

## ROLE OF PROSECUTOR IN DRUG COURT A-11

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The prosecutor must shed their traditional role as advocate and work as part of a team in drug court. The prosecutor's responsibilities include screening candidates for the program and making sure participants comply with the drug court requirements. The prosecutor participates in a coordinated strategy for responding to positive tests and other instances of noncompliance. A prosecutor gives input to the court whether to reinstate criminal prosecution if rehabilitation is unsuccessful.

### 1. The role of prosecutor in a nonadversarial courtroom

#### a. Switching hats from advocate to team player

In drug court, the prosecutor must switch hats from advocate to team player. No longer are we seeking punishment for the crime but in the alternative are promoting rehabilitation. It is best to keep in mind some of the victims of the defendant's drug use are his/her children, family, friends, and society. A prosecutor's role is to stop their victimization by transforming an addict into a better parent, family member, friend and community member. Prosecutors must show compassion and understanding while still holding individuals accountable for their actions. Transforming an addict into a sober productive member of society is the ultimate goal. The best way to achieve that goal is through a team effort!

#### b. Communication among team members

Communication is very important in drug court. There needs to be a coordinated effort among the district attorney, deputy public defender, treatment provider and the court. If a client is performing poorly in treatment there must be swift intervention. If additional services need to be provided (ie. medical, mental health, educational or vocational) every effort should be made to make these available. It should be communicated when a client is doing well so there can be positive feedback. In drug court everyone's input is important in the team approach.

### 2. Prosecutor's role in promoting rehabilitation while protecting public safety

#### a) Screening candidates for drug court:

A prosecutor must ensure each candidate is appropriate for the drug court program. Screening must occur early in the criminal justice process and eligible defendants must be agreed upon by the bench, deputy district attorney, and public defender. In California, drug court is limited to defendants who: possess drugs, drug paraphernalia or were under the influence of a controlled substance. Defendants with prior violent or serious felony convictions (strike priors), convictions for any offense whether misdemeanor or felony involving violence or any drug trafficking or sales offense are ineligible. In unusual cases, a defendant with a prior misdemeanor conviction involving an act of violence may be admitted to drug court upon the concurrence of all parties and the court. The parties in determining if a prior misdemeanor conviction involving an act of violence will be deemed an unusual case permitting admission to the program can consider the following factors: the nature and character of the prior conviction, the defendant's entire criminal history, the defendant's background and life history, the defendant's acknowledgement of need for treatment and any equities or circumstances in the defendant's background that would encourage inclusion of the defendant in drug court.

b) Intervention should be immediate and up-front

Eligible defendant's are typically identified by the pretrial services report prepared by the probation department. Next, the treatment provider will interview and assess the defendant for eligibility and suitability. If the treatment provider determines the defendant is eligible and suitable for drug court the defendant will be conditionally accepted into the program at their first drug court appearance.

c) Drug Court is pre-plea in California

California's drug court program is pre-plea. It is codified in California Penal Code section 1000.4(a) which states in part: The judge along with the district attorney and the public defender may agree in writing to establish and conduct a pre-guilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants. \*Compton drug court allows post-plea defendants terminated from deferred entry of judgment program.

3. A prosecutor's part in a team approach to sanctions and other instances of noncompliance

a) Progressive sanctions

The drug court program needs to include a plan for graduated sanctions which must be applied as immediate and direct consequence of program failure. After a discussion among team members of appropriate sanction to impose the judge may: commit the participant to the Sheriff's in-custody program, impose restrictions in residential treatment, extend treatment, move the client from outpatient to inpatient, increase levels of treatment in outpatient, add more drug testing or AA,NA, CA meetings, and require more frequent court appearances. Additional sanctions may include letter writing or an in court speech addressing the issue of ..."What was I thinking?"

In California, the drug court program was designed to include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed by the judge, the district attorney, and the public defender. Cal. Penal Code section 1000.4 (a).

b) Sanctions must be immediate, consistent and across the board

Drug court sanctions should be applied consistently among drug court clients. Making exceptions for certain clients sends the wrong message to other clients. There must be a consistent and across the board approach to sanctions. Similar misbehavior's need to be handled with similar sanctions.

#### 4. Recommending termination from the program

In California, the drug court judge determines when termination is appropriate with input from the treatment provider, district attorney and the public defender.

The court may terminate a defendant from drug court if the court finds: (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime (a misdemeanor involving violence or a felony) or (4) engaged in criminal conduct rendering him unsuitable for the program. California Penal Code section 1000.4(b).

It helpful to keep in mind that recovery doesn't happen over night. Addiction is a long-standing and debilitating problem. Lack of progress are a part of the recovery process and are to be expected. Not everyone's recovery runs on the same schedule. The ultimate goal is to make substance abusers productive members of society and this takes patience!