

**REPORT OF VIOLATION OF DRUG COURT AGREEMENT**

**State of Idaho v. \_\_\_\_\_**

**Case No. \_\_\_\_\_**

**The Drug Court Treatment Staff alleges that the above named defendant has violated the Drug Court Agreement as follows:**

**Incurred new criminal charges identified as follows: \_\_\_\_\_**

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**Failed to attend treatment groups and complete all assignments specifically identified as follows: \_\_\_\_\_**

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**Failed to attend individual treatment sessions as follows: \_\_\_\_\_**

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**Failed to attend the 12-step support groups or some other approved program as ordered by the Court:**

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**Failed to have his/her green card as follows: \_\_\_\_\_**

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**Absconded or left the jurisdiction without written permission as follows:**

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**Failed to maintain employment, be enrolled as a full-time student or participating in such programs as approved by Drug Court as follows:**

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**Failed to obtain a GED and/or take TABE tests, GED pre-tests, if applicable.  
Failed to complete all homework assignments as follows:**

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**Failed to inform all health care providers of his/her addiction and obtain written verification at the time he/she was prescribed prescription medication and/or appear for pill count as follows: \_\_\_\_\_**

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**Failed to pay restitution, fines, and Drug Court fees as ordered by the Court:**

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**Failed to remain free of all illegal drugs, herbal treatments (including Spice of any other mind altering substance), all alcohol, or any over the counter medications (except Tylenol or acetaminophen, ibuprophen, or aspirin) without a doctor's prescription as follows: \_\_\_\_\_**

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**Failed to submit to all drug court tests, including, but not limited to, random, breath, and/or oral fluid drug screens as follows:**

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**Attempted to dilute, adulterate, or tamper with drug or alcohol testing (either of his/her own tests or other Drug Court participants' tests) as follows:**

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**Failed to comply with curfew as ordered by the Court as follows: \_\_\_\_\_**

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**Violated Drug Court rules by among other things, lying, cheating, being disruptive, being discourteous, failing to file employment or other reports, and/or forging green cards or other Drug Court reports as follows:**

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**Violated no contact orders as follows: \_\_\_\_\_**

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**Failed to attend Alumni Group, Relapse Prevention, other groups, make weekly contact with sponsor, and/or to comply with mentorship requirements as follows: \_\_\_\_\_**

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**Had possession of or attempted to deliver, obtain and/or sell any illegal drug, herbal preparation (Spice, etc.) and/or alcohol as follows: \_\_\_\_\_**

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**Had inappropriate relationships within the Drug Court population in violation of Drug Court as follows: \_\_\_\_\_**

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**Failed to comply with each and every other order imposed by the Drug Court Judge, as follows: \_\_\_\_\_**

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**Failed to comply with other rules, as follows: \_\_\_\_\_**

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**Failed to make satisfactory progress, as follows: \_\_\_\_\_**

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The lack of progress is not caused by a physical or mental inability to engage in treatment.

The lack of progress is caused by some physical and/or mental condition, and staff addressed these as follows: \_\_\_\_\_

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The participant is not exhibiting genuine effort as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The participant's behavior is having the following impact on the other participants. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Prior to acceptance into Drug Court the defendant was advised of the potential consequences of violating the Drug Court Agreement. The defendant also expressly agreed to not violate Drug Court rules. Based on the above allegations *if found to be true by a preponderance of the evidence*, the Drug Court Treatment Staff believes the defendant may no longer be amenable to treatment within the Drug Court Treatment Program and/or that the defendant's continued participation may jeopardize the treatment of other Drug Court participants.**

**In addition, the Drug Court Treatment Staff advises the Court as follows: \_\_\_\_\_**

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Dated: \_\_\_\_\_**

\_\_\_\_\_  
**Drug Court Coordinator**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

**IN RE: ADA COUNTY DRUG COURT II**

**ORDER ADOPTING WRITTEN  
TERMINATION PROCEDURES IN ADA  
COUNTY DRUG COURT II**

In 2003, the Idaho Drug Court Coordinating Committee adopted the Adult Drug Court Guidelines for Effectiveness and Evaluation which recommends that each District Court “should establish written policies and procedures that describe how the drug court(s) will implement these statewide guidelines as well as any additional guidelines, policies, and procedures necessary to govern its operations.”<sup>1</sup> The Coordinating Committee further wrote:

Idaho, like many other states throughout the nation, has come to view drug courts as an effective means of reducing substance abuse and related crime. Drug courts utilize many common and established practices such as drug testing, close supervision of offenders, substance abuse treatment, and judicial monitoring but combine them in a unique way to better address the needs of the offender, the justice system, and the community. The specifics of just how these practices are carried out may vary by drug court, particularly as practitioners continue to experiment with techniques that further drug court development and as local jurisdictions tailor them to the types of offenders, crimes, and resources within a given community. However, all drug courts are based upon key, underlying principles that define them as drug courts and ultimately account for their success.

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The purpose of this document is to set forth guidelines to provide a sound and consistent foundation for the operation and evaluation of Idaho’s drug courts. These guidelines articulate research-based best practices and identify elements that are correlated with desired results and outcomes.

These guidelines are not rules of procedure and have no effect of law. They are not the basis of appeal by any drug court participant and lack of adherence to any guideline is not the basis for withholding any sanction or readmitting a participant who is terminated for any cause.

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<sup>1</sup> See [http://www.isc.idaho.gov/guidelines\\_a.htm](http://www.isc.idaho.gov/guidelines_a.htm)

The Guidelines provide a basis for each drug court to establish its own procedures that reflect standards of operations, the needs of participants, and the resources available in the community.<sup>2</sup>

Adult Drug Court Guidelines for Effectiveness and Evaluation (emphasis added).

The Court has not previously adopted a written procedure, and, therefore, consistent with this guideline, the Court hereby adopts a written procedure for initiating termination proceedings in Ada County Drug Court II.

### **BACKGROUND**

In 2007, the Idaho Supreme Court issued *State v. Rogers*, 144 Idaho 738, 170 P.3d 881 (2007) holding that criminal defendants in drug court or other diversionary programs enjoy certain due process rights when faced with termination from the treatment or diversionary program. More specifically, the Idaho Supreme Court relying on *Morrissey v. Brewer*, 408 U.S. 471 (1972), ruled that a participant has the due process right to written notice of the basis for a recommendation for termination, including any alleged violations; disclosure of any evidence against him; the opportunity to be heard in person and to present witnesses and documentary evidence; the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); and a written statement by the court as to the evidence relied on and reasons for termination. The United States Supreme Court in *Morrissey* further ruled as follows:

We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

*Id.* at 742, 170 P.3d at 885 (quoting *Morrissey*, 408 U.S. at 489) (emphasis added).

In ruling that a participant enjoys certain due process protections, however, the Idaho Supreme Court further declared that given the nature of such diversionary programs, the method for providing due process during a termination should be flexible and wrote as follows:

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<sup>2</sup> In fact, Idaho drug courts initiate termination proceedings in many different ways. In one drug court, for example, the prosecutor does not participate in the drug court, and therefore, termination is initiated by a written memorandum recommending discharge signed by the drug court coordinator. In another court, termination is initiated by the court following staffing.

However, we also caution that this process is to be flexible, *does not need to be equated to a separate criminal prosecution* and may be informal, on the condition that the safeguards are provided. The drug court judge may preside over the termination proceedings. Additionally, the neutral court may consider evidence which might not necessarily be admissible in a criminal trial, if such evidence is disclosed to Rogers prior to the hearing, is reliable and would assist the court in making its determination. [Footnote omitted.] Finally, after the termination hearing if Rogers is terminated, the drug court judge may serve as the sentencing judge, since information from the termination proceedings would be admissible in a sentencing hearing.

*Rogers*, 144 Idaho at 743, 170 P.3d at 886 (emphasis added).

The Supreme Court refrained from identifying a specific procedure and stated “we do not want to unnecessarily impede the functioning of diversionary programs.” *Id.* Furthermore, while the Supreme Court likened the participant’s liberty interest to that enjoyed in probation, it did not rule that a decision to terminate a participant from a diversionary court program was the same as a decision to revoke probation or that termination could only be initiated in the same way the State initiates a probation violation. It only required the diversionary court provide similar constitutional safeguards – right to notice, hearing, *etc.* In fact, the method for commencing a hearing on termination is not constitutionally or statutorily driven. The only constitutional requirement is that the participant be provided with notice and an opportunity to meaningfully challenge any decision in conformity with the standards recognized in *Rogers*.

Subsequent to *Rogers*, this Court informally adopted *ad hoc* a procedure mirroring the existing probation violation procedure, allowing the prosecutor to file a Motion for Discharge after the staff team recommended termination. While at first sight, adopting the probation violation model appears to easily adapt to initiating termination in drug court, it has not always worked well. By adopting the probation violation model to give the participant adequate notice, opportunity to be heard and to challenge the evidence, the Court did not confer the sole authority to initiate termination on the prosecutor much like he may<sup>3</sup> enjoy

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<sup>3</sup> The Court notes, however, that the statute in fact allows the Court to initiate an arrest warrant without a specific motion from the State. The Court could issue an order to show cause where it has received a sworn report of violation from the probation officer and the State took no action. I.C. § 20-222 provides in relevant part as follows:



with regard to probation violation proceedings. Drug court, however, is not probation, it is treatment and while a participant is entitled to due process before being terminated, commencing termination from treatment does not equate to initiating a probation violation.

The Ada County Drug Court II accepts both post guilty plea, pre-sentence participants and post sentencing probationers. With regard to a post guilty plea, pre-sentence participants, once a plea is entered a prosecutor's authority is limited. Once a defendant pleads guilty, the prosecutor has no authority to unilaterally allow a defendant to withdraw his guilty plea, dismiss the charges or change the conditions of release. It requires the permission of the Court. Moreover, post plea a defendant is no longer even entitled to bond.

Likewise, while the prosecutor may<sup>4</sup> control decisions to bring a Motion for Probation Violation, the Court retains jurisdiction over the probationer throughout probation and has continuing authority to change the conditions of probation throughout that probationary period without the consent of the prosecutor. I.C. § 20-221 provides as follows:

By order duly entered the court may impose and may at any time modify any conditions of probation or suspension of sentence. The court shall cause a copy of any such order to be delivered to the probation officer and parole officer and to the probationer.

Furthermore, the defendant and the prosecutor cannot stipulate to change the conditions of probation or anything else absent the Court's consent. *See* I.C.R. 27. Therefore, the Court retains the authority to determine whether a participant is appropriate for continued drug court treatment provided the Court complies with due process in making that determination.

No person has a right to be admitted to drug court. *See* I.C. § 19-5604. Drug court is not based on the traditional adversarial scheme relying primarily on punishment and containment. Rather it is centered on a therapeutic model developed on evidence based practices. There are plenty of substance abuse treatment programs available in Idaho and

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At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Thereupon the court, after summary hearing may revoke the probation and suspension of sentence and cause the sentence imposed to be executed, or may cause the defendant to be brought before it and may continue or revoke the probation, or may impose any sentence which originally might have been imposed at the time of conviction.

Therefore, while it may be the practice that probation violations are initiated by the State, it does not appear to be mandated.

none is as successful as drug court because those programs originate in a penal model. Drug court is purposely designed as a life changing therapeutic program and is founded on evidence based practices that have been thoroughly studied and validated scientifically. It has been proven to facilitate changes in the whole person, helping him cope, live and remain both substance abuse and crime free.

The purpose of drug court is to effect life-long changes, not simply mark time to keep a person out of prison on the instant charge. The Guidelines specifically endorse treatment that includes “prompt and systematic reporting to the drug court treatment team of the participant’s behavior, compliance with, and progress in treatment; the participant’s achievements; the participant’s compliance with the drug court program requirements; and any of the participant’s behavior that does not reflect a recovery lifestyle.” Guidelines, ¶3.4(8) (emphasis added). During each phase of treatment, a participant must demonstrate compliance with the conditions of drug court and show progress. While sanctions and rewards should be consistent, they may be individualized. Guidelines, ¶4.12

Termination from drug court is not a punishment; termination should be the result of a therapeutic decision, thoroughly staffed, that this particular treatment program is no longer effective for this individual or that keeping the individual in the program is detrimental to the program itself. Drug court’s success is directly related to consistent team coordinated non-adversarial responses to participant behavior. Drug court has proven to be a highly successful treatment based, diversionary program operated within the court system that provides:

judicially supervised treatment and case management services for drug offenders in lieu of criminal prosecution or incarceration. [Footnote omitted.] The core components of a drug court include: (1) on-going judicial supervision of offenders through regular status hearings, (2) random weekly urinalysis testing, (3) mandatory completion of a prescribed regimen of substance abuse treatment and case management services and (4) the imposition of progressive negative sanctions for program infractions and positive rewards for program accomplishments. [Footnote omitted.] Clients who satisfactorily complete the prescribed regimen typically have their current criminal charges expunged in the case of a pre-plea drug court or avoid a sentence of incarceration in the case of a post-plea drug court. [Footnote omitted.] Defendants are typically required to enter a guilty plea or plea of nolo contendere or to stipulate to the facts in the arrest report as a pre-condition of entry into drug court. [Footnote

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<sup>4</sup> See Footnote 3.

omitted.] Therefore, termination from the program for non-compliance ordinarily results in a conviction and sentencing to an intensive level of probationary supervision or incarceration.

Douglas B. Marlowe, *Effective Strategies For Intervening With Drug Abusing Offenders*, 47 Villanova Law Review 989, 1010 (2002). No other program, including court ordered treatment that is not monitored through a diversionary program, is as effective. *Id.* The scientific studies clearly demonstrate that drug court outcomes achieve superior cost savings to traditional probation or pre-trial supervision in terms of reduced jail time, reduced demands on the probation department and reduced prosecution and law enforcement costs related to court appearances.<sup>5</sup>

Drug court uniquely combines treatment with judicial oversight and the power to immediately reward good choices while imposing treatment driven sanctions for bad ones. The primary emphasis, however, remains at all times on treatment. It is not just a form of probation; it is treatment. In fact, those participants in drug court post plea, pre-sentence are not on probation.

The Ada County Drug Court treatment staff is professionally educated in the treatment of addiction, life choices, sexual and physical abuse and retraining to return a participant to the community to be a productive member of society. *See* Eight Principles of Effective Correctional Intervention.<sup>6</sup> Neither the Court nor counsel have the requisite training to independently make therapeutic decisions without the input of the professionally trained staff.

After a thorough review, the Court finds that the procedure it informally adopted *ad hoc* in 2007 should be modified in order to more appropriately augment the therapeutic character of the Drug Court II program to support and enhance the core element of a successful drug court – effective evidence based treatment with consequences. Therefore, in order to preserve the treatment component and to likewise provide the participant with due process protections, the Court is adopting the following written procedures for commencing

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<sup>5</sup> *See generally* Steven Belenko, *Research On Drug Courts: A Critical Review: 2001 Update* (Nat'l Ctr. on Addiction & Substance Abuse at Columbia University, 2001); Steven Belenko, *Research on Drug Courts: A Critical Review: 1999 Update*, 2 NAT'L DRUG CT. INST. REV. 1 (1999); Steven Belenko, *Research on Drug Courts: A Critical Review*, 1 NAT'L DRUG CT. INST. REV. 1 (1998).

<sup>6</sup> *See* [http://www.isc.idaho.gov/guidelines\\_a.htm](http://www.isc.idaho.gov/guidelines_a.htm)

termination for both pre-sentence and post-sentence (probationers) participants, effective immediately.

### TERMINATION PROCEDURES

1. Either the Ada County Drug Court Coordinator or the prosecutor may recommend termination of a participant to the Drug Court Team.<sup>7</sup> Those recommendations shall be in writing and conform to the following requirements:
  - A. If the Ada County Drug Court Coordinator concludes a participant may no longer be appropriate for treatment in Drug Court, the Coordinator shall lodge a Report of Violation of Drug Court Agreement with the Drug Court team using the attached form. *See* attached. That Report shall indicate whether the participant continues to be amenable to treatment, whether the participant is making meaningful progress, and/or whether the participant may be adversely affecting the treatment program or the Drug Court population. This Report shall set forth, at a minimum, the following:
    - i. A list of all the participant's violations of the Drug Court Agreement from the beginning of treatment;
    - ii. An assessment of whether the participant is actively engaging in treatment;
    - iii. An assessment of how the participant's continuation in the program may adversely affect other participants' recovery;
    - iv. An assessment of whether treatment staff is investing more in the participant's recovery than the participant is;
    - v. If the problem is primarily lack of progress and not willful disobedience of court orders, the Report shall also answer the following additional questions:
      1. Is the lack of progress caused by a physical or mental inability to engage in treatment and, if so, how has staff addressed these and what has been the success?
      2. Is the participant exhibiting genuine effort?
      3. What is the impact on the other participants?
  - B. The prosecutor may lodge a Motion for Discharge/Termination with the Drug Court team that clearly sets forth all violations of the Drug Court Agreement.
  - C. Once the team has received either a Motion from the prosecutor or a Report of Violation of Drug Court Agreement from the Coordinator, the matter

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<sup>7</sup> The Ada County Drug Court II team consists of the Drug Court Coordinator, at least one treatment provider, probation officers, a deputy sheriff, defense counsel, prosecutor, in-court clerk, and Judge. *See* Adult Drug Court Guidelines for Effectiveness and Evaluation, ¶ 4.4.

shall be staffed<sup>8</sup> by the Drug Court team. After staffing if the Court finds there is a sufficient basis to proceed based on either the Coordinator's Report or based on the prosecutor's Motion for Discharge/Termination, the Court shall order the participant to appear in Court and provide the participant with written notice of the allegations by delivering a copy of the Coordinator's Report or Motion for Discharge/Termination.

D. The Court shall inform the participant that he/she has the right to request a hearing to challenge both the factual allegations and to challenge any decision to terminate if those allegations are established by a preponderance of the evidence. The participant shall be informed that he/she has the following rights: right to a hearing, right to counsel, right to remain silent, be personally present, to present evidence, to compel the attendance of witnesses to appear, right to confront any witnesses called by the State, to cross-examine those witnesses, and the right to appeal any judgment. Once the participant has been notified of the allegations, no party may withdraw the allegations without permission of the Court upon a showing of good cause.<sup>9</sup>

3. At any evidentiary hearing, the prosecutor will present any evidence or witnesses. Like a probation violation hearing, the evidentiary rules are relaxed. If after an evidentiary hearing, the Court rules that the evidence has been proven by a preponderance of the evidence and is sufficient to support the recommendation of termination, the parties will be given the opportunity to argue whether termination is appropriate.
4. If, following argument, the Court decides termination is appropriate the Court shall set the matter for sentencing and order a pre-sentence report if the participant is before the Court pre-sentence, post guilty plea. If the participant is before the Court as a term of probation, the State may file any Motion for Probation Violation at any time, including at the same time it files the Motion for Discharge/Termination and the Court will arraign the participant on the Motion during the participant's appearance.

This procedure shall be effective immediately and fully complies with due process.

**IT IS SO ORDERED.**

Dated this 29<sup>th</sup> day of July 2010.

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<sup>8</sup> Staffing occurs once a week just prior to court appearances and the entire team discusses each participant's treatment progress and program compliance. The team also discusses whether the participant will get sanctions, rewards, or whether the participant will move to a higher phase. Finally, the team discusses potential graduation or termination. The Judge has the final word but relies heavily on the treatment staff's recommendations because they are trained in providing treatment and see the participant regularly. No *ex parte* communication is allowed. See Adult Drug Court Guidelines for Effectiveness and Evaluation, ¶ 4.2-4.3.

<sup>9</sup> To simply dismiss a termination proceeding once begun without a good reason and without a participant changing behavior undermines the therapeutic nature of Drug Court by indicating to the participant change is unnecessary. It potentially reinforces the magical thinking most criminal defendants have.

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District Judge