



## Vermont Legislative Research Service

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### Treatment Courts

States established treatment courts as a response to the cycle of incarceration that is associated with substance abuse.<sup>1</sup> Treatment courts, also called drug courts, do not mirror the traditional court settings. Instead of issuing punishments or sentences for drug-related offenses, these courts recognize substance abuse as a disease and aim to treat it.<sup>2</sup> Offenders essentially undergo treatment and supervision rather than time in prison.

#### The Drug Court Alternative

Drug and treatment courts have grown since their first appearance in 1989 in Florida. These courts developed in part due to the growing opioid epidemic, alongside the mass incarceration crisis within the United States. According to the National Drug Court Resource Center, there are more than 4,000 drug courts nationwide, including six types of specialty treatment courts:<sup>3</sup>

- Juvenile Drug Treatment Courts (JDTC), designed to address youth with substance use disorders who interact with the juvenile justice system;
- DUI/DWI Courts, which follow the drug court model and address DWI offenders through treatment and supervision;<sup>4</sup>
- Family treatment courts serve the children, parents, and families that interact with the child welfare system because of parental substance abuse as a factor for either child abuse or neglect (this court division protects child safety by ensuring a safe environment through family recovery);<sup>5</sup>

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<sup>1</sup> U.S. Department of Justice, Office of Justice Programs, “Drug Courts: Overview,” May 16, 2023, <https://ojp.gov/feature/drug-courts/overview#types-of-drug-courts>.

<sup>2</sup> U.S. Department of Justice, “Drug Courts: Overview.”

<sup>3</sup> Nicolas Nayfeld, “Drug Courts and the ‘Responsibility without Blame’ Approach,” *Journal of Applied Philosophy* 40, no. 3 (2022): 488–504, <https://doi.org/10.1111/japp.12640>.

<sup>4</sup> V. Venkatraman, C. M. Richard, K. Magee, and K. Johnson, “3.1: DWI Courts,” *Countermeasures That Work: A Highway Safety Countermeasures Guide for State Highway Safety Offices*, 10th ed., Report No. DOT HS 813 097,, 2020, National Highway Traffic Safety Administration, [https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th\\_080621\\_v5\\_tag.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th_080621_v5_tag.pdf).

<sup>5</sup> Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, “Family Drug Court Program,” May 2021, <https://ojjdp.ojp.gov/programs/family-drug-court-program>.

- Mental health courts, a newer development within treatment courts (these courts deal with non-violent individuals who have been diagnosed with mental health or a co-occurring substance abuse disorder);<sup>6</sup>
- Veterans’ Treatment Court, which deals with veterans who have substance abuse disorders and are involved in the justice system;<sup>7</sup> and,
- Tribal healing and wellness courts, a compilation of resources within the context of the tribal justice system.<sup>8</sup>

Drug Courts are utilized by those with substance abuse disorders charged with criminal drug-related offenses. These courts aim to provide an alternative to incarceration and receive holistic treatment to address substance abuse disorders. The process is intensive, requiring random drug tests and regularly scheduled hearings. The entirety of the process lasts more than a year.<sup>9</sup> Participants must abstain from substances over a long period, complete a substance abuse disorder program, not be detained, and have a job to complete the program.<sup>10</sup> Upon completion, participants may expunge their records. If participants fail to complete the process, they are subject to a traditional court proceeding.

### **Drug Courts in Vermont**

Within the state of Vermont, there are six treatment court programs. These programs operate within family and criminal courts. In Vermont, there are three Adult Drug Treatment Dockets located within Chittenden, Rutland, and Washington County. The focus of these treatment courts is "voluntary, post-plea programs for defendants over age 18 that divert non-violent offenders with substance use problems from incarceration into supervised treatment programs with rigorous standards of accountability."<sup>11</sup> In Franklin County, there is one Juvenile Treatment Docket that serves ages thirteen through seventeen. These courts follow similar processes as adult Treatment Courts but utilize developmentally appropriate materials.<sup>12</sup> There have also been developments of other treatment courts, like the Mental Health Treatment Docket, which follows similar proceedings to drug courts but is in the context of mental health services.<sup>13</sup> Another treatment court is the Southeast Regional DUI Docket, which has been expanded to Windsor, Orange, and Windham counties and deals with hardcore DUI offenders.<sup>14</sup> The Vermont Judicial Commission of Family Treatment Dockets. The final treatment court in Vermont is the Vermont

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<sup>6</sup> Bureau of Justice Assistance, U.S. Department of Justice, “Mental Health Courts Program: Overview,” February 2012, <https://bja.ojp.gov/program/mental-health-courts-program/overview>.

<sup>7</sup> Bureau of Justice Assistance, U.S. Department of Justice, “Veterans Treatment Court Program: Overview,” March 14, 2023, <https://bja.ojp.gov/program/veterans-treatment-court-program/overview>.

<sup>8</sup> U.S. Department of Justice, Tribal Law & Policy Institute, “Key Component 1,” *Tribal Healing to Wellness Courts: The Key Components*, 1–3, West Hollywood, California, 2003.

<sup>9</sup> Nayfeld, “Drug Courts and the ‘Responsibility without Blame’ Approach.”

<sup>10</sup> Nayfeld, “Drug Courts and the ‘Responsibility without Blame’ Approach.”

<sup>11</sup> State of Vermont Supreme Court, “The Vermont Judiciary: A Guide for Legislators,” 2019, <https://www.vermontjudiciary.org/sites/default/files/documents/Guide%20for%20New%20Legislators%20011619.pdf>.

<sup>12</sup> State of Vermont Supreme Court, “The Vermont Judiciary: A Guide for Legislators.”

<sup>13</sup> State of Vermont Supreme Court, “The Vermont Judiciary: A Guide for Legislators.”

<sup>14</sup> State of Vermont Supreme Court, “The Vermont Judiciary: A Guide for Legislators.”

Judicial Commission on Family Treatment Dockets which has the primary focus of addressing the upsurge in child protection cases that have resulted due to the current opioid crisis.<sup>15</sup>

In 2023, Vermont treatment courts were allocated \$190,000 through the Vermont Department of Health - Department of Substance Abuse (VDH-DSA). Funding for the Vermont treatment court system comes from federal grants as well as judicial general fund dollars. The State Programs Manager receives their funding from the Vermont Judiciary with general funds. All other positions and program funding to support treatment programs came from federal grants.<sup>16</sup>

Many drug court programs across the country do not possess strong statistical data on the rates of recidivism and the cost incurred by the state with their treatment court programs. Since the inception of the program, there have been excessive amounts of raw data compiled on the treatment courts of Vermont. This data historically required research teams to manually analyze it to make sense of it. In collaboration with NPC Research, Vermont will soon have a compilation of statistics relating to its treatment programs hopefully by December of 2023. This data will pertain to the rates of recidivism and the overall costs to the state for treatment programs.<sup>17</sup> The statistical analysis will be housed on the Vermont Judiciary website when it is released.<sup>18</sup>

### **Efficacy of Treatment Courts**

The most pressing question surrounding treatment courts is simple: Are they effective? This is a difficult question to answer because there is a great deal of variation in the structure and operation of drug courts from state to state.<sup>19</sup>

Studies done on treatment court systems across the country find that they do lead to a reduction of recidivism. A metaanalysis of thirty studies of drug courts across the U.S., conducted by scholars at Columbia University's National Center on Addiction and Substance Abuse, found that drug use and criminal behavior were substantially reduced for those participating in a drug court. The metaanalysis also found that drug use and criminal behavior were reduced for those who graduated from drug court programs, to a lesser but still notable extent.<sup>20</sup> Another comprehensive study evaluating adult drug courts concluded that drug courts led to significantly reduced rates of substance use and a decreased likelihood of future criminal behavior.<sup>21</sup> In a large meta-analysis of 154 different studies, published in the *Journal of Criminal Justice* in 2012,

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<sup>15</sup> State of Vermont Supreme Court, "The Vermont Judiciary: A Guide for Legislators."

<sup>16</sup> Kim Owens, Interview with Program Manager of Vermont Treatment Courts, September 30, 2023.

<sup>17</sup> Kim Owens, interview.

<sup>18</sup> Vermont Judiciary, "Treatment and specialty dockets," accessed October 15, 2023,

<https://www.vermontjudiciary.org/programs-and-services/treatment-and-specialty-dockets>.

<sup>19</sup> United States Government Accountability Office, *Report to Congressional Committees*, "Adult Drug Courts," December 2011, <https://www.gao.gov/assets/gao-12-53.pdf>.

<sup>20</sup> Steven Belenko, *National Drug Court Institute Review*, "Research on Drug Courts: A Critical Review," June 2001,

[https://ndcrc.org/wp-content/uploads/2020/06/DCRVOLUME1-1\\_Research\\_on\\_Drug\\_Courts\\_A\\_Critical\\_Review.pdf](https://ndcrc.org/wp-content/uploads/2020/06/DCRVOLUME1-1_Research_on_Drug_Courts_A_Critical_Review.pdf).

<sup>21</sup> Shelli Rossman, John Roman, Janine Zweig, Michael Rempel, and Christine Lindquist, "The Multi-Site Adult Drug Court Evaluation: Executive Summary," *Urban Institute Justice Policy Center*, December 2011, <https://www.ojp.gov/pdffiles1/nij/grants/237108.pdf>.

the authors found that these studies showed that participation in treatment court programs led to an average twelve percent drop in recidivism. Going deeper, the report found that courts with higher graduation rates and those that only accepted non-violent offenders saw even larger reductions in recidivism.<sup>22</sup> One additional finding of this study is of note: the studies analyzed did not find any notable effectiveness for juvenile treatment courts, only adult treatment courts. A narrower meta-analysis of exclusively juvenile treatment courts reached a similar conclusion, finding that there was no evidence of juvenile treatment courts being more effective than traditional courts; however, the study's authors noted that much of the research on the subject was of poor quality.<sup>23</sup>

## Case Studies of Other States

### Maine

The state of Maine has had a treatment court system since 2001.<sup>24</sup> Initially starting with six treatment courts, Maine now operates eight treatment courts in 8 different counties across the state.<sup>25</sup> Maine's General Fund provides the funding for the staff of the treatment courts including judges, marshals, and full-time case managers. Maine's Department of Health and Human Services provides funding for treatment and case management.<sup>26</sup> While Maine's treatment courts do not receive federal funds for their operation, they did receive two federal grants from the Bureau of Justice Assistance to aid in establishing two new treatment courts.<sup>27</sup>

A study conducted by the Public Consulting Group in collaboration with the state of Maine found that treatment courts save the state an average of twelve percent of the cost of typical incarceration when a person exits the treatment court program. The same study found that the state continues to see savings from treatment courts after release due to decreased rates of recidivism in those who participated in the program. The state saved twenty-eight percent of the cost per person of traditional incarceration after 18 months when considering decreased recidivism.<sup>28</sup>

- The average cost until exiting incarceration in a prison and probation in Maine is \$43,461.<sup>29</sup>

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<sup>22</sup> Ojmarrh Mitchell, David Wilson, Amy Eggers, and Doris MacKenzie, "Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts," *Journal of Criminal Justice* 40, no. 1 (January 2012), [https://www.innovatingjustice.org/sites/default/files/documents/Assessing\\_Efectiveness.pdf](https://www.innovatingjustice.org/sites/default/files/documents/Assessing_Efectiveness.pdf).

<sup>23</sup> Emily Tanner-Smith, Mark Lipsey, and David Wilson, "Meta-Analysis of Research on the Effectiveness of Juvenile Drug Courts," *Office of Justice Programs*, (December 2016) <https://www.ojp.gov/pdffiles1/ojdp/grants/250439.pdf>.

<sup>24</sup> Maine Administrative Office of the Courts, "2021 Annual Report on Maine's Treatment and Recovery Courts," February, 2022, 6, <https://www.courts.maine.gov/about/reports/adtc-report-2021.pdf>.

<sup>25</sup> State of Maine, "2021 Annual Report on Maine's Treatment and Recovery Courts," 16.

<sup>26</sup> State of Maine, "2021 Annual Report on Maine's Treatment and Recovery Courts," 12.

<sup>27</sup> Maine Administrative Office of the Courts, "2022 Annual Report on Maine's Treatment and Recovery Courts," February 2023, 10, <https://legislature.maine.gov/doc/10024>.

<sup>28</sup> State of Maine, "Maine Adult Treatment Courts Evaluation Report," December 2020, 67, <https://www.courts.maine.gov/about/reports/adtc-evaluation-report-2020.pdf>.

<sup>29</sup> State of Maine, "Maine Adult Treatment Courts Evaluation Report," 76.

- The average cost until exiting for a person participating in a treatment court is \$38,193.<sup>30</sup>
- On average it costs \$10,964 for someone to complete the usual 15.5 months of the program with an additional average cost of \$27,229 for incarceration and probation.
- Recidivism rates for a sample of traditional incarcerated individuals were 31%-47% six to twenty-four months after exit and recidivism rates for a sample of individuals who received treatment were 12%-20% six to twenty-four months after exit.<sup>31</sup>

In total, the state of Maine claims it saves \$16,232 on average for every person who participates in treatment programs compared to those who do not participate.<sup>32</sup>

## New Hampshire

The state of New Hampshire currently has ten drug courts.<sup>33</sup> Funding for these courts comes from either the state or the federal government. Courts that intend to be drug courts must meet specific requirements before they are eligible to receive state funding, including the following:<sup>34</sup>

- Obtain a certificate of approval from the chief justice of the Superior Court;
- A minimum of the drug court justice and the drug court coordinator must have undergone training from a federal drug court training program or have attended another approved training;
- Provide documentation that the court had applied for a federal implementation grant and was either denied or the grant has expired; and,
- The drug court cannot be presently funded by a non-prophet or federal implementation grant; drug courts are allowed to be funded for supplemental or enhancement funding from other sources, though.

On top of the services provided to those in drug courts, New Hampshire has begun to implement mental health courts into their court system. These new courts function similarly to drug or DUI courts by addressing the root cause of criminality by treating certain factors that cause it. The statute that implements these courts, N.H. Rev. Stat. § 490-H:2, puts it as such: “The courts monitor offenders with mental illnesses for compliance with individual services to change behavior which would otherwise result in criminal conduct.”<sup>35</sup> New Hampshire is one of 39 states with a system and guidelines in place for these courts as of 2019.<sup>36</sup>

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<sup>30</sup> Maine, “*Maine Adult Treatment Courts Evaluation Report*,” 76.

<sup>31</sup> Maine, “*Maine Adult Treatment Courts Evaluation Report*,” 67.

<sup>32</sup> Maine, “*2021 Annual Report on Maine’s Treatment and Recovery Courts*,” 28.

<sup>33</sup> New Hampshire Judicial Branch, “*Court Locations*,” Accessed Sept 26, 2023, <https://www.courts.nh.gov/our-courts/drug-mental-health-courts/court-locations>.

<sup>34</sup> Office of the NH Drug Offender Program, “*Superior Court of New Hampshire Drug Court Fiscal Policy*,” July 2022, 3, <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-07/nhdrugcourtfinancialpacket.pdf>.

<sup>35</sup> *Implementation of Mental Health Courts* N.H. Rev. Stat. § 490-H:2.

<sup>36</sup> National Drug Court Resource Center, “*Painting the Current Picture*,” May 2023, 114, <https://ntcrc.org/pcp/>.

## Conclusion

Drug and treatment courts can be used as an alternative to incarceration for non-violent crimes, while also addressing individual substance abuse issues. There are studies and other state programs that have been shown to highlight the success of these programs on decreased recidivism. There is also some evidence that treatment courts also lower the cost incurred by state governments compared to traditional incarceration.

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This report was completed on November 28, 2023, by Morgan Ambrose, Nate Biscotti and Luke McDermott under the supervision of VLRS Director, Professor Anthony “Jack” Gierzynski.

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