

## Statewide FTC AC Frequently Asked Questions

**This document is not intended to be legal advice, but a starting place when considering common issues that come up in Family Treatment Courts. Please consult your local advisory committees and your statewide FTC Advisory Committee representatives when deciding on your FTC's policies and practices.**

### Ex Parte Communication

#### 1. Who can attend Family Treatment Court staffing?

The pre-court staffing is a confidential non-hearing meeting typically restricted to those who have signed the Family Treatment Court Memorandum of Understanding (MOU). The substance use disorder and treatment related information that is shared in these meetings is protected by Oregon and federal law. Before that information can be shared, the participant must sign a release of information identifying the individuals or entities allowed to receive disclosures of that information. The release of information allows protected information to be shared with those designated individuals in the staffing meeting.

The staffing does not include participants and is for the FTC team to discuss participant progress, phases, and next steps. Participants must have signed a release of information including all providers and parties attending the staffing. Other professional parties to the dependency case may also attend if the participant has signed a release of information. Statewide professionals conducting an audit or review, as well as staff conducting a peer review or evaluation may attend staffing without a release of information by the participant so long as they sign a confidentiality agreement.

#### 2. Who can attend Family Treatment Court hearings?

While the family treatment court hearing is meant to focus on the participants' treatment, rather than the dependency case, the courtroom is open, and parties from the dependency case may attend. The courtroom is also open to supports for participants. Only the participants' treatment should be addressed. Should a party in the dependency case wish to share information, they should do so in the dependency case. While there is naturally some overlap, parties and participants should take care to keep the cases separate, and not use FTC for dependency case discussions, and should not use the dependency case for FTC discussions. See ORS 419A.252, ORS 419A.255 relating to confidentiality.

#### 3. What is the role of the coordinator?

The local FTC coordinator is an Oregon Judicial Department (OJD) employee. As an OJD employee, the coordinator needs to take special care to ensure they are not having contact with participants about substantive matters in the FTC nor the dependency case, unless the participant's attorney and other members are present.

The FTC coordinator can work with participants regarding the FTC program, including providing orientation, FTC process questions, help with scheduling, updating information in the Specialty Court Case Management System (SCMS), assisting participants in resolving barriers to FTC tasks, and general coordination. If a participant contacts the coordinator about another issue, the coordinator should document the nature of the contact in SCMS and follow local practice to ensure parties are notified and aware of the contact.

Coordinators are able to file court orders and other documents including hearing notices but should not file adversarial legal documents in the case such as motions or reports. Motions and other substantive legal documents, outside of court orders, should be filed in the dependency case by parties to the case.

OJD has developed a document entitled "Role of the Specialty Court Coordinator" linked [here](#). Many FTC coordinators are coordinators for more than one treatment court program or have other duties in the larger court or are otherwise not full time. Coordinators are also able to work with their Judge and TCA to apply for and manage grants supporting the FTC.

#### 4. What should be covered in FTC staffings and court?

Only participant and FTC specific discussions should be taking place in FTC staffing and court. Additionally, any FTC policy or process discussion should be reserved for governance meetings.

#### 5. What if something relating to the dependency case is raised during an FTC staffing or court?

Because not all parties to the dependency case are generally present (including the judge in parallel courts), if something relating to the dependency case is raised the judge should stop the person who is sharing, and advise the participants, attorneys and others that the focus of the FTC is the person's treatment, not the details of the dependency case. The judge should inform the individual(s) sharing the information that they need to disclose the information in the dependency case, and raise the issues in that venue rather than in the FTC.

### **Specialty Court Case Management System (SCMS) and the Case Record**

#### 1. Who has access to SCMS and when?

The Trial Court Administrator (TCA) is responsible for the records in SCMS, including FTC records. The TCA is responsible for determining who may access SCMS and may delegate that task to the FTC coordinator if the coordinator is a court employee. As with staffings, only

individuals allowed access by the release of information signed by the participant can have access to that participant's profile in SCMS. Access to the participant's profile is only allowed so long as the participant is in the program because that is when the participant's consent expires. The SCMS access guidelines should be included in the FTC policy and procedure manual and discussed by the local court governance committee.

2. Does material in the FTC SCMS record also get filed in the dependency case?

No. Under Oregon law, the participant record in SCMS must be kept separate from the case file. If someone (treatment provider, ODHS, attorney) files a document in the participant's record in SCMS for purposes of the FTC, it does not also exist in the dependency case in Odyssey. Providing documents in SCMS does not meet the discovery requirements of the dependency case. If the party would like the Judge to also consider it in the dependency case, it is their responsibility to file it in that case as well.

It is against the SCMS agreement signed by all users to download any documents or reports from the SCMS record and discover them into the dependency case record. Parties to the FTC can summarize the document, request it from the originator, or otherwise obtain the document outside of SCMS.

3. Where should motions, petitions, and other legal pleadings or exhibits be filed?

Legal documents should be filed in the dependency case.

4. If I file something in the participant's FTC profile through SCMS, can I also file it in the dependency case?

Yes. If an attorney, participant, or other party files a document from their own organization (or something they obtained on behalf of a participant) they can file it in the dependency case.

5. How should a party handle information and documents in a parallel court?

A parallel court structure includes one judge hearing the juvenile dependency case and a different judge presiding over the FTC. If a party wishes to introduce information into the dependency case, they must do so independently of the FTC.

6. How should a judge or party handle information and documents in an integrated court?

Judges and parties should keep the focus on the participant's treatment during FTC proceedings and on the dependency case during dependency hearings. Documents must still be filed separately in both cases. Parties and judges should ensure ex parte contact is not occurring, and that all parties are present if issues in the dependency case come up in court. See Oregon Code of Judicial Conduct, Rule 3.9 and Oregon Rules of Professional Conduct Rules 3.5 and 4.2.

## **Successful Dismissal Prior to Graduation**

1. If a dependency case is closing prior to the FTC graduation can a client successfully graduate from the FTC?

Sometimes a family's dependency case is dismissed prior to the parent in the FTC achieving graduation for a variety of reasons. If the children are in home with the parent at the time of dismissal, this is still considered a successful exit from the Family Treatment Court, as the FTC's goals of reunification and safety have been achieved. It is very important that this successful exit be entered into SCMS as 'successfully completed'. Families who are able to reach their goal of dependency case dismissal are successes.

FTCs are encouraged to include links to community supports early in the phases to prevent as much disruption in supports as possible due to families achieving safety and stability earlier than expected.

In rarer cases, the FTC may have a participant who achieved recovery and stability through their FTC engagement but was unable to achieve reunification for other reasons. These special cases can be considered through the lens of the goals of the FTC to determine if the participant was successful in the program and achieved what was possible for safety and stability given the limitations.

2. Can participants continue in the FTC after their dependency case has been dismissed?

Different FTCs have chosen different processes when a dependency case is ending prior to a participant's graduation from the FTC, including developing and fostering connections to alumni groups, connection to recovery community supports, and completion certificates.

Participants should not continue to participate in FTC if there is no open dependency case. FTCs should consider the ethics of requiring participants without an open case before the court to engage in services such as screens, court appearances, or other activities that could potentially result in a new legal case before the court. Additional factors to consider include the fiduciary responsibility of the courts in funding services for people without a case before the court and that participant representation ends 30 days following dismissal. This includes anything associated with defense representation, including OPDC case manager services.

## **Terminating a Client from the FTC**

1. If a participant is not successfully engaged in the Family Treatment court, how should it be handled?

It is important to keep in mind that there is no better avenue available to dependency families to address substance use than the FTC. One motto to keep in mind is that it should be easy to enter the FTC and difficult to leave. Some things to consider before terminating a client include:

FTCs should have a process for termination that includes participants being provided notice and an opportunity to be heard regarding their termination from the FTC.

It is recommended that FTCs have an exit process that includes a 'cool down' period for participants who have indicated their intent to withdraw from the FTC that includes an opportunity to discuss the decision with their attorney.

If a participant has an outstanding warrant(s), there could be a timeline of continuing them in the FTC prior to considering termination. Any timeline should be included in the written agreement the participant agrees to when entering the program. There are SCMS updates in process to create a filter specifically for participants on warrant for more than 60 days allowing FTCs to keep track of these participants without having them included automatically in the data dashboard.

### **Americans with Disabilities Act (ADA) and FTCs**

1. Can FTCs restrict or suggest treatment modalities, levels of treatment, or medication choices related to treatment?

No. Judges and coordinators are not licensed to practice medicine. All participants in FTCs should be assessed by a licensed treatment provider to determine what level of treatment they are recommended to engage in and with a physician to determine if Medically Assisted Treatment (MAT) is appropriate and if so what kind of MAT the participant is prescribed. Substance use disorder is a medical diagnosis and people with diagnosed substance use disorder are entitled to protections under the ADA regarding their medical decisions.

2. Can an individual with a disability, including cognitive and/or behavioral health disabilities, be excluded from participation in an FTC on the basis of that disability?

No. The Oregon Judicial Department (OJD) does not discriminate on the basis of disability in admission to, access to, or operations of its programs or services. Under Title II of the ADA, each OJD program or service will be accessible to and usable by qualified persons with disabilities. The OJD will make reasonable changes to its policies and procedures for qualified persons with disabilities unless doing so would cause a change in basic OJD programs or services or would result in unreasonable financial or administrative burdens. Each court will provide ADA accommodations to participants in court proceedings with disabilities at state expense. This includes, but is not limited to, individuals with cognitive and/or mental disabilities, learning disabilities, PTSD, and brain injuries.

OJD may offer accommodations including, but not limited to: providing auxiliary aids and services to increase effective communication, staff assistance to guide participants to courtrooms and other areas in the courthouse, frequent breaks, slow-paced hearings,

additional time and patience, allowing personal companions to sit and assist person with disabilities with tasks in courtrooms including taking notes, guiding the person to documents, and other tasks as agreed to by the judge presiding over the case. CART (communication access real-time translation / real-time transcription) is also an option to assist persons with communicating with the court and may be provided along with a Companion Support Service Provider (SSP) persons who assist with guiding and providing visual, environmental, and situational information and other services.

### **Funding for Family Treatment Courts**

#### 1. How are FTCs in Oregon currently funded?

Each FTC has a different constellation of funding, but there are three main sources of base funding for FTCs:

- (1) Special Appropriation Funding: this is general budget funding from the legislature to support Family Treatment Courts. This began in 2021 when the legislature set aside a certain amount of funds (HB 5006) to support existing and expanding FTCs. A part of these funds is disbursed every biennium to support named FTC courts and participant funds through ODHS. This funding currently supports Coordinator positions for four courts as well as participant support funding allocated to ODHS.
- (2) Criminal Justice Commission (CJC) Funding: this is grant funding from the CJC that supports both Coordinator positions as well as treatment costs and other approved costs. CJC awards can be made to the Court directly or to the county or to both, depending on what the funding is for. Courts must apply every two years for general CJC funding (current period ends Dec. 31<sup>st</sup>, 2025). CJC also has yearly implementation grants for specific projects that FTCs can apply for.
- (3) Office of Juvenile Justice and Delinquency Prevention (OJJDP) Funding: this is a national grant from OJJDP that OJD was awarded in 2020 to support the expansion of FTCs in Oregon. The grant sunsets in September of 2024. The grant has supported a statewide position at OJD as well as participant supports, training for FTCs, peer reviews, and conference costs.

#### 2. How is funding going to change in Oregon in the next biennium (2025-2027)?

The 2024 HB 5204 provided general funding for some CJC funded coordinator positions, and the Advisory Committee's goal is to have all FTC Coordinator positions funded legislatively beginning in the 2025 biennium. FTCs will receive updates related to progress regarding this goal.

#### 3. What other funding exists for FTCs?

There are several other funding sources for individual or collaborative FTCs. These include cyclical yearly grants such as the OJJDP federal grant that can be awarded to FTCs individually or statewide, as well as the SAMHSA Grants to Expand Substance Use Disorder Treatment Capacity in Adult and Family Treatment Drug Courts (Short Title: SAMHSA Treatment Drug Courts) that both open every year and are very large multi-year grants to small local grants through community organizations like Rotary or other groups. Some grants have requirements for matching and reporting, if you are applying for a grant that would require OJD to manage or match funds please be sure to consult the OJD Grants office. Some grants can be awarded to FTC treatment providers or other partners to support FTC participants and services. If you would like assistance in locating or applying to any grants for your FTC, please reach out to the OJD statewide FTC Analyst, [justine.kilsby@ojd.state.or.us](mailto:justine.kilsby@ojd.state.or.us), for support.