



## **BEST PRACTICES FOR TRANSFERRING CASES IN SUPERIOR AND STATE COURT**

### **I. Introduction**

This guide applies to state-certified accountability courts serving adult defendants and/or probationers in superior and state court. This resource provides a framework for state-certified accountability courts in superior and state court to receive participants and to transfer participants to other accountability courts in a timely, efficient, and predictable manner. Facilitating transfers quickly and expeditiously is in the best interest of participants and programs by enabling programs to serve more qualified participants and enhancing the likelihood of enhancing the success of those participants. State-funded and state-certified courts are expected to cooperate with one another while transferring cases and to be proactive in assisting in transfers between jurisdictions.

In general, participants should enroll in the accountability court that serves the county in which they reside, and into the program or track that best suits their needs clinically. However, as with any potential participant, programs have discretion to decline to admit a participant via a transfer when the program cannot adequately meet the participant's clinical or other needs. For example, a participant in a mental health court may move for a job and want to enroll in the local program near their new home. If that jurisdiction is only served by a drug court program and cannot meet that participant's mental health needs, it might be appropriate for the drug court program to deny entry to the participant. Similar issues may arise when the participant is a veteran or when moving between a DUI court and a drug court. Nonetheless, as with all potential participants, programs should strive to accommodate transfer participants when possible. Programs should be thoughtful and judicious when making admissions decisions for all potential participants, whether they arrive as a transfer or not.

Additionally, there is some variety across the state in how accountability court programs are administered. Some programs rely not only on the coordinator or director to manage operations, but also involve other team members such as case managers, assistant coordinators, court administrators, or attorneys for logistical support. In many programs, the coordinator or director of the accountability court acts as point person for coordinating transfers, but in some jurisdictions, other team members or court personnel may handle some or all of the duties involved in the transfer process. This guidance is written broadly to account for those differences, and courts are free to assign duties to various team members as the court deems appropriate, so long as the process flows smoothly and in a timely manner. Ultimately, the presiding judge of the accountability court program is responsible for ensuring that their programs handle participant transfers effectively.

This policy was prepared by the Ad Hoc Subcommittee on Participant Transfers. The subcommittee was chaired by Hon. Currie Mingledorff and included Chief Judge T. Russell McClelland, Chief Judge Brenda Weaver, Judge Jason Deal, and Judge Alison Toller, and supported by CACJ staff Assistant Director Josh Becker and General Counsel Alison Lerner. This guidance is effective March 1<sup>st</sup>, 2023.

## II. Types of Transfers and Definitions

Transfers typically happen in one of two circumstances: pre-admission and post-admission. Pre-admission transfers generally occur when a potential participant resides in a different county from where their underlying case is pending, and they wish to enroll in the accountability court in their home county. Post-admission transfers occur when a current accountability court participant wants to move to another jurisdiction and to transfer their participation to the accountability court in their new home county.

This policy applies to both types of transfers. Even where a potential participant is not going to be enrolled in the accountability court in the county where their charges are pending, the accountability court in the county in which they were arrested has a duty to assist in facilitating in screening that person for participation in the accountability court program that serves their home county. By working together to facilitate participant transfers at all stages of a case, as a community of interconnected programs, we can enhance access to accountability court programs for qualified Georgians across the state.

The accountability court program that is assisting screening the defendant for another jurisdiction's accountability court, or which is conducting the screening on behalf of another court program, is designated the "referring program," or "referring accountability court." These terms refer to the program in the county in which the charges or probation violation is pending and which will be sentencing the participant to complete another jurisdiction's accountability court program. The terms "receiving program" and "receiving accountability court" refer to the accountability court program that the potential participant wishes to enroll in, which will almost always be the county in which they reside.

Generally, transfers are accomplished by transferring supervision of the case from the referring court to the receiving court. A transfer of supervision typically occurs post-plea or after an admission to a probation violation, often when the defendant/probationer is ordered to complete a particular accountability court program as a condition of their sentence or probation revocation. Transfers can occur before or after adjudication. They may also occur where a voluntary sentence modification or waiver of probation revocation is done by consent of the parties, or on a bond condition from a case pending in another county. All these types of transfers are governed by this policy.

### III. Transfer Procedures

#### A. Pre-Admission Transfers

This guidance applies to all pre-admission transfers in state and superior court. Pre-admission transfers can arise in a number of ways. For example, the referring program may receive a typical referral, only to discover during the screening process that the potential participant's only option for housing is in another jurisdiction. In other cases, the referring program may be made aware before the screening process starts that the potential participant resides outside the local accountability court's jurisdiction and needs assistance being screened by another program.

This process presumes that the participant is in custody in the referring court's jail. If the participant is out of custody, the court programs may ask the participant to travel to be screened if this is practical. The process is otherwise the same.

In pre-admission transfers, for data collection purposes, a transfer participant is counted as a referral by the referring program. Once the participant is accepted into the receiving program, the referring program should report that referral as an "eligibility denial – program related – out of jurisdiction." The receiving court should enter the participant as a new referral, using the date the participant was referred to the receiving program, not the referring program. However, if the receiving program performs no screening process of their own and accepts the referring programs' screening process, they can enter the referring program's dates and data. Once accepted into the receiving program, the participant should be treated by the receiving program as any non-transfer participant and all data should be entered and submitted for the quarter in which the transfer occurs. The referring program should not collect or report any data on the transfer participant after the eligibility denial data submission for the quarter in which the transfer occurs.

##### i. Initial Referral and Screening

Even when a potential participant is identified from the beginning of the process as residing outside the jurisdiction of the court in which their charges or probation violation is pending, the referring court program should provide logistical or other assistance in the screening process. The referring program should work to identify an appropriate receiving program based on where the participant intends to reside. Once a receiving program is identified, the referring program may want to enlist the prosecutor on their team to coordinate with the receiving court to begin the screening process. Most commonly, the prosecutor on the referring program team should coordinate with their counterpart in the receiving court. Additionally, the program should keep the defense attorney for the potential participant informed of the progress of the referral regularly, at least weekly.

With the somewhat rare exception of a non-negotiated, or "blind plea," prior to beginning the screening process, the referring program should confirm that a negotiated resolution has been reached, and that entry into an accountability court is a concrete option for the potential participant to resolve their case. It is generally not efficient to screen a participant and then find out the prosecutor on the case is unwilling to make a plea offer that involves accountability court participation. Additionally, a copy of the receiving program's handbook and contract should be made available to the participant. Typically, this would be given to the participant's defense

attorney so that they can discuss it with them. However, if either the receiving program or referring program have a practice of conducting a pre-orientation by a court staff or team member, that person may give a copy of the handbook and contract to the potential participant directly.

The referring court program coordinator or other designated team member should coordinate with the receiving program to plan a process for screening the potential transfer participant. If the receiving court is located in a nearby jurisdiction, it may be possible for the receiving court staff to travel to screen the participant. If that is feasible, the referring program coordinator should assist in facilitating communication with the local jail for screening, or should work to provide space in the courthouse or other building for screening if the participant is out of custody. However, it may be that the receiving court, even if located nearby, is unable to screen the participant themselves directly. For example, they may use a contracted treatment provider and the provider may be unwilling or unable to travel outside the county to conduct a screening.<sup>1</sup> Similarly, where the receiving court is located farther away, it may be impractical for the receiving court staff to conduct the screening directly.

Regardless of whether the receiving program is able to conduct an in-person clinical assessment directly, the referring program should assemble the following information and documentation timely, **no later than two weeks** after the referring program becomes aware that the potential participant will need a transfer.

The required information and documentation:

- a. Defendant's full name and SID
- b. List of charges (also warrants, police reports, accusation/indictment if available)
- c. Proposed home address and names of current residents, if any
- d. GCIC waiver signed by defendant or copy of defendant's GCIC
- e. Mental health diagnosis, if applicable
- f. Medication list, if applicable
- g. Disability status
- h. Score from CACJ-approved risk/needs assessment tool, if available (such as LS/CMI or DUI-RANT)

If the receiving court cannot conduct the clinical screen, then the referring court should complete the LS/CMI, DUI-RANT, or other CACJ-approved risk/needs assessment tool.

The referring court program should transmit any piece of this information as soon as it is acquired to the receiving court and should not wait until all the documentation and information is available before sending items to the receiving court. This will enable the receiving court to expedite the screening process.

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<sup>1</sup> Programs using contracted treatment providers should consider reviewing the MOUs with these providers carefully and consider negotiating a clause that requires the provider to travel a certain distance to conduct clinical screenings and to be reimbursed for mileage and time spent.

Programs may modify this procedure if both the referring court and receiving court are in agreement, so long as the transfer process continues in a timely fashion. For example, the programs may wish to hold off on conducting a risk/needs assessment until the legal screen is conducted, particularly if staff are aware that the potential participant has an extensive criminal history or may have a conviction that would exclude them from the program. In that case, the receiving program may wish to conduct the legal screen first. Similarly, if the receiving court has reason to believe the proposed home address will not be approved, they may conduct the home evaluation prior to conducting a risk/needs assessment. As long as this process does not take more than one or two weeks, this can be an effective way to streamline processes.

As this information and documentation is being collected and sent to the referring court program, the coordinators in the receiving court program and referring court program should ensure that the prosecutor of the referring court and the defendant's defense attorney are regularly updated as to the status of the process.

ii. Staffing by the Receiving Accountability Court Program

The receiving court program coordinator and prosecutor should work diligently, as they would with any referral to their program, to screen the potential transfer participant. When the program first learns of the referral, the case should be placed on the receiving court program's regular staffing agenda so that updates can be regularly provided to the judge and to the rest of the team. The receiving program's coordinator and prosecutor should coordinate actively and collaboratively with the referring court program to assist in the screening process and should be willing to travel outside the county if needed and if permitted by local county policies. Regardless of whether travel for screening purposes is not permitted or is not practical, the receiving court program should cooperate proactively with the referring court program to expedite screening.

Once the GCIC waiver or GCIC criminal history record is received, the prosecutor in the receiving court program should conduct the legal screen as soon as possible. If a copy of the GCIC criminal history record is available to the prosecutor during the referral process, the prosecutor need not re-run the GCIC report.

Once all the information and documentation is received by the receiving court program, the receiving court program should make an eligibility determination **within two weeks** of receipt of all the required information and documentation. Programs may make eligibility decisions sooner if the circumstances permit. The receiving court program should staff the matter regularly by email and at every staffing and may be able to make a final determination sooner than that if staffing is held weekly. Judges may agree to an extension of time for good cause shown so long as both teams are actively working on the matter and there is coordination and communication between the programs.

iii. Post-Screening Procedures

If the receiving court program denies the transfer participant entry into the program, the referring court program and the participant's defense attorney should be contacted immediately to let them know about the denial and the basis for the denial.

If the participant is accepted, the referring court program should also be informed immediately. The receiving court coordinator should ensure that the prosecutor on the case and the participant's defense attorney are informed as well as the referring court program coordinator.

To facilitate the transfer, the receiving court program and referring court program should both coordinate to ensure that all necessary paperwork, including first reporting instructions, is completed for the defendant to be released and to enter into their program.

If this has not been done already, a copy of the receiving court program's participant handbook and contract should be given to the participant's defense attorney to ensure that the participant has it before release. The receiving court program should ensure that the contract is completed by the defendant prior to any court hearing. It is strongly recommended that the participant's attorney review the contract with them.

Once completed, a copy of the fully executed program contract should be sent to the receiving court program for their records and to be filed with the clerk. The referring court program should also retain a copy of the contract for filing in the referring court clerk's file in the defendant's criminal case as described below.

While the contract is being completed, the prosecutor assigned to the criminal case or probation violation should work with the defense attorney representing the participant to schedule the case for a plea or admission to a probation violation. Ideally a negotiated resolution would have been agreed upon prior to screening. In pre-plea cases, a bond hearing may be scheduled, or a bond order may be executed via a written consent order.

The referring court (typically the prosecutor or defense attorney) should inform the receiving court of the court date as soon as it is scheduled. The receiving court program should schedule a date and time for the participant to report to the receiving program after their release, and both coordinators should ensure that the participant receives a copy of the reporting instructions and date and time of their intake appointment and first court session. Courts should strive to use a one-page form that has the address, date and time of the participant's first contact with the receiving court program, date and time of first court appearance, and any directions or relevant information, so that the participant has all the needed information in one place. These instructions should be given to the participant as soon as possible, but no later than during the court hearing on the matter.

Additionally, before the court hearing at which the participant will be ordered to complete the receiving accountability court program, both the referring court program and receiving court program should ensure that a Transfer Order, found at Appendix A, is filled out accurately and completely. A draft order should be reviewed by the prosecutor on the underlying case and the participant's defense attorney. The form can be completed by any of the attorneys involved or by the coordinator or another team member.

At the time of the court hearing, the Transfer Order and contract should be presented to the judge presiding over the case in the referring court. The judge should review the terms of the program with the participant and the contract on the record at the hearing. This should occur even if the

judge hearing the plea is not an accountability court judge. The judge should review the reporting instructions with the defendant on the record as well, to avoid any confusion regarding the defendant's responsibilities upon release from the jail.

The judge should then sign their part of the Transfer Order and return it to the referring court program or defense attorney to be sent to the receiving court program. Ideally, the partially executed Order should be filed to create a record, but at a minimum a copy of it should be retained by the referring court program.

When the partially executed Transfer Order is obtained by the receiving court program, program staff should present it to the presiding judge of the accountability court program to sign. After the judge executes the order, receiving court program staff should send a copy to the referring court to be filed with the clerk of court in the referring court.

Additionally, if permitted by the receiving court program's local clerk of court, the receiving court program should file the Order in the clerk of court for the receiving court. Programs should be aware that some clerk's offices have refused to file these orders, because the underlying case is not pending in that clerk's jurisdiction. However, other clerk's offices have created case numbers for these Orders at the request of the court and have accepted them for filing. If the clerk's office in the receiving court refuses to file the Order, the receiving court program should simply retain a copy for their records and note the refusal of the clerk. The receiving program should then send the original order executed by both judges back to the referring court to be filed into the record in the underlying case. Since the case is pending in that jurisdiction, there should be no concerns with filing it in the referring court clerk's office.

Both program coordinators and the defense attorney and prosecutor assigned to the defendant's case should work together to ensure that a plan is in place for the defendant to be transported (either by themselves, family, or law enforcement) from the jail and to their residence or directly to the receiving court program from jail. Both the referring court program and the receiving court program have an affirmative duty to ensure the defendant is not released to the street in a manner that would result in the participant being homeless or not having adequate transportation.

#### iv. Sanction and Termination After Enrollment

Once the Transfer Order is executed by both judges and filed with the clerk of the referring court, the defendant becomes like any other defendant in the receiving accountability court program. The participant can be sanctioned by the receiving court program and incarcerated in the receiving court's local jail. However, programs should be aware that there are potential pitfalls here. Some jails have expressed a hesitance or outright refusal to house transfer participants because the underlying case is not in their county. This is rare, but it may occur, especially where the local clerk's office refused to accept the transfer order for filing. In that instance, programs should work collaboratively and thoughtfully with their local sheriff, clerk, and all other agencies to work toward a solution to getting participants housed on sanction orders.

If the transfer participant is ultimately recommended for termination, the receiving court should hear the termination hearing if one is requested by the participant. This is generally more efficient,

because most or all of the witnesses and documentation will be in the receiving court's jurisdiction. Termination hearings on transfer participants should not be held in the referring court.

All paperwork related to the participant's termination should be filed with the referring court. If the clerk in the receiving court permits it, it should be filed with the receiving court as well to complete that record.

#### B. Post-Admission Transfers

Post-admission transfers occur when an active participant in an accountability court program wishes to move to another jurisdiction before graduating from the program. This would require them to enroll in the accountability court that serves the county where they hope to reside. In this case, the screening process typically can move more quickly, because the referring accountability court program already has the critical information needed for the receiving accountability court to assess the participant for their program.

Referring programs have discretion in whether to grant a participant's request to transfer to another program. Upon receiving the request, the receiving program should staff the matter at the next available staffing, or sooner via email or remote meeting, if the matter is urgent (such as where the participant is facing homelessness or other urgent situations).

For data collection purposes, the referring program should exit the participant as "Discharged-Transferred" and submit them in the quarter in which the transfer occurred. The receiving program should enter the required data for the transferred participant for the quarter in which they were referred but needs only to enter data required for any new participant, such as demographic information, intake information, and assessments, as outlined in the Data Dictionary and Data Collection Toolkit located on CACJ's website. The receiving program does not need to enter historical data from before the quarter in which the transfer occurred unless otherwise noted as required, since that data will be reported by the referring program.

The information/documentation to be sent by the referring court program to the receiving one is essentially the same as for a pre-admission transfer, with a few small modifications. The information and documentation to be sent is as follows:

- a. Defendant's Full Name and SID
- b. List of charges (also warrants, police reports, accusation/indictment if available)
- c. Copy of plea paperwork
- d. Copy of executed contract
- e. Risk/needs assessment score
- f. Proposed address and names of current residents, if any
- g. GCIC waiver signed by defendant
- h. Mental health diagnosis, if applicable
- i. Medication list, if applicable
- j. Disability status



- k. Brief summary of the participant's record in the program, including sanction history and curriculum already completed

Just as the referring program has discretion regarding whether to permit the participant to transfer, the receiving program is not required to accept a participant just because the referring program has agreed to it.

Once a referral is received, the receiving program should staff the participant at the next available staffing session and should screen the participant timely and proactively. As with pre-admission transfers, once all the information is received, the receiving program should reach a decision about acceptance within **two weeks**.

If the receiving court program agrees to accept the participant, programs should follow the transfer procedures listed above for pre-admission transfer cases. As with pre-admission transfers, both programs should ensure that a copy of the fully executed transfer order is filed into both the receiving court and referring court's clerk of court if possible. Before the transfer paperwork is executed, the receiving court and the participant should have an agreement about what phase the participant will be entering and what curriculum will be needed.

The receiving program may require that the participant complete a new contract. Sanctions and terminations will follow the procedures listed above for pre-admission transfers as well.

## **FREQUENTLY ASKED QUESTIONS**

1. Q: Does the judge in a receiving court program have authority to sanction the participant to jail time to be housed in the receiving court's local jail?  
A: Yes, when a proper transfer order is in place. The transfer order gives the judge in the receiving court authority to order the defendant incarcerated in the receiving court's county jail.

# **APPENDIX A**

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY

**STATE OF GEORGIA**

**STATE OF GEORGIA**

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vs.

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CASE NO. \_\_\_\_\_

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\_\_\_\_\_

**TRANSFER ORDER**

The above-named Defendant having entered a plea, been sentenced, or otherwise accepted in this Court on \_\_\_\_\_, 20\_\_ to participate in the \_\_\_\_\_ County \_\_\_\_\_ Court, and it appearing that said Defendant is eligible for and has been accepted into said \_\_\_\_\_ Court and has agreed to the terms hereof, it is hereby **ORDERED** that supervision over Defendant’s case be and hereby is transferred until program completion or termination, to the Superior/State Court of \_\_\_\_\_ County. All parties to this Order explicitly agree to the following conditions of transfer:

1. Treatment and supervision shall be transferred to the Receiving Accountability Court and all sanctions shall hereafter be imposed by the presiding Judge of the Receiving Accountability Court as long as the Defendant remains in the program.
2. The Clerk of Receiving Court shall create a file into which any and all official motions and orders of the Receiving Court shall be maintained. The Clerk of the Receiving Court shall close the file upon the Defendant’s completion or termination from the Receiving Court’s program.
3. Defendant shall pay restitution, fines, and surcharges originally imposed as a part of the sentence as directed by the \_\_\_ County \_\_\_ Court (Referring Court). All Court-related fees, including, but not limited to, participant fees and monetary sanctions, shall be paid to the \_\_\_ County \_\_\_\_\_ Court (Receiving Court). <Insert specific provisions here>
4. It is further ordered that the Defendant successfully complete each and every condition of the Receiving Accountability Court’s program until such time that the Defendant graduates from said program.
5. In the event that the Defendant is terminated from the Receiving Accountability Court program, the Defendant shall be transferred back to the Referring Court for disposition of the case.

**SO ORDERED** this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**TO BE SIGNED IN DUPLICATE**

\_\_\_\_\_  
\_\_\_\_\_, Judge  
\_\_\_\_\_ Court of \_\_\_\_\_ County

\_\_\_\_\_  
\_\_\_\_\_, Judge  
\_\_\_\_\_ Court of \_\_\_\_\_ County

Consented to by:

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant’s Attorney Bar. No