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Drug Courts

Nationally and locally, our court systems have become overburdened by case load—those staffing the court system (judges and attorneys) face increasing pressure to process cases as quickly as they can. There is greater demand for judicial attention than the system can supply. The result is internal frustration among judges and attorneys as well as frustration among citizens who become doubtful that the courts are solving problems as recidivism increases. It also has led communities and lawmakers to question the efficacy of a system that produces high costs placed on the state and tax payer (Berman 2005).

According to the American Probation and Parole Association (APPA), conservative estimates show that it costs more than \$60 a day or \$22,000 a year to house an inmate in state prison (Kinsella and Fuller 2003).

The reality is that, at the national and local levels, the courts are flooded with cases involving nonviolent criminals evincing serious social problems that include drug addiction, mental illness, and family dysfunction (Berman 2005). Over the past 15 years, innovation has occurred within American state courts with this realization that the traditional manner of adjudicating and penalizing offenders was ineffective to address these social ills; the court system needed to find new ways to identify and solve the underlying problems that face individuals—offenders and victims—and crime-plagued communities. “Problem-solving courts” address the underlying causes of social problems; offenders become part of a treatment and supervision program rather than face time in prison. The majority of these courts focus on drug abuse—these are called drug courts.

There are more than 2,000 new “problem-solving courts” in the United States, and every state has at least one. The American Bar Association has endorsed problem-solving justice along with the Conference of Chief Justices (Berman 2005). These community based supervision programs are estimated to cost less than \$10 a day for an offender under regular supervision. Additionally, over time the cost of these programs has decreased while spending for prisons has increased—which makes funds for the new programs scarce (Kinsella and Fuller 2003).

The Drug Court Alternative

Drug courts are the most popular of the new problem-solving courts. With an increase in the criminal and family court caseload as the drug epidemic spread through the country in the late 1980s, drug users and dealers became a constant part of the growing judicial dockets and the largest population contributing to overcrowded jails and the overburdened child welfare system. In 1989, Judge Stanley Goldstein introduced the first drug court in Dade County Florida that utilized treatment in order to prevent the cycle of drug abuse and recidivism within communities (Judge Anita Josey-Herring 2005). This approach, that maintained certain traditional mechanisms to hold defendants and offenders

accountable, gained credibility as more specialists, lawmakers, and those involved in criminal justice recognized that compulsion to use and abuse drugs was indicative of more than willful law-breaking—it is linked to a psychological and physiological craving similar to the disease model.

Drug courts offer addicted offenders community-based treatment in place of incarceration. A survey of 382 drug courts showed that the most common charges are felony drug possession, misdemeanor drug possession, and then associated charges (Roman 2005). Offenders are subject to random weekly urine analysis monitoring to ensure they are in compliance with their treatment and remain clean and sober. They are held accountable close in time to their infractions as a result of prompt and predictable court sanctions. Typically, participants see the judge every two weeks, and a multidisciplinary team verifies the offender's participation in the counseling sessions. Drug courts are also remarkable for their component of encouragement—the judge and team often encourage the participant and offer praise and motivational incentives following any accomplishment. If defendants complete the treatment successfully, the charges against them are typically reduced and they can avoid jail or prison terms (Berman 2005). The Federal Bureau of Justice Statistics states that a successful participant is defined as someone who has not: violated the rules of their supervision and been returned to jail or prison, committed another crime, or attempted to escape supervision (Kinsella and Fuller 2003).

Some drug court programs have after-care planning that connects participants with their community and other resources, giving them the tools necessary to effectively transition back into the community (Judge Josey-Herring 2005).

Estimates show that each year about 20,000 to 25,000 drug-involved offenders enter drug courts around the country, while each year 550,000 or 600,000 drug-involved offenders entering the justice system meet a clinical definition of being at risk of dependence (Roman 2005). At the end of 2007, there were 2,016 drug courts in about 1,100 counties, according to the National Drug Court Institute. The institute says that number is up from 1,048 five years ago and is nearly 1,800 more than existed ten years ago (Unze 2007). The 2003 Federal Bureau of Justice Statistics shows figures indicating states could save millions of dollars by using community-based supervision programs. Their study shows that 51 percent of state prison inmates are incarcerated for committing nonviolent crimes, 21 percent of which are imprisoned for drug offenses (Kinsella and Fuller 2003).

Efficacy of Drug Courts

Because drug courts are constructed to best address the problems of offenders, each court might operate under differing procedures, making measurements of the efficacy of drug courts on the national level very difficult. Something as slight as the charisma of the judge might make one program more effective than another. Conversations on the efficacy of drug courts often distinguish between the adult drug courts and juvenile drug courts.¹

There have been more than 100 research studies about adult drug courts and if one examines the most

1 “There are adult drug courts, which are specialized dockets in criminal courts established to reduce recidivism and substance abuse among nonviolent substance-abusing defendants. There are juvenile drug courts, which are specialized dockets within the juvenile court, and they involve delinquency matters of nonviolent offenders and status offenders with substance abuse and alcohol problems. And there are family treatment courts or family dependency treatment courts, which are selected neglect-and-abuse cases, otherwise known as dependency cases, on family court dockets for parental substance abuse as a primary factor. The judge, treatment personnel and child protection agency officials, and others work together to help parents in these situations achieve sobriety with the goal of reuniting families” (Judge Josey-Herring 2005).

rigorous and thorough 25 studies, one can conclude that drug courts reduce criminal offending by 15 to 20 percent (Roman 2005). This represents a reduction in recidivism. Yet evidence that drug courts reduce drug use is much harder to measure, since monitoring drug use is difficult. John Roman of the Urban Institute says, “Even though the evidence is sort of ambiguous, I think the preponderance of the evidence is that adult drug court participants use fewer drugs and fewer of them use drugs during the period when they are participating in the drug court” (Roman 2005).

The studies show that the adult with a long history of both drug use and multiple contacts with the criminal justice system is the most helped by these adult drug courts. There exists greater skepticism of the efficacy of juvenile drug courts however, due to the nature of juvenile transgressions and the lack of knowledge on the pathologies of juvenile substance use. Peter Reuter, from the University of Maryland, an expert on drug policy, finds that drug involvement among juveniles may be less prevalent than 10, 15 years ago. For those aged 18-25, drug use has decreased or remained stable². Cocaine, heroin, and methamphetamine use is lower than it was in the 1990s. Marijuana use increased in the early 1990s, yet it has stabilized. Most juvenile offenders show up in the criminal justice system because of marijuana use—yet marijuana is not identified as a drug with a dependency potential strongly related to criminality. Juveniles are arrested mostly for marijuana possession, and thus do not stand to benefit from a drug-treatment program. Thus addicts are far fewer in number amongst the juvenile population than the adult population (Reuter 2005).

Participants in a juvenile drug court might experience a longer period of time and deeper involvement within the juvenile justice system, due to the treatment approach, than had they been processed the traditional way. This intensive intervention might be inappropriate for juveniles who do not carry addiction problems (Roman 2005).

There is a broad consensus, however, that drug courts are an improvement to the traditional court system. For example, Judge Anita Josey-Herring of the District Columbia Superior Court says:

From a judicial perspective, I believe drug courts work. By using a multidisciplinary approach, the drug court team not only addresses the participants' substance abuse needs but also their mental health, physical health, and social service and educational problems to the extent that resources allow. This effort requires a tremendous commitment by the judge and other stakeholders involved in that process, and it requires an investment of a personal nature as well as financial resources. This holistic approach forces the system to really hone in on core problems of drug court participants to affect the root causes of why the participant is using drugs (Judge Josey-Herring 2005).

Doug Marlowe, a researcher at the University of Pennsylvania, wrote: "More research has been published on the effects of drug courts than on virtually all other interventions for drug-abusing offenders combined. Taken together, the results of experimental studies proved the efficacy of drug courts beyond doubt" (Marlowe).

A study done by the National Drug Court Institute in 2005 showed 70% of drug court participants graduate from the program and re-offend at a rate of 17% on average. Offenders who do time in prison

² Though the use of methamphetamines has increased, it is still less than 1 percent of the population having used methamphetamines in the recent past. Though in certain communities it has had devastating effects, on the national level, methamphetamine use is less serious a problem than cocaine or heroine, and it doesn't appear to be spreading to larger populations (Reuter, 2005).

have an average recidivism rate of 66%. In addition, the same study showed the annual average cost of a drug court participant is \$3,500, while annual prison costs range from \$13,000 to \$44,000 per inmate (Unze 2007).

Challenges for the Drug Court Program

The greatest challenge for the drug court system presently is finding a way to explain how the model produces behavioral change in terms of drug use and criminal offending. Which approaches are most effective, and why are they effective? This is a difficult question to answer because, as mentioned before, the programs vary in their approach.

Political support (and thus funding) for drug courts has varied over the years. Federal funding was first authorized in the Crime Bill in 1994, yet at that time, the courts were seen as unacceptable, or “soft on crime.” Two years later, Congress repealed the drug-court funding program. A year after the repeal, funding for the program was reinstated and almost doubled (Lee 2005). Over time, opinion has shifted in Washington towards the positive—it is seen as a valued innovation, a commonsense practice. For example, in 2005, during a tight budget year, the president recommended an increase of 75 percent from 2004 in the funding for the drug-court program (from \$40 million to over \$70 million) (Lee 2005). The program was reauthorized in 2001 in the Department of Justice Reauthorization Bill with little debate.

Legislators want to know why the program is successful and want to be able to see concrete results identifiable across courts nation-wide—yet these figures and percentages aren't readily available and the methodology for calculating them hasn't been completed. Furthermore, not all officials and elected politicians in Washington understand that addiction is a chronic relapsing disease that has no cure but treatments, just like asthma and hypertension (Lee 2005). Others see addiction as a moral failing, that users could stop if they simply “got serious” about their lives.

Marcia Lee, who served on the Senate Judiciary Subcommittee on Crime in 2005, concluded in her discussion of the politics of federal funding for drug courts at a forum hosted by the Urban Institute:

The future of the drug-court program really depends on proven results and educating folks on the Hill about those successes. And the more success the drug-court program has and the more confident that people can be in its success, the more likely that other problem-solving courts will get congressional funding, and the more likely that the criminal justice system will be able to be reformed at least around the margins to refocusing on rehabilitation and helping offenders reenter into the community successfully (Lee 2005).

Case Studies

The following sections provide case studies as to the efficacy of the drug-court program. Below, table 1 compares recidivism rates in the traditional court system and the drug court system for select cities (Belenko and Dumanovsky 1993).

Table 1: Recidivism Rates Compared

| City | Traditional Court | Drug Court |
|----------------|-------------------|-------------------|
| Denver, CO | 58.0% | 53.0% |
| Portland, OR | 1.53 ^a | 0.59 ^a |
| Oakland, CA | 1.33 ^a | 0.75 ^a |
| Riverside, CA | 33.0% | 13.4% |
| Austin, TX | 41.0% | 38.0% |
| Wilmington, DE | 51.1% | 33.3% |

^a expressed as the average number of arrests suffered during the follow up period, not as a percentage.

Source: Belenko, Steven & Dumanovsky, Tamara. 1993. "Special Drug Courts: Program Brief." Washington, DC: Bureau of Justice Assistance, US Department of Justice.

California

In 1998, the Judicial Council adopted section 36 of the California Standards of Judicial Administration, which provides guidelines and clarification specifically for pre-plea diversion drug courts. A pre-plea diversion program allows for the defendant to participate in a program that includes counseling, drug testing, education, etc. If all the requirements are met, the charges against the defendant are dismissed. Under Penal Code section 1000.5, all participants in drug courts shall:

1. Be eligible for early entry;
2. Receive treatment and rehabilitative services;
3. Be monitored for abstinence from use of drugs by frequent drug testing;
4. Receive early and frequent judicial supervision, and;
5. Receive sanctions and incentives.

Funding for these courts comes from Drug Court Partnership Act of 1998, which through a series of four-year grants, annually grants \$7.6 million to 34 counties in support of adult post-plea drug courts. Additional funding comes from the Comprehensive Drug Court Implementation Act of 1999, which for the fiscal year 2000-2001 allocated \$10 million for drug courts for juvenile offenders, parents of children who are detained by or dependents of the juvenile court, parents of children in family law cases involving custody and visitation issues, criminal offenders, and other approved drug court systems.

A report released April 15, 2003 highlights two separate studies on drug courts conducted by the Judicial Council of California's Advisory Committee on Collaborative Justice. Their findings evidence that drug courts "result in substantial savings to the criminal justice system as the result of reduced prison and jail costs, lower victimization costs, reduced recidivism, and greater case processing efficiency (Holt 2003)." One study, completed early in the year of 2003, focused on drug court programs in Los Angeles, San Diego, and Butte counties. The following are their findings:

- Criminal justice costs that were avoided averaged approximately \$ 200,000 annually per court for each 100 participants.

- Based on these data, with 90 adult Drug Courts operating statewide as of 2002 and an estimated 100 participants in each court annually, adult Drug Courts may be saving up to \$18 million a year in California's criminal justice system.

The second study, co-administered by the Department of Alcohol and Drug Programs and the Administrative Office of the Courts reveals additional key findings:

- Arrest rates, compiled from 17 counties for 1,945 participants who completed drug court, declined by 85 percent in the first two years after admission, compared to the two years before entry.
- Conviction rates for the same participants dropped by 77 percent and incarceration rates declined by 83 percent.
- Social outcome data, compiled from 28 counties for 2,892 participants, indicated that 70 percent of participants were employed upon completion of drug court. Almost 62 percent were unemployed when they entered the program.
- Ninety-six percent of the babies born to program participants, 132 babies, were drug free at birth.

New Hampshire

A study of the New Hampshire Department of Corrections found that, "by combining drug treatment, counseling, vocational and educational programs, and close supervision, participants were able to work and live at home... the program improved the lives of participants, protected the public's safety, and saved the state an estimated \$10 million dollars" (Kinsella and Fuller 2003).

Kansas

In 2000, Kansas mandated that rather being sent to prison, probation and parole violators would become part of the state's community corrections system. "The Kansas Sentencing Commission estimates that millions of dollars have been saved with this program, and 774 prison beds have been left open (Kinsella and Fuller 2003)." Reforms include reduced length of community supervision for low-level offenders and the provision of additional funds to establish three new day reporting and treatment centers (Kinsella and Fuller 2003).

Vermont

Currently, there are two drug courts in Vermont – one in Chittenden County and one in Rutland County. Both are functioning and staffed. Both have reported the success rate of their individual drug court (See Table 2 and 3).

In Bennington County, Section 121 in the Appropriation Act of FY'06 directed that the Bennington County Drug Court Committee must report to the joint fiscal Committee. During that meeting, the Bennington Drug Court Committee was given permission to change focus from a drug court to a domestic violence 'docket.' In Washington County, a drug court began operation in September of 2006. They had 7 referrals: 1, being an active participant, 4 awaited eligibility (as of that time), and 2 didn't enter. Lamoille County, rather than establishing a drug court, developed an intensive outpatient substance abuse treatment program (named "Legacy"). The program, however, has folded due to lack of funding. Franklin, Caledonia and Orleans counties all have a type of Substance Abuse Intervention Program, but not an established drug court (Suskin 2007).

Table 2: Data collected on Vermont Drug Courts, and Drug Court Participants

| Drug Court Initiative Counties | Chittenden County Adult Drug Treatment Court | Rutland County Adult Drug Treatment Court |
|---|--|---|
| Through 12/31/06 | The numbers include information on participants from the program's inception. | |
| Operations | | |
| Date Started | March 2003 | January 2004 |
| Total Participants | 65 (34 F / 31 M) | 79 (41 F / 28 M) |
| Total Graduates | 18 (11 F / 7 M) | 16 (9 F / 7 M) |
| Active | 17 (11 F / 6 M) | 25 (14F / 11 M) |
| Terminated/Withdrew | 30 | 38 |
| Average Age | 25 | 25 |
| Race | 98% Caucasian / 2 % African American | 99% Caucasian / 1 % African American |
| Drug of Choice | Heroin and other opiates | Prescription Drugs / cocaine – crack |
| Drug-Free Babies | 4 | 2 |
| Charges (multiple per participant) | False Pretence, Uttering a Forged Instrument, Retail Theft-Felony, Burglary, Gr.Larceny, Petty Larceny | Retail Theft, Uttering a Forged Instrument, Petty Larceny, Violation of Cond. Of Release, Violation of Probation. |

Table 3: Data collected on Vermont Participants: Number of days/night incarcerated

| Name of Drug Court | # of Graduates for whom Incarceration has been calculated | Date of first graduation to date of calculation for incarceration | # of days/nights incarcerated prior to entering drug court | Total # of days/nights incarcerated during the drug court program as a sanction | Total # of days/nights incarcerated post graduation |
|----------------------------------|---|---|--|---|---|
| Rutland Drug Treatment Court | 14 | 12/21/04 to 3/16/06 | 422 | 76 | 0 |
| Chittenden Adult Treatment Court | 10 | 3/18/03 to 1/25/06 | 277 | 92 | 2 |
| Total | 28 | | 699 | 168 | 2 |

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