

# Dane County OWI Treatment Court Program

## Policies and Procedures Manual

March 2016



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# **Dane County OWI Treatment Court Program**

## **MISSION STATEMENT**

The Dane County OWI Treatment Court aims to reduce the number of repeat intoxicated drivers, thereby increasing community safety. This court-supervised program for repeat intoxicated drivers will use evidence based practices to provide intensive case management and treatment to hold participants accountable while providing opportunities for making positive changes. The program will support, encourage, and assist participants to become responsible, contributing members of our community, ultimately reducing the financial and emotional impact of driving while intoxicated.

## **INTRODUCTION**

In 2011, Dane County and the State of Wisconsin partnered to establish an Operating While Intoxicated (OWI) Treatment Court. Wisconsin has the highest rate of driving while intoxicated in the nation. In 2012, there were 5,024 alcohol-related crashes, in which 223 people were killed and nearly 3,000 were injured in Wisconsin. An average of one person was killed or injured in an alcohol-related crash every 2.8 hours on Wisconsin roadways. In 2012, approximately 36% of all fatal traffic crashes and 33% of all fatal motorcycle crashes were alcohol-related in Wisconsin. In addition, there were more than 33,000 convictions for drunken driving offenses in Wisconsin in 2012. (Wisconsin Department of Transportation)

The goal of the OWI Treatment Court is to promote public safety by using case management, treatment, and judicial oversight, thereby reducing or eliminating further drinking and driving. In this way, the Dane County OWI Treatment Court offers participants the opportunity to improve their chance of a sober and healthy life, to contribute to a safer community, and to break the cycle of driving while intoxicated,

This four-phase program is built to provide the support the participants need to progress through treatment and maintain a lasting recovery. As participants meet the milestones in each phase, the intensity of their services will be adjusted to meet requirements and assist them in meeting their goals.

Participants will be required to attend routine court appearances, treatment appointments and appointments with their probation agent, which may include office and home visits.

One of the main requirements of the OWI Treatment Court is that participants abstain from using alcohol and all other drugs. Participants are required to comply with using a Soberlink and/or Transdermal Alcohol Detection (TAD), which are monitoring devices that test for alcohol use. They are also required to comply with random alcohol and drug testing, such as urinalysis tests. Participants may be required to report to a pre-set location for scheduled breath or random urine testing.

An Intoxicated Driver Assessment will determine the level of treatment the participants need. Participants may be required to complete individual and/or group treatment for substance use and other concerns. Participants may be required to attend community self-help support meetings. The OWI Treatment Court program can also help participants set and achieve educational, financial, and employment goals.

As participants achieve their goals in the OWI Treatment Court, they will receive positive reinforcement and may be eligible for early phase promotion and an earlier graduation. However, failing to follow the requirements of OWI Treatment Court will result in immediate sanctions. The length of their stay in the program depends on the individuals' progress. The estimated program length is one year; however, it could take a longer or shorter time depending on the participants' needs and compliance with program requirements.

## **OWI TREATMENT COURT TEAM**

The OWI Treatment Court Team comprises of individuals from a variety of disciplines who come together to handle cases involving eligible participants through an intensive, judicially-monitored program of drug and alcohol treatment, rehabilitation services, and strict community supervision.

The OWI Treatment Court Team shall consist of the following:

- Circuit Court Judge
- Representative from the District Attorney's Office
- Representative from the Public Defender's Office
- Representative from the Wisconsin Department of Corrections
- Clinical Coordinators

## **ELIGIBILITY STANDARDS**

Potential candidates meeting the following criteria will be considered for admission to the Dane County OWI Treatment Court Program:

- Resident of Dane County
- OWI 3rd Conviction
- BAC .20 or higher
- Must be placed on probation, with mandatory compliance of OWI Treatment Court as a condition
- Adult (Age 18 or older)
- Not currently or previously charged in conjunction with an OWI related death or serious personal injury
- Finding of alcohol dependency or suspected alcohol dependency on Intoxicated Driver Program assessment

## **REFERRAL AND ENTRY PROCESS**

Any Dane County resident who meets the eligibility criteria may be referred to the OWI treatment court as a condition of probation upon conviction.

The sentence structure is as follows: the sentencing judge (in the assigned branch) will impose a jail sentence. The length of the sentence is in the discretion of the judge. Generally we expect the sentence will follow the applicable District 5 OWI sentencing guidelines. The judge will impose the sentence, but stay it, and the defendant will be placed on two years' probation. The conditions of probation are within the discretion of the sentencing judge, but will include participation in the OWI treatment court.

The conditions will also include jail time of at least 14 days. The conditional jail time is served at the time of sentencing.

Journey Mental Health Center will perform a clinical assessment on the defendant to determine whether s/he is alcohol dependent or suspected to be alcohol dependent. If not, Journey will notify the sentencing court that the participant is not eligible for the OWI treatment court, and the sentencing court may impose such other conditions of probation as may be appropriate under the circumstances.

Each participant will be assigned to a probation agent. An agent will supervise the participant throughout the two-year probation period. We try to admit each participant into the treatment court program as soon as reasonably possible. Depending on the census of our court participants (about 60 at any time) there may be some delay in the participant's entry into the court program. During that period, the supervising agent will acquaint the participant with the treatment court protocols and begin monitoring the participant for alcohol and drug use. The agent has authority to respond to rule violations, including alcohol and drug use, by appropriate measures, including placing a jail hold.

Generally, participants will be admitted to the OWI treatment court in the order they are sentenced. The treatment court team may in its discretion move a participant into the court program earlier if the team believes it appropriate considering public safety and the needs of the participant.

The Dane County Sheriff currently has a jail diversion program that may be offered to OWI offenders. That program is not available, however, to persons who are eligible to participate in OWI treatment court but who decline.

## COURT PROCEEDINGS

The OWI Treatment Court Calendar is dedicated to the evaluation, treatment and supervision of eligible and suitable offenders. The OWI Treatment Court shall be held on each Friday, except as ordered by the Court. A closed staffing will take place at 8:30 am, or as otherwise directed by the OWI Treatment Court Judge. Court proceedings will begin promptly at 10:00 am. All scheduled OWI Treatment Court participants must be in attendance at that time, unless otherwise excused by the OWI Treatment Court Judge or the OWI Treatment Court probation agent or clinical coordinator. If a participant fails to appear at a scheduled court proceeding, or the court may issue a bench warrant.

At the staffing, the probation agents and clinical coordinator(s) will advise the OWI Treatment Court Team of the progress or any violation of each OWI Treatment Court participant. During each OWI Treatment Court hearing, the OWI Treatment Court Judge will discuss the case with each OWI Treatment Court participant, and OWI Treatment Court Team. Sanctions may be imposed for any violations.

## Rules and Expectations for Court

Appropriate courtroom decorum will be expected during court sessions. Example of expectations will include:

- No cell phone use shall be permitted. Phones may be confiscated if they make noise during court proceedings
- Be on time
- Dress appropriately – Attire shall **not** include tank tops, halter-tops, hats or sunglasses. Shorts and skirts are expected to be of reasonable length. Additionally, clothing that displays offensive language; advertising of alcohol or other drugs is not acceptable.
- Act appropriately – loud and boisterous behavior is unacceptable. Do not talk while others are being reviewed and side conversations should be kept to a minimum.
- Speak clearly and directly to the Court
- Attend all court sessions as ordered – failure to appear will result in a warrant being issued
- Remain attentive during court proceedings for all participants

## **OWI TREATMENT COURT FILES**

Any materials filed with the court will be maintained in the court file kept by the Clerk of Court. The Treatment Court Judge will not maintain any separate file.

The “Waiver of Confidentiality, Agreement to Ex Parte Communication, and Right to Counsel” form signed by the participant will be filed in the court file. Other materials maintained in the court file include the minutes of court proceedings, termination motions, and any judicial correspondence related to the defendant.

Members of the treatment court team should not send emails to the judge except in the case of an emergency, or for matters that do not relate to an individual participant.

## VIOLATIONS AND SANCTIONS

Any violation of the rules may result in the immediate imposition of sanctions determined by the OWI Treatment Court Judge, Department of Corrections, or team after consultation. Sanctions may be different for each participant, even when circumstances seem to be similar. Each person has different needs and concerns. It is the goal of the OWI Treatment Court team to utilize tools which help each individual attain recovery. Sanctions in response to violations may include, but are not limited to the following:

- Verbal warning
- Admonishment from Judge
- Written letter or assignment
- Imposed curfew
- Increased substance abuse testing
- Increased supervision reporting
- Community service hours
- Increased time in phase
- Extension in program
- Return to lower phase
- Increased court appearances
- Imposed or increased community support meetings attendance
- Electronic Monitoring
- Limitation or decrease in privileges
- Imposition of jail time
- Warrant for arrest
- Motion for termination

OWI Treatment Court Participants who have a positive alcohol or drug test or had violations during the reporting period will not be entitled to participate in any additional court incentives.

The following are examples of violations that may result in sanctions or other treatment responses:

- A positive alcohol or missed drug test
- Possession or use of alcohol or controlled substances including synthetic marijuana
- Tardiness or failure to appear for court, supervision, or treatment appointment
- Being charged with a new criminal offense or failing to report a new arrest
- Failing to report any prescribed or over-the-counter medication
- Failing to report any change of residence
- Possession of weapons
- Driving without legal permission
- Not being honest
- Violating any other requirement expressly imposed by the Court or Team.

## **GUIDELINES FOR SANCTIONS**

Sanctions will be applied according to evidence-based practices with the following goals in mind:

1. To maintain the integrity of OWI Treatment Court
2. To foster fairness and consistency in the application of sanctions
3. To sustain accountability for participants
4. To create predictability in the imposition of sanctions, and in turn, greater deterrence of future violations
5. To retain flexibility in determining sanctions without detracting from the above stated goals of firmness, fairness, accountability and predictability.

## **INCENTIVES**

Incentives will be applied according to evidence-based practices for continued compliance with the rules and expectations of the OWI Treatment Court program. Incentives for maintaining sobriety and abiding by the conditions of the OWI Treatment Court Program may include, but are not limited to the following:

- Weekly/Quarterly drawing
- Star Chart Recognition
- Positive feedback/praise from the Judge or Team
- Permission for travel
- Person of the Week
- Early dismissal from court
- Certificates of recognition and/or completion
- Advancement of OWI Treatment Court phase
- Decrease in court appearances

## **GRADUATION CRITERIA**

In order to be eligible for graduation participants must complete a minimum of nine (9) to twelve (12) months in the program and the following expectations must be met:

- Must remain substance free for a minimum of three months prior to graduation. Participants who have a positive drug or alcohol test will be extended for 3 months from date of positive test.
- Complete primary course of treatment. All participants must complete primary course of treatment required by Driver Safety Plan and/or Clinical Coordinator. Participants may be involved in continuing individual therapy, participation in aftercare or regular attendance at support groups at the time of graduation.

A graduation ceremony will take place at the participant's final OWI Treatment Court session. Family members, friends, sponsors, and other supportive individuals are encouraged to attend the graduation ceremony.

## TERMINATION PROCESS

1. Grounds for termination.

The court may terminate a person from treatment court if:

- (a) The person's conduct threatens public safety; or
- (b) The person's conduct threatens the integrity of the program; or
- (c) The person is unwilling or unable to engage in treatment or to meet reasonable expectations for progression.

2. Termination procedure.

(a) The motion.

If any member of the team believes there are grounds for termination, s/he will inform the team and the judge will excuse her/himself from further discussion. If the participant has review hearings between the filing of a termination motion and the hearing, the judge may participate in the team discussion of the participant's progress during the interval, but the team will not discuss the grounds for the termination motion in the judge's presence.

The termination process is initiated by the prosecutor team member filing and serving a motion to terminate, specifying the grounds.

(b) The hearing.

The participant is entitled to a hearing on the motion to terminate. It will be scheduled sufficiently in advance to permit the participant to obtain counsel. If the participant was represented by a public defender lawyer, s/he should immediately contact the public defender's office (**17 S. Fairchild St., Madison; 608-266-9150**) so that a lawyer may be reappointed.

(c) Right to counsel.

We strongly encourage a participant facing termination to be represented by counsel at the hearing.

The consequence of termination is that a participant can no longer fulfill the court-ordered probation condition of OWI treatment court. That will probably result in revocation of probation and imposition of the stayed jail sentence.

A lawyer may assist a participant facing termination in many ways, including: presenting facts to refute, explain, or mitigate the behavior forming the basis for the motion; cross-examining witnesses and scrutinizing evidence offered by the prosecutor; arguing to the court; and negotiating with the prosecutor. By virtue of their training and experience, lawyers are usually more effective in doing those things than those who choose to represent themselves without counsel.

(d) A neutral magistrate.

A decision on the motion to terminate will be made by a neutral magistrate. The OWI treatment court judge will preside at the termination hearing, but if the participant makes a timely request for a different judge, a new judge will be assigned to hear the motion.

(e) Hearing procedure.

At the termination hearing the prosecutor must prove the grounds for termination by a preponderance of the evidence. The judge makes the decision. The participant has a due process right to:

- (1) Counsel, and if counsel is waived, to a determination by the court, following a colloquy, that the waiver is made knowingly, intelligently, and voluntarily, and that the participant is competent to represent himself;
- (2) Written notice of the grounds for termination;
- (3) A review of the Department of Corrections supervision file on the participant;
- (4) Disclosure of evidence against the participant;
- (5) Be present and testify;
- (6) Confront and cross-examine adverse witnesses;
- (7) The judge's findings based on the evidence and his statement of the reason for termination.

The rules of evidence do not apply. Hearsay is admissible. The judge considers the reliability of the evidence offered in reaching a decision.

Until the judge decides if a participant is terminated, the participant remains in the program. S/He must comply with all program requirements and is subject to sanctions for failure to do so.

If a participant absconds (i.e., activities and whereabouts are unknown to the agent), s/he will be suspended from the program, and a termination hearing will be scheduled within a reasonable time after the participant is apprehended.

## **TREATMENT PHASES**

The Dane County OWI Treatment Court Program shall consist of four phases. Each phase will be based on progress and accomplished goals.

### **Pre-Court Phase**

Monitoring Equipment Required:

- Participants using the Soberlink will be required to provide multiple tests per day;
- Participants who are on TAD will be required to download information every day.

Alcohol or Substance Abuse Urinalysis (UA) Testing:

- UA test to gather baseline of substance use or abuse.
- Random UA tests will be determined based on the results of the baseline test and substance abuse history.
- Breathalyzers will be administered randomly during face-to-face contact with DCC agent or assigned staff.
- EtG/EtS will be used as needed.

Court and Agent Meeting requirements:

- Participants will meet with their agent, or covering agent on a weekly basis.
- Participants will be required to attend court only when violations warrant being addressed in court (i.e. jail sanctions, new charges, termination).
- OWI Treatment Court Agents will inform the participant when s/he is scheduled to begin court appearances. Contact shall be made at least 1 week prior to first court appearance.

### **Phase I**

- Attend OWI Treatment Court bi-weekly, or as directed by the OWI Treatment Court Team.
- Random and frequent testing
- Serve conditional jail term ordered by the sentencing judge.
- Attend all appointments with your agent as directed. You may be required to see your agent once per week.
- Attend and complete your Intoxicated Driver Program assessment.
- Attend substance abuse counseling and/or group sessions as directed by your assessment and your treatment provider.
- Comply with your Driver Safety Plan.
- Comply with all monitoring tests as required.
- Comply with any other rules and conditions imposed by the judge, agent, clinical coordinator, and treatment provider.
- Participant must have 1 month of sobriety before moving to Phase II.

## **Phase II**

- Attend OWI Treatment Court every three weeks, or as directed by the OWI Treatment Court Team.
- Participant must continue compliance with all requirements from previous phase.

## **Phase III**

- Attend OWI Treatment Court every four weeks, or as directed by the OWI Treatment Court Team.
- Agent may remove monitoring equipment during this phase based on compliance.
- Participant must continue compliance with all requirements from previous phase.

## **Phase IV**

- Attend OWI Treatment Court every four weeks, or as directed by the OWI Treatment Court Team.
- Participant must continue compliance with all requirements from previous phase
- Participant must have 3 months of sobriety before graduating from the program.

## **SUBSTANCE ABUSE MONITORING**

Monitoring the participants' sobriety is an important component of the OWI Treatment Court, and they will be monitored throughout their participation. Monitoring may include the use of the Soberlink, Transdermal Alcohol Detection (TAD) device, and urinalysis.

The Soberlink is a handheld breathalyzer device that will require the participants to be tested at predetermined or random intervals. If the participants miss a test they are required to contact their agent immediately. The Transdermal Alcohol Detection (TAD) device monitors the alcohol use through an ankle bracelet. All test results are sent to the Department of Corrections Monitoring Center. All positive tests or missed tests will be reported to the OWI Treatment Court team and Judge for possible sanctions.

If a urine or breath test result is positive for alcohol or other substances, the participants may be required to appear at the next scheduled OWI court session, regardless of previously scheduled court return date. OWI Treatment Court participants are not allowed to consume "non-alcoholic" beer or use products that contain alcohol, such as NyQuil and mouthwash. Any breath tests that are positive for the presence of alcohol will be deemed a positive test by the OWI Treatment Court team, and any claims that the test may be due to use of alcohol based products will not change this determination.

### **Random Testing Process**

All urine (UA), breathalyzer (BA), and oral swab testing will be completed on a random basis. Each participant will be assigned a number and they will be responsible for calling the testing agency on a daily basis to find out if they are required to report for a test. The testing agency will change the message each day before 7:30 a.m. The voice message at the designated number will inform the participant what number(s) of the day is/are. If the participant's assigned number is called s/he must report to the testing agency within the predetermined time slots. Failure to report may result in sanctions.

Testing will take place under the supervision of the Department of Corrections, or a designee. Same sex staff will observe/witness the collection of all UA drug testing samples when possible. Staff will accompany the participant into the restroom to ensure that altering of the UA sample does not occur.

Participants will have 30 minutes maximum time to complete the test. Participants are not permitted to leave the office during this time. If the participant is not able to complete the test in time the test will be considered failed.

The OWI Treatment Court Team reserves the right to request a confirmation test when a participant has a positive test result. UA tests may also be sent in for confirmation if they appear to be tampered with or diluted in any way.

### Tampering with Drug-Testing

Tampering with urine or breath tests, or attempting to alter the efficacy of the monitoring equipment is an offense that is taken seriously.

The following are examples of tampering:

- Ingesting or placing a substance(s) in the urine or breath test in an attempt to alter the result
- Providing a sample that is not urine or breath from the person being tested

Success in OWI Treatment Court depends on a relationship of trust among staff and participants, and participants are expected to be honest and truthful in their interactions with treatment personnel. Therefore tampering offenses may result in termination from the program. Providing information about, or suggesting or encouraging any of the above to another person in the program will be treated with the same severity as tampering itself.

## SUMMARY OF PROGRAM RULES

1. Do not possess or consume any alcohol or drugs for which you do not have a prescription. This includes but is not limited to “non-alcoholic” beer, foods cooked with alcohol, mouthwash that contains alcohol, synthetic marijuana, other mood-altering substances, and medications not prescribed to you. If you do use alcohol or any other mood-altering substance, report it immediately to you agent. Take any prescribed medications ONLY as prescribed.
2. Do not drive or operate any vehicle without a valid driver’s license and IID installed. You must receive approval to own or operate a motor vehicle in advance from your agent.
3. Do not tamper with monitoring tests or the equipment used in testing.
4. Meet with your agent and clinical coordinator as directed, and attend all scheduled court sessions.
5. Comply with the Rules of Community Supervision, which your agent provides to you. Be sure to report any alcohol use, drug use and police contact to your agent.
6. Comply with all monitoring tests, either scheduled or unscheduled.
7. Comply with all assessment and treatment requirements; attend community support groups as directed. You may attend more group meetings or treatment appointments than required, but you may not attend less than required. Verification of attendance may be required.
8. Do not use any medications containing alcohol (e.g. Nyquil, cough medications, etc.), mouthwashes containing alcohol or other personal hygiene products containing alcohol (e.g. lotion, perfume). Make sure to read labels prior to use. It is your responsibility to be certain that the products you are using do not contain alcohol. These products can result in a positive result for your monitoring tests, which in turn can result in a sanction.
9. Report ALL medications you use to your agent (including over-the-counter products). You must provide the actual prescription bottle for verification purposes, and you must sign releases for your agent and/or clinical coordinator to contact your prescribing physician(s) and dentist(s).
10. Comply with all directives and decisions made by the Judge and the team.
11. Do not leave the county without permission from your agent. The team understands that you may want to go out of town or on vacation while in the program. You are required to seek permission prior to making plans to leave town. If approved, you are required to comply with any requirements the team deems appropriate.
12. Participants will be encouraged to hold or actively seek employment, and/or be enrolled in full-time or part-time school and/or treatment. If you are not employed, or attending school or treatment full time, you may be required to perform community service.

## **CONFIDENTIALITY AND RELEASES**

The participant's identity and privacy will be protected consistent with federal confidentiality laws; 42 United States Code (USC) Section 2990dd-2, and the regulations implementing these laws at 42 Code of Federal Regulations (CFR, Part 2) and Wisconsin law. OWI Treatment Courts and confidentiality laws are designed to achieve the shared goal of encouraging substance abusers to obtain and remain in treatment. The Dane County OWI Treatment Court can only function if information is shared among team members.

Participants will be required to authorize the release of pertinent information to selected persons or agencies. This includes, but is not limited to: Dane County Court, District Attorney, Public Defender or Defense Attorney, Dane County Sheriff's Office, other Law Enforcement agencies, independent program evaluators, Department of Corrections, Journey Mental Health referring agencies, employers, significant others (or members of household), community support sponsor and any specialized service the participant is receiving. The purpose of this communication is to facilitate treatment coordination between the OWI Court treatment team and the designated person or agency.

**PROGRAM STAFF AND CONTACT INFORMATION**

<p><b>Judge John Markson</b>  Dane County Circuit Court Branch 1  OWI Treatment Court Presiding Judge</p>	
<p><b>Shaun O’Connell</b>  <b>Assistant District Attorney</b>  Email: <a href="mailto:Shaun.o’connell@da.wi.gov">Shaun.o’connell@da.wi.gov</a>  Phone: (608) 266-4211</p>	<p><b>Adam Welch</b>  <b>State Public Defender</b>  Email: <a href="mailto:welcha@opd.gov">welcha@opd.gov</a>  Phone: (608) 261-8855</p>
<p><b>Adam Hasse - Agent</b>  <b>Department of Corrections</b>  7017 Raywood Road  Madison, WI 53713  Email: <a href="mailto:adam.hasse@wisconsin.gov">adam.hasse@wisconsin.gov</a>  Phone: (608) 224-6330</p>	<p><b>Lauren Franson - Agent</b>  <b>Department of Corrections</b>  7017 Raywood Road  Madison, WI 53713  Email: <a href="mailto:lauren.franson@wisconsin.gov">lauren.franson@wisconsin.gov</a>  Phone: (608) 224-6322</p>
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<p><b>Lucy Milani</b>  <b>Alternative Sanctions Team Leader</b>  <b>Journey Mental Health Center</b>  625 West Washington Ave.  Madison, WI 53703  Email: <a href="mailto:lucy.milani@journeymhc.org">lucy.milani@journeymhc.org</a>  Phone: (608) 280-2416</p>	

Appendix A

DANE COUNTY OWI TREATMENT COURT PROGRAM

Waiver of Confidentiality, Agreement to Ex Parte Communication, and Right to Counsel

Waiver of Confidentiality

All OWI Treatment Court participants are required to provide authorization to disclose confidential information. The purpose of this authorization is to give the treatment court team access to participant healthcare and non-healthcare information to evaluate and assess the participant, to determine an appropriate and individualized treatment plan, and to evaluate and monitor the participant's success under that plan.

1. I agree to execute consent for disclosure of confidential health and medical and non-health information. I understand that members of the treatment court team may require me to provide very personal information. This may include, but is not limited to, drug and alcohol use, my criminal record, education and work history, family history, medical information, physical and sexual abuse history, and psychiatric information.

\_\_\_\_\_

2. I understand that information and documents received through my consent for disclosure may be copied and shared between members of the treatment court team, which includes the treatment court judge, the clinical coordinator, the case manager (an agent with the Department of Corrections), and representatives of the public defender's office and district attorney's office. I understand that the members of the team may change.

\_\_\_\_\_

3. I understand that information and documents received through my consent for disclosure and information relevant to my progress and participation in treatment may be discussed in open court and may be disclosed before other participants in treatment court and observers of treatment court, including but not limited to, members of the public and the media.

\_\_\_\_\_

4. I understand that occasionally people other than treatment court team members may observe a treatment court team meeting, with the understanding that the meeting is confidential.

\_\_\_\_\_

5. I understand that information relating to my treatment court participation will be publicly available in my criminal court file, which is kept by the Clerk of Court.

\_\_\_\_\_

Agreement to Ex Parte Communication

I understand that the judge may initiate, permit, or consider ex parte communication with members of the treatment court team. This means that, even when neither I nor my attorney is present, the judge may discuss any aspect of me and of my case and learn or review any information about me that could affect my participation in treatment court.

\_\_\_\_\_

Right to Counsel

1. I agree to waive my right to have an attorney present at treatment court review hearings.

\_\_\_\_\_

2. I understand that I have a right to an attorney when I am facing a court-imposed jail sanction. If I drink alcohol, use controlled substances without a valid prescription, or violate another rule or requirement of the program, I may face a jail sanction.

\_\_\_\_\_

3. An attorney may help me at a hearing at which a sanction is considered by presenting my side of the story, questioning the evidence offered in support of the sanction, or arguing to the judge that there are mitigating circumstances that make a jail sanction inappropriate.

\_\_\_\_\_

4. If I am facing a jail sanction and wish to have an attorney represent me, it is my responsibility to arrange for an attorney to be present at the court review hearing. I recognize that the effectiveness of a sanction depends on its being imposed as soon as reasonably possible. Therefore, I acknowledge that if I do not arrange for an attorney to be present with me at a review hearing at which a sanction is considered, I understand I will have waived any right to an attorney with respect to the sanction.

\_\_\_\_\_

5. I understand that I am on probation. The Department of Corrections may have me taken

into custody to investigate, among other things, an alleged violation, for disciplinary purposes, or to prevent a possible violation. The rules about probation holds are set forth in the Wisconsin Administrative Code, sec. DOC 328.27. Nothing set forth in the paragraph above affects the DOC's right to impose a hold pursuant to the Administrative Code and DOC policy.

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6. If there is a motion to terminate me from the program, I have a right to be represented by an attorney at the hearing. I am aware that the court strongly encourages a participant facing termination to be represented by counsel at the hearing.

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(a) The consequence of termination is that a participant can no longer fulfill the court-ordered probation condition of OWI treatment court. That will probably result in revocation of probation and imposition of the stayed jail sentence.

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(b) A lawyer may assist a participant facing termination in many ways, including: presenting facts to refute, explain, or mitigate the behavior forming the basis for the motion; cross-examining witnesses and scrutinizing evidence offered by the prosecutor; arguing to the court; and negotiating with the prosecutor. By virtue of their training and experience, lawyers are usually more effective in doing those things than those who choose to represent themselves without counsel.

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#### Participant's Information and Understanding

I am \_\_\_\_\_ years old.

I have completed \_\_\_\_\_ years of schooling.

I do \_\_\_\_\_ do not \_\_\_\_\_ have a high school diploma, GED, or HSED.

I do \_\_\_\_\_ do not \_\_\_\_\_ understand the English language.

I am not \_\_\_\_\_ am \_\_\_\_\_ currently receiving treatment for a mental illness or disorder.

I have not \_\_\_\_\_ have \_\_\_\_\_ had any alcohol, medications, or drugs within the last 24 hours.

I have read this waiver, consisting of four pages including the signature page, or had it read to me, and I understand it. I have had an opportunity to discuss and ask questions and I have answered all questions truthfully. By signing this waiver I confirm that it accurately reflects my wishes regarding disclosing confidential information, my agreement to ex parte communication, and my understanding of my right to counsel.

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
Date

Witnessed by Case Manager:

\_\_\_\_\_  
Signature of Case Manager

\_\_\_\_\_  
Date