

# SOUTHEAST REGIONAL DUI TREATMENT DOCKET (SERDTD)



## FOR REPEAT OFFENSE IMPAIRED DRIVING CASES

## POLICY AND PROCEDURES MANUAL

## **I. INTRODUCTION**

This Policy and Procedures Manual provides an overview of the Southeast Regional DUI Treatment Docket (“SERDTD”), a DUI treatment program in Orange, Windham, and Windsor Counties, Vermont. (It includes three attachments: #1 SERDTD Team Release; #2 SERDTD Policy on Jail Sanctions; #3 SERDTD Termination Protocol.) The SERDTD combines substance abuse intervention, enhanced probation supervision, and regular judicial oversight of repeat offense impaired drivers. The SERDTD is a voluntary, post-conviction accountability program -- the criminal charges will not be dismissed upon successful completion of the program.

## **II. MISSION STATEMENT**

The mission of the SERDTD is to increase public safety and reduce recidivism by providing coordinated, comprehensive, and intensive treatment, supervision, and judicial oversight of high-risk DUI offenders.

## **III. GOALS**

The goals of SERDTD are: 1) participant sobriety and recovery from substance dependence and addiction; 2) reduction in recidivism rates; and 3) enhanced public safety.

## **IV. DEFINITIONS**

- A. SERDTD or Program Team (“Team”). The SERDTD treatment and policy team consists of the following individuals: presiding judge, court coordinator, the state’s attorney, a defense attorney, a treatment provider, probation and parole, and a peer recovery support specialist.
- B. Case Manager. The Case Manager oversees the coordination of treatment and other services to all SERDTD participants.
- C. Court Coordinator. The Court Coordinator is responsible for the general administration and ongoing development of SERDTD.
- D. Phases. Phases contain the program and treatment goals a SERDTD participant must achieve to graduate from the program.
- E. Referral Process. The period following the initiation of a referral to sentencing into the program when a participant learns about and participates in a screening and assessment to determine clinical eligibility.
- F. Releases. Forms signed by a participant waiving confidentiality among team members (Attachment #1) and treatment providers to allow communication about the participant’s treatment and progress in the program.
- G. Incentives. Benefits or rewards given to a participant by the Judge to encourage positive and progressive behavior by the participant.

- H. Treatment Response. A change in treatment that is necessary to address a participant's behavior. An example of a treatment response is increased testing or counseling sessions. Treatment responses are not considered a sanction.
- I. Sanctions. Judicially ordered consequences for non-compliant behavior by program participants. Examples include verbal reprimand by the Judge; spending a day observing court; or writing an essay explaining their non-compliant behavior. Sanctions can include a short term of incarceration. (Attachment #2)
- J. Participant Requirements. Participants are provided with the Participant Handbook, which is reviewed with them by the court coordinator and their attorney. The Participant is also sentenced to probation with specific conditions of probation for the Program and will sign a SERDTD Contract at sentencing. The Participant Handbook, the probation order, and the Contract set forth the expectations for participation in SERDTD.
- K. Treatment Provider. The clinician providing physical and/or mental health treatment or services to a participant in the program. Treatment providers include the Case Manager, DOC Substance Abuse providers, a participant's primary care and/or other treating physician(s), and counselors.
- L. Legal Eligibility. An initial determination made jointly by the State's Attorney and Defense Counsel finding a participant is eligible based upon the charges pending, age and residence of the participant, and any other information known that is applicable to eligibility criteria.
- M. Clinical Eligibility. A determination based upon risk screening and a clinical assessment made by a licensed clinician indicating a participant is clinically appropriate to enter the program. Clinical eligibility requires a moderate to severe substance use disorder diagnosis.
- N. Continuing Care. A component of reporting and/or services available to a graduate of the SERDTD.
- O. Referral Form. The form efiled in Odyssey (the Courts electronic filing system) by a referring attorney to initiate a screening and the beginning of the Referral Process. A Referral can also be made verbally in court on the record followed up by a referral form efiled in Odyssey. Once initiated in Odyssey either verbally or through efiled a referral notification appears in the SERDTD automated Data Management Information System (DIMS) and the referral process begins.

## V. PROGRAM DESCRIPTION

A. Eligibility. SERDTD is not designed for all DUI offenders. It is geared to repeat offenders, **18** years of age or older and who are at the moderate to severe end of a substance use disorder as described in the DSM-V. It is a voluntary program for participants who have the desire and capacity to address their substance use dependence and choose to adhere to the strict requirements and demands of the program. Health insurance is required and may be obtained with support from the case manager.

Legal Eligibility: Offenses that qualify for consideration for SERDTD are:

- a. DUI-A/D Third Offense or greater (or incident);
- b. DUI-A Second Offense with a BAC at any time of at least .15; DUI-D Second Offense involving an illicit substance;
- c. DUI-A Second Offense with a prior DUI charge that was reduced to a non-DUI conviction (i.e., this is a 3<sup>rd</sup> alcohol related offense); and DUI-A/D First Offense when accompanied by two or more violations of court orders pertaining to alcohol or drugs.

Offenses that involve death or serious bodily injury may not be eligible for participation in SERDTD. Participants with unresolved charges may be precluded from enrollment in the program. Individuals who meet the criteria above and who live in Orange, Windham, or Windsor Counties, in an area supervised by the Brattleboro, Hartford, or Springfield Probation and Parole Offices, may seek to enroll in SERDTD.

Clinical Eligibility: Participants must be at the moderate to severe end of a substance use disorder as described in the DSM-V. The Court Coordinator will conduct the Impaired Driver Assessment (IDA) and the Michigan Assessment-Screening Tool (MAST) risk/needs screening tools. Individuals scoring high/high or moderate/high on the IDA and who are also clinically assessed to have moderate to severe substance use disorder are eligible for the Program.

B. Sentence Structure. SERDTD is a post-conviction program for offenders placed on probation. The suspended portion of the sentence should have a minimum sentence of at least 15 months and a maximum sentence of at least 24 months. The imposed (split) portion of the sentence must comply with statutory requirements but cannot exceed 90 days. The duration of probation supervision shall be until further order of the court.

C. Referral Process. Once an entry order for a referral is made in Odyssey either through submitting a referral form or making a verbal referral to the SERDTD on the record the Court Coordinator will conduct a screening. This process will involve collecting biographical, contact, employment, family, housing, and transportation information. Additionally, the individual referred will receive an orientation by the Court Coordinator or designee. At the time of the orientation, a baseline substance use screening will be performed, and a clinical assessment will be scheduled.

D. Program Expectations. SERDTD requires abstinence from alcohol and regulated drugs not prescribed or ordered by a doctor. The consumption of alcoholic beverages or the use of illegal drugs or other mind-altering substance creating impairment is not permitted. Any prescription medication taken must be authorized by a medical doctor and reviewed with the treatment provider and case manager. A medical marijuana card does not satisfy program requirements for use of marijuana. Participants cannot consume a regulated drug without a doctor's written order and treatment plan, including dosage amounts. The

participant will sign a release for the physician to communicate with the Team. Per the standard program conditions of probation, participants will not leave the State of Vermont without written permission from the assigned Docket Probation Officer. Authorization for New Hampshire Treatment appointments, grocery shopping and other essential errands may be issued by your probation officer. For all other requests, participants shall complete the SERDTD Travel Authorization Form and submit it to their Docket Probation Officer at least two weeks prior to any proposed non-emergency travel. Requests will be assessed on a case-by-case basis and will depend on several factors, including the participant's number of sober days, program phase (travel is typically not authorized in Phases 1-2), compliance with the program and input from the participant's treatment provider. (revised 5/9/24)

D. Right to Decline Enrollment. The SERDTD reserves the right to decline eligibility and enrollment to any person, and specifically if the person poses a risk to the program, a Team member, or to the public, or if the participant is unable to follow the requirements of the program, or if the necessary resources to support the participant are not available.

E. Participant Requirements. SERDTD participants are sentenced to probation with specific conditions of probation for the Program, which also includes all program terms and requirements outlined in the Participant Handbook and the SETRDTD Contract. Participating and completing the Program will be a condition of probation. Non-compliance with Program requirements may result in a Violation of Probation.

F. Court Appearances. Participants in the SERDTD Program appear in court every two weeks or as directed by the Team for status conferences with the Judge. These status conferences provide judicial oversight and help to support the participants. Prior to each court appearance the SERDTD Team will meet to discuss the participant's progress since the last hearing and responses to their behavior.

G. Incentives. The SERDTD Team shall discuss incentivizing participants behavior during the staffing and the Judge will deliver the incentives in the court hearing. The Judge retains the sole discretion to present an incentive to a participant. Incentives may include:

- Court room praise and applause
- Recovery tokens or stones
- Inspirational bracelets
- Certificates of appreciation
- Phase advancement
- Reduction in court appearances
- Gift cards

H. Sanctions. The SERDTD Team shall discuss the need for sanctions for non-compliant behavior during a staffing prior to the court hearing. The Judge retains the sole discretion to decide what sanction should be imposed, if any after hearing from the participant in a hearing. Sanctions may include:

- A verbal or written reprimand from the Judge
- Community service hours
- Increased reporting to probation
- Home confinement
- Curfew
- Electronic monitoring (at participant's expense)
- Increased court appearances
- A period of incarceration
- Other sanction as deemed appropriate

The filing of a violation of probation complaint for non-compliant behavior will trigger the regular court process consistent with Vermont law and the Rules of Criminal Procedure. Violations of Probation that are limited to program non-compliance shall remain in Windsor County, and will be handled by the Program Judge, DSA, and Defense Attorney.

I. Therapeutic Response. A therapeutic response to a participant's behavior is designed to support them through increased treatment or ancillary services. A therapeutic response is a treatment response and is not a sanction.

J. Financial Considerations. Participants in the SERDTD are expected to meet their court-ordered financial obligations to include court fines and surcharges, and restitution. There are no program fees to participate in the SERDTD. If a participant is struggling to pay court related fees or restitution, work with your case manager to find a solution. The Case Manager will also work to assist indigent defendants in meeting their financial obligations and obtain insurance for treatment services.

K. Eligibility Determination. The goal is to engage defendants in treatment as soon as possible while they await their sentencing. The eligibility determination process may take up to 30 days. During this time the Court Coordinator will conduct a screening and orientation and a clinical assessment will be conducted by the treatment provider. The participant will learn about the program from the Team and their attorney of what will be expected of them. They may decide to not enroll or may not be eligible for the program in which case the referral will be denied. Information gathered from and about the participant during the screening and assessment is confidential and will not be used against the participant in court proceedings outside of the SERDTD, or to initiate any new charges against the participant.

L. Treatment Phases. The SERDTD has five phases with participants progressing through each phase based on their behavior and needs. The SERDTD requires a minimum of fourteen (14) months to complete the program. The minimum duration of each phase is:

- Phase 1: 60 days
- Phase 2: 90 days
- Phase 3: 90 days
- Phase 4: 90 days
- Phase 5: 90 days

M. Graduation. A SERDTD participant who satisfactorily completes all five phases of the program will be eligible to graduate from the SERDTD. Graduation marks an important milestone and accomplishment in the participant's life. Graduation may coincide with a discharge from probation; at a minimum a *Motion to Set Term of Probation* will be filed, setting the term of probation to six months from the graduation date. Graduation ceremonies will occur at court and may include family, friends, employers, and the arresting officer.

N. Discharge/Termination. There are several factors which can result in termination from SERDTD, including: unexplained absences; threats against other participants, staff, or Team members; new criminal charges; chronic non-compliance; refusal to complete curriculum/recommended treatment; dishonesty or negative behavior affecting other participants. This list is not exclusive. A participant is entitled to notice and a hearing prior to termination from the SERDTD. (Attachment #3)

O. Data Collection and Reporting. The SERDTD collects data and is evaluated to ensure the program is following the All-Rise Best Practice Standards and National Center for DWI Courts guidelines. Substantial data will be collected about the program. No personal identifying information about SERDTD participants will be shared in reports generated from that data except to evaluators in accordance to 42CFR part II.

## VI. PROGRAM REFERRAL PROCESS

- A. A referral can be made on the record during a hearing, or by filing the referral form into Odyssey. Referrals to the SERDTD may be made by the prosecutor or defense attorney, or jointly. A legally eligible defendant cannot be sentenced to the Program, unless both the State and Defense agree with the legally eligible defendant participating in the Program. Referrals can also be made by Defense Counsel at change of plea hearings, when the State's Attorney and Defense Counsel have agreed to a contested sentencing and that SERDTD is a sentencing option that may be considered by the Court. After the referral is made, a legally eligible defendant will be screened for program eligibility by the SERDTD Court Coordinator. After the initial screening, a clinical assessment is scheduled and completed. Parties on the referral will be notified of clinical eligibility. If the defendant is eligible and accepts the states offer, cases can be transferred to Windsor County for sentencing into the program.
- B. SERDTD is post-conviction and post-sentence. Any referral to the program from interested parties other than an attorney representing the interests of the defendant or from the States Attorneys office will be forwarded to the State's Attorney and Defense Counsel in the county in which the charge is filed. Any referrals brought to any SERDTD Team member will be forwarded to the State's Attorney and Defense Counsel in the county in which the charge is filed for referral consideration.
- C. To achieve the best outcome for participants and maintain best practice standards, referrals to the SERDTD should be made as close to the time of arrest as possible.

**VII. CONTINUING CARE COMPONENT**

- A. A continuing care component is available for all graduating participants. Continuing care may include monthly check-ins with a case manager, adherence to a maintenance or relapse prevention plan, and can include mentoring new participants in the program if desired.
- B. Continuing care is intended to be a limited component to assist participants as they transition into the community after graduating from the program and is not a requirement.

**VIII. EVALUATION / EVIDENCE BASED PROGRAM**

- A. The Court Coordinator is responsible for collecting all data identified as necessary to calculate performance measures in the Management Information System (“MIS”). Clinical staff will collect data using clinical instruments administered at assessment, and throughout treatment service delivery. The Data Information Management System will support tracking and ensure achievement of program goals and objectives. Additional data will be collected by participant surveys, peer reviews, and utilizing other fidelity tools to ensure the program complies with the Standards. Process and Outcome evaluation will be conducted internally and by and by independent evaluators. For the latest SERDTD evaluation go to the Vermont Judiciary website.

**IX. THE NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS (NADCP) BEST PRACTICE STANDARDS (aka AllRise)**

- A. The SERDTD will maintain fidelity to the best practice standards as set forth in the National Association of Drug Court Professional’s *Adult Drug Court Best Practice Standards*. The evidence-based standards set forth in this NADCP publication establish the practice goals for all treatment courts, and the SERDTD Team recognizes the efficacy of these practice standards and the applicability of these standards to the SERDTD.

# State of Vermont Treatment Court

1/2024

## AUTHORIZATION FOR RELEASE AND DISCLOSURE OF CONFIDENTIAL ALCOHOL AND/OR DRUG ABUSE PATIENT INFORMATION

I, \_\_\_\_\_ (Print Client's Name), hereby authorize the \_\_\_\_\_ and staff thereof, to receive information from and release information to the following: (The information being shared is regarding my eligibility, progress, attendance, results of my urine drug tests, and compliance with Treatment Court services.) Check appropriate boxes and insert name.

- State's Attorney representative: \_\_\_\_\_  
My Attorney: \_\_\_\_\_  
Public Defender representative: \_\_\_\_\_  
Dept. of Corrections: \_\_\_\_\_  
Treatment Provider(s): \_\_\_\_\_  
Law enforcement: \_\_\_\_\_
- Evaluator: \_\_\_\_\_  
Peer support: \_\_\_\_\_  
Laboratory: \_\_\_\_\_

I understand that information shared may be held in a secure web-based information system, operated by Datagain, for the Vermont Judiciary's Treatment Court Programs. Treatment Court Team members have access to the Datagain Information System (DIMS). I understand that my information in DIMS will be used for Judiciary-approved evaluation even after I have ended my involvement with the Treatment Court.

I understand that any information shared is protected by Federal Regulation 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" and cannot be disclosed without my written consent unless otherwise provided for in the regulations. (See back of Authorization). Recipients of this information may re-disclose it only in connection with their official duties.

I understand that I have the right to restrict this information. I understand that this information may be discussed in open court; however, detailed specific treatment information will not be disclosed in open court. I am aware that the courtroom is a public place and that the hearings are recorded, and that anyone present in the courtroom can hear the information shared, including members of the media.

I understand that the services I receive are not conditioned upon authorizing this disclosure and that although revocation of this consent will result in termination from the Treatment Court program, services may continue. Revocation is permissible at any time and should be submitted in writing to the Treatment Court.

I acknowledge that I have been advised of my rights, have received a copy of the advisement, and have had the benefit of legal counsel or have voluntarily waived the right to an attorney. I am not under the influence of drugs or alcohol. I fully understand my rights and I am signing this authorization voluntarily.

This authorization permits the release of the information as described above from \_\_\_\_\_ to \_\_\_\_\_ or through my completion or termination in the program, whichever occurs first.

**Participants Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

If under 18 years of age, Parent/Guardian's Signature \_\_\_\_\_ Relationship to Minor \_\_\_\_\_

I have read and explained the content and purpose of this release and have received verbal acknowledgement of understanding by the individual.

**Witness Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

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### Revocation

I hereby revoke this authorization on \_\_\_\_\_ (date) at \_\_\_\_\_ (time). Do not release any further information under this authorization. I understand that any information that has already been released is not affected by the revocation and may be considered covered under this authorization.

Signature: \_\_\_\_\_

**(Rev. 1.2024)**

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State of Vermont  
Treatment Courts

**Notification Form from 42 C.F.R. § 2.22(d)**

**CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS**

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser unless:

- (1) The patient consents in writing;
- (2) The disclosure is allowed by a court order; or
- (3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

(See 42 U.S.C. § 290dd-3 and 42 U.S.C. § 290ee-3 for federal laws and 42 C.F.R. Part 2 for federal regulations.)

**SOUTHEAST REGIONAL DUI TREATMENT DOCKET (SERDTD)  
POLICY ON JAIL SANCTIONS**

**CHILDREN AT HEARINGS:** Please be aware that the Southeast Regional DUI Treatment Docket (SERDTD) policy is to transport participants immediately following court hearings. **You are advised not to bring your children to SERDTD hearings.** In the event you receive a jail sanction, the child would be without supervision. It is your responsibility to make arrangements for your children during an incarcerative sanction. In general, SERDTD hearings are not an appropriate environment for children. Please make arrangements for your children to be cared for while you are at your hearing.

**WALK-IN JAIL SANCTIONS:** Participants presenting themselves at the correctional facility for a jail sanction imposed by the SERDTD must bring with them, a Mittimus for Corrections or you will not be admitted. **It is your responsibility to pick-up your mittimus at the clerk's office following your hearing today.** If you are being transported by the Sheriff's Department to the facility, they will process the paperwork.

**BRING NOTHING:** Please know that you are to **present at the correctional facility with nothing on your person except identification.** Leave pocketbooks, cigarettes, lighters, wallets, electronic devices, and medications at home. Do not bring additional clothing.

**MEDICATIONS:** If you are on medication, please do not bring your medication to the facility. Any medication you bring with you will be confiscated upon your arrival. **It is your responsibility to coordinate dispensing of medication while in jail with the Treatment Docket Coordinator or your Probation Officer prior to going to the correctional facility for your sanction.**

**WOMEN TRANSPORTATION:** Female participants receiving a jail sanction for more than one night should make arrangements for pick-up from the correctional facility in South Burlington (Chittenden Regional Correctional Facility). Anyone who is picking you up should first check with the correctional facility in Springfield to verify that you were transferred to the Chittenden facility. If the time of your pick-up is not indicated on the Mittimus to Corrections, then you will be released in the morning upon arrival of the first shift. **It is your responsibility to coordinate your transportation home from the correctional facility.** Please consult with the Treatment Docket Coordinator prior to leaving your hearing if you have questions or concerns.

**SOUTHEAST REGIONAL DUI TREATMENT DOCKET (SERDTD)**  
**Termination Protocol**

1. Motion to Terminate

- a. After consultation with the Team, the Deputy State's Attorney (DSA) may file a *Motion to Discharge* a Participant from the Program.
- b. The DSA will consult with the supervising Probation Officer, and coordinate the filing of a *Violation of Probation*, at the same time, or within seven (7) days of the filing of the *Motion to Terminate*.
- c. The participant will be notified on the record by the Judge to return at the next scheduled SERDTD hearing to answer to the State's *Motion to Terminate*. This hearing is the Discharge Preliminary hearing.
- d. The *Motion to Terminate*, along with the *Violation of Probation*, will provide written notice to the Participant that the State is seeking to have the Participant terminated from the Program.
- e. The written notice will state the basis of the violation citing the conditions of probation, and/or program non-compliance as provided for in the Participant Handbook.
- f. Notice will be given to Participant's Attorney of Record and/or the SERDTD Public Defender.
- g. The notice will also state the participant has a right to a hearing on the allegations and that there is a right to counsel at the hearing.

2. Process for Motion to Terminate & Violation of Probation

- a. Upon a *Motion to Terminate & Violation of Probation*, the participant is still a participant in the SERDTD, pending the request for a hearing.
- b. Upon a *Motion to Terminate & Violation of Probation*, the participant is still on probation pending the termination hearing/VOP merits hearing.
- c. The hearing on the *Motion to Terminate* is consolidated with the merits hearing on the *Violation of Probation*.
- d. The Participant can choose to admit the *Violation of Probation*, and the *Motion to Terminate*; if the Participant chooses to enter an admission and be discharged from the Program, the case is returned to the original criminal docket for sentencing; although the Participant can request that the Program Judge preside over their sentencing.
- e. The Participant can also choose to have a contested hearing on the *Motion to Terminate and Violation of Probation*, and that hearing will be scheduled with the Program Judge unless the Participant requests that the Program Judge recuse themselves. The Program Judge shall recuse themselves upon the request of the Participant.
- f. If the Participant is terminated from the Program and found in violation of probation, the case is returned to the original criminal docket for sentencing; although the Participant can request that the Program Judge preside over their sentencing, as long as, the Participant did not request that the Program Judge be recused from hearing the *Motion to Terminate* and *Violation of Probation* merits hearing.

3. Suspension

- a. A Participant is considered suspended pending a *Motion to Terminate* and *Violation of Probation* merits hearing.
- b. During the suspension, the Participant is still required to follow all program requirements, and attend SERDTD hearings.
- c. The Participant may be incentivized or sanctioned based on their continued participation in the Program.

- d. During this time, the Participant is not accruing sober days or phase advancement days.
4. Motion to Terminate Preliminary Hearing
  - a. At the Motion to Terminate Preliminary hearing:
    - i. The participant will answer the *Motion to Terminate* on the record, indicating whether he or she wishes to contest their termination;
    - ii. To the extent applicable, discovery will be exchanged; the *Motion to Terminate* and the *Violation of Probation* shall be given to the participant, and his or her attorney; and
    - iii. *Motion to Terminate* and the *Violation of Probation* shall be scheduled for a hearing.
    - iv. If necessary, the Parties may request a status conference prior to the contested hearing.
5. Status Conference (if requested and approved)
  - a. At the Status Conference, the participant will:
    - i. Be provided with a list of witnesses and other evidence which the State intends to call or introduce on behalf of the team at the merits hearing, not previously disclosed;
    - ii. Disclose any witnesses or other evidence that he or she intends to use at the merits hearing; and
    - iii. Give notice as to whether or not he or she may testify at the hearing, for purposes of reviewing immunity, if any.
  - b. The status hearing will also be an opportunity to address any procedural or legal matters pertaining to the conduct of the hearing or potential consequences.
  - c. The Motion/Merits Hearing will be scheduled at this hearing.
6. Motion/Merits Hearing
  - a. At the hearing on the *Motion to Terminate* and *Violation of Probation*, the DSA assigned to the SERDTD team will present the case for terminating the Participant from the Program, and for a finding of a violation of the Violation of Probation.
  - b. The *Motion to Terminate* and the *Violation of Probation* must be proven by a preponderance of the evidence: that the participant has violated the requirements of the programs as set out in the “Participant Handbook” and the “Conditions of Probation”
  - c. The Participant shall have the right to counsel at this hearing.
  - d. The Participant may cross examine witnesses and call witness on his or her behalf.
  - e. Hearsay evidence, deemed reliable by the court, may be admitted at the hearing. *See* V.R.E. 1101(b)(3); *State v. Austin*, 165 Vt. 389, 396-7 (1996). The court must make findings of reliability on the record.
  - f. Immunity to any witness or the Participant will only be granted by the Court after request by the State in accordance with 12 V.S.A. & 1664. If new criminal conduct is the basis for the *Motion to Terminate*, the issue of use and/or derivative use immunity will be reviewed on a case-by-case basis in relation to the facts and circumstances of each case.
  - g. The *Motion to Terminate* may, with good cause shown, be continued pending resolution of the new criminal charges.
  - h. The Program Judge shall preside at the *Motion to Terminate* and the *Violation of Probation*, unless the Participant requests the Program Judge recuse themselves.
  - i. The decision regarding termination and/or the finding of a violation of probation may be appealed to the Vermont Supreme Court.
7. Disposition

- a. If the allegation is not proven by a preponderance of the evidence, the participant will remain in the Program, and/or on probation. However, this does not preclude the issuance of any other sanction or added probation conditions relating to the alleged conduct.
- b. If the participant is terminated from the Program and he/she is found in violation of probation, the hearing will proceed to sentencing on the VOP. The cases will transfer back to the originating county's criminal division for sentencing. The Participant may request that the Program Judge preside over their sentencing, as long as, the Participant did not request that the Program Judge recuse themselves from the *Motion to Terminate* and *Violation of Probation merits* hearing.
- c. The participant shall be given credit for time served for any work crew, jail time, or residential treatment served as sanctions during participation in the Program.