




**Standard 6:
Due Process**
See section 8 of binder

Due Process

Provide written standards with criteria for:

- Admission
- Sanctions
- Incentives
- Phase advancement
- Treatment
- Graduation
- Termination/expulsion

Learning Objectives

As a result of this session you should be able to:

- Appreciate the due process and constitutional rights of the participants in the non-adversarial context of a treatment court.
- Apply due process protections in all aspects of the program.

Due Process

Inform participants of policies and procedures

Due Process

Have participants waive prohibition on ex parte communications.

- SCR 60.04(1)(g)(6): “A judge may initiate, permit, engage in or consider ex parte communications knowingly waived by a participant when the judge is assigned to a therapeutic, treatment or problem-solving docket in which the judge must assume a more interactive role with participants, treatment providers, probation officers, social workers, prosecutors, defense counsel, and others.”

Due Process

Honor participants’ right to be heard at every stage of the proceedings

Due Process

Honor participants’ right to be represented by counsel at every stage of the proceedings.

- Jail sanctions issue.
- Take special care in termination procedures:
 - Ample notice to get counsel for termination hearings.
 - Full waiver if participant wishes to proceed without counsel.
- Make sure participants understand that defense counsel on the team is not their individual attorney.

Due Process

Understand the role of each team member and appreciate the ethical obligations inherent in that role.

Due Process

Be on the record. SCR 71.01(2)

Due Process

Observe due process in drug testing.

- Instrumented confirmation of testing if result contested
- Chain of custody

Due Process

Provide alternatives to deity-based community support meetings.

Role Play

Due Process

Proposed Termination Process Protocols

- 1) Team Recommendation on Termination
- 2) Right to Notice
 - a) Of a hearing
 - b) Violations
- 3) Right to know procedure
- 4) Right to an Attorney

Breakout 5

•Based on the role play, what due process issues did you identify? Discuss.

•Review current termination procedures and modify to account for due process issues

•Take home assignment

- Identify training needs for team members
- Determine how training will be tracked and monitored
- Identify barriers to participating in training

Due Process

- 5) Hearing before a Neutral* Judge:
 - a) Right to present evidence,
 - b) Right to cross examination,
 - c) Burden on the team to prove the basis for termination,
 - d) By preponderance of the evidence.

*Neutral Judge can be the Treatment Court Judge, but that judge can not be part of the team meeting deciding to recommend the termination.