

THE ROLE OF DEFENSE COUNSEL & PROSECUTORS IN SPECIALIZED DOCKETS

Ohio Specialized Docket Conference
November 21-22, 2019

QUALIFYING FOR REIMBURSEMENT

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Active Participation Increases Success!

- Defense Attorney – the Research *
- Drug Courts where a public defender was expected to attend all drug court team meetings demonstrated a 41% improvement in outcome costs.

• **NPC Research Key Components Study 2008*

Active Participation Increases Success!

Evidence further suggests participants may be more likely to perceive Drug Court procedures as fair when a dedicated defense attorney represents their interests in team meetings and court sessions, and greater perceptions of fairness are consistently associated with better outcomes in Drug Courts and other problem-solving courts. *

*Adult Drug Court Best Standards, Volume II

Active Participation Increases Success!

- ***Journal of Advancing Justice***
- Research on practices that decrease racial disparities in programs.
- Defense attorney attends staffing is a 50% reduction and a 63% if they attend court hearings.

• <https://www.ndci.org/wp-content/uploads/2018/10/AJ-Journal.pdf>



Active Participation Increases Success!

- Prosecutor - the Research*
- Drug Courts that required prosecutor attendance at treatment team meetings increased graduation rates and improved outcome costs by 38%.
- Drug Court that required prosecutor attendance at court sessions further increased graduation rates and showed a 34% improvement in outcome costs.
- **NPC Research Ten Key Components Study, 2008*



Specialized Docket Standards

- Appendix I of the Rules of Superintendence for the Courts of Ohio
- Established to guide courts in the planning and implementation of all specialized dockets.
- “The standards set forth minimum requirements for the certification and operation of all specialized docket courts.”

Specialized Docket Standards

Standard 2. Non-Adversarial Approach

A specialized docket shall incorporate a non-adversarial approach while recognizing all of the following:

- A) A prosecutor's distinct role in pursuing justice and protecting public safety and victim's rights;
- B) A defense counsel's distinct role in preserving the constitutional rights of the specialized docket participant;

Specialized Docket Standards

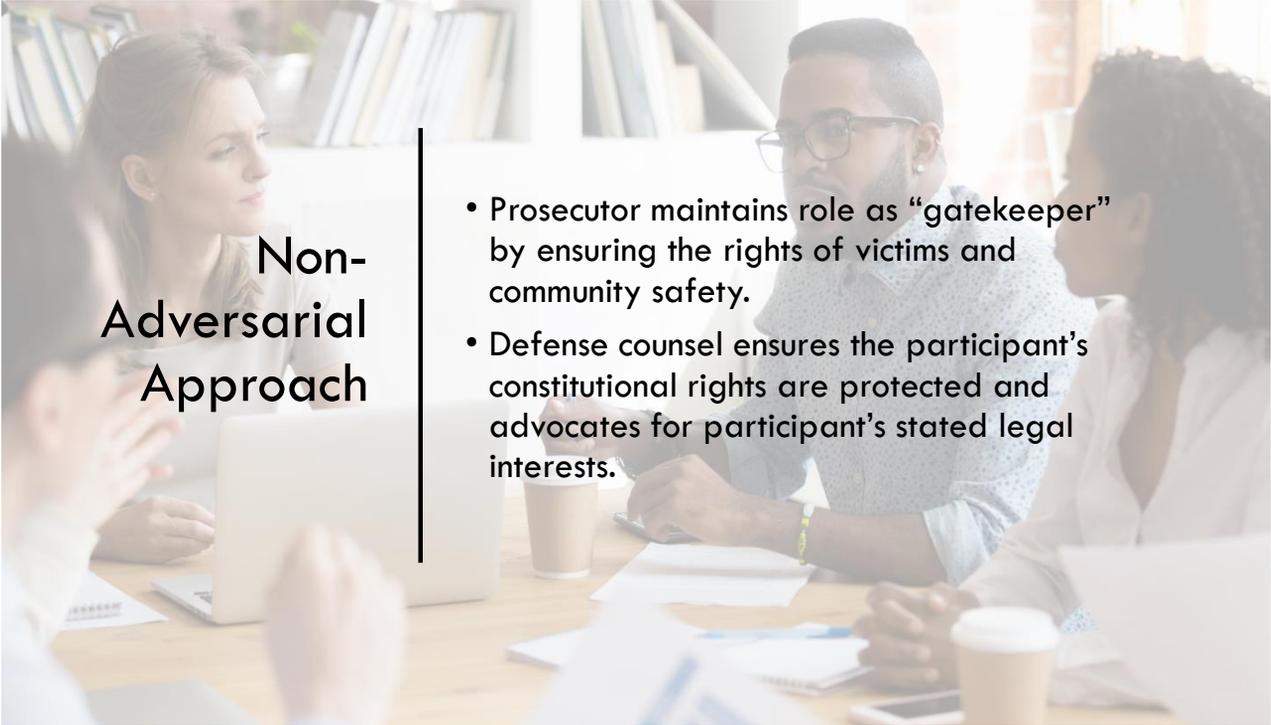
- C) The participant's right to request the attendance of defense counsel during the portion of a specialized docket treatment team meeting concerning the participant;
- D) A participant's right to a detailed, written participation agreement and participant handbook outlining the requirements and process of the specialized docket.

Specialized Docket Standards

- Standard 3. Legal and Clinical Eligibility and Termination
- A) Criteria
- A specialized docket shall have written legal and clinical eligibility, completion, termination, and neutral discharge criteria that have been collaboratively developed, reviewed, and agreed upon by the relevant parties identified in Standard I(A)
- Relevant parties include the prosecutor and defense counsel.

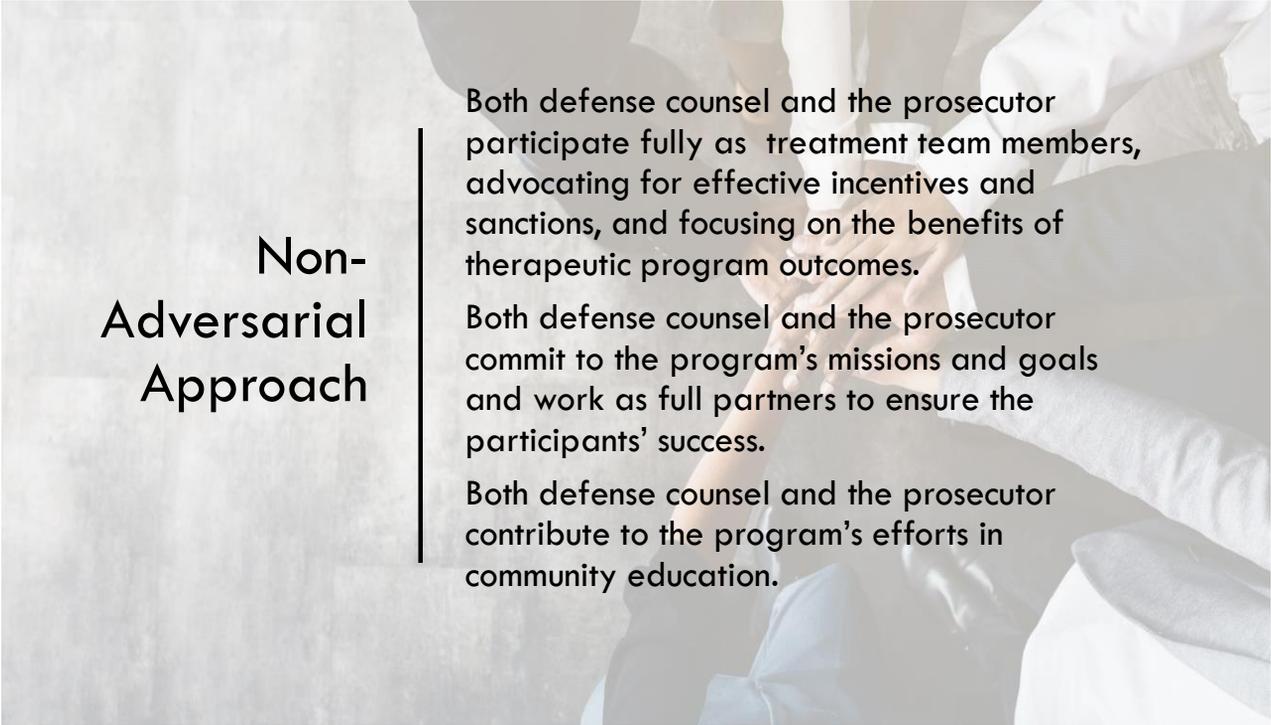
Specialized Docket Standards

- B) Decision on admission or termination
- A specialized docket judge shall have discretion to decide the admission into and termination from a specialized docket in accordance with the written criteria for the specialize docket.
- C) No right to participate
- The written legal and clinical eligibility and termination criteria do not create a right to participation in a specialized docket.



Non-Adversarial Approach

- Prosecutor maintains role as “gatekeeper” by ensuring the rights of victims and community safety.
- Defense counsel ensures the participant’s constitutional rights are protected and advocates for participant’s stated legal interests.



Non-Adversarial Approach

Both defense counsel and the prosecutor participate fully as treatment team members, advocating for effective incentives and sanctions, and focusing on the benefits of therapeutic program outcomes.

Both defense counsel and the prosecutor commit to the program’s missions and goals and work as full partners to ensure the participants’ success.

Both defense counsel and the prosecutor contribute to the program’s efforts in community education.

DRUG COURT IS STILL COURT

Defense counsel still has a duty to investigate in all cases and to determine whether there is a sufficient basis for criminal charges.

Defense counsel has the duty to evaluate the client's legal situation, ensure the client's legal rights are protected and determine whether the specialized docket program is appropriate for the client's needs.

Defense counsel effectively advises the clients on the program conditions.

A specialized docket program versus other legal alternatives is the choice of the client. The decision to enter the program must be made knowingly, intelligently, and voluntarily.

DRUG COURT IS STILL COURT

THE RIGHT TO DUE PROCESS

It does not matter that participation in a specialized docket program is voluntary.

It does not matter that there is no right to participate in a specialized docket program.

It does not matter that specialized docket programs are focused on treatment.

What does matter is that it is fundamental to our legal system that the State shall not deprive any person of life, liberty, or property without due process.

A golden statue of Lady Justice, blindfolded and holding a scale of justice in her left hand and a sword in her right. The background is a soft, hazy light.

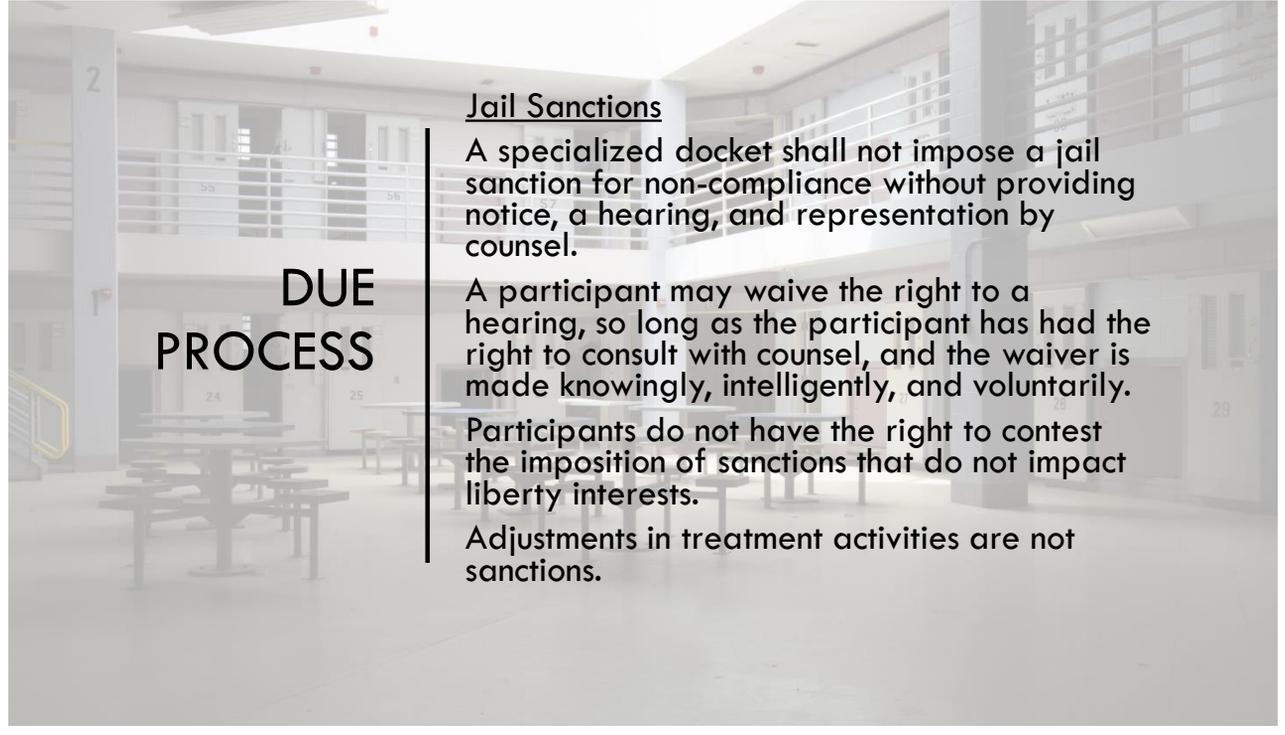
DUE PROCESS

Termination Hearings

A specialized docket shall not terminate participants unless provided notice of intent to terminate, a hearing, and representation by counsel.

Said participants shall have a commensurate level of rights as those required for community control violations.

A participant may waive the right to a hearing, so long as the participant has had the right to consult with counsel, and the waiver is made knowingly, intelligently, and voluntarily.

A photograph of a jail interior, showing a common area with tables and chairs, and a balcony with railings. The scene is brightly lit.

DUE PROCESS

Jail Sanctions

A specialized docket shall not impose a jail sanction for non-compliance without providing notice, a hearing, and representation by counsel.

A participant may waive the right to a hearing, so long as the participant has had the right to consult with counsel, and the waiver is made knowingly, intelligently, and voluntarily.

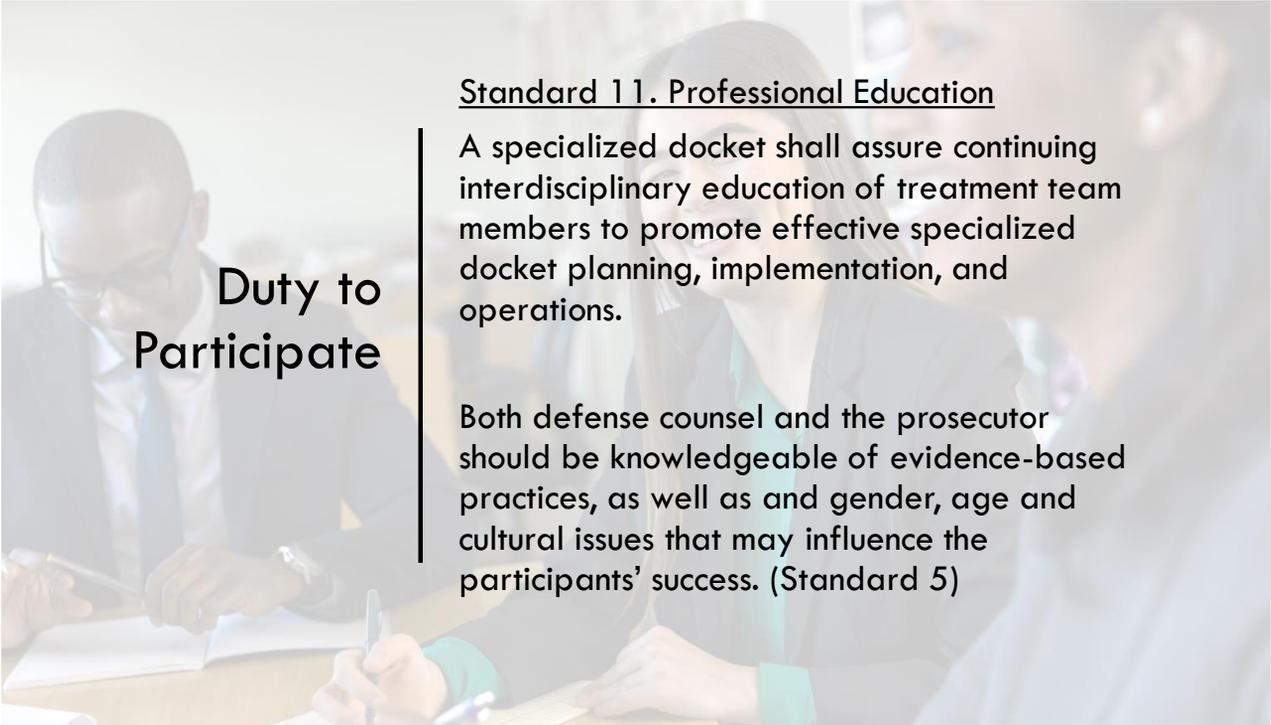
Participants do not have the right to contest the imposition of sanctions that do not impact liberty interests.

Adjustments in treatment activities are not sanctions.



Legal Guidance

- Specialized Docket Section Guidance
- <http://www.sconet.state.oh.us/JCS/specDockets/guidanceConstitutionalStandards.pdf>
- National Drug Court Institute
- <https://www.ndci.org/resources/law/>

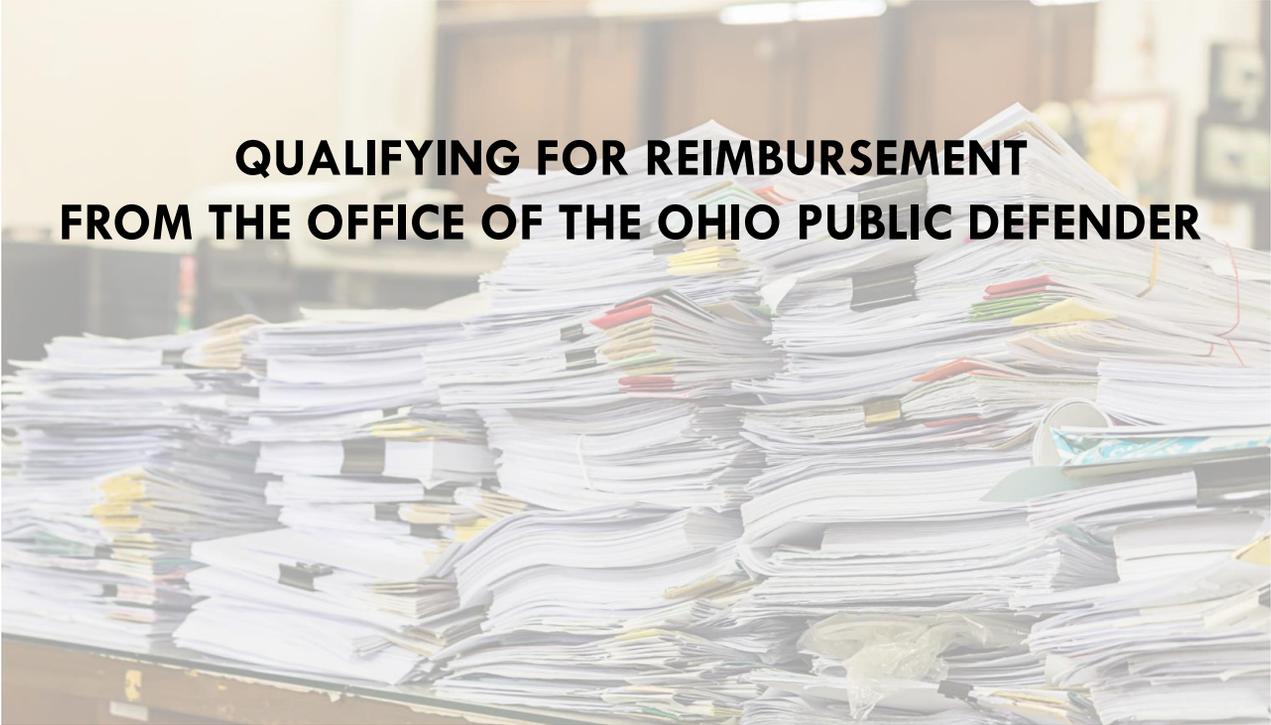


Duty to Participate

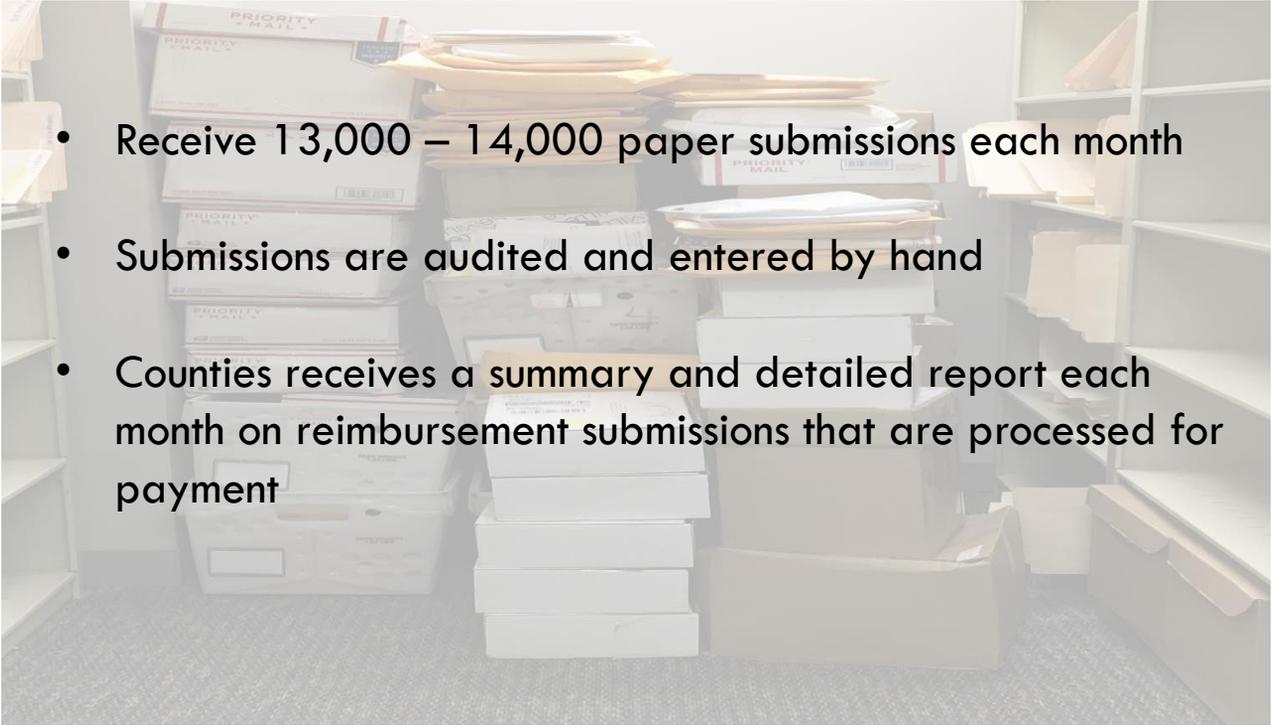
Standard 11. Professional Education

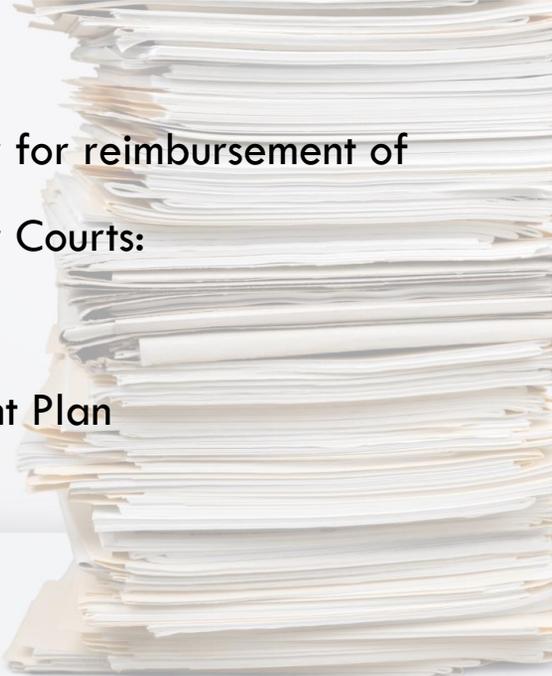
A specialized docket shall assure continuing interdisciplinary education of treatment team members to promote effective specialized docket planning, implementation, and operations.

Both defense counsel and the prosecutor should be knowledgeable of evidence-based practices, as well as and gender, age and cultural issues that may influence the participants' success. (Standard 5)

A large stack of papers, including folders and loose sheets, piled high on a desk. The papers are mostly white with some colorful tabs and clips. The background is slightly blurred, showing an office environment.

QUALIFYING FOR REIMBURSEMENT FROM THE OFFICE OF THE OHIO PUBLIC DEFENDER

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- A room filled with stacks of boxes and papers. Several boxes are labeled "PRIORITY MAIL". The room appears to be a storage or processing area for mail and documents. The lighting is bright, and the overall scene suggests a busy office environment.
- Receive 13,000 – 14,000 paper submissions each month
 - Submissions are audited and entered by hand
 - Counties receives a summary and detailed report each month on reimbursement submissions that are processed for payment



Courts have two options to qualify for reimbursement of indigent defense costs in Specialty Courts:

1. Traditional
2. Specialty Court Reimbursement Plan



Traditional Option:

- Adhere to Reimbursement Standards & Guidelines for submission of reimbursement requests
- Counsel submits one fee app per client



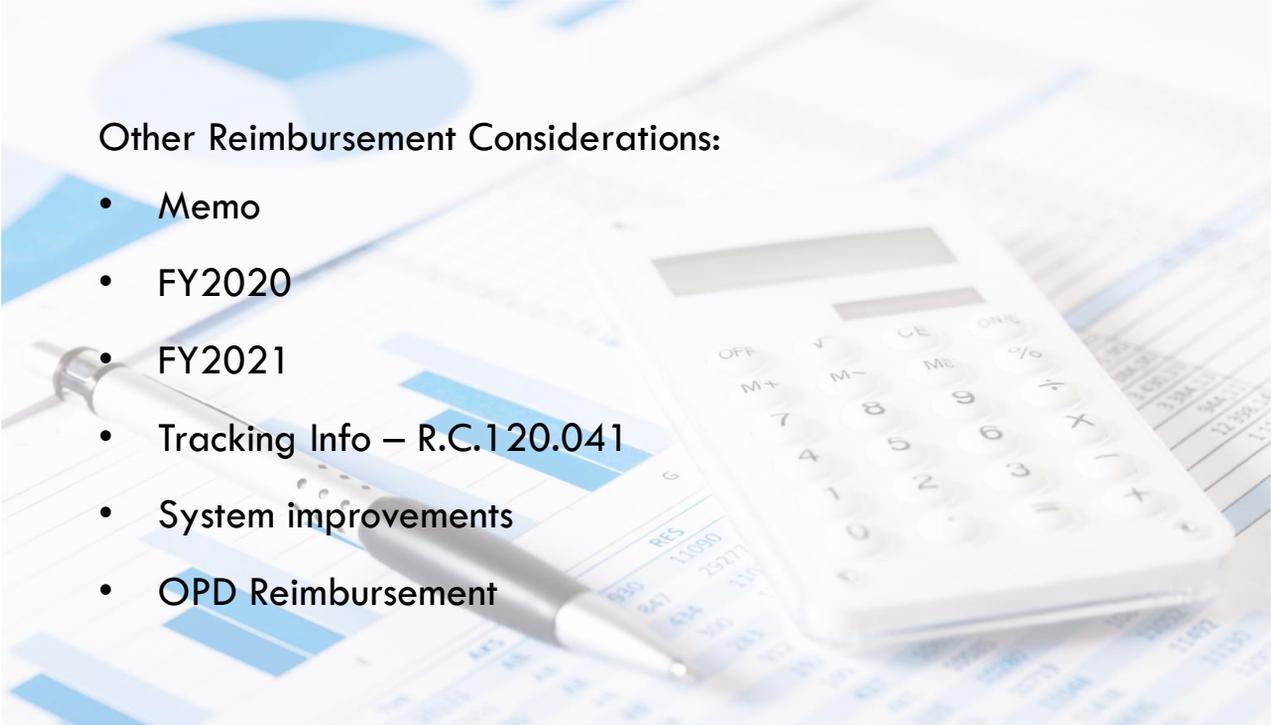
Specialty Court Reimbursement Plan Option:

- Adhere to Reimbursement Standards & Guidelines for Specialty Courts
- Develop a plan
- Counsel is able to submit one fee app for their services in a Specialty Court (can include multiple clients)
- Timeline for submissions



Benefits of Specialty Court Reimbursement Plan :

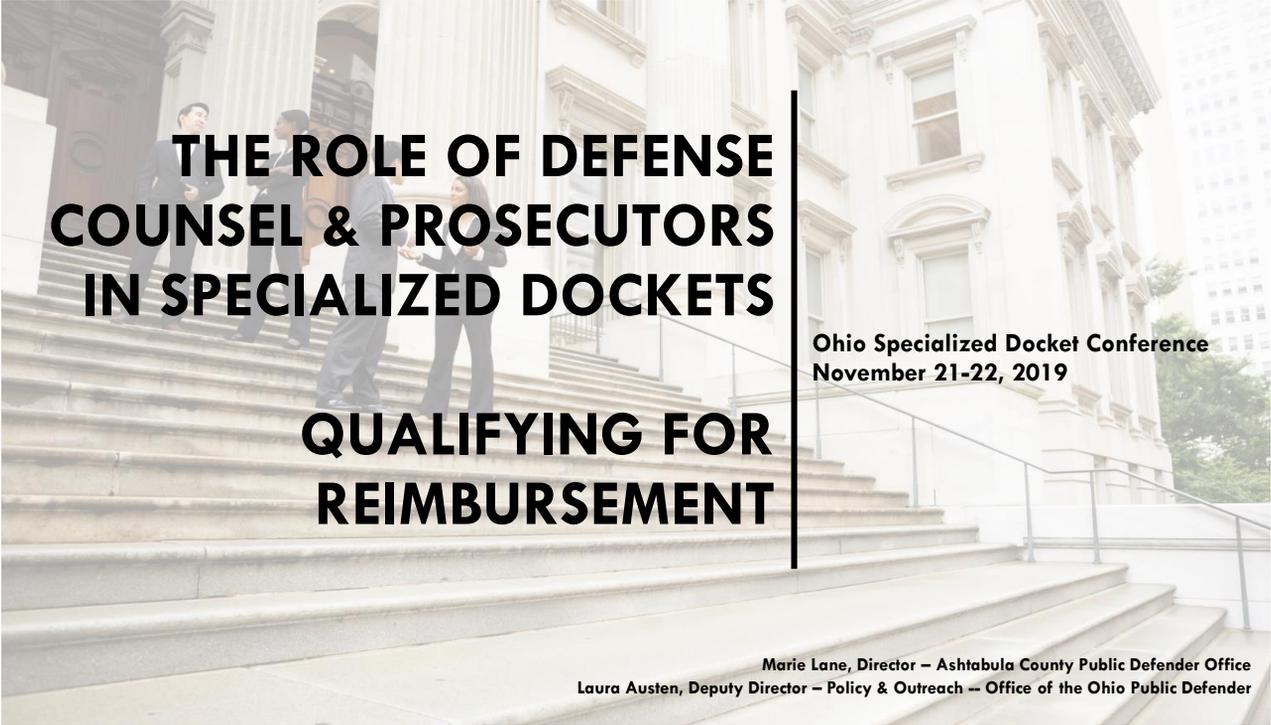
- Less paperwork for all parties
- Easier to track time
- Continuity

A background image showing a white calculator, a silver pen, and various financial documents including a pie chart and spreadsheets with data tables.

Other Reimbursement Considerations:

- Memo
- FY2020
- FY2021
- Tracking Info – R.C.120.041
- System improvements
- OPD Reimbursement





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