaining compliance with the Michigan DWI/Sobriety Court Statute (MCL 600.1084, *et seq.*).

3. Terms and Definitions

- a. Ex parte communication: Any communication, relevant to a legal proceeding between a judge and a party to the proceeding or any other person about the case, outside of the presence of the opposing party or the opposing party's attorney, that is not on the record.
- b. Participant: Any person referred to the 16th Judicial Circuit DWI/Sobriety Treatment Court, currently being screened as a candidate for the 16th Judicial Circuit DWI/Sobriety Treatment Court (including those who are ultimately denied entry to the program), currently participating in the 16th Judicial Circuit DWI/Sobriety Treatment Court, or someone who has been discharged from the 16th Judicial Circuit DWI/Sobriety Treatment Court program.
- c. Policies and Procedures Manual: Policy and procedure manuals document policies and procedures designed to influence and determine all major decisions and actions, and all activities that take place within the boundaries set by them. Procedures are the specific methods employed to express policies in action in day-to-day operations of the organization.
- d. Staffing meetings: Team meetings where participants' progress is discussed and options for incentives, sanctions, treatment, and phase changes are evaluated.

- e. Stakeholders: A person, group or organization that has interest or concern in an organization.
- f. Treatment services: Any services provided by a licensed clinician or by an employee of an agency providing therapeutic services for substance use disorder, mental health, or developmental disabilities.

4. Mission of the 16th Circuit DWI/Sobriety Treatment Court

The 16th Judicial Circuit Court DWI/Sobriety Court is dedicated to helping address alcohol dependence by recurring drinking and driving offenders. Our goal is to provide an intensive but rewarding opportunity to end the cycle of alcohol abuse, promote long-term sobriety, and, in doing so, not only protect the community but improve the quality of life for our participants.

Participants must: Show Up. Try Hard. Tell the Truth.

5. Guiding Principles of the 16th Judicial Circuit DWI/Sobriety Treatment Court

- a. Determine the population to be served.
- b. Perform a clinical assessment.
- c. Develop a treatment plan.
- d. Supervise the offender.
- e. Forge agency, organization, and community partnerships.
- f. Take a judicial leadership role.
- g. Develop case management strategies.
- h. Address transportation issues.
- i. Evaluate the program.
- j. Ensure a sustainable program.

For detailed information about these guidelines, please refer to The Ten Guiding Principles of DWI Courts (attached as Exhibit A).

6. Roles of the Parties of the 16th Judicial Circuit DWI/Sobriety Treatment Court

- a. All parties shall:
 - i. Participate as a team member, operating in a non-adversarial manner.
 - ii. On an annual basis, attend current training events on legal and constitutional issues in drug treatment courts, evidence-based substance abuse and mental health treatment, behavior modification, and/or community supervision.
 - iii. Help to identify potential and eligible 16th Judicial Circuit DWI/Sobriety Treatment participants.
 - iv. Provide feedback, suggestions, and ideas on the operation of the DWI Court.

- v. Attend staffing meetings and provide input on incentive and sanctions for participants.
 - vi. Share information as necessary, and in compliance with 42 CFR and HIPAA, to appraise participants' progress in, and compliance with, the conditions of the DWI Court.
 - vii. Ensure that they, all employees, and other agents, shall maintain the confidentiality of all records generated during the term of this MOU in accordance with applicable state and federal laws and regulations, including but not limited to, 42 CFR Part 2, HIPAA, and 290dd-2.
- b. The roles of the individual parties are as follows:
- i. DWI Court judge
 1. Serve as the leader of the team.
 2. Preside over status review hearings.
 3. Engage the community to generate local support for the DWI Court.
 4. Communicate with the participants in a positive manner and make final decisions regarding incentives, sanctions, and program continuation.
 5. Consider the perspective of all team members before making final decisions that affect participants' welfare or liberty interests and explain the rationale for such decisions to team members and participants.
 6. Rely on the expert input of duly trained treatment professionals when imposing treatment related conditions on the participants.
 7. Shall consider whether to terminate a participant's participation in the DWI Court program if that participant is accused of a new crime. If a participant is convicted of a felony for an offense that occurred after being admitted to DWI Court, the judge must terminate the participant from the program.
 - ii. Prosecuting attorney:
 1. Provide legal screening of eligible participants.
 2. Attend review hearings.
 3. Represent the interests of the prosecutor and law enforcement.
 4. Advocate for public safety.
 5. Advocate for victim interest.
 6. Hold participants accountable for meeting their obligations.
 7. If a plea agreement is made based on completion of the program, complete appropriate court documents for resultant modification(s) upon participant's successful completion of the program (reduced charge, nolle prosequi, etc).
 8. May help resolve other pending legal cases that impact participants' legal status or eligibility.
 - iii. Program coordinator:

1. Arrange for or conduct additional screenings of persons aside from the prosecutor's legal screening.
 2. Attend review hearings.
 3. Answer inquiries from defense attorneys on possible eligibility.
 4. Enter data into DCCMIS system.
 5. Act as liaison with agencies that are providing services to the participants.
 6. Ensure that new team members are provided with a formal training within three months of joining the team on the topics of confidentiality, and his or her role on the team, and that the new team member is provided with copies of all program policy and procedure manuals, the participant handbook, and a copy of all current memoranda of understanding.
- iv. Probation Agent:
1. Administer a validated criminogenic risk/needs assessment tool to participants during the referral process to ensure the DWI Court is serving the appropriate target populations.
 2. Attend review hearings.
 3. Work with the program coordinator in supervising and monitoring the individuals in the program.
 4. Prepare presentence reports and perform drug and alcohol tests as needed.
 5. Schedule probation violations or show cause hearings for participants who have violated the program rules and are subject to termination from the program, or if a liberty interest is at stake.
 6. Enter data into the DCCMIS system.
- v. Defense counsel representative:
1. Ensure that defendants' procedural and due process rights are followed.
 2. Ensure that a defense counsel representative is present at all staffing meetings to avoid ex parte communication.
 3. Attend review hearings.
 4. Ensure that the participant is treated fairly and that the DWI Court team follows its own rules.
 5. When appropriate, and without breaching attorney-client privilege, encourage clients to be forthcoming and honest regarding their recovery process.
- vi. Treatment provider:
1. Conduct assessments when needed to determine program eligibility, appropriate treatment services, and progress in treatment.

2. Ensure that a treatment representative is present at all staffing meetings to ensure therapeutic input regarding any sanctions being considered.
 3. Liaison with any treatment providers and/or treatment agencies that are providing services to the participants, and keep the team updated on treatment attendance and progress.
 4. Attend review hearings.
 5. Manage delivery of treatment services.
 6. Administer, or ensure administration of, behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes.
 7. Provide clinical case management.
 8. Offer insights and suggestions on the treatment plans of individuals in the program.
 9. Enter data into the DCCMIS system.
- vii. Law enforcement agency:
1. Attend review hearings.
 2. Assist with apprehensions for participants with active warrants.

7. Deferrals, Delays, and Deviation from Sentencing Guidelines

Under MCL 600.1068(2), the prosecutor must approve an individual's admission into the 16th Judicial Circuit Court DWI/Sobriety Treatment Court if the individual will be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines.

8. Term of Agreement

This agreement is effective for one year upon the date of the final signature and shall renew automatically for subsequent one-year terms unless otherwise modified. Any signatory to this agreement may terminate participation upon thirty days' notice to all other signatories.

9. Agency Representatives

This MOU will be administered by the 16th Judicial Circuit DWI/Sobriety Treatment Court team, which consists of the following stakeholder agency representation:

- a. 16th Judicial Circuit Court Chief Judge James M. Biernat, Jr.
- b. 16th Judicial Circuit DWI/Sobriety Treatment Court Judge Julie Gatti.
- c. 16th Judicial Circuit Court, Court Administrator, Julie Bovenschen
- d. Macomb County Chief Prosecuting Attorney, Pete Lucido
- e. Michigan Department of Corrections, Heidi E. Washington
- f. Macomb County Sheriff, Anthony Wickersham
- g. Macomb County Bar Association President, Francisco Brugiglio

- h. Community Corrections, Barb Caskey
- i. Clinton Counseling, CEO Jeff Oldham
- j. 16th Judicial Circuit DWI/Sobriety Court, Coordinator Lori Menzie

10. Modification of Agreement

Modification of this agreement shall be made by formal consent of all parties, pursuant to the issuance of a written amendment, signed and dated by the parties, prior to any changes.

11. Other Interagency Agreements

This agreement does not preclude or preempt each of the agencies individually entering in to an agreement with one or more parties to this agreement, nor does it supplant any existing agreement between such parties.

12. Signatures of Parties to this Agreement

The parties have entered into this agreement as evidenced by their signatures below. A certified copy of the agreement shall be provided to each signatory to the agreement. The original agreement shall be held by the 16th Judicial Circuit Court.

DocuSigned by:
James M. Biernat, Jr.
Signature

James M. Biernat, Jr.
Printed Name

Chief Judge
Title

6/11/2021 | 1:42 PM EDT
Date

DocuSigned by:
Peter J. Lucido
Signature

Peter J. Lucido
Printed Name

Macomb County Prosecutor
Title

6/15/2021 | 1:45 PM EDT
Date

DocuSigned by:
Julie Gatti
Signature

Julie Gatti
Printed Name

Circuit Judge
Title

6/14/2021 | 3:15 PM EDT
Date

DocuSigned by:
Heidi Washington
Signature

Heidi Washington
Printed Name

Director, Michigan Dept of Corrections
Title

6/17/2021 | 9:35 AM EDT
Date

DocuSigned by:
Julie Bovenschen
Signature

Julie Bovenschen
Printed Name

Court Administrator
Title

6/14/2021 | 9:05 AM EDT
Date

DocuSigned by:
Anthony Wickersham
Signature

Anthony Wickersham
Printed Name

Macomb County Sheriff
Title

6/11/2021 | 8:30 AM EDT
Date

DocuSigned by:
Thomas Tomko
050DBDDB218A40D...
Signature

Tom Tomko
Printed Name

Macomb County Public Defender
Title

6/14/2021 | 9:19 AM EDT
Date

DocuSigned by:
Barb Caskey
3A62DBBCD2E24A9...
Signature

Barb Caskey
Printed Name

Director, Community Corrections
Title

6/10/2021 | 7:35 PM EDT
Date

DocuSigned by:
Jeff Oldham
02D1938DD5E64EE...
Signature

Jeff Oldham
Printed Name

Clinton Counseling CEO
Title

6/13/2021 | 3:47 PM EDT
Date

DocuSigned by:
Lori Menzie
869F56E3B1534C3...
Signature

Lori Menzie
Printed Name

DWI/Sobriety Court Coordinator
Title

6/11/2021 | 10:18 AM EDT
Date