

Constitutional and Other Legal Issues in Drug Treatment Courts

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Adapted from:

*Constitutional and Other Legal Issues in Drug Court, Judge William G. Meyer (ret.), Sr. Fellow
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Eligibility and Equal Protection

14th Amendment Requires:

- Strict Scrutiny?
- Intermediate Level?
- Rational Relationship to Legitimate Government Purpose?

Jurisdiction's decision not to develop a drug court is rationally related to a legitimate government purpose

- *Lomont v. State*, 852 N.E. 2d 1002 (Ind. App. 2006)
- *State v. Harner*, 103 P. 3d 738 (Wash. 2005)
- *State v. Little*, 66 P.3d 1099 (Wash. App. 2003)

Refusal to offer drug court to all defendants
does not constitute denial of equal
protection because there exists no right to
enter drug court

- *Jim v. State, 911 So. 2d 658 (Miss. App. 2005)*

Conditions of Drug Court Contract

4th Amendment

Waiver of Probable Cause for Search
of Person and Property

Drug Court Participant on Probation or Post-Plea Model

- Generally permitted but may need reasonable suspicion
Griffin v. Wisconsin, 483 U.S. 868 9 (1987)
- May be permitted solely on execution of waiver
Samson v. Calif., 126 S. Ct. 2193 (2006)
- Cannot use waiver to harass

Drug Court Participant in Diversion Program

Waiver of 4th Amendment Protection in Bond or
Diversion Cases Probably Unconstitutional

Terry v. Superior Court, 73 Cal. App. 4th 661 (Cal. App. 1999)

U.S. v. Scott, 450 F3d 863 (9th Cir. 2006)

Conditions of Drug Court cont'

1st Amendment

Area & Association Restrictions

Area Restrictions

Factors

- Compelling Need to Go to Location
- Mechanism for Supervised Entry
- Size of the Area
- Relationship to Rehabilitation of Offender

Area Restrictions

Permissible

- Two block radius- Oyoghok v. Municipality of Anchorage, 641 P.2d 1267 (Alaska 1982)
- One block - Johnson v. State, 547 So.2d 1048 (Fla. App. 1989)
- Stay out of French - QuarterState v. Morgan, 389 So. 2d 364 (La. 1980)

Not Permissible

- Any place where alcohol is sold, served, consumed – State v. Wright, 739 N.E.2d 1172 (Ohio App. 2000)

Association Restrictions

Reasonably related to the Purposes of Probation, the Prevention of Crime, and Protection of the Public

- Drug users and dealers - *Andrews v. State*, 623 S.E.2d 247 (Ga. App. 2005)
- Wife - *People v. Tungers*, 127 Cal. App. 2005)
- But, Too Broad – Any unsupervised contact with drug using wife - *Dawson v. State*, 894 P.2d 672 (Alaska App. 1995)

Treatment

1st Amendment

Establishment Clause of the 1st Amendment
Prohibits Mandating Participants to Attend AA
or NA Meetings

Court or treatment provider can make AA and NA available so long as participation is not mandatory and other options are available

- *Kerr v. Ferry, 95 F.3d 472 (7th Cir. 1996)*
- *Griffin v. Coughlin, 88 N.Y.2d 674 (1996)*
- *Inouye v. Kemma, 504 F.3d 705 (9th Cir. 2007)*

Drug Testing and Due Process

To satisfy due process concerns, drug tests should be scientifically reliable

- *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)
- *Frye v. United States*, 293 F.3d 1013 (1923)

Types of Drug Tests

- Urine – Instrumented vs. non-instrumented tests
- Sweat Patch – environmental contamination
- Hair – environmental contamination

Reliability of Drug Tests

- EMIT – Found to be reliable

Matter of Lahey v. Kelly, 518 N.E.2d 924 (N.Y. 1987);
Spence v. Furrier, 807 F.2d 753 (8th Cir. 1986); *Jones v. State*, 548 A.2d 35 (D.C. 1998)

- Sweat Patch – Generally found reliable but concerns with environmental contamination

U.S. v. Alfonzo, 284 F.Supp.2d 193 (Mass. 2003)

- Hair – High risk of environmental contamination

Wykoff v. Resig, 613 F. Supp. 1504 (N.D. Ind. 1985); *Thomas v. McBride*, 3 F.Supp. 989 (N.D. Ind. 1998)

Sanctions and Due Process

Factors

- Pre-plea vs. Post-plea Model
- Contested vs. Non-Contested Factual Basis
- Due Process Rights of Parolee or Prison Inmate

Right to Hearing

Sanctions

- Participant can waive right to hearing

State v. Rogers, 170 P.3d 881 (Ida. App. 2006)

Contract rules govern when sanctions are imposed (different result with termination)

- Participant cannot prospectively waive rights

Staley v. State, 851 So.2d 805 (Fla. App. 2003)

Termination from Drug Court and Due Process

Probation Revocation Hearing Analysis

- Notice
- Disclosure of Evidence
- Opportunity to be Present and Testify
- Right to Confront and Cross-Examine Witnesses
- Neutral Magistrate
- Written Findings of Evidence and Decision

Gagnon v. Scarpelli, 411 U.S. 778 (1973)

Hearing Required

- *State v. Rogers, 170 P.3d 881 (Idaho 2007) Idaho Supreme Court ruled full due process required in termination from drug court*
- *State v. LaPlaca, 2011 N.H. LEXIS 86 (N.H. June 28, 2011) New Hampshire Supreme Court ruled hearing is required but not full panoply of rights. Suggests due process may diminish if lesser sanction is imposed.*
- *State V. Gosha, 931 N.E.2d 432; 2010 Ind. App. Full hearing required at termination*

No Hearing Required

- Evidentiary hearing not required
- Preponderance of evidence not required
- Court must conduct sufficient inquiry to satisfy itself that there was a legitimate basis for program decision
- Court must put findings on the record

People v. Fiammegta, 923 N.E. 1123, (NY Ct App 2010)

Waiver of Hearing Rights

- State v. Rogers:

170 P.3d 881 (Idaho 2007) Idaho Supreme Court ruled full due process required in termination from drug court – “contract” cannot waive this right

- Staley v. State:

851 So.2d 805 (Fla. App. 2003) Defendant could not prospectively waive his right to contest future allegations of violations

- State v. LaPlaca, 2011 N.H. LEXIS 86 (N.H. June 28, 2011)

Cannot prospectively waive right to hearing – cannot waive without full knowledge of allegations

Judicial Impartiality and Due Process

Termination Hearings

- Neither Actual nor Apparent Bias
- Standard – Objective
- Recusal – Preferred Option where Factual Basis Contested

Recusal at Termination Hearings

Oklahoma Supreme Court saw potential for bias when Drug Court judge presides over termination proceeding

Alexander v. State, 48 P3d 110 (Okla. 2002)

Tennessee Court of Criminal Appeals found actual bias – drug court judge cannot function as “neutral and detached” hearing body

State v. Stewart, 2010 Tenn. Crim. App. LEXIS 691, August 18, 2010, Filed

Brown v. State of Maryland

Challenge to Maryland's problem-solving courts

- Question of fundamental jurisdictions
- Sanctions and double jeopardy

406 Md. 579, 961 A.2d 553, 2008