

THE SUPREME COURT *of* OHIO

COMMISSION ON SPECIALIZED DOCKETS GUIDANCE: CONSTITUTIONAL RIGHTS OF PARTICIPANTS

A specialized docket court shall ensure the constitutional rights of its participants and not engage in practices that infringe upon those rights.

A. ADULT SPECIALIZED DOCKETS

1. **RESTRICTIONS ON PARTICIPANTS AS TO GEOGRAPHICAL LOCATIONS AND ASSOCIATIONS:** An adult specialized docket may make restrictions on the access or contact participants have with certain geographic locations and certain persons or class of persons, if said restrictions are reasonably related to the participant's rehabilitative needs.
2. **RESTRICTIONS ON PARTICIPANTS AS TO CONSUMPTION OF VARIOUS SUBSTANCES:** An adult specialized docket may require participants to comply with the directives indicated for their prescribed medications, or refrain from the use of certain otherwise legal substances or medications, if said restrictions are reasonably related to the participant's rehabilitative needs.

Regarding the use of Medication Assisted Treatment (MAT) in an adult specialized docket, there shall/should be no restrictions regarding the use of any legally prescribed medication that is FDA approved. Participants shall not be required to cease the use of a legally prescribed MAT as a condition of community control or probation, for successful completion of the docket, visitation with children, or reunification.

3. **DIRECTIVES TO PARTICIPANTS AS TO THE TIME, MANNER, PLACE, AND FREQUENCY OF RANDOM DRUG TESTING:** An adult specialized docket may require participants to present themselves for drug testing at any time when requested by any authorized representative of the specialized-docket-treatment team. The participant shall comply with such request, as long as requests are reasonably related to the participant's rehabilitative needs.
4. **SECULAR ALTERNATIVES:** If an adult specialized docket requires participation in a 12-step program as part of the requirements of participation, then it shall permit participants to participate in a secular alternative and should refrain from requiring attendance at any non-secular 12-step program.
5. **SEARCHES:** An adult specialized docket may require participants to sign conditions of community control that include the waiver of the right against warrantless searches, as long as the participants knowingly, intelligently and voluntarily sign the conditions. An adult specialized docket may conduct searches of participants who are not on community control, as long as such searches conform to all constitutional prerequisites.

6. DUE PROCESS:

a. *Termination Hearings*

An adult specialized docket shall not terminate participants unless providing notice of intent to terminate, a hearing, and representation by an attorney.

Said participants shall have a commensurate level of rights as those required for community-control-revocation hearings. A participant may waive the right to a hearing, as long as the participant had the right to consult with an attorney and the waiver is made knowingly, intelligently, and voluntarily.

b. *Jail Sanctions*

An adult specialized docket shall not impose a jail sanction for non-compliance without providing notice, a hearing, and representation by an attorney.

A participant may waive the right to a hearing, as long as the participant had the right to consult with an attorney and the waiver is made knowingly, intelligently, and voluntarily.

Participants do not have the right to contest the imposition of sanctions that do not impact liberty interests. Adjustments in treatment activities are not sanctions.

7. **RIGHT AGAINST SELF-INCRIMINATION:** An adult specialized docket may require participants to waive their right to remain silent and to not incriminate themselves regarding violations of the rules of the specialized docket program. An adult specialized docket court, however, shall not require the waiver of those rights in regard to pending criminal charges and statements made by participants cannot be used as evidence in any criminal prosecution.
8. **INDIGENCY:** The United States Supreme Court has repeatedly struck down rules and practices that discriminate against defendants based solely on their inability to pay fines and fees. In *State v. Fugate*, 117 Ohio St. 3d 261, the state recognized the Equal Protection clause does not tolerate disparate treatment of defendants based solely on their economic status. With respect to specialized dockets, this means that candidates shall not be denied admission to the docket based on financial ability. The docket shall consider a participant's ability to pay fees and/or other financial obligations and make reasonable accommodations based on financial ability. Program materials and participation agreements should include these statements to ensure candidates are aware their admission is not predicated on their ability to pay when considering whether they should participate in the docket.
9. **OTHER CONSTITUTIONAL AND STATUTORY CONCERNS:** An adult specialized docket court shall comply with all constitutional and statutory rights of their participants. Any such rights that are permitted to be waived by said participants are to be done in a manner ensuring the substantive due process rights of the participant.

B. JUVENILE SPECIALIZED DOCKETS

1. **RESTRICTIONS REGARDING GEOGRAPHICAL LOCATIONS AND INTERPERSONAL ASSOCIATIONS:** A juvenile specialized docket may make restrictions on the access or contact participants have with certain geographic locations and certain persons or a class of persons if said restrictions are reasonably related to the participant's rehabilitative needs.
2. **RESTRICTIONS ON PARTICIPANTS AS TO CONSUMPTION OF VARIOUS SUBSTANCES:** A juvenile specialized docket may require participants to comply with the directives indicated for their prescribed medications, or refrain from the use of certain otherwise legal substances or medications, if said restrictions are reasonably related to the participant's rehabilitative needs.

Regarding the use of Medication Assisted Treatment (MAT) in a juvenile specialized docket, there shall/should be no restrictions regarding the use of any legally prescribed medication that is FDA approved. Participants shall not be required to cease the use of a legally prescribed MAT as a condition of probation, for successful completion of the docket, visitation with children, or reunification.
3. **DIRECTIVES TO PARTICIPANTS AS TO THE TIME, MANNER, PLACE, AND FREQUENCY OF RANDOM DRUG TESTING:** A juvenile specialized docket may require participants to present themselves for drug testing at any time when requested by any authorized representative of the specialized-docket-treatment team. Both the participant and the participant's parent, guardian, or custodian shall comply with such requests, as long as requests are reasonably related to the participant's rehabilitative needs.
4. **SECULAR ALTERNATIVES:** If a juvenile specialized docket requires participation in a 12-step program as part of the requirements of participation, it shall permit participants to participate in a secular alternative and should refrain from requiring attendance at any non-secular 12-step program.
5. **DRUG TESTING OR THERAPY OF THE PARTICIPANT'S PARENT, GUARDIAN OR CUSTODIAN:** A juvenile specialized docket may require a participant's parent/guardian/custodian to submit to drug testing, participate in therapies as recommended by the participant's therapist, and/or be evaluated for appropriateness for individual psychiatric, substance use, or mental-health treatment and participate in and complete the recommended therapies. A specialized docket may require a parent to waive confidentiality with the providers of such therapies and permit the specialized docket to receive any requested information regarding such therapies. Such restrictions shall be reasonably related to the participant's rehabilitative needs.
6. **SEARCHES:** A juvenile specialized docket may require a participant and the participant's parent, guardian or custodian to sign conditions of community control or subject to court orders, including the waiver of the right against warrantless searches, as long as the participants knowingly, intelligently, and voluntarily sign the conditions. A juvenile specialized docket may conduct searches of participants who are not on community control or subject to court orders, as long as such searches conform to all constitutional prerequisites.

7. DUE PROCESS:

a. *Termination Hearings*

A juvenile specialized docket shall not terminate a participant unless providing notice of intent to terminate, a hearing, and notice of the right to be represented by an attorney. Said notices shall issue to the participant, the participant's parent, guardian, or custodian, and the participant's attorney of record. A participant may waive the right to a hearing, as long as the participant had the right to consult with an attorney and the waiver is made knowingly, intelligently, and voluntarily.

b. *Detention Sanctions*

A juvenile specialized docket may impose the suspended detention days, as set forth in the participant's dispositional orders, for noncompliance with specialized-docket orders. Any detention of a child must comply with the Ohio Rules of Juvenile Procedure.

Participants do not have the right to contest the imposition of sanctions that do not impact liberty interests. Adjustments in treatment activities are not sanctions.

8. **RIGHT AGAINST SELF-INCRIMINATION:** A juvenile specialized docket may require a participant and the participant's parent, guardian, or custodian to waive the participant's right to not incriminate themselves regarding violations of the rules of the specialized docket program. The juvenile specialized docket shall not require the waiver of the right against self-incrimination regarding potential or pending delinquency complaints. Statements made by a participant or the participant's parent, guardian, or custodian cannot be used as evidence in any criminal prosecution.

9. **INDIGENCY:** The United States Supreme Court has repeatedly struck down rules and practices that discriminate against defendants based solely on their inability to pay fines and fees. In *State v. Fugate*, 117 Ohio St. 3d 261, the state recognized the Equal Protection clause does not tolerate disparate treatment of defendants based solely on their economic status. With respect to specialized dockets, this means that candidates shall not be denied admission to the docket based on financial ability. The docket shall consider a participant and the participant's parent, guardian, or custodian's ability to pay fees and/or other financial obligations and make reasonable accommodations based on financial ability. Program materials and participation agreements should include these statements to ensure candidates are aware their admission is not predicated on their ability to pay when considering whether they should participate in the docket.

10. **OTHER CONSTITUTIONAL AND STATUTORY CONCERNS:** A juvenile specialized docket shall comply with all constitutional and statutory rights of the participants. Any rights permitted to be waived by the participants shall be waived in a manner ensuring the substantive due-process rights of the participant.

C. FAMILY DEPENDENCY SPECIALIZED DOCKETS

1. **RESTRICTIONS REGARDING GEOGRAPHICAL LOCATIONS AND INTERPERSONAL ASSOCIATIONS:** A family-dependency specialized docket may make restrictions on the access or contact participants have with certain geographic locations and certain persons or class of persons, if said restrictions are reasonably related to the participant’s rehabilitative needs.
2. **RESTRICTIONS ON PARTICIPANTS AS TO CONSUMPTION OF VARIOUS SUBSTANCES:** A family-dependency specialized docket may require participants to comply with the directives indicated for their prescribed medications or refrain from the use of certain otherwise legal substances or medications, if said restrictions are reasonably related to the participant’s rehabilitative needs.

Regarding the use of Medication Assisted Treatment (MAT) in a family-dependency specialized docket, there shall/should be no restrictions regarding the use of any legally prescribed medication that is FDA approved. Participants shall not be required to cease the use of a legally prescribed MAT as a condition for successful completion of the docket, visitation with children, or reunification.
3. **DIRECTIVES TO PARTICIPANTS AS TO THE TIME, MANNER, PLACE, AND FREQUENCY OF RANDOM DRUG TESTING:** A family-dependency specialized docket may require participants to present themselves for drug testing at any time when requested by any authorized representative of the specialized-docket treatment team. The participant shall comply with such request, as long as requests are reasonably related to the participant’s rehabilitative needs.
4. **SECULAR ALTERNATIVES:** If a family-dependency specialized docket requires participation in a 12-step recovery program, it shall permit participants to participate in a secular alternative and should refrain from requiring attendance at any non-secular 12-step program.
5. **WARRANTLESS SEARCHES:** A family-dependency specialized docket may require a participant waive the right to be free of warrantless searches as long as said waivers are knowingly, intelligently, and voluntarily made. Searches may include searches of the participant, which include observed drug screens and searches of a participant’s residence or property. Evidence collected cannot be used as evidence in any criminal prosecution or as evidence in the underlying abuse, neglect, or dependency matter, unless independently proven.
6. **DUE PROCESS:**
 - a. *Termination Hearings*

A family-dependency specialized docket shall not terminate participants unless providing notice of intent to terminate, a hearing, and informing the participant of the right to representation by an attorney. A participant may waive the right to a hearing, as long as the participant had the right to consult with an attorney and the waiver is made knowingly, intelligently, and voluntarily.

b. Jail Sanctions

A family-dependency specialized docket shall not impose jail sanctions for non-compliance until notice, hearing, and finding that a parent-participant is in contempt of court for failing to comply with the orders of the family-dependency specialized docket. Thereafter, the specialized docket may, as a sanction for non-compliance with orders of the specialized docket, reimpose any or all suspended jail time, as long as the participant is provided notice of a hearing and the right to representation by an attorney. A participant may waive the right to either the contempt hearing or the jail-imposition hearing, as long as the participant had the right to consult with an attorney, and the waiver is made knowingly, intelligently, and voluntarily.

Participants do not have the right to contest the imposition of sanctions that do not impact liberty interests. Adjustments in treatment activities are not sanctions.

7. **RIGHT AGAINST SELF-INCRIMINATION:** A family-dependency specialized docket may require participants to waive the right to remain silent and to not incriminate themselves regarding violations of the rules of the specialized-docket program. Statements made by a participant cannot be used as evidence in any criminal prosecution or as evidence in the underlying abuse, neglect, or dependency matter, unless independently proven.
8. **INDIGENCY:** The United States Supreme Court has repeatedly struck down rules and practices that discriminate against defendants based solely on their inability to pay fines and fees. In *State v. Fugate*, 117 Ohio St. 3d 261, the state recognized the Equal Protection clause does not tolerate disparate treatment of defendants based solely on their economic status. With respect to specialized dockets, this means that candidates shall not be denied admission to the docket based on financial ability. The docket shall consider a participant's ability to pay fees and/or other financial obligations and make reasonable accommodations based on financial ability. Program materials and participation agreements should include these statements to ensure candidates are aware their admission is not predicated on their ability to pay when considering whether they should participate in the docket.
9. **OTHER CONSTITUTIONAL AND STATUTORY CONCERNS:** A family-dependency specialized docket shall comply with all constitutional and statutory rights of the participants. Any rights permitted to be waived by the participants shall be waived in a manner ensuring the substantive due-process rights of the participant.