

**WINDSOR COUNTY DUI TREATMENT DOCKET (WCDDT)  
Discharge Protocol**

1. Notice of Discharge

- a. Upon a vote of the WCDDT Team that a participant be discharged from the WCDDT, the participant will be notified on the record by the judge to return at the next scheduled WCDDT hearing to answer discharge. This hearing is the Discharge Preliminary hearing.
- b. If feasible, the DSA assigned to the Treatment Team will provide written notice on behalf of the Team on the same day that the judge makes notification. If not, written notice shall be given at the Discharge Preliminary hearing.
- c. The written notice will state the basis of the violation citing the conditions in the Participant Contract and/or Participant Handbook.
- d. If the basis of the violation is also a Violation of Probation (VOP) a VOP Complaint shall be filed at the time of the Discharge Preliminary Hearing.
- e. Notice will be given to Participant's Attorney of Record and/or the WCDDT Public Defender.
- f. The notice will also state that the participant has a right to a hearing on the allegations and that there is a right to counsel at the hearing.

2. Effect of Notice

- a. Upon notice of discharge, the participant is still a participant in WCDDT, pending the request for a hearing.
- b. Upon notice of discharge, if the participant is still on probation, the participant is still on probation pending the request for a hearing.
- c. If no hearing is requested on the discharge from the WCDDT at or before the Discharge Preliminary Hearing, the discharge is effective one week from the date of notice of discharge or upon waiver of a hearing, whichever is sooner.
- d. If no hearing is requested on the discharge from the WCDDT at or before the Discharge Preliminary Hearing, but the person is still on probation he or she is entitled to have a hearing on the VOP.
- e. If the participant requests a hearing, the participant is suspended from the WCDDT pending the outcome of the Merits hearing. If he or she are on probation, they stay on probation pending a VOP hearing.

3. Suspension

- a. During suspension the participant:

- i. may receive treatment services at the discretion of the provider;
    - ii. may receive case management at the discretion of the court;
    - iii. is subject to the WCDTC contract;
    - iv. may be sanctioned;
    - v. may be subject to Violations of Probation.
  - b. Attendance requirements at WCDTD status conferences during suspension will be determined by the WCDTD Team and/or the judge.
4. Discharge Preliminary Hearing
  - a. At the Discharge Preliminary hearing:
    - i. The participant will answer the discharge notice indicating whether he or she wishes to contest the discharge;
    - ii. To the extent applicable, discovery will be exchanged; the written notice of discharge will be presented to the participant and his or her attorney; and
    - iii. The Discharge Status hearing will be scheduled
5. Discharge Status Hearing:
  - a. At the Discharge Status Hearing, 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 the 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 Discharge Merits Hearing will be scheduled at this hearing.
6. Discharge Merits Hearing
  - a. At the hearing on the merits of the notice of discharge from the WCDTD, the DSA assigned to the WCDTD team will present the case for discharge on behalf of the team.
  - b. If there is also a VOP, the DSA assigned to the WCDTD team will present the evidence for the VOP merits hearing.
  - c. The alleged violations of the WCDTD and/or a VOP must be proven by a preponderance of the evidence: that the participant has violated the requirements of the program as set out in the "Participant Contract", and/or the "Participant Handbook" and/or the "Conditions of Probation."
  - d. The participant shall have the right to counsel at the discharge hearing.

- e. The participant may cross examine witnesses and call witnesses on his or her behalf.
  - f. 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.
  - g. 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 discharge request, 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.
  - h. Discharge hearing may, with good cause shown, be continued pending resolution of the new criminal charges.
  - i. The treatment court judge shall preside at the discharge hearing and/or VOP hearing, unless that is not practicable.
  - j. The decision of the judge regarding discharge and/or the VOP 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 WCDDT, 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 discharged from the treatment court and/or he/she is found in violation of probation, the hearing will proceed to sentencing on the VOP. Sentencing will be before the WCDDT judge unless the participant requests sentencing before the criminal division judge.
  - 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 treatment court.