

Juvenile Court Standing Order 2-23

Access to Records and the Role of the Judge in Family Treatment Court

This Standing Order shall repeal and replace Juvenile Court Standing Order 1-23: *Access to Records and the Role of the Judge in Family Treatment Court* which took effect on March 20, 2023.

1. Applicability: This standing order applies to any Family Treatment Court (FTC) held within a division of the Juvenile Court Department including but not limited to FTCs established under the Juvenile Court's **PATHS** program.

2. Definitions: "Family Treatment Court" is a type of specialty court that focuses on issues of parental abuse and neglect raised through the filing of a care and protection in the Juvenile Court by treating the parents' underlying substance use disorder through a collaborative approach that involves the Juvenile Court, the Massachusetts Probation Service, the Department of Children and Families (DCF), substance use treatment providers and the attorneys involved in the care and protection.

"FTC Case Progress File" is a paper file maintained by the FTC Coordinator, separate from the FTC Record, accessible only by the FTC Coordinator and sharable only with the FTC Clinician. The Case Progress File includes initial intake, staffing worksheets, participant essays/reflections, reports, progress worksheets, attendance information, ongoing assessments, referral information, communications with providers and collaterals and copies of court orders.

"FTC Information" includes statements and observations made during the FTC session and the team meeting.

"FTC Records" refers to the case file for the FTC maintained by the Office of the Clerk-Magistrate in paper and electronic format. The case file may include but not be limited to motions to participate, agreement to participate, discovery stipulation, waivers, substances use screening order, and other judicial orders. This definition does not apply to any documents created by or any communications made by any employee of the Massachusetts Probation Service. Records and communications made by any employee of the Massachusetts Probation Service in the course of their work are governed by the Massachusetts Probation Service standards, applicable statutes, and court rules.

"**PATHS** (Prevention and Treatment for Health and Stability of Children and Families)" is a state-wide FTC developed by the Juvenile Court to assist families where an individual's substance use is the central factor in their involvement with the Juvenile Court. The goal is to ensure the safety, stability and timely permanency for children while promoting health and wellness for families. **PATHS** is guided by the Juvenile Court's *Pathways* model of differentiated case management and resources from the *Upstream* Child Welfare Resource Mapping initiative.

3. FTC Records: All Juvenile Court FTC records are confidential and protected by the provisions of G.L. c. 119, § 38, **Juvenile Court Standing Order 1-84: *Juvenile Court Case Records and Reports***, and **Trial Court Rule VIII: *Uniform Rules on Impoundment Procedure***.

The *Participation Order* and the *Order Following Participation in the Family Treatment Court* shall be admissible in the care and protection proceeding involving the family.

The FTC case progress file and FTC information are confidential and shall not be admissible in the care and protection proceeding involving the family or any other court proceeding.

FTC records are accessible only to the FTC team in the course of their work in the FTC.

4. Results of Substance Use Screens: Participants in the FTC undergo substance use screens as part of their agreement to participate in the FTC. The results of any substance use screens in the FTC shall be released to members of the FTC in accordance with applicable federal and state laws and the provisions of the FTC manual. The results may be used in the FTC for case planning purposes for the participant. The results of any substance use screens conducted as part of the FTC, call in and attendance records related to the substance screens are discoverable and admissible in the care and protection proceeding involving the family.

5. Discoverability and Admissibility:

- (a) A participant, with advice of counsel, may introduce all of the FTC record and other information related to the FTC into the care and protection. If a participant does introduce information regarding the FTC, the participant waives their privilege regarding the confidentiality of the FTC record and information. The waiver shall be in writing.
- (b) If the participant does not waive the privilege, the only portion of the FTC case that is discoverable and subject to admissibility in the care and protection are the results of the substance use screens.
- (c) A DCF social worker may be a member of the FTC team. The social worker shall not use or include any information regarding the FTC in their notes, dictation and reports for the underlying care and protection, unless the information was provided to the social worker by the participant in a conversation or other communication that occurred outside of the FTC session and with prior notice from the social worker to the participant that if the participant provided information regarding the FTC it may be included in the social worker's notes, dictation and reports for the underlying care and protection. Information regarding the FTC shall not be shared with DCF Foster Care Reviewers.
- (d) Statements made by participants and collaterals during FTC sessions, intake or team meetings are not admissible in the care and protection or other court proceedings.
- (e) The FTC Coordinator and FTC Clinician shall not be subpoenaed and shall not testify in the underlying care and protection involving the family.

6. Role of the Judge and Continuation of the Care and Protection: The Juvenile Court judge assigned to the care and protection matter may also preside over the FTC. The care and protection will continue concurrently with the FTC and in accordance with the provisions of G.L. c. 119 related to care and protections, *Juvenile Court Rules For the Care and Protection of Children*, **Trial Court Rule VI: Uniform Rules for Permanency Hearings** and **Juvenile Court Standing Order 2-18: Time Standards**.

The communications of the judge as a member of the FTC team are protected by **Joint Standing Order 1-16: Authority of the Judge with Respect to Communication with Specialty Court Teams**.

If a participant voluntarily withdraws or is discharged from the FTC or any other party to the care and protection withdraws from the FTC, the FTC will end, and the care and protection case will continue accordingly. If the same judge presided over the FTC and the care and protection, that judge shall not continue to preside over the care and protection. The care and protection shall be reassigned to another Juvenile Court judge.

A trial in the care and protection cannot be scheduled (1) any earlier than 6 months from the date of withdrawal/discharge if at the time of withdrawal/discharge the care and protection case is 9 months old or less, or (2) any earlier than 4 months from the date of withdrawal/discharge if at the time of withdrawal/discharge the care and protection is more than 10 months old. ¹

7. Court Investigator, Guardians Ad Litem and CASAs: Any court investigator, guardian ad litem or CASA appointed in the care and protection case shall only receive information about whether the parties are participating in the FTC, and when the participation in the FTC ends, either by graduation, voluntary withdrawal or discharge. The court investigator, guardian ad litem and CASA shall not have access to the FTC Record, the FTC Case Progress File and FTC Information.

Date: November 17, 2023

/s/ Amy L. Nechtem

Effective Date: December 8, 2023

Amy L. Nechtem

Chief Justice of the Juvenile Court

¹ See G.L. c. 119, § 26 and **Juvenile Court Standing Order 2-18: Time Standards**, setting forth that the trial in a care and protection shall be held 12 to 15 months after the filing of the petition.