

The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact

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SINCE THE 1980s, an overwhelming emphasis on law enforcement strategies to combat illegal drug possession and sales has resulted in dramatic increases in the nation's arrest and incarceration rates. Although general population surveys reported declines in illegal drug use during the 1990s, rates of arrest and incarceration for drug offenses rose at a record pace into the twenty-first century (Tonry, 1999). Drug offenses have been among the largest categories of arrests for the past 20 years. From 1980 to 2000, arrests for drug offenses more than doubled. In 2000 alone, more than 1.5 million persons were arrested for a drug offense—more than four-fifths for a drug possession (Bureau of Justice Statistics, 2002).

Prison sentences for drug offenses contributed significantly to the burgeoning of the incarcerated population in the United States. Between 1990 and 1999, the number of drug offenders in prison grew by more than 100,000, constituting 20 percent of the total increase in the country's prison population. Between 1995 and 2003, the number of persons incarcerated for a drug crime accounted for the largest percentage of growth in the nation's prison population (49 percent) (Bureau of Justice Statistics, 2005). At year-end 2005, more than 1.2 million people were incarcerated in state prison — approximately 240,000 of them for a drug crime (Harrison & Beck, 2006).

By the late 1980s, drug-addicted offenders, in unprecedented numbers, were clogging the criminal justice system at every stage — from arrest to prisoner re-entry. Rigorous prosecutions and sentencing policies are very expensive and largely ineffective in reversing the cycle of drug use and crime; especially costly and ill-advised is the use of prison to solve America's chronic drug problem (Hennessy, 2001). Hence, various community-based programs were instituted to curb the alarming rise in drug-related imprisonment. The proliferation of drug cases, particularly in large urban jurisdictions, forced numerous courts to adopt new approaches for clearing crowded dockets. An example of such a program is drug treatment court (DTC), the most popular and widely adopted specialized drug court model in the United States (Cooper & Trotter, 1994). In their various forms, drug courts have been distinguished by several features, such as expedited case processing, outpatient treatment, and support services (e.g., job placement and housing). DTCs often combine any or all of these components and involve mandatory drug testing and intensive court or probation supervision.

This article focuses on adult DTCs and is divided into three sections. Section 1 discusses the implementation of first-generation specialized drug courts as well as their impetus, rationale, and early manifestations, which concentrated on offender diversion and case expedition. Section 1

also presents research exploring the effects of these courts on case processing and sentencing. Section 2 defines the concept of therapeutic jurisprudence and the theoretical underpinning of DTCs, which are the second generation of specialized drug courts, and briefly describes the country's oldest and best-known DTC ; it also enumerates the core elements of DTCs. Section 3 examines the rise in the number of drug courts nationwide and summarizes research on their impact on rearrest and treatment retention. The article concludes with some recommendations for future investigations of DTCs.

Specialized Drug Courts

Rationale and Impetus

As their name suggests, drug courts handle only defendants with felony or misdemeanor drug cases—usually nonviolent arrestees with substance use disorders. The argument for segregating drug crimes from other offenses is threefold. First, judges, state's attorneys, and public defenders who specialize in drug cases become more proficient and efficient in all aspects of case processing; they improve at screening cases, using case information, presenting motions, submitting guilty pleas, and filing case dispositions (Belenko, Fagan, & Dumanovsky, 1994; Davis, Smith, & Lurigio, 1994). With focused practice, they can complete court tasks and resolve problematic cases more quickly and effectively (Inciardi, McBride, & Rivers, 1996).

Second, in omnibus felony courts, drug cases compete with violent crimes for judges' and attorneys' time and attention. Drug cases are often relegated to lower positions on court dockets and, as such, are subject to postponements and protracted continuances, pending the adjudication of violent crimes. In specialized drug courts, drug offenses are the court's first and only priority — an approach that precludes inordinate delays and generates more successful prosecutions and convictions of drug offenders.

Third, the development of drug cases through street-level enforcement activity produces strong evidence and reliable witnesses. These cases are unlikely to be settled by a trial. In drug courts, the “going rate” for felony drug crimes is well established and understood by attorneys and defendants, significantly reducing the time to adjudicate cases and leading to greater fairness and equity in sentencing. In order to save considerable case processing time and resources, drug courts have also devised innovative procedural rules for expediting indictments, plea negotiations, motion hearings, and trials (Belenko & Dumanovsky, 1993).

To support their operations, many specialized drug courts receive funding from the Bureau of Justice Assistance's Differentiated Case Management and Expedited Drug Case Management Programs (Davis et al., 1994). First-generation drug court programs were designed to divert offenders through deferred prosecution tactics or suspended sentences, supervising offenders and then dismissing their charges after the successful completion of court conditions (General Accounting Office, 1997; Smith, Davis, & Lurigio, 1994). Deferred prosecution programs afford defendants the opportunity to avoid a felony conviction, which could lead to the loss of a job as well as future employment prospects, federal entitlements, or subsidized housing. Those who repeatedly fail in the program return to court to have their cases adjudicated through the standard dispositional process (Cooper & Trotter, 1994). The first jurisdiction to implement a drug court was New York City; it created the court in 1974 in response to the enforcement of the draconian Rockefeller Drug Laws, which overwhelmed the state's criminal justice system with an unrelenting spate of drug cases throughout the 1970s (Belenko & Dumanovsky, 1993).

Downside of Specialization

Drug courts are grounded in the notion that not all criminal cases are alike or require the same investment of court resources or time. Using various case management techniques, early drug courts in Philadelphia , Milwaukee , Los Angeles , and Detroit significantly reduced case-processing days and increased annual case dispositions (Copper & Trotter, 1994). However, researchers found that case expedition had unexpected negative consequences such as less efficient use of resources, more lenient dispositions, and higher operational costs. Furthermore,

no evidence indicated that the specialized drug courts had actually decreased rearrests among drug offenders (Davis, et al., 1994).

Inundated with drug cases, Cook County's (Chicago) Court System, the largest single-site felony court system in the United States, experienced a serious caseload management crisis in the late 1980s and early 1990s (Smith, Lurigio, Davis, Goretsky-Elstein, & Popkin, 1994). The size of court dockets had mushroomed and case-processing times had risen exponentially, leading to crushing workloads for judges and court staff and extraordinary delays in case dispositions. In an attempt to break the logjam, five new night drug courts were opened, handling drug cases from 4 pm to midnight and removing most of the drug-case overflow from the day courts' calendars. As a result, drug cases took less time to process, the percentage of prison sentences declined and the length of probation terms was shortened. Also reduced were the proportion of cases tried (the vast majority were settled by guilty pleas), dismissed, and represented by private attorneys.

Notwithstanding the case-processing advantages of night narcotics court, staff complained of fatigue, isolation from fellow agency personnel, problems obtaining case information, and a lack of security in and around the court building. Many night narcotics court staff, mostly public defenders, complained that the fast pace of the courts had led to "assembly line justice." The evaluators of Cook County's night narcotics court concluded that

substantial changes in the processing and outcomes of drug cases were brought about through the establishment of new night drug courts in Cook County. By setting up new courts, staffing them with new judges, and introducing better case management practices, the judicial administration successfully overcame the inertia built into the system. Processing drug cases became far more efficient, but with some possible costs to the quality of justice (Smith et al., 1994, p. 51).

Drug Treatment Courts

As noted above, DTCs, the second generation of specialized drug courts and the most prominent, are more service-oriented than their predecessors, which were aimed primarily at improving the speed and efficiency of case processing (Davis et al., 1994). Although DTCs differ in their structures, operations, and staffing, they are predicated on the assumptions that drug use is deeply rooted in the community, addiction is "as much a public health problem as a criminal justice problem," and drug treatment is the only long-term solution "to the drug crisis" (General Accounting Office, 1997; Vigdal, 1995, p. 6). DTC was created for persons with substance-use disorders who enter the criminal justice system because of a drug-defined (e.g., possession of small amounts of drugs) or drug-related offense (theft to obtain money to purchase drugs). DTC is client-centered and as such its success is measured in "human" (sobriety and employment) rather than "statistical" terms (number of closed cases).

Therapeutic Jurisprudence

DTC is grounded in the concept of therapeutic jurisprudence, which was introduced in 1987 and has been extensively discussed in the legal literature (Wexler, 1992). Therapeutic jurisprudence studies the "role of the law as a therapeutic agent" (Wexler, 2000, p. 131). Therapeutic jurisprudence is also defined as the social scientific study of the law's effects on people's psychological and physical well-being (Slobogin, 1995). According to the proponents of therapeutic jurisprudence, the law is an active social force that can have profound consequences (for better or worse) on a defendant's problems. Therefore, courts can be change agents that exert a therapeutic (or non-therapeutic) influence through their procedures, rulings, and dispositions (Wexler & Winck, 1996). Therapeutic jurisprudence is a perspective or paradigm that guides court interventions for the purpose of improving clients' lives.

The Prototype

Dade County's Felony Drug Court (Miami) was the first DTC in the nation. Located in Florida's Eleventh Judicial Circuit, the court began hearing cases in 1989 and was widely touted

for its innovative procedures and emphasis on teamwork, cooperation, and collaboration among members of the courtroom work group (Davis et al., 1994). Drawing on the principle of therapeutic jurisprudence, its philosophy and operational design became the prototype for future DTCs. The court is based on the premise that addiction is a disease that promotes criminal behavior; it is therefore highly treatment-orientated and supportive of clients' recovery efforts. Defendants are neither prosecuted nor punished for their substance use problems. Instead, the court provides or brokers drug treatment and other services that help them achieve sobriety and stability in their lives (Florida 's Eleventh Judicial Circuit, 2007) .

Participation in Miami 's DTC court is voluntary. Eligible defendants must be charged with purchasing or possessing illicit drugs. Those with histories of violent crime, drug trafficking, or felony convictions are not accepted into the program. The court's procedures are non-adversarial. Led by a judge, its operations are conducted by a team that includes defense and prosecution attorneys as well as other court personnel and treatment providers. The team appreciates the nature of addiction, relapse and recovery; participates in a shared decision-making protocol; and fosters clients' efforts to remain sober. The judge plays a central role in monitoring participants' progress, encouraging them to remain crime- and drug-free, and dispensing sanctions for their failure to comply with program requirements. Throughout the program, judges and clients meet often to ensure that the judge's presence is paramount in clients' lives (Florida 's Eleventh Judicial Circuit, 2007) .

Clients participate in the program for a minimum of 12 months, pursuant to statute, but can spend 18 months or more in the program, depending on their ability to fulfill the court's mandates. Treatment services are delivered in three phases: detoxification, stabilization, and aftercare. After clients complete their one-year (or more) term in the program and need no further monitoring or case management services, the DTC team's counselor recommends discharge to the judge, who makes the final decision based on the counselor's evaluation of clients' readiness and the judge's review of clients' overall recovery from addiction and progress in educational, vocational, and other service activities. During the final court appearance, a graduation ceremony is held and clients are formally released from court supervision. Following graduation, clients may file a petition to expunge their current arrest from the record . If clients consistently fail to comply with the conditions of court supervision, they can be expelled from the program at any time and prosecuted in criminal court (Florida 's Eleventh Judicial Circuit, 2007) .

Basic Features of DTC

Like the Miami Dade Court , most DTCs present defendants with the option of pleading guilty and participating in mandatory treatment or going to trial and risking incarceration or other criminal justice sanctions. Failure to comply with program requirements can culminate in various judicial sanctions, ranging from a verbal reprimand to a probation sentence to confinement in jail or prison (Canadian Centre on Substance Abuse, 2007; Mugford & Weekes, 2006). In general, the defining components of DTC are consistent with Miami Dade's DTC model. For example, the Drug Courts Program Office, United States Department of Justice (1997) and the National Association of Drug Court Professionals have enumerated the following key elements of DTC (Drug Strategies, 1999):

- Prompt identification of clients and their immediate placement in treatment;
- Non-adversarial court proceedings enacted by a team of judges, attorneys, and treatment providers and designed to protect community safety as well as defendants' and offenders' due process rights;
- Regular contact between clients and judges in judicial status hearings or other types of court sessions;
- Intensive supervision practices that include close monitoring and frequent, random drug testing of clients;
- Treatment interventions that are delivered on a continuum of care, evidence-based, comprehensive, and integrated for individuals with co-occurring psychiatric disorders;
- Contingencies of rewards and punishments that encourage compliance with treatment and

- other conditions of program participation;
- Ongoing evaluations to monitor program implementation and measure the accomplishment of program objectives and goals;
- Close working relationships with a wide range of community service providers and public agencies; and Interdisciplinary educational opportunities to help program staff stay current with the latest advances in offender drug treatment and case management strategies.

A study of lessons learned from the implementation of DTCs suggests that the most successful programs are characterized by effective management information systems for tracking cases, a screening and assessment pipeline that controls the number of clients accepted into the program, protocols to coordinate the individual efforts of the DTC team members, accurate and reliable drug-testing services, and incentives to foster client retention (Finigan & Carey, 2002). In addition, scholars have suggested different typologies to characterize the structures and operations of DTCs. For example, one interesting conceptual framework with heuristic and practical value suggests that DTCs can be differentiated along five dimensions: leverage (incoming participants' perceptions of the consequences of program failure), program intensity (requirements that must be satisfied to graduate from the program), predictability (the certainty and swiftness of program rewards and sanctions), population severity (the eligibility requirements for program admission), and rehabilitation emphasis (the extent to which DTC team members collaborate on decisions regarding client services and recovery) (Longshore, Turner, Wenzel, Morral, Harrell, McBride et al., 2001).

In summary, the DTC model has transformed specialized criminal courts from adversarial and legalistic to therapeutic and rehabilitative (Fulton-Hora, 2002). DTCs adopt a common mission and team approach to working with drug-involved offenders. Judges, prosecutors, defense attorneys, probation officers, and treatment providers execute a coordinated case management plan that holds offenders accountable through graduated sanctions for rule infractions and rewards them through reductions in sentences and dismissals of charges for successful program completion (Belenko, 1998; MacKenzie, 1997).

Growth and Effectiveness of DTC

The Rise of DTCs

The number of DTCs has grown rapidly since their inception, as “greater numbers of criminal court judges and observers [came] to see traditional jurisprudence as merely a revolving door for drug-using offenders” (Longshore et al., 2001, p. 7). In their earliest stages, DTCs attracted considerable attention, owing to the enthusiastic endorsements of national leaders such as United States Attorney General Janet Reno, President Bill Clinton, and the Director of the Office of National Drug Control Policy (ONDCP), General Barry McCaffrey, who stated, “The establishment of drug courts, coupled with [their] judicial leadership, constitutes one of the most monumental changes in social justice in this country since World War II” (Drug Strategies, 1999, p. 5). DTCs also gained momentum with generous federal funding from the Violent Crime Control and Law Enforcement Act of 1994 and the Drug Courts Program Office, which awarded \$56 million for the initial planning, implementation, and expansion of drug courts throughout the country (Belenko, 1998).

In 1997, more than 370 drug courts were operational or being planned in the United States ; at that time, the largest numbers of drug courts were in California , Florida , Ohio , Oklahoma , and New York (Cooper, 1998). By April 2007, more than 1,000 specialized drug courts were operational in all 50 states as well as the District of Columbia , Guam , and Puerto Rico . A total of 41 states, the District of Columbia , Guam , and Puerto Rico have enacted legislation that supports the planning and operations of DTCs (American University , 2007). The White House has hailed DTCs as “one of the most promising trends in the criminal justice system” (White House, 2004).

Program Impact

A study of Miami 's DTC found that participants had fewer cases dropped, fewer rearrests, and lower incarceration rates than nonparticipants (Finn & Newlyn, 1993). A separate study of Miami's drug-court participants also reported that they were less likely to be rearrested or sentenced to prison than were nonparticipants. Among those who were rearrested, drug court participants' time-to-rearrest was two to three times longer than that of nonparticipants (Goldcamp & Wieland, 1993).

Another study compared DTC probationers with those on electronic monitoring, intensive probation supervision, and standard probation supervision. Results showed that DTC probationers were less likely than those in the other groups to test positive for illicit drugs while on supervision (Santa Clara County Courts, 1996). In one of a growing handful of randomized experiments of a DTC , researchers reported that program participants had fewer rearrests and reincarcerations than a control group of nonparticipants (Deschenes, Turner, Greenwood, & Chiesa, 1996). Another randomized trial found that DTC clients were less likely to be rearrested and had fewer rearrests than did control subjects (Gottfredson & Exum, 2002). Two years following their graduation from the program, DTC participants in the study were again less likely to be rearrested than control subjects (Gottfredson, Najaka, & Kearley, 2003).

DTC clients in two large court jurisdictions in Florida's First Judicial Court had lower rates of rearrest the longer they stayed in the program —a finding that underscored the importance of program retention for subgroups of clients such as young people, women with polydrug use problems and histories of prostitution, and individuals with co-occurring psychiatric disorders (Peters, Haas, & Hunt, 2001; also see Cooper, 1998). During a 30-month follow-up period, graduates of the two DTCs were less likely to be rearrested or abusing drugs and more likely to be employed than DTC non-graduates or a matched comparison group of probationers (Peters & Murrin, 2000).

Thorough reviews of a large number of evaluations have found that rates of client retention in DTCs were much higher than those of offenders and non-offenders in other types of drug treatment programs (Belenko, 1998; 1999; 2001). Studies demonstrate that a substantial percentage of drug-court participants have lengthy criminal and substance abuse histories. In addition, research shows that DTCs more closely monitor and test clients for drug use than do other types of community supervision programs. Investigations also indicate that DTCs generate savings — at least in the short term — accruing from reduced jail and prison use, diminished criminality, and lower criminal justice costs. Research also finds that retention in treatment is significantly higher among DTC participants than among offenders in outpatient drug treatment programs. Most important, studies demonstrate that drug use and criminal behavior are substantially reduced while clients are participating in and after graduating from DTC .

The validity of these highly positive results is undermined by the methodological shortcomings of many of the studies of DTCs, such as inadequate comparison groups, biased samples that include only those who graduate from the program, short follow-up periods, and limited outcome measures (Marlowe & Festinger, 2000; Peters & Murrin, 2000). Despite these flaws, an impressive number of investigations conducted in a broad range of jurisdictions with widely varying participants have consistently reported favorable outcomes for DTC clients compared to non- DTC clients.

As Marlowe and Festinger (2000) noted, "Clearly *something* is happening [in DTC], and there *is* room for optimism" (p. 4, italics in original). Nonetheless, questions concerning how and why DTC works are largely unaddressed and unanswered (Longshore et al., 2001). Future studies should explore the specific operational and treatment components of DTCs that are most responsible for fostering offender change. Finally, subsequent research should investigate DTC's effects on participants who differ in race, age, gender, type of substance-use disorder, and beliefs about addiction and recovery (Marlow & Festinger, 2000; Peters & Murrin, 2000).

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