

RECOVERY COURT AND YOUR CLIENT

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Introduction

- That National Treatment Court Resource Center defines drug courts as follows: “Drug Courts are an innovative and effective solution to addressing substance use within the criminal court system.” See <https://ntcrc.org/what-are-drug-courts/>.
- Virginia Code Ann. § 18.2-254.1 defines and regulates Recovery Courts across the Commonwealth – this statute is known as the Recovery Court Act (formerly known: Drug Treatment Court Act).

Brief Overview of Rec. Ct. Dockets

- There are basically four distinct types of Recovery Court or Drug Court dockets:
 1. DUI Recovery Court (only one in the state - Waynesboro) – district court docket that monitors, post-conviction, DUI offenders through local Alcohol Safety Action Program
 2. Adult Recovery Court dockets (52 dockets – All of SWVA)
 3. Juvenile Recovery Court (3 dockets – one includes Lee, Scott, and Wise County)
 4. Family Recovery Court (5 dockets – one includes Giles Co.) – JDR dockets that aid in equipping parents with substance use treatment and parenting skills to promote long-term recovery, providing permanency for children, and enhancing possibilities of reuniting families within legal timeframes for child dependency cases.

History of Specialty Dockets in Virginia

- The 23rd Judicial Circuit (Roanoke area) was the first jurisdiction in Virginia to establish a “drug court.” This was done circa 1995.
- In 2004, the Virginia General Assembly passed the Drug Court Treatment Act (now VA Code 18.2-254.1). Goals for the legislation were rather concise:
 1. Reducing drug addiction and drug dependency among offenders;
 2. Reduce recidivism;
 3. Reduce court workloads and dockets;
 4. Increase and promote accountability amongst offenders;
 5. Better use of resources in the criminal justice system.

History, *cont'd.*

Fast forward to April 2012, the National Center for State Courts completed an Impact Study for Virginia Adult Drug Treatment Courts. This study made several findings that are still relevant today:

1. As of Dec 31, 2009 there were approximately 2,459 drug courts nationwide
2. Average docket loads for actual drug courts varied – 17% of drug courts had 15 or less participants; 17% of drug courts had 16 to 30 participants; 25% of drug courts had 31 to 45 participants; and so on. The largest drug court found in this study had up to 150 participants.
3. Types of charges, at that time, that were consistently present in Drug Court programs:
 - Drug Possession
 - Property crimes
 - Probation violations
 - PWIDs
 - DWI/DUI
 - Prostitution
 - Domestic Violence

History, *cont'd.*

4. Felony Drug Courts, at that time, had an average of six people on staff. This includes judges, drug court administrators, prosecutors, probation officer, law enforcement officers, and defense attorneys.
5. At that time period, 4.2% of participants were under 21 years old while the majority of participants, statewide, were 21 to 30 years old (36.3%).
6. Additionally, there was a mean of 391 hours of therapy and support service hours completed by participants and a median of 326 hours in the same category.

Recent Data Collection

Moving on to November 2016, the House Appropriations completed a fiscal study of Drug Court programs in Virginia. Here were some relevant findings:

1. No new state funding to court treatment programs from 2012 to 2016. However, the General Assembly in 2016 providing additional funding in the amount of \$300,000.00 in FY 2017 and \$960,000.00 in FY 2018.
2. As of the study in 2016, Drug Courts, in order to receive funding had to meet minimum caseload thresholds, provide a 25% local match, and comply with regulations set by the Supreme Court of Virginia.
 - Local funds would go towards salaries of the Drug Court Coordinator, probation officers, Community Service Board employees/staff, and administrative assistants. It was also applied to lease costs, utility costs, drug testing supplies, and treatment services.
3. There were a total of 38 drug treatment courts in Virginia
 - 30 adult drug treatment court programs for adults
 - 8 juvenile drug treatment courts

Recent Data, *cont'd.*

4. In FY 2015, only 41% of participants graduated from a drug court treatment program
 - In that year, Buchanan County had the highest graduation rate (almost 70%) while Bristol had the lowest (around 15%).
5. In 2016, re-arrests for participants was at 11%. Relating back to the 2012 study, graduates of a program had a 5.6% felony recidivism rate.
6. This study also incorporated data from the 2012 study and revealed there was an average savings of \$19,000.00 per participant as it relates to those who go through with traditional case processing.
7. <https://www.vacourts.gov/courtadmin/aoc/djs/programs/sds/programs/rc/home> - website for this information and more.

2024 Annual Report

- Found on the Supreme Court of Virginia website: https://www.vacourts.gov/static/courtadmin/aoc/djs/programs/sds/programs/rc/resources/2024_rc_report.pdf
- Biggest highlights involve changes to Best Practices models, increased auditing activity, and an increase in actual participation.
- Opioid Abatement Authority (Tazewell County has its own Committee to filter through projects that request local funding as well – Recovery Court in Tazewell County received local support through some of the Opioid case settlement money).

2024 Report, *cont'd.*

The Virginia Recovery Court Dockets Fiscal year 2024 Annual Report revealed positive progress. Here were some of the relevant findings:

1. Virginia Adult Recovery Treatment Court dockets save \$19,234 per person (same as 2023) as compared to traditional case processing. Estimated cost savings in FY 24 was \$4.3 million (down from \$4.8 million)
2. 510 participants successfully graduated from recovery court programs.
3. There was a reported 1,378 active participants in FY 2024. (Increase of 7.4%).
4. Juvenile dockets reports 33 active participants (increase of 65% since FY 23) and family treatment dockets had 56 participants (increase of 43.6% from FY 23).

2024 Report, *cont'd.*

5. The 3 year re-conviction rate for those who successfully completed an adult treatment program in FY 2021 was 18.5% (in FY 2020 it was 22.1%).
6. Most frequently used drugs by participants: 1. Opiates (291 uses); 2. Marijuana (273 uses); 3. Methamphetamine (243 uses); 4. Cocaine (234 uses); and 5. Alcohol (214 uses) (**Alcohol and Cocaine switched places between 2023 and 2024**).
7. There were a total of 44,713 negative screens and a total of 6,723 positive screens in FY 2024.
8. Most common offenses were Probation Violations (32.3%); Possession of Drugs (31.2%); and, Larceny offenses (5.4%).

Recovery Court Operations, Rules, and Laws

- RANT Assessment:
 - Risk and needs Triage is a tool used by Recovery Court staff to be used prior to placement and dispositions of cases.
 - All Virginia adult Recovery Courts are required to complete the RANT assessment and the results are then entered into the specialty docket database.
 - This assessment places a score for the offender – one of four categories. The assessment will go over history and present use of substances, social history questions, education, drugs of choice, employment, treatment/medical history, and behavioral history.

Recovery Court, *cont'd.*

- Rule 1:25 of the Supreme Court of Virginia – Specialty Docket
 - This rule helps define what a “specialty docket” is and what it does
 - Only permits three types of specialty dockets: 1. Drug treatment courts/Recovery Courts pursuant to Virginia Code Ann. § 18.2-254.1; 2. Veterans dockets; and 3. Behavioral/mental health dockets.
 - Technically, treatment courts are the sole responsibility of the locality and the local court. However, it seems that the General Assembly will continue funding these programs for the foreseeable future.
 - The specialty docket codes enacted had a name change in 2024 - § 18.2-254.1 is now the “Recovery Court Act” and the main specialty docket is now referred to “Recovery Court.”

Recovery Court, *cont'd.*

- § 18.2-254.1(F) specifically establishes a statewide Committee to collect data and establish standards for Recovery Courts across the Commonwealth.
- § 18.2-254.1(G) specifically establishes a local advisory Committee to help guide and direct individual, local Recovery Courts. Its task is to “ensure quality, efficiency, and fairness in the planning, implementation, and operation of the recovery court...” The local Committee is also tasked with creating the criteria for eligibility and participation of an offender. The local Committee is comprised of a Commonwealth’s Attorney, a defense attorney, DoC, DJJ, and community based probation representatives, DBHD and DSS representative, the County Administrator, and others.
- The City of Bristol and Tazewell County have Recovery Courts specifically created by statute. § 18.2-254.1(R).

Case Law Development

- What happens when your client messes up in Recovery Court and that also violates a term of a probation revocation order from an older case (not included in Recovery Court)? What happens if your client receives a new charge in Recovery Court? **The Court is to judge successful completion; you should pay attention to the words used in the Recovery Court Plea Agreements.**
- “In this case, the court finds the plea agreement to be distinct and explicit in its terms. **The plea agreement distinctly indicates that "successful completion" of the recovery court program is left to the sound judgment of the Culpeper County Recovery Court.** This court will execute the plea agreement terms on August 26, 2025. What merits observation are the undisputed factual findings, including, without limitation, that the Defendant received a new criminal conviction while in the recovery court program, has violated several provisions of the May 2021 order concerning good behavior by obtaining a new criminal conviction and consuming alcohol, and was repeatedly dishonest with recovery court staff, and still graduated successfully. A crime victim in Orange County still has an outstanding restitution obligation because of the Defendant's actions. The presence of a crime victim underscores that substance abuse is not a victimless crime. However, the Defendant is considered to have "successfully completed" the Culpeper County Recovery Court.”
 - ***Commonwealth v. Brown*, Nos. CR18A-435- 03, CR18A-442-03, CR23-403-01, 2025 Va. Cir. LEXIS 187, at *8-9 (Cir. Ct. Aug. 4, 2025).**

Case Law Development, *cont'd.*

Wise County Case - ***Riffle v. Commonwealth*, No. 0034-24-3, 2025 Va. App. LEXIS 304, (Ct. App. May 27, 2025).** Your client cannot get credit for time for the days your client served in Recovery Court.

- “Code § 53.1-187 neither requires nor authorizes a circuit court to reduce a sentence, but the statute does require the circuit court to give credit for any time spent in pre-trial confinement. Code § 53.1-187 (“When entering the final order in any such case, the court shall provide that the person so convicted be given credit for the time so spent.”). Furthermore, recovery courts—like the drug court program in Russell County—are neither “a state hospital” nor “a state or local correctional facility.” *Id.* Rather, recovery courts are “specialized court dockets within the existing structure of Virginia’s court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases.” *Harris v. Commonwealth*, 279 Va. 541, 544, 689 S.E.2d 713 (2010) (quoting Code § 18.2-254.1(D)). In this case, Riffle was not confined or detained within the meaning of Code § 53.1-187 during his time in the drug court program. Therefore, Riffle was not entitled to a credit for the time he spent participating in the drug court program, and the circuit court did not err in refusing to credit Riffle for that time.”
 - ***Riffle*, 2025 Va. App. LEXIS 304, at *6-7.**

Case Law Development, *cont'd.*

What due process is your client afforded in a Recovery Court termination hearing? *IT DEPENDS...*

- “In the instant case, the appellant's only objections in the circuit court revocation proceeding were directed at the process to which he claimed he was entitled *in the drug court termination proceeding*. ” and the defendant's liberty interest “could be revoked only by order of the circuit court.” *Id.* Because the liberty interest at issue could be revoked only by the circuit court in a revocation proceeding, it was the circuit court in which the appellant was entitled to exercise his due process right to be heard regarding the termination if not afforded that opportunity in the drug court hearing. *See id.* Consequently, the appellant's reliance on *Harris* for the proposition that he was entitled to more process in the drug court proceeding is misplaced, and that decision does not entitle him to relief in this appeal.” ***Washington v. Commonwealth*, No. 0710-16-1, 2017 Va. App. LEXIS 288, at *12-13 (Ct. App. Nov. 14, 2017).** Due process, under *Harris*, does not necessarily apply to every aspect of termination proceedings. However, under the same *Harris* decision, the Court specified that the Defendant has the right to participate in termination decision, present evidence, etc.

Case Law Development, *cont'd.*

***Harris v. Commonwealth*, 279 Va. 541, 689 S.E.2d 713 (2010). Defendants have the right to participate in a termination hearing.**

- “We agree with Harris and the Commonwealth that Harris had a liberty interest while he was participating in the drug treatment court program as part of the plea agreement accepted by the trial court. Over 30 years ago, the United States Supreme Court declared that persons on parole or probation enjoyed a conditional liberty interest. [*Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593, 33 L. Ed. 2d 484 \(1972\)](#); [*Gagnon v. Scarpelli*, 411 U.S. 778, 782, 93 S. Ct. 1756, 36 L. Ed. 2d 656 \(1973\)](#).” *Id.* at 545.
- “Consequently, because Harris had no opportunity to participate in the termination decision, the trial court's refusal to consider evidence of the reasons for termination from the program when deciding whether to revoke Harris' liberty and impose the terms of the plea agreement deprived Harris of the opportunity to be heard regarding the propriety of the revocation of his liberty interest. That decision was error.” *Harris v. Commonwealth*, 279 Va. 541, 546, 689 S.E.2d 713, 716 (2010)

Case Law Development, *cont'd.*

Does double jeopardy apply to a client's revocation hearing IF evidence presented at revocation hearing was from a Drug Court/Recovery Court Program that ended with a dismissal of the charge? **PROBABLY DON'T KNOW YET...**

- *McCauley v. Commonwealth*, No. 0451-21-2, 2022 Va. App. LEXIS 133, at *9 (Ct. App. May 3, 2022). Court of Appeals was asked to figure this question out but decided the objections made at the hearing and the record was not good enough for them to be reasonably certain of the law that would apply. The objection at the hearing in Circuit was not timely or reasonable enough.

Case Law Development, *cont'd.*

- ***Maxey v. Commonwealth*, No. 1725-22-2, 2023 Va. App. LEXIS 658, at *5-6 (Ct. App. Oct. 3, 2023). A Defendant's "desire" to successfully complete Recovery Court is NOT, by itself, a mitigation factor that can tip the scales on a probation violation revocation.**

Practice Tips to Consider

- Use common sense when pushing a client towards a recovery court program.
- The information from the 2012 Study is still applicable when looking at the size of the Drug Court / Recovery Court program prior to advising a client – the larger the group, then the larger of potential problems. The 2012 study advised that drug court programs with less than 125 participants was a safer docket load and that the smaller caseloads tended to produce better results.

Practice Tips, *cont'd.*

- Know and understand your local Recovery Court documents. There are, in almost every adult Recovery Court program in Virginia, memorandums that participants are required to sign, a policy manual that is required to be reviewed, and there are also local advisory boards/committees that help guide the direction of the individual treatment program.

Practice Tips, *cont'd.*

- Review stats that get released by the Supreme Court each year on Recovery Court programs. For example, if a client has a possession charge, then his chances tend to be much higher to be accepted into a treatment program than if the client has a PWID or Domestic Violence charge. Your client's age will also have an impact just given what statistics exist showing acceptance rate and success rate for a treatment program. Another random factor to consider is if the client is single (most participants are single having not been married and divorced prior to entry). A final factor that every attorney should review with the client before entry of a treatment court program is level of education – the majority of participants either graduated high school, obtained a GED, or have some college.

Practice Tips, *cont'd.*

- Every attorney should thoroughly vet a client's ability to have reliable transportation. If you, as a lawyer, get a client into a Recovery Court program but the client has no reliable source of transportation then you are setting your client up for failure.
- Attorneys should familiarize themselves with the RANT assessment – they should advise their client on what this is and what type of questions will be asked during this assessment.

Practice Tips, *cont'd.*

- Attorneys should evaluate the utility of Recovery Court treatment program compared to the client's history of substance use. Although every case is different, certain dependencies are regularly treated in treatment court programs while other substances have not been heavily studied/researched through Recovery Court programs.

Practice Tips, *cont'd.*

- If you have a client that has status as a veteran or current service member, then you should at least discuss an option of Recovery Court or Treatment program. There is a push from the Supreme Court and the General Assembly to enroll veterans in these programs should the need present itself. Also, attorneys should familiarize themselves with the local referral forms utilized by the Courts – **referral forms should be asking or inquiring as to military status of the Defendant.** If they are not, then it should be brought to the attention of the local judge or local drug court coordinator.

Checklist for Attorneys

- **“GATE KEEPER”** - Advise client that Commonwealth’s Attorney is the “gate-keeper” and by statute he or she will have the final say on a person’s eligibility for entry into Recovery Court.
- **“A RAP SHEET, BUT NOT THE MUSICAL KIND”** - Advise client on what charge(s) or prior conviction(s) will prevent or prohibit consideration or acceptance into a Recovery Court (e.g. some counties will not allow individuals with prior distributions, some counties will not allow individuals with certain number of felony convictions; etc.).
- **“PLAYERS IN THE GAME”** - Advise client of who all is involved in Recovery Court (specific Judge, specific prosecutor, specific defense attorney, probation officer, recovery court coordinator, treatment team member, peer recovery specialist, etc.).

Checklist, *cont'd.*

- **“THAT ESCALATED QUICKLY”** - Advise client that they can still end up in jail or incarcerated for extended periods of time in Recovery Court if they violate terms and conditions (e.g. sanction for lying about recent substance use).
- **“READ THE MANUAL”** - Advise client that there is a Recovery Court Manual (each specific Recovery Court is likely different) and that the client is not only responsible for the physical copy of the Manual but is likewise responsible to read it and understand it. The Manual outlines the policies and procedures in place for each respective Recovery Court.
- **“LEVEL UP”** - Advise the client that there are multiple phases or stages in Recovery Court and try to provide a rough estimate on how much time to expect to be in the program (varies throughout Virginia).

Checklist, *cont'd.*

- **“FROM WALKING TO WHEELS”** - Advise the client that reliable transportation and a stable home location is like necessary to be accepted.
- **“NO WRONG ANSWERS”** - Advise the client that he or she will likely undergo a pre-screening process with a coordinator, recovery specialist, or other provider to gather health, social, and criminal history information prior to final acceptance into the program. This process typically involves one to two meetings.
- **“MY HYDRATION EVALUATION / A “RANDOM” CHARACTER ANALYSIS”** –Advise the client that there will be many opportunities in Recovery Court to prove your sobriety and ability to make really good decisions.

Checklist, *cont'd.*

- **“A PLATE OF OPTIONS WITH A SIDE OF TRY”** – advise the client that they will be required to participate in various recovery-related activities throughout the week and that there will be a plethora of options to decide especially as it relates to the types of recovery processes and groups (e.g. AA, NA, Celebrate Recovery, etc.).
- **“THE LOVE POLICE”** - Advise the client that during their time in Recovery Court that the Judge and/or Recovery Court Team has the final say on who they are allowed to have contact without, what social media platforms are acceptable, what work schedules may look like, and the number of recovery-related activities that must occur throughout the week.
- **“YOU DON’T [HAVE TO] GO HOME, BUT YOU CAN’T STAY HERE”** - Advise the client that if he or she is ultimately recommended for removal for multiple violations, new charges, or other inappropriate behavior that they have the right to counsel, they have the right to have a hearing on the removal and present evidence and call witnesses/cross-examine witnesses, or they have the right to voluntarily withdraw from the program.
- **“CELEBRATE RECOVERY”** - Advise the client on what outcomes are possible if the participant is successful (e.g. dismissal, suspended time only, referral to alternative sentencing program in lieu of incarceration in a jail, etc.).

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Questions????