

On September 21, 2022, the Nebraska Supreme Court adopted the following rule amendments to Neb. Ct. R. § 6-1208, as well as the new Appendix 1 of Chapter 6, Article 12:

CHAPTER 6: TRIAL COURTS

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Article 12: Problem-Solving Courts.

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§ 6-1208. Operational requirements.

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(K) All problem-solving courts shall collect management information and data on the governance and operation of the courts and shall report such information and data in such reports and at such frequency as required by these rules and Appendix 1 and as the Administrative Office of the Courts and Probation may from time to time require.

The collection and reporting of the information and data shall be by utilization of the Nebraska Probation Application for Community Safety System (NPACS). The scope of the data and information collected and reported shall be as necessary to comply with the reporting requirements in the problem-solving court's performance measures and the problem-solving court's audit process as more fully described in Appendix 1 to these rules.

~~(K)~~ (L) All problem-solving courts shall utilize evidence-based practices as identified by applicable scientific research and literature and shall adhere to best practice standards.

~~(L)~~ (M) The Court shall reserve the right to allow exemptions to any of the requirements set forth in § 6-1208(A) through ~~(K)~~ (L). Any request for an exemption shall be made to the Court in writing. Exemptions shall be terminated at the discretion of the Court.

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Problem-Solving Court Audit Protocol

A. Initiating an Audit Application

Every operational problem-solving court in Nebraska will be subject to an audit every three years. During the initial rollout of the audit process, a schedule that will be developed for each court and the implementation of the audit process will be staggered across multiple years.

To initiate a local problem-solving court audit, an individual problem-solving court program shall submit their audit materials electronically to the Nebraska State Problem-Solving Court Director for review. The completed application must be signed by the presiding judge of the problem-solving court and submitted electronically along with the following documents (at a minimum):

- 1) Policy and Procedure Manual
- 2) Participant Handbook
- 3) Signed Memorandum of Understanding for Team Members
- 4) Team Roles and Responsibilities
- 5) Sample Treatment Plan
- 6) Release of Information/Information Sharing Forms
- 7) Written orientation plan for new team members
- 8) List of advisory board members

B. Initial Application Review for Completeness

Submitted applications will be reviewed by the Nebraska State Problem-Solving Court Director for completeness. If it is determined that an application is incomplete, the State Problem-Solving Court Director shall provide the applicant program notice by electronic mail identifying the deficiency and state a deadline to submit a complete application.

C. Problem-Solving Court Audit Team

The Nebraska State Problem-Solving Court Director shall assign a team of his or her staff to review every application. The review team shall be composed of the Nebraska State Problem-Solving Court Director and a team of his or her staff.

D. Audit Levels

There are two levels of audit review.

A **Level 1** audit consists of a review of:

- 1) The materials submitted by the applicant
- 2) Programmatic data available via the state MIS
- 3) Observations during a site visit to the applicant program and interviews with team members

Courts that are newly operational or being audited for the first time will participate in a Level 1 audit.

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A **Level 2** audit includes a review of the materials submitted by the applicant and programmatic data but will **not** involve a site visit.

A court found to be fully compliant in their previous audit will be eligible for a Level 2 audit **every other** audit cycle.

In addition to a Level 1 or Level 2 audit that occurs every three years, a local court may submit a request for an audit at any time. Such requests will be reviewed and conducted at the discretion of the Nebraska Problem-Solving Court Director.

D. Scope of Site Visit

The site visit shall include the following components:

- 1) Observation of the pre-court staffing meeting
- 2) Observation of the program's court session
- 3) Interviews with the program judge(s), coordinator/case manager/probation officer, treatment representative(s), veterans justice outreach liaison (for veterans treatment courts only), prosecutor representative, and defense attorney representative(s)

Site visits will generally be completed in one day, but if the review hearing or staffing meeting is held on different days, the site visit might extend to two days. Likewise, the site visit for a regional program that has multiple locations might extend to more than one day. Site visits may be conducted virtually as deemed appropriate by the review team.

E. Compliance Determinations

The review team shall consider the totality of an applicant program's compliance with the standards. At the conclusion of the audit, the team shall recommend one of the following findings:

- 1) **Fully Compliant:** The designation of Fully Compliant is reserved for courts that have been operating for at least one year and are found to be in full compliance with 100% of the core critical standards and 95% or more of the non-critical core standards. The designation of Fully Compliant is valid for three years. All fully compliant programs must reapply for renewal of this status every three years. Programs that have a pending applicant for renewal request remain in fully compliant status until their review is complete.
- 2) **Provisionally Compliant:** This status is reserved for courts that are in compliance with 100% of the core critical standards and fewer than 95% of the non-critical core standards but 90% or more of the non-critical core standards. Provisionally compliant courts will be required to submit a written improvement plan within thirty days that brings the court in compliance with at least 95% of the non-critical core standards within a twelve-month period. The Nebraska State Problem-Solving Court Director will ensure that technical assistance is available to assist the court with coming into compliance. Failure to submit a written plan within 30 days and/or failure to meet the timelines for

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becoming compliant shall result in a report being filed with the Supreme Court noting that the court was found to be non-compliant

- 3) **Not Compliant:** Courts that are found to be in non-compliance with any of the core critical standards or fewer than 90% of the non-critical core standards will be required to submit a written improvement plan within thirty days that brings the court into compliance with 100% of the core critical standards within three months and at least 95% of the non-critical core standards within a twelve-month period. The Nebraska State Problem-Solving Court Director will ensure that technical assistance is available to assist the court with coming into compliance. Failure to submit a written plan within 30 days and/or failure to meet the timelines for becoming compliant shall result in a report being filed with the Supreme Court noting that the court was found to be non-compliant.

F. Grounds for Recommendation of Not Compliant

Courts may be found non-compliant for one or more of the following reasons:

- 1) Failure to be in compliance with any of the critical core standards;
- 2) Failure to be in compliance with fewer than 90% of the non-critical core standards;
- 3) Conduct or practices found by the review team to be harmful to the health and safety of any participant in the program;
- 4) Failure of the applicant program to cooperate with the review team in its review process; and/or
- 5) Failure of the applicant program to provide accurate or reliable information (including omission of information) on the application and its supporting materials.

Should the review team recommend a finding of Not Compliant, the Nebraska State Problem-Solving Court Director will convey to the presiding judge of the program the following information:

- 1) Notice of the recommendation of Not Compliant
- 2) Brief statement containing reason for the recommendation of non-compliance
- 3) Statement that the recommendation of non-compliance will become final unless written objections are submitted
- 4) Written objections must be submitted within 28 days and be signed by the presiding problem-solving court judge

LEVEL 2 AUDITS

A. Renewal Application

A Fully Compliant program needs to submit a renewal application for a Level 2 audit no later than six months prior to the current expiration of their previous finding of being Fully Compliant. During the period of review for the renewal request, programs will remain under the fully certified status. Programs whose most recent problem-solving court standards audit finding has expired will be reclassified as Provisionally Compliant absent good cause.

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A program that has been previously fully compliant may be considered for one renewal that is an expedited review.

B. Level 2 Review Process

A Fully Compliant program shall follow the procedures below to initiate a Level 2 audit review. Not less than six months prior to the expiration date of the previous audit, a program must submit to the Nebraska State Problem-Solving Court Director the following:

- 1) Request for Renewal
- 2) Statement of compliance with current Nebraska standards
- 3) Update on any waivers previously obtained and their applicability to current local conditions
- 4) Current team members and contact information
- 5) Other issues determined relevant for review as identified by the applicant or the review team (e.g., follow-up questions specific to past review or knowledge of program or changes in evidence-based practices)
- 6) Updated policy and procedure manual
- 7) Updated participant handbook
- 8) Other supporting documents relevant to renewal

Upon receipt of a complete request for renewal, the Statewide Problem-Solving Coordinator shall schedule a review at the earliest convenience. If no site visit has been conducted within six years of the renewal request or other grounds exist, the Statewide Problem-Solving Coordinator shall require a site visit.

If the review team believes a renewal of court as Fully Compliant is appropriate, the review team shall notify the Statewide Problem-Solving Coordinator. If the review team believes additional information is needed, it may seek that information from the applicant at its discretion. If the review team concludes renewal without a full review is not appropriate, the review team shall thereafter follow the procedure for a full standards audit.

A renewal is valid for three years from the date of the expiration of the prior finding.

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