

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
AMENDING ARIZONA CODE OF	)	Administrative Order
JUDICIAL ADMINISTRATION	)	<u>No. 2009 - 38</u>
§ 6-205: DRUG TREATMENT AND	)	(Affecting Administrative Orders
EDUCATION FUND	)	Nos. 2001-68 and 2002-69)
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An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on March 19, 2009, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-205 is amended as indicated on the attached document. All other provisions of § 6-205 as adopted, remain unchanged and in effect.

Dated this 8th day of April, 2009.

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RUTH V. McGREGOR  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 6: Probation**  
**Chapter 2: Adult Services**  
**Section 6-205: Drug Treatment and Education Fund**

**A. Definitions.** In this section the following definitions apply:

“Administrative director” means both the administrative director of the Administrative Office of the Courts (AOC) and the director’s designee.

~~“Alcohol and drug testing” means any method of determining the level or identifiable substances in the body including, but not limited to, breathalyzer tests, blood tests, and urine samples.~~

“Case record” means any documentation pertaining to a particular probationer maintained by the probation department in electronic or paper medium.

“Co-payment” means an amount that a probationer pays to the probation department or a licensed provider for treatment and education services.

“Controlled substance” means “a drug, substance or immediate precursor in schedule I through V of article 2 of this chapter” as provided in A.R.S. § 36-2501 (A)(3).

“Court” means superior court.

~~“Day treatment” means a treatment service for probationers in a non-residential setting that consists of a minimum of 5 days per week for 6 hours of face to face contact per day.~~

“Evidence-based practice” means strategies that have been shown through current, scientific research to lead to a reduction in recidivism.

“Intensive outpatient treatment” means a treatment service for probationers in a non-residential setting that consists of a minimum of ~~3~~ three, ~~2~~ two-hour face-to-face group sessions per week. ~~1~~ One, ~~1~~ one-hour individual session may be substituted for ~~1~~ one, ~~2~~ two-hour group session.

“Lapse/Relapse prevention” means a service for probationers in a non-residential setting that facilitates maintaining abstinence as well as provides help for probationers who experience relapse.

“Long term residential treatment” means any type of treatment or counseling for alcohol and other drug disorders where the probationer resides at the facility for 31 days or more.

“Motivational enhancement” means a client-centered counseling approach for initiating behavior change by helping probationers resolve ambivalence about engaging in treatment and stopping drug use.

“Short term residential treatment” means any type of treatment or counseling for alcohol and other drug disorders where the probationer resides at the facility for 30 days or less.

“Standard outpatient treatment” means a treatment service for probationers in a non-residential setting that consists of a minimum of one, 90 minute face-to-face group session per week with a maximum of ~~5~~ five face-to-face contact hours per week. ~~± One, ± one-hour~~ individual session may be substituted for ~~± one~~, 90 minute group session.

“Substance abuse education” means an intervention service designed to provide for probationers in an outpatient setting for 2 to 12 sessions information, knowledge, understanding of substance abuse and motivational enhancement.

“Substance abuse evaluation” means administration of an Administrative Office of the Courts (AOC) approved assessment by a qualified or licensed person to determine morbidity and target intervention strategies.

**B. Applicability.** Pursuant to Article VI, Section 3 of the Arizona Constitution and A.R.S. § 13-901.02 (A) provides: “The drug treatment and education fund is established. The administrative office of the supreme court shall administer the fund.” ~~the following requirements are issued to govern the administration of the Drug Treatment and Education Fund (DTEF) on behalf of the supreme court.~~

**C. Purpose.** A.R.S. § 13-901.01(A) provides: “Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.”

~~A.R.S. § 13-901.01 (D) provides: “If a person is convicted of personal possession or use of a controlled substance as defined in § 36-2501, as a condition of probation, the court shall require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances.”~~

If a person is convicted of personal possession or use of a controlled substance or drug paraphernalia, as a condition of probation, the court shall require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances. Each person who is enrolled in a drug treatment or education program shall be required to pay for participation in the program to the extent of the person's financial ability.

## D. General Administration.

1. The Administrative Office of the Courts (AOC) shall:
  - a. Administer the Drug Treatment and Education Fund (DTEF) on behalf of the supreme court;
  - b. Monitor local DTEF programs;
  - c. Prepare written material setting forth various techniques, practices, guidelines and other recommendations regarding the operation and management of the DTEF and distribute this material to judges and probation personnel;
  - d. Inspect, audit, or have audited the records of any court using the DTEF;
  - e. Prescribe and adopt procedures, forms and reports necessary for financial administration, program administration, operation and management of the DTEF;
  - f. Conduct seminars and educational sessions regarding the purpose and operation of the DTEF;
  - g. Establish performance measures and expectations in consultation with the court for determining compliance with each court's DTEF program plan;
  - h. Assist courts in developing their DTEF program plans;
  - i. Provide general assistance to courts on the operation of the DTEF;
  - j. Adopt other administrative practices and procedures; consistent with this code, as necessary for the administration of the DTEF; and
  - k. Pursuant to A.R.S. § 13-901.02 (D);:

“... cause to be prepared at the end of each fiscal year after 1997 an accountability report card that details the cost savings realized from the diversion of persons from prisons to probation. A copy of the report shall be submitted to the governor and the legislature, and a copy of the report shall be sent ~~made available~~ to each public library in the state.”<sup>2</sup>

- l. Approve any and all assessments used to perform substance abuse evaluations pursuant to ACJA § 6-205.
2. For purposes of uniform administration, each adult probation department receiving DTEF monies shall comply with this code.

## **E. Allocation of Funds.**

1. A.R.S. § 13-901.02 (B) provides:

Fifty per cent of the monies deposited in the drug treatment and education fund shall be distributed by the administrative office of the supreme court to the superior court probation departments to cover the costs of placing persons in drug education and treatment programs administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances.

2. A.R.S. § 13-901.02 (B) further provides: "Such monies shall be allocated to superior court probation departments according to a formula established by the administrative office of the supreme court."

## **F. Program Plan and Financial Management.**

1. Each participating court shall submit an program and expenditure plan to the administrative director. The expenditure plan and any plan modification shall be consistent with A.R.S. §§ 13-901.01 and 13-901.02 and this code, and shall outline how the DTEF allocation shall be used to cover the cost of placing persons in drug education and treatment programs. The participating court shall submit the plan within the prescribed time frame and on forms required by the administrative director.
2. Each presiding judge shall submit, in writing, all requests to modify the program and expenditure plans on a form approved by the administrative director.
3. In the event that the administrative director disapproves a plan or plan modification submitted by a court, the presiding judge of the court may request that the administrative director submit the plan to the chief justice for consideration and final determination.
4. On approval of the plan as submitted or modified and the availability of funds, the administrative director shall enter into a written funding agreement with the submitting court for the distribution of funds. The administrative director may amend or terminate funding agreements due to lack of funds, lack of financial need, or the court's failure to comply with applicable statutes, the approved plan, funding agreement or this code.
5. The administrative director may reallocate funds during the year based on documented need, current use of funds and approved plan or budget modifications.
6. ~~Pursuant to A.R.S. § 12-267(B), provides: "The county's chief fiscal officer shall establish and maintain separate accounts in the fund showing receipts and expenditures of monies from each source listed in subsection A of this section." deposit funds received by the court pursuant to A.R.S. § 13-901.02 (B) into a separate account within the adult probation services fund.~~

7. The participating court shall use allocated DTEF monies and interest only for the support and operation of approved DTEF plans. Each participating court plan shall describe a procedure for monitoring compliance with DTEF contract and AOC Funding Agreement requirements.
8. On agreement with a participating court, the administrative director may withhold funds allocated to the court and may authorize direct expenditures for the benefit of the court. The administrative director may also reallocate these funds during the fiscal year.
9. The presiding judge of each participating court shall submit to the AOC, by January 31 of each year, a mid-year financial and program activity report related to the court's plan through December 31. Failure to submit the report in a timely manner may result in financial sanctions.
10. The presiding judge of each participating court shall submit to the AOC, by August 31 of each year, a closing financial and program activity report related to the court's plan through June 30. Failure to submit the report in a timely manner may result in financial sanctions.
11. The presiding judge of each participating court shall return to the AOC, by August 31 of each year, all DTEF funds distributed to the court which are unencumbered as of June 30 and unexpended as of July 31. Failure to revert the unencumbered funds in a timely manner may result in financial sanctions.
12. Each participating court and its probation department shall maintain and provide to the AOC data and statistics as may be required by the administrative director to administer the DTEF. Each participating court and probation department shall maintain AOC required data in the statewide Adult Probation Enterprise Tracking System (APETS).
13. Each participating court and its probation department shall retain all financial records, applicable program records, and data related to each approved plan for a period of at least 5 five years from the close of the fiscal year.

#### **G. Program Operations.**

1. Each probation department shall have a written policy and procedure detailing the management and provision of DTEF services in their department, including, but not limited to:
  - a. Identifying probationers eligible to receive services provided by the DTEF Establishing a process to identify and refer for participation in an appropriate drug treatment or education program, probationers sentenced pursuant to A.R.S. §13-901.01. The determination of whether treatment or education is needed shall be based on the risk score in the substance abuse domain of the standardized assessment or reassessment and any other relevant information. Probationers determined to need

treatment shall be evaluated with an AOC approved assessment administered by a qualified or licensed person, in consultation with the adult probation department, to determine the level of substance abuse treatment necessary. At a minimum, probationers sentenced pursuant to A.R.S. §13-901.01 shall receive substance abuse education.

b. ~~Screening, assessing, and the referral processes;~~ Establishing a process to identify and refer for drug education or treatment, probationers not sentenced pursuant to A.R.S. §13-901.01, once those who have been sentenced pursuant to A.R.S. §13.901.01 have been served and resources permit. The determination of whether treatment or education is needed shall be based on the risk score in the substance abuse domain of the standardized assessment or reassessment and any other relevant information. Probationers determined to need treatment shall be evaluated with an AOC approved assessment administered by a qualified or licensed person, in consultation with the adult probation department, to determine the level of substance abuse treatment necessary.

~~e. Obtaining treatment services through the adherence to adopted procurement rules ;~~

~~d. Monitoring DTEF contract and AOC funding agreement requirements;~~

~~e. Collecting required data elements, data entry, and quality assurance reports;~~

~~f. Prescribing forms;~~

~~gc. Assessing co-payment~~ utilizing an AOC approved standardized tool for assessing ability to pay; and

~~hd. Utilizing~~ Identifying a quality assurance the process for the data entry into APETS regarding DTEF funded services and outcomes collection of for the compilation of DTEF performance measures.

2. Each probation department shall have a process by which each participating court enters into contractual agreements with qualified human services agencies to provide drug treatment and education services.

a. Participating courts are authorized to combine resources and jointly enter into such contractual agreements;

b. Participating courts shall develop contractual agreements pursuant to the Judicial Branch Procurement Rules or local procurement policies;

c. All contractual agreements shall contain a provision acknowledging the authority of the AOC to inspect their records or conduct audits; ~~and~~

- d. All contractual agreements shall contain specifications that meet the drug treatment and education fund requirements.
  - e. All treatment services shall be contracted at the local court level consistent with local procurement requirements.
  - f. All treatment contracts shall contain state minimum insurance requirements.
3. All agencies or organizations entering into contractual agreements with a participating court shall hold licenses issued by the Arizona Department of Health Services, Office of Behavioral Health Licensing. The participating court shall retain a copy of the agency or organization's most recent license.
  4. Each probation department shall require clinical staff providing treatment services funded by the DTEF to ~~have a masters degree or higher in a behavioral health discipline and be working toward required certification or be certified by at least one of the following accrediting bodies: hold licensure with either the Arizona Medical Board, Arizona Board of Psychologist Examiners, or Arizona Board of Behavioral Health Examiners based upon the services rendered.~~
    - a. ~~Arizona Board of Behavioral Health Examiners as a certified substance abuse counselor (CSAC), certified associate counselor (CAC), certified professional counselor (CPC);~~
    - b. ~~Arizona Board of Certified Addictions Counselors as a certified alcohol and drug abuse counselor (CADAC);~~
    - e. ~~National accreditation of alcohol and drug abuse counselors (NCACI, NCACH, MAC); or~~
    - d. ~~Other professionally recognized substance abuse counseling accreditation approved by the administrative director.~~
  5. Each probation department shall require all ~~uncertified~~ probation department employees or contract service providers that facilitate substance abuse education programs to be trained and certified in the delivery of the specific education program. ~~who furnish direct service to probationers to have proof of a minimum of 4 hours per month of clinical supervision by key clinical staff who possess both the current substance abuse certification and a masters degree in a behavioral health discipline.~~
  6. Vendors who are contracted for drug treatment and education services shall not be employed as an adult probation officer.

7. Private practitioners who are contracted for drug treatment and education services shall not sub-contract with others to perform the contracted services, unless approved by the probation department or AOC.
8. Each probation department shall be responsible for the costs incurred for any service rendered which is not in accordance with the court's approved expenditure plan.

## **H. General Treatment Requirements.**

1. Each probation department shall:
  - a. ~~Require all treatment and education services subsidized by the DTEF to employ current research or evidence based intervention strategies for treating substance abusing probationers~~ Utilize an AOC approved standardized tool for assessing a probationer's ability to pay for services, including, but not limited to, the probationers eligibility for Arizona Health Care Cost Containment System (AHCCCS), private insurance, and other means of payment. The probationer shall choose 1 of 2 methods of payment:
    - (1) The probationer shall pay a sum determined by the AOC approved standardized tool for assessing the ability to pay to the probation department for deposit in the separate DTEF account within the adult probation services fund, or
    - (2) The probationer shall pay a sum determined by the AOC approved standardized tool for assessing the ability to pay directly to the provider who will document these payments as deducted from the monthly invoice for services rendered.
    - (3) Provide to the AOC by August 31 of each year reports summarizing payments made by probationers receiving DTEF funded services.
  - b. ~~Require all treatment, interventions and services to be matched to the specific needs of the probationer; and~~ Screen all probationers for AHCCCS, Title 19 and Title 21 eligibility. If eligible, the probation officer shall document in offenders' case record. The probation officer shall only place qualified offenders in AHCCCS funded treatment or education programs, if available. This placement shall not cause therapeutic disruption.
  - c. Require all treatment and education services funded by the DTEF to employ current research or evidence-based intervention strategies for treating substance abusing probationers. Develop a service delivery continuum which includes the following services:
    - ~~(1) Substance abuse education,~~
    - ~~(2) Standard and intensive outpatient,~~
    - ~~(3) Residential treatment,~~
    - ~~(4) Motivational enhancement, and~~
    - ~~(5) Lapse/relapse prevention~~

- d. ~~Obtain approval from the AOC for a service delivery continuum which does not include the five services identified in 1(e) or contains services in addition to the services identified in 1(e)~~ Require all treatment, interventions and services to match the specific needs of the probationer.
- e. Develop a service delivery continuum which includes, at minimum, the following services: ~~Assess probationers that are eligible to receive DTEF funded services for their financial ability to pay for participation in the drug education and treatment program pursuant to A.R.S. § 13-901.01(D), and, unless ineligible, shall complete an AHCCCS referral form and Title 19 and/or 21 application. The probationer shall choose 1 of 2 methods of payment:~~
  - ~~(1) Substance abuse evaluation. The probationer shall pay to the probation department for deposit in the separate DTEF account within the adult probation services fund, or~~
  - ~~(2) Substance abuse education. The probationer shall pay directly to the provider who will document these payments as deducted from the monthly invoice for services rendered.~~
  - ~~(3) Standard and intensive outpatient.~~
  - ~~(4) Residential treatment.~~
  - ~~(5) Motivational enhancement, and~~
  - ~~(6) Lapse/relapse prevention.~~
- f. Obtain AOC approval prior to adding additional services to the continuum provided in provision (H)(1)(e) of this section. The request shall include documentation of evidence-based research supporting the effectiveness of the additional service. Provide to the AOC, by August 31 of each year, reports summarizing payments made by probationers receiving DTEF funded services.

**I. ~~Screening and Assessment.~~**

- 1. ~~Each probation department shall:~~
  - a. ~~Prior to treatment intervention, administer a validated screening and preliminary assessment instrument that measures risk to re-offend and need for intervention services to probationers eligible to receive DTEF funded services. This instrument shall be normed on a sample Arizona probation population;~~
  - b. ~~Administer the Arizona Substance Use Survey (ASUS) to probationers eligible to receive DTEF funded services prior to treatment intervention;~~
  - c. ~~Train and maintain staff competent in the administration and interpretation of the ASUS;~~

- ~~d. Require recommendations and referrals to treatment providers be in accordance with the results of the ASUS and other secondary assessments that complement and improve the intervention process; and~~
- ~~e. Reassess the probationer's substance abuse problem using the ASUS at 180 days or upon a significant event such as the completion of treatment or other service intervention on all sampled probationers identified by the AOC.~~