

Directive # 14-04
Amends Directive #2-02

**TO: Assignment Judges
Trial Court Administrators**

FROM: Philip S. Carchman, J.A.D.

SUBJ: Drug Court Transfer Policy

DATE: November 29, 2004

The Judicial Council approved the attached Drug Court Transfer Policy on June 24, 2004. This policy provides that a drug court participant's case may be transferred from the county where the offense was committed to the participant's county of residence either upon conviction or when he or she moves. Upon transfer, the receiving court has full responsibility for participant case management decisions, data entry, and the imposition of sanctions if necessary. This policy was recommended to the Judicial Council by the Conference of Criminal Presiding Judges upon recommendation of the drug court judges, with the input of the county prosecutors and public defenders.

The former policy, contained in the *Manual for Operation of Adult Drug Courts in New Jersey*, Directive # 2-02, allowed for transfers only to a county with an existing drug court program. Until now, this policy precluded transfers in those instances when the county of residence did not have a drug court. With the establishment of adult drug courts in every county as of September 1, 2004, the limits of the former policy are no longer required.

The drug court transfer policy differs from the policy for transfer of standard probation supervision cases in that the transfer of drug court cases requires that the county of origin relinquish all authority and responsibility for the participant after the transfer is complete. All case management decisions, the imposition of sanctions and the decision to find a violation of probation and/or terminate probation become the sole responsibility of the drug court in the new county of residence. If a transferred participant is re-sentenced, however, the county of origin must be notified so the appropriate information can be entered into PROMIS/Gavel.

This policy is effective immediately. It replaces Section VIII.A.4 (on pages 57-58) of the *Manual for Operation of Adult Drug Courts in New Jersey*, which was promulgated by Directive # 2-02.

Questions regarding the policy may be directed to Assistant Director Joseph J. Barraco, Criminal Practice, at (609) 292-4638, or to Drug Court Manager Carol Venditto at (609) 292-3488.

P.S.C.

attachment

cc: Chief Justice Deborah T. Poritz
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ADULT DRUG COURT TRANSFER POLICY

**Approved by the Judicial Council June 24, 2004
[Promulgated by Directive #14-04 (November 29, 2004)]**

[Replaces Section VII.A.4 of the *Manual for Operation of Adult Drug Courts in New Jersey* promulgated by Directive #2-02]

I. BACKGROUND

In the years since drug courts began, the need to develop a policy that will allow for transfer of cases between counties became apparent. The problem preventing the development of such a policy was that every county did not have a drug court. With funding for drug courts in every county appropriated for FY 2005, it is now possible to implement a uniform policy to cover transfers.

II. PREVIOUS POLICY

The *Manual for Operation of Adult Drug Courts in New Jersey*, Directive #2-02, July 22, 2002, provided that a participant must reside in the county in which his/her drug court case is processed. A court was authorized to consider transferring drug court supervision to the county where the offender resided only if that county had a drug court (*Manual*, page 57). Thus, individuals who did not reside in the county of offense were routinely rejected from drug court.

III. NEW POLICY

a. Current Participants

A current drug court participant may request a transfer to another vicinage when he/she moves. The drug court judge upon consultation with the drug court team may grant this transfer request.

- Since a change in location and supervision requires a level of adjustment that could endanger recovery, the participant will need to demonstrate to the drug court team that such a change is in his/her best interests. The team will need to carefully review the transfer request and seek input from the treatment provider when considering whether a transfer request should be granted.
- The county of supervision should not consider a participant's request for transfer unless that participant has articulated the reasons for the transfer in writing.
- Past performance in drug court and the current level of cooperation with supervision should be considered. Every effort must be made to ensure that the transfer of a case is appropriate, and that unstable cases are not transferred

until all concerns are resolved. No participant in danger of termination should be considered for a transfer.

- A transfer request will not be considered until after the participant has successfully completed any residential treatment program.

b. Drug Court Applicants

1) When a Transfer May Be Granted

An eligible drug court applicant (that is, an offender not yet enrolled in any drug court) who resides in a county other than the county where the offense was committed may have his/her supervision transferred to the county of residence following conviction. The case may be transferred after sentencing in the county of offense and after the participant has successfully completed any initial residential treatment program, if required, following the procedures outlined below. Cases involving participants who require residential treatment are not to be transferred immediately after sentencing because the personal circumstances of the participant may change prior to successful completion of residential treatment rendering any transfer of supervision unnecessary. For example, some drug court participants abscond from residential treatment, triggering an escape notification procedure coordinated by the probation officer. Other participants, after a period of initial treatment, often conclude that returning to the county of residence would endanger their recovery. It is for these reasons that a transfer of supervision should not be completed until after successful completion of residential treatment.

2) Process for Transferring Cases

Although a transfer cannot be effectuated prior to conviction, it is essential that the drug court teams begin communicating about a potential transfer case as soon as such a case is identified through the screening, assessment and acceptance process. The drug court coordinators should consult frequently in any transfer situation. A potential transfer case must follow the established drug court acceptance process in the county in which the offense occurred. If he/she is found acceptable, that drug court will forward the transfer request to the county of residence for review.

The participant must successfully complete any required residential treatment program before a transfer may be effectuated. If, however, the participant is to be referred to an outpatient treatment program following sentencing, the substance abuse evaluator in the county of offense should communicate with the substance abuse evaluator in the county of residence so an appropriate outpatient treatment provider program can be identified.

After the defendant is sentenced to drug court in the county of offense, the case is not to be considered transferred until the coordinator in the county of offense has confirmed with the coordinator in the county of residence that the participant has a scheduled appearance in the drug court in the county of residence and an appropriate treatment provider agency has been identified. The sentencing judge should put on the record the name of the participant's treatment provider agency and the date of the first scheduled appointment in the drug court where he or she resides.

- The probation officer in the county of offense should remain responsible for all aspects of supervision of any pending transfer case until the individual has successfully completed any residential treatment program and the transfer process is complete.
- It is essential that the probation officer/drug court team in the county of offense coordinate an appropriate aftercare plan with the probation officer/drug court team in the county of residence following residential treatment and ensure that the participant has a scheduled appearance before the drug court in the county of residence upon his/her release from any residential treatment program. The drug court probation officer in the county of residence must verify the residence of the offender before the receiving county accepts supervision of the case. Then, and only then, will the team in the county of offense relinquish responsibility to the team in the county of residence.
- The relationship between the participant and his/her supervising probation officer is key and as such it is important that the officer in the county of residence attempt to establish a relationship prior to residential program completion. How this is to be accomplished will depend on a variety of resource factors, but whenever possible the probation officer in the county of residence should visit the participant while he/she is in residential treatment.
- Written treatment provider reports on the status of participants in residential treatment must be submitted to both the county of offense and the county of residence so the drug court teams in both counties may provide a coordinated approach to participant progress.
- The two teams will also need to coordinate with, and clearly articulate to, the residential provider where the participant should go for in-court status reports. The participant should be brought to the county of residence at least once prior to discharge to begin forming a relationship with the team in the county where supervision will be transferred.

The initial stages of recovery are exceptionally fragile and participants are at high risk for relapse. Therefore, any transfers need to be accomplished without a lapse in treatment, supervision or judicial involvement. If a transfer cannot be effectuated immediately following sentencing, that participant must report as directed to the county of offense until the transfer process is complete.

c. Involvement and Input of the Team in the County of Residence in Transfer Decisions

The adult drug court program is a statewide program structured to provide each participant in the state with equal treatment in every vicinage. For this reason, the county of residence must accept the decision of the county of offense that the defendant is an

acceptable candidate for the drug court. An exception should only be made in the following cases:

- Team members in the county of residence provide the judge/team in the county of offense with previously unknown information about this applicant that renders him/her ineligible for drug court, or
- There is a significant change in circumstances from the time of program acceptance to the time of the transfer request.

Only under these circumstances may the case be returned to the county of offense for further court action.

The prosecutor in the county of offense shall communicate (via telephone or through the exchange of paperwork) with the prosecutor in the county of residence about possible transfer cases before the prosecutor in the county of offense makes a formal recommendation as to whether or not the individual meets the legal requirements for acceptance into the program. It is the responsibility of the drug court team in the county of offense to maintain an appropriate level of communication with their peers in the county of residence to ensure that the transfer process is done with full disclosure, without needless delay or without a lapse in treatment, supervision, drug testing and judicial involvement.

Additional considerations in case transfers:

- A case should not be transferred to the county of residence until such time as the participant is actually living in the residence indicated on the application form. It is the responsibility of the team in the county of offense to address any warrant and/or detainer issues before transferring the case to the county of residence.
- A case should not be transferred to the county of residence while a participant remains incarcerated, unless special arrangements are made with the team in the county of residence.
- Although the team members in the county of residence do not have the authority to reject a case accepted by the county of offense for legal/clinical reasons, other than as set forth above, they may do so for capacity reasons. If the county of residence can demonstrate that they are unable to accept the transfer due to a lack of sufficient resources, then the county of offense must retain supervision of that case. If a county has admitted a number of new cases at, or in excess of its monthly allotment for the past 6 months, or if their probation officer to participant ratio is in excess of 1:50, that county has reached a capacity situation justifying the rejection of transfer cases.
- The county in which the defendant resides will be permitted to reject the supervision of a case in which a field visit establishes that the address provided is invalid.

- A case is not considered a “transfer case” if residency remains within the same vicinage. Multi-county vicinages have the flexibility to handle internal county transfer protocols in whatever manner works best for their program.
- Sometimes the receiving court may request that the participant report to the county of residence, prior to the formal transfer of supervision, so he/she can become familiar with the receiving county team members. Likewise, sometimes courts may request that the participant report to the county of offense after transfer as a means of closure. These are not mandatory actions, but rather examples of ways in which individual teams can take steps to reduce the potential negative effects of a transfer of supervision.
- Special consideration should be given to assisting the participant in their “acceptance” into the drug court “family” of fellow participants. Asking successful Phase III participants to “mentor” the newly transferred participant may be a way of accomplishing this goal.

d. Post-transfer Participant Case Management Decisions

After the case is transferred to the county of residence, after sentencing, successful completion of residential treatment and an aftercare plan has been established, all case management decisions are the sole responsibility of the team in the county of residence. The following additional factors also apply:

- As soon as possible after transfer, the county of residence/supervision will obtain a new, signed consent for release of information form to comply with federal confidentiality laws.
- It is recommended that the county of residence run a new computerized criminal history (CCH) for their records.
- All decisions about sanctions, incentives, phase changes, incarceration, violation of probation charges and termination are to be made by the team in the county of residence.
- The drug court judge in the county of residence has the same authority and responsibility for the transferred participant as they do for defendants sentenced within their county.
- Any violation of probation hearing, whether it results in a sanction, continuation of probation (COP) or termination is under the jurisdiction of the judge in the county where the case was transferred (the county of residence).
- The judge in the county of residence is required to abide by any parameters of the case indicated on the plea agreement form.

e. File Transfer

The following documents must be forwarded to the county of residence for review prior to the date of transfer of supervision. The team in the county of residence must be given two weeks in which to review the materials and conduct a field visit, if applicable, before the case can be formally accepted for supervision. The transfer documents are to be exchanged between drug court coordinators who will have the responsibility to disseminate this information to their teams.

- Drug Court Application with Application for Transfer of Supervision form attached
- Signed Consent for Release of Information
- ASI – Clinical Assessment report prepared by the TASC evaluator in the county of offense
- Prior and current pre-sentence investigation reports with discovery and police reports attached
- Current Computerized Criminal History (CCH-rap sheet)
- Signed Participation Agreement
- Signed Standard Conditions of Probation
- Indictment, Plea Agreement forms and Judgment of Conviction
- Participant Handbook of the county of offense, if applicable
- Any other documents deemed appropriate by the drug court team

Any documents not available at the time of the transfer request should be forwarded to the receiving drug court team as soon as they are prepared.

IV DATA ENTRY RESPONSIBILITIES

If it is known at the time of sentencing that a case will be transferred, the judge in the county of offense will issue an order changing the venue of this case to the county of residence. As part of the transfer process, the prosecutor's office in the county of offense should request that the prosecutor's office in the county of residence enter this participant's case into the Promis/Gavel system. Promis/Gavel is currently not capable of an automatic electronic transfer of post-disposition case data, therefore, case data will need to be re-entered in the county of residence manually.

By requesting that the prosecutor's office in the county of residence enter the defendant's basic case data into their Promis/Gavel system, the supervising drug court team will be able to track the court events and provide the drug court judge and other courtroom staff with an accurate court calendar. Other data entry considerations:

- The last event recorded in Promis/Gavel in the sending county (generally the county of offense) should reflect the transfer and advise the viewer to refer to case data in the receiving county for further court events and/or court actions. Likewise, the receiving county will need to refer a viewer to the county of offense for prior court events. The goal is to provide a viewer with a total picture of the case's court events.

- Promis/Gavel reports will be created to provide the drug court coordinators with a list of all cases transferred into their court and out of their court for tracking purposes.
- Transferred cases should be considered active in the county of supervision (generally the county of residence) only. Once the case is successfully transferred the county that transferred the case out (generally the county where the offense occurred) no longer considers that an active case. Thereafter the case will be tracked only as a “transferred out” case.
- As CAPS is capable of transferring a case from one county to the next without the problems associated with Promis/Gavel, the data entry process for transferred cases remains the same as that set by the Probation Division in other probation cases.
- If a participant is supervised by the county of offense while in residential treatment, it is the responsibility of the probation officer in the county of offense to complete all case related data entries up to the point that the case is formally transferred to the county of residence.
- Due to the electronic relationship between the Promis/Gavel and State Police Computerized Criminal History (CCH), the CCH flag used to link systems will not be transferred to the county of residence. It is for that reason that any new sentencing event must be recorded in Promis/Gavel in the county where the original sentence occurred. In the event that a transfer case results in a re-sentencing due to program termination, the data entered into Promis/Gavel to record that action must also be added to the case record in the county where the participant was originally sentenced. This needs to be done to insure that a participant’s CCH properly reflects the re-sentence information.
- Data entry procedures on transferred cases will be added to the drug court data entry process manuals for both Promis/Gavel and CAPS.