

## **Drug Court as an Alternative to Prison**

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On any given day, the United States has 2.1 million people behind bars. The prison population has increased exponentially over the last few decades, in large part because harsher sentences have been imposed for the possession or sale of drugs (Fielding et al. 2002: 217). Drug offenders account for 72% of the overall increase in the federal prison population between 1990 and 1996 (“Drug Strategies” 1999). Research shows substance abuse is a major contributing factor to crime, particularly income-generating crime. The high prevalence of drug use among offenders has been well documented. In 2003, for example, 70% of adult males tested positive for at least one illicit drug when arrested (Krebs et al. 2007: 57). Drug addicts commit crimes while they are active substance abusers four to six times more often than when they are not actively abusing narcotics (Harrell and Roman 2001: 207). An individual who has a severe addiction commits nearly 63 crimes a year (Hubbard et al. 1998: 66).

Increasingly, our nation responds to substance abusing criminals by imprisoning them. The problem with this response is that it fails to meaningfully address the drug use of the offender by providing access to substance abuse treatment (Listwan et al. 2003: 392). Research shows that drug addiction is responsive to treatment (Listwan et al. 2003: 392) and that as drug use decreases, so does crime (Harrell and Roman 2001: 207; Harrell, Roman, and Sack 2001: 32-7). As prison does little to nothing to treat substance abuse, it also does little to nothing to curb the criminal activity of drug addicts. According to the most recent report from the U.S. Department of Justice, 67.5% of all inmates are rearrested within three years of release (Langan and

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Levin 2002: 1). With such high recidivism rates and the overcrowding of prisons, alternatives to incarceration for drug-related crimes are much needed.

Drug court programs have emerged as a viable alternative to incarceration for non-violent, addicted offenders. Drug offenders are the most receptive to change at the “crisis moment” of an arrest because their substance abusing behavior is forced into the open. Drug courts capitalize on the crisis nature of the arrest by taking immediate judicial action and assessing and placing offenders in treatment as rapidly as possible (National Association of Drug Court Professionals [NADCP] 1997: 13).

Since the first drug court program was launched in 1989 in Miami, Florida, the drug court concept has been widely received all over the country. As of April 2007, there are 1,699 drug courts operating in the United States and another 349 drug court programs are in the planning stages (Bureau of Justice 2007: 111). Drug court is a non-adversarial approach to rehabilitating non-violent, drug-abusing offenders. Thus, in order to qualify for drug court an offender must have a non-violent charge and they must have a serious drug addiction problem. Drug court combines treatment with judicial supervision in order to reduce substance abuse and, in turn, the ensuing criminal behavior that it provokes.

### **What is Drug Court? Key Components and Variations**

To define drug court is difficult because no two programs are the same. Due to differences in local jurisdictions and criminal justice system practices, drug court programs vary in their specific policies and practices. Today, most drug courts are post-plea programs, but some are pre-plea programs (Cooper 2003: 1680). In post-plea drug courts, the offender must plead guilty to the charge(s) in his or her criminal case before being accepted into the program. This ensures that the offenders know what their sentence will be if they do not successfully complete the program. The post-plea court model thus offers an incentive to complete the program. In pre-plea drug courts, offenders do not have to plead guilty before entering the program; charges are simply deferred while they are in the program. The criminal history of offenders accepted into drug court varies across jurisdictions.

Some programs only accept first or second time non-violent offenders, while other programs accept offenders with longer, more diverse criminal histories. However, in order to receive federal funding, drug courts cannot accept defendants who have been convicted of a violent crime or face pending charges for a violent offense (Harrell and Roman 2001: 225). Other examples of the differences that exist among drug court programs include: the number of judges on the drug court team; the types of sanctions and rewards used and the strategies for implementing them; the length of the program; the frequency of drug tests and judicial status hearings; the therapeutic orientations of treatment providers and the psychological/sociological theories they employ in substance abuse treatment; and completion requirements and reasons for termination.

The NADCP has identified ten key components of drug court, which include: (1) integration of alcohol and drug treatment services with justice system case processing, (2) a non-adversarial approach that emphasizes teamwork, (3) ongoing judicial interaction, (4) the provision of alcohol, drug and other related treatment and rehabilitation services, (5) the early definition and prompt placement of eligible participants, (6) alcohol and drug testing, (7) a system of sanctions and rewards to discourage prohibited behavior and encourage compliance, (8) ongoing evaluation of the program to gauge effectiveness, (9) interdisciplinary education to promote planning, implementation and operations, and (10) partnerships with public agencies and community-based organizations to generate local support (1997: 9-38). Although these are common to most drug courts, they are general principles and leave much room for individual drug courts to decide how to implement them.

Drug courts rely on the cooperation and collaboration of many individuals and organizations in order to achieve their mission of reducing the drug abuse and criminal activities of offenders. Judges, prosecutors, defense counsels, probation authorities, law enforcement officials, evaluators, medical professionals, local treatment providers and vocational rehabilitators all work together as a therapeutic team to promote recovery. Although the prosecutor and the defense counsel traditionally work against one another in the court room, the NADCP emphasizes the importance of them working together in promoting

the recovery of the drug offender (11). The judge is the leader of the drug court therapeutic team and develops a hands-on and supervisory relationship with the participant throughout treatment. Participants interact directly with the judge(s) on a regular basis through judicial status hearings, which reinforces the drug court's policies and serves to check the progress of each participant.

While individual drug court programs vary in the amount and type of substance-abuse treatment required, treatment services for drug court participants are broad in scope and diverse. Drug court participants are usually provided with a combination of primary health care services such as detoxification and the treatment of any co-occurring health problems, mental health care services such as individual and group therapy, and social and support services such as personal and educational development, job skills, and employment services. Accessibility to treatment services and regular contact with the therapeutic team are vital to the recovery of drug court participants.

The treatment available to drug court participants is made possible by coalitions between public, private, and community-based organizations. The linkage between community groups and the criminal justice system helps to inform the public about drug court concepts and fosters a sense of shared responsibility in rehabilitating offenders. Drug courts receive limited funding from the federal government. They primarily rely on community involvement, volunteers, private funding, and local and/or state funding.

Frequent court-ordered drug testing is essential for establishing a framework of accountability and gauging the progress of participants in drug court. Urinalysis is a common method of detecting a participant's drug use. Tests may be conducted randomly or at scheduled intervals no less than twice a week for the first several months of participation in drug court. After the first several months, the frequency of testing is left up to the discretion of the drug court team.

The court is immediately notified if a participant has tested positive, has missed a test, or has submitted a fraudulent sample. The court responds with the use of sanctions, such as increased treatment (e.g. requiring a client to attend more counseling sessions or NA/AA meetings a week or increasing the frequency of urinalysis testing) or

community service. The purpose of sanctions is to motivate participants to complete treatment, comply with program requirements, and remain drug free (Lindquist, Krebs, and Lattimore 2006: 120). The sanctioning process may be standardized and documented or it may be individualized and left up to the discretion of the judge, but, regardless, sanctions ought to be implemented swiftly and with certainty (Harrell and Roman 2001: 209-210; Lindquist, Krebs, and Lattimore 2006: 121). In addition to sanctioning prohibited behavior, the drug court team encourages compliance through the use of rewards, such as certificates or less treatment. Successful completion of the drug court program may result in the dismissal of the original charge, a reduced sentence, reduced fines or any combination of these rewards.

For drug court programs to operate effectively they must be carefully planned, have clearly defined goals, and be open to making modifications as necessary (NADCP 1997: 29). Since drug courts are frequently asked to produce tangible outcomes and cost-effectiveness, they ought to be designed with the ability to gather and manage information for use in evaluations and goals ought to be described in measurable terms. Drug court must be monitored closely by program management in order to make changes where needed. In addition, all of those who are directly or indirectly involved in drug court ought to receive periodic education and training on the drug court's goals, objectives, policies and procedures. It is important to expose criminal justice officials to treatment issues and treatment professionals to criminal justice issues. Education and training programs can foster a spirit of commitment and cooperation. With a shared understanding of all aspects of the drug court model, the therapeutic team can implement the program more efficiently and better help substance-abusing offenders.

### **Does Drug Court Work?**

The variation among drug courts makes it difficult to compare outcomes of one drug court to another. One ought to take caution when examining outcome results and must consider these variations in the implementation of the drug court model as possible alternative explanations for the outcome results.

The question of whether or not drug court works has received a

lot of attention in the drug court literature. The majority of research on the efficacy of drug courts has focused on recidivism rates, graduation rates, the costs and benefits of the program, and subsequent substance abuse. While the primary objective of drug court is to reduce substance abuse and recidivism, and the majority of research explores these two outcomes, the drug court program also hopes to help clients improve their mental and physical health, achieve financial and employment stability, mend family ties, and improve their overall social functioning. However, there is limited research that explores the effect of drug court in these areas. Other secondary goals include reducing the caseload of the overburdened court system (Gottfredson and Exum 2002: 339; Listwan et al. 2003: 391) and freeing up resources to focus on other offenders who present greater risks to the public (Cooper 2003: 1692). In discussing whether or not drug courts work, this paper will focus on four outcome measures: recidivism as measured by re-arrest rates, substance use and abuse, retention and graduation rates from the program, and cost-benefit analysis.

#### *The Effect of Drug Court on Recidivism*

A study that examined the arrest rates of drug court participants before and after the drug court program shows that the felony arrest rates of drug court participants in a two year follow up period were significantly lower than the arrest rates prior to entering the program (Truitt et al. 2002: 11). In other studies, when compared to similar offenders who were found eligible and suitable for drug court but did not enter the program, research shows that drug court participants have lower rates of recidivism (as measured by re-arrest rates) (Belenko 2001: 36-39; Cissner and Rempel 2005: 5; Cooper 2003: 1691; Fielding et al. 2002: 221; GAO 2005: 45; Gottfredson and Exum 2002: 352; Kalich and Evans 2006: 582). National estimates of drug court recidivism show that only 16.4% of drug court participants are rearrested within one year of program graduation and only 27.5% after two years of program graduation (Roman, Townsend, and Bhati 2003: 27). Compared to the national average of 44.1% of prisoners being re-arrested after one year of release (Langan and Levin 2002: 3), the drug court program appears to be effectively rehabilitating more offenders than traditional incarceration.

In examining the effect of drug court on recidivism, it is important to consider the time period in which re-arrests are being examined, the type of offense being measured, and the risk level of offenders prior to entering drug court. In this regard, research results are more complicated. For example, during drug court, participants had significantly fewer re-arrests than non-participant comparison group members after one year of being in the program (Belenko 2001: 29-30; Gottfredson and Exum 2002: 350; Kalich and Evans 2006: 577; Rempel et al. 2003: 2). Post-program re-arrest rates remained lower for drug court participants than members in a non-drug court comparison group (Rempel et al. 2003: 3), but the differences between the two are not always significant (Belenko 2001: 31; Wolfe, Guydish, and Termond 2002: 1164). A longer term study of drug court indicates that the only significant association between drug court and reduced recidivism occurs during the 12-18 months following program completion (Krebs et al. 2007: 66). There was an association with decreased likelihood of recidivism in the other time periods but it was not statistically significant. The United States Government Accountability Office's evaluation of the Maricopa County drug court discovered a similar delayed effect (GAO 2005: 53). Recidivism among drug court participants during the first twelve months after program completion was no different from that of the comparison group. Only in the three-year follow up period did they find lower re-arrest rates among drug court participants. Despite the variations in time periods, the fact that there were significant results after the conclusion of the program suggests that drug court has some positive long-term impact on recidivism when participants are no longer in treatment or under supervision (Krebs et al. 2007: 57; Rempel et al. 2003: 3).

However, some studies question the long-term effects of drug court on recidivism (Wolfe, Guydish, and Termond 2002:1158). In a two-year follow up study after program completion, there were no significant differences found in the re-arrest rates of participants and non-participants (Wolfe, Guydish, and Termond 2002: 1164). Interestingly, there were significant differences in the post-program re-arrest rates between graduates and non-graduates (GAO 2005: 56; Wolfe, Guydish, and Termond 2002: 1168) but the fact that drug court participants were no less likely than comparison offenders to be

re-arrested does not lend support to the argument that drug court works better than other alternatives.

In distinguishing among the specific types of offenses for which participants were re-arrested for during the program, results show that drug court participants have fewer re-arrests for drug-related offenses than comparison group members (Listwan et al. 2003: 400), but they are not significantly less likely to be arrested for non drug-related offenses. This suggests that the drug court effect may only be seen in reducing drug-related criminal behavior and it has little effect on general criminal behavior.

These competing findings indicate the importance of studying drug courts and their outcomes over a longer period of time. Recidivism impacts in Las Vegas and Portland drug courts varied by year of admission, indicating that the impact of drug court may change over time due to external and/or internal factors such as staff changes, changes in the drug court program or changes in client eligibility (Goldkamp, White, and Robinson 2001b: 62-3). In addition, results for recidivism appear to differ by risk strata (low, medium, or high). A study of Los Angeles' drug court programs assigned risk level to drug court participants and comparison group members based on an index including criminal history, type of current offense, substance abuse, and community ties. Among medium- and high-risk subjects, drug court participants had significantly lower rates of drug-related arrests than comparison group members. In this study, Fielding et al. report that among low risk subjects, there were no significant differences in re-arrest rates of drug court participants and comparison group members (2002: 221-2).

#### *The Effect of Drug Court on Substance Abuse*

In their evaluation of twenty-three drug court programs, the GAO concludes that evidence concerning the effectiveness of drug courts in reducing substance use among participants is limited and mixed (2005: 57). Research indicates that drug use, as determined by drug tests, is reduced while defendants are enrolled in drug court (GAO 2005: 60; Gottfredson and Exum 2002: 340). In addition, the average rate of positive urinalyses for participants while in the drug court program is significantly lower than for non-drug court participants

(Cooper 2003: 1691). However, self-reported data on substance use generally shows no significant reductions in drug use while defendants are enrolled in drug court (GAO 2005: 60). It is important to note that self-reported data is limited and presents evaluation challenges because it relies on the honesty of individuals in disclosing personal information. Therefore, the contradictory results of in-program substance use as measured by self-reported data versus drug tests could be explained by the underreporting or over-reporting of drug use by study participants (GAO 2005: 60).

Few studies directly measure substance use after participants have completed the drug court program because it is difficult to locate both drug court participants and comparison group members for follow-up tests (Cissner and Rempel 2005: 6). If individuals are located, they are not obliged to submit a urine sample and they must do so voluntarily. One study that did measure post-program drug use relied on self-reports. Results show that twelve months after exiting drug court, 60% of participants reported drug use and 50% reported alcohol use (Marlowe et al. 2005: 151). Compared to the 85% of offenders who report using drugs twelve months after being released from prison, these results are much lower (Marlowe et al. 2005: 153).

Research shows that substance use may be reduced for certain drugs but not others during and after program participation. One study found drug court participants less likely than comparison group members to test positive for heroin or cocaine after one year into the program but more likely to test positive for marijuana (Deschenes, Turner, and Greenwood 1995 as cited in Cissner and Rempel 2005: 6). Similarly, a study of the Brooklyn Treatment Center that focused only on outcomes for female offenders found that female drug court participants were significantly less likely than a group of comparison female offenders to report drug use in a post-program follow-up interview in each drug category except marijuana (heroin, cocaine, hallucinogens, prescription drugs, inhalants, and alcohol) (Harrell, Roman, and Sack 2001: 28).

Aside from drug tests and self-reported drug use, another possible measure of substance use after program completion is the re-arrest rate for drug-related crimes. Listwan et al. found that drug court participants are less likely to be re-arrested for a drug-related offense

than comparison group members, which may indicate decreased involvement in substance abuse (2003: 403).

*Retention and Graduation Rates as a Measure of Drug Court's Efficacy*

Drug courts have been found to keep addicted persons in treatment longer than other community-based treatment programs for offenders (Belenko 2001: 25; Cissner and Rempel 2005: 5; Cooper 2003: 1691). A review of drug court programs across the United States shows averages between 60 and 70% of drug court clients completing one year or more of drug court treatment (Rempel et al. 2003: 4). Community-based treatment programs only retain between 10 and 30% of their clients for one year (Cissner and Rempel 2005: 5).

Retention in drug treatment is a measure of program success (Cissner and Rempel 2005: 4). However, Peters, Haas and Murrin found that even if participants complete more time in the drug court program there is no additional benefit gained unless they actually graduate from drug court (1999: 45). Participants who graduate from drug court are less likely to be re-arrested than those who do not graduate (Fielding et al. 2002: 223; Kalich and Evans 2006: 583; Wolfe 2002: 1164). Furthermore, research shows that non-graduates, those who are terminated or voluntarily dropped out of the program, are just as likely or, in some cases, more likely to be re-arrested post-program than comparable offenders not exposed to drug court (Cissner and Rempel 2005: 6; GAO 2005: 56; Kalich and Evans 2006: 583; Rempel et al. 2003: 5). These findings may reflect individual differences among participants with regards to their readiness to change, but the importance of program graduation cannot be overlooked. Simply staying in the drug court program is not enough; participants must want the program to work. Graduation is the key to successfully reducing criminal behavior and subsequent arrests among drug court participants in the long run (Cissner and Rempel 2005: 14; Hepburn and Harvey 2007: 259; Rempel et al. 2003: 5).

With graduation being a critical predictor of drug court's long term outcomes on offenders, graduation rates say a lot about how effective drug courts are. Due to the variation in completion requirements among individual drug court programs, there is also much variation in graduation rates. In a review of sixteen drug court programs, the GAO

shows graduation rates ranging from as low as 27% to a high of 66%. Despite the variation, Belenko (2001: 26) and the GAO (2005: 63) both found an average of 47% of participants graduating from drug court. Drug court is clearly doing something right in keeping offenders in treatment and getting almost half of them to stay with it until the end.

#### *Cost-Benefit Evaluation of Drug Court*

Overall, analyses show that the cost of drug court is substantially less than incarceration (GAO 2005: 73; Fielding et al. 2002: 223; Logan et al. 2004: 394). Drug court costs per case in Mendocino County, CA were calculated at \$3,900 (Belenko 2001: 42), compared to an estimated jail cost per case of \$6,360. Similarly, in Douglas County, NE total drug court costs per case were found to be \$4,352 (Belenko 2001: 42), compared to \$8,358 per case for traditional processing (i.e. court costs and jail costs). Costs, in terms of jail time (as used for sanctions) and treatment, are 25% lower for drug court clients than traditionally processed clients (those referred to drug court but not enrolled) (Belenko 2001: 43).

In a study focusing on the twelve months after exiting the program, Logan et al. found that drug court involvement is associated with reductions in adverse and undesirable outcomes such as incarceration, utilization of mental health services, jail time, and the legal costs of convictions and charges, and is associated with increases in earnings and child support payments (2004: 395).

An analysis comparing the costs of drug court program graduates versus drug court terminators shows the economic benefits of drug court to be most pronounced for program graduates (Logan et al. 2004: 392). However, program terminators did show significant reductions in all of the adverse outcome categories except prison time and child support deficits (Logan et al. 2004: 392).

One study of drug court programs in Kentucky found an overall net economic benefit of \$5,446 per drug court participant, or a return of \$2.71 for every dollar spent in the drug court programs (Logan et al. 2004: 392). The economic return for Kentucky drug court programs is comparable to other drug court programs across the nation. An analysis of the drug court programs in Washington State found a net

economic benefit of \$3,892 per participant, or a return of \$1.74 for every dollar spent on the drug court programs (Cissner and Rempel 2005: 7). In an evaluation of the Cumberland County drug court program in Maine (Belenko 2001: 43), an economic return of \$5,557 per drug court participant was calculated.

Drug courts save money over the long run in terms of recidivism because they save the criminal justice system from dealing with future cases (jail space and probation services) (Belenko 2001: 41; Cissner and Rempel 2005: 7; Cooper 2003: 1691-2; Fielding et al. 2001: 223; GAO 2005: 72). In the short run, however, the upfront costs to the court system of running drug court generally exceed those of conventional case processing because of the treatment services and resources needed to rehabilitate offenders (Cissner and Rempel 2005: 7). Thus, drug court ought to be considered as an investment that returns future savings.

### **How Does Drug Court Work and for Whom?**

Drug courts can produce a crime reduction effect, but the effect may be contingent on the influence of external and internal factors and participant attributes (Goldkamp, White, and Robinson 2001b: 61-62). It is important to identify which key components work best for which types of offenders and how they work to produce positive outcomes. Until recently there have been very few studies that isolate the effects of the key components of drug court to determine how they contribute to participant outcomes. When controlling for differences in participant characteristics, an analysis of the Clark County drug court in Las Vegas indicates that attendance at court sessions, sanctioning, and treatment were all significant predictors of subsequent offender behavior (Goldkamp, White, and Robinson 2001b: 62). This section addresses these three key components of drug court—judicial supervision, sanctions, and substance-abuse treatment—and examines research showing how they are implemented and what outcomes they produce.

#### *Judicial Supervision, Frequency of Status Hearings and Numbers of Judges*

Judicial supervision is an important component of the drug court model. Drug court participants have consistently credited their success

in the drug court program to their positive and personalized interactions with the judge(s) (Cissner and Rempel 2005: 11; Marlowe et al. 2005: 146). Evidence shows that judicial status hearings can positively affect performance during drug court (as measured by counseling attendance, drug test results, etc.), but that the effect varies according to the risk type of the offender. High-risk offenders, as defined by having antisocial personality disorder and/or a prior history of drug abuse treatment, achieve more weeks of abstinence when given a high “dosage” of judicial status hearings (biweekly) than when given a low “dosage” (only as needed, in response to noncompliance) (Festinger et al. 2002: 155; Marlowe et al. 2006: 70). Low-risk offenders performed equivalently when assigned to all levels of judicial status hearings (Festinger et al. 2002: 155; Marlowe et al. 2006: 70). There were some cases, however, in which low-risk offenders performed worse when prescribed a high “dosage” of judicial status hearings (Festinger et al. 2002: 155).

If correctly matched to the participants’ risk status, judicial status hearings can positively affect performance during the drug court program. However, this effect does not extend to the period following the program when participants are no longer under judicial supervision (Marlowe et al. 2005: 152). After leaving drug court, high-risk offenders who attended biweekly judicial hearings are no more likely than low-risk offenders who attended less frequent judicial hearings to achieve more weeks of abstinence. Drug courts must come up with strategies to extend their positive effects when individuals are no longer under judicial supervision.

In addition to the frequency of judicial status hearings, the number of judges may also affect participant performance. The central role of the judge as facilitator, supervisor of treatment, and guarantor of accountability among drug court participants sets the drug court program apart from other treatment initiatives. Drug courts may only have one or two judges at a time, but due to restructuring they may frequently rotate judges, causing participants to see quite a few judges during their enrollment in the program. To examine the effect of the number of judges, Goldkamp, White, and Robinson took advantage of a “natural quasi-experiment” in the Multnomah County drug court (2001b: 27). Over a seven year period (1991-1998), the Multnomah

County drug court's judicial staffing changed from a period of a single drug court judge (1991-1995) to a period of multiple judges in rotation (1996-1998). Findings from this "natural quasi-experiment" show that exposure to only one judge results in lower probabilities of re-arrest than exposure to 2-4 judges. This supports the assumption that participants supervised by many judges would not benefit as much from the symbolic authority of the judge as participants in the single-judge model. Goldkamp, White, and Robinson surmise that participants benefit from a personal connection to the judge and consistency in the treatment of their behavior (2001b: 28).

Interestingly, Goldkamp, White, and Robinson also found that exposure to five or more judges results in lower probabilities of re-arrest than exposure to 2-4 judges (2001b: 28). A possible explanation for these contradictory findings is that those enrolled in the drug court program for longer periods of time would be expected to encounter more judges and being in the program longer means they are continuing treatment and maybe even completing the program (Goldkamp, White, and Robinson 2001b: 28-29).

Whether or not judge exposure plays a role in shaping outcomes is tied to the period of time in the program. A one-judge relationship produces lower re-arrest rates when the treatment exceeds a twelve-month period. Additionally, seeing five or more judges results in lower re-arrest rates when the treatment exceeds a twelve-month period. This analysis suggests that the length of time in drug court overshadows the significance of the number of judges (Goldkamp, White, and Robinson 2001b: 29).

Other outcomes that were measured in this study are treatment attendance and termination. A historical overview of the Portland drug court shows that treatment attendance declined after it switched from a single judge to multiple judges presiding over drug court hearings. In addition, it was found that participants appearing before a single judge were less likely to be terminated from the program than participants appearing before multiple judges in the course of their enrollment (Goldkamp, White, & Robinson 2001b: 30).

### *Sanctions*

The role of sanctions in the drug court model is to motivate

participants to attend treatment, remain drug free, and complete the program. Sanctions are widely used by drug courts but there have been few studies that examine the efficacy of sanctions and which particular sanctions work best. In an evaluation of a pretrial program in Washington DC that was established to expedite drug-related case processing, Harrell and Roman identified the independent effects of using a graduated sanctioning schedule versus no sanctioning on drug use and crime (2001: 209). This particular court began an ambitious experiment in 1993 by randomly assigning drug-using defendants to either a sanctioning pre-trial docket or a standard pre-trial docket. The sanctioning docket required twice-weekly drug testing, judicial monitoring, and graduated sanctions for drug test failures. Graduated sanctions involved increasingly severe penalties for successive drug test failures. The first infraction held a penalty of three days in the jury box; the second infraction held a penalty of three days in jail; the third infraction held a penalty of seven days in detox; and the fourth infraction and all subsequent infractions held a penalty of seven days in jail. The standard docket, in contrast, required twice-weekly drug testing and judicial monitoring but did not use graduated sanctions for test failures. Harrell and Roman found that defendants in the sanctioning docket were three times more likely to test drug free in the month before their sentencing than defendants in the standard docket (2001: 218). In addition, participants who received graduated sanctions tested positive on a significantly smaller proportion of drug tests the month before sentencing than participants who did not receive graduated sanctions. With regards to recidivism, participants who received graduated sanctions were significantly less likely to be arrested in the year following program completion than participants in the drug-test-only group.

The use of graduated sanctions for positive drug tests, missed drug tests or fraudulent samples has been shown to be effective in reducing drug use and crime when compared to drug courts that only use drug tests and do not sanction noncompliance (Harrell and Roman 2001: 218). According to Harrell and Roman, successful sanctions programs must include an up-front agreement demonstrating that the defendant understands the rules, a swift implementation of sanctions after a violation occurs, and a certainty that the sanctions will be

imposed (2001: 210-1).

The most frequently sanctioned behaviors in drug court are positive drug tests, missing treatment, and having a poor attitude (Lindquist, Krebs, and Lattimore 2006: 128). The most common sanctions used in the drug court program are increased frequency or intensity of treatment, increased frequency of urinalysis, and increased frequency of court status hearings and jail (Cooper 2003: 1685). Qualitative data gathered from interviews with drug court staff and participants in five judicial circuits in Florida shows that jail time is the most effective sanction (Lindquist, Krebs, and Lattimore 2006: 133). Interestingly, quantitative data does not support this position. A review of studies done in the Clark County drug court and Multnomah County drug court shows that the imposition of jail sanctions is actually associated with higher re-arrest rates and lower graduation rates (Belenko 2001: 23, 28).

Drug courts are premised on the idea that the threat of incarceration motivates offenders to enter and remain in treatment (Hepburn and Harvey 2007: 256-7). While the actual use of jail sanctions may not produce desirable outcomes, recent research examines whether or not the simple threat of jail motivates offenders towards favorable performance (i.e. remaining in treatment). Findings show no significant difference in the program retention and completion between offenders who enter the drug court program under the threat of a legal sanction and those who enter the drug court program with no threat of a legal sanction (Hepburn and Harvey 2007: 270). The threat of jail made no difference in either the length of retention in the program or in the likelihood of successfully completing the program. These results indicate that using jail as a sanction for noncompliant behavior may not be essential and since incarceration can be costly this could be a way to cut program costs.

With regards to the standardization of sanctions (i.e. the same sanction for the same violation, regardless of individual characteristics and histories), the most common themes reported by drug court staff and drug court participants is that the use of sanctions is tailored to each individual and that the standardization of sanctions is not good or desirable (Lindquist, Krebs, and Lattimore 2006: 133). Whether or not the overall sanctioning process is effective depends on the

individual. If participants are motivated, sanctioning them can be effective, but those who enter drug court only to avoid jail may not care if they get sanctioned (Lindquist, Krebs, and Lattimore 2006: 131).

#### *Substance Abuse Treatment*

For incarcerated drug abusing offenders who receive little to no substance abuse treatment while in prison, re-addiction after release from prison is almost inevitable and is a common cause of recidivism. Thus, substance abuse treatment is an essential part of the drug court model if it is to be an effective alternative to incarceration. Research shows that drug court participants who receive treatment are significantly less likely to recidivate (i.e. fewer post-program re-arrests) than those who do not receive treatment (Gottfredson, Najaka, and Kearley 2003: 189).

The term “substance abuse treatment” encompasses a variety of different interventions: cognitive-behavioral therapy, psychoanalytical therapy, social/coping skills, self-help (twelve step) interventions (i.e. AA and NA), punishment-oriented therapy, relapses prevention, family therapy, etc. Individual drug court programs have the freedom to choose which substance abuse treatment interventions to use based on their clients’ needs. While the literature confirms that treatment is important, it is difficult to determine which approaches are most effective because treatment services vary widely. However, years of drug treatment research outside the drug court arena shows that cognitive-behavioral therapy is the most effective therapeutic intervention in effecting change in substance-abusing offenders. Many studies indicate that cognitive-behavioral therapy reduces substance use and criminal behavior during and after the treatment period more so than other therapeutic interventions (Miller et al. 1995, as cited in Bouffard and Taxman 2004: 196; NIDA 1999, as cited in Taxman and Bouffard 2003: 81; Taxman and Bouffard 2003: 77). Cognitive-behavioral therapy is centered on the idea that our thoughts cause our feelings and behaviors. It is a broad approach that employs many different techniques aimed at influencing our cognitions in order to change our beliefs and behaviors.

In surveying treatment providers from four different jurisdictions

across the United States, Taxman and Bouffard found that the knowledge of the most effective practices in treating substance abuse (i.e. cognitive-behavioral therapy) among counselors is relatively low (2003: 83). Moreover, through observations of treatment services as they are actually delivered, Taxman and Bouffard found that counselors spend relatively little time on addressing clinical issues with cognitive-behavioral therapeutic approaches (2003: 81). Among the four different jurisdictions, the maximum amount of time spent on cognitive-behavioral treatment components in any one counseling session was 26%. The average amount of time spent on cognitive-behavioral treatment components in the meetings across all four jurisdictions was 16% (Taxman and Bouffard 2003: 81). Several researchers agree that successful treatment modalities (i.e. cognitive-behavioral therapy) are not being adopted by treatment professionals within the drug court program (Fox 2004: 11-3).

The effectiveness of any treatment largely depends on the staff delivering the services (Taxman and Bouffard 2003: 83). Research shows that substance abuse counselors involved with drug court programs support and employ a wide range of therapeutic approaches in their sessions, including cognitive-behavioral techniques, education and aftercare, self-exploration, self-help and peer support (Taxman and Bouffard 2003: 80). Across the four jurisdictions examined, the average amount of meeting time spent on these treatment practices is 16%, 32%, 13% and 7%, respectively (Taxman and Bouffard 2003: 81). It is evident that counselors involved with drug courts employ an eclectic approach to treatment. A lack of a coherent strategy is found to exist both within single treatment sessions and among the treatment program as a whole (Taxman and Bouffard 2003: 81). Programs that address multiple client needs by providing an array of different techniques may be preferred, but techniques based on incompatible philosophical positions should not be used together (e.g. AA tells clients they are powerless whereas cognitive-behavioral therapy requires clients to recognize the role that their thoughts play in perpetuating their behavior) (Bouffard and Taxman 2004: 213). Such an approach might deliver inconsistent messages to clients and impede their ability to develop a suitable action plan for reducing drug using and drug seeking behaviors (Blankenship, Dansereau, and Simpson 1999, as cited in

Bouffard and Taxman 2004: 212).

The tendency to apply a variety of methods in their therapeutic sessions suggests that substance abuse treatment counselors lack a treatment program model with clearly defined goals and objectives (Taxman and Bouffard 2003: 83). The results of the observations of four different jurisdictions' drug court treatment programs indicate the importance of improving the content of the treatment services in drug court so that participants receive a unified message aimed at changing their problematic behavior. Increasing treatment provider's knowledge of evidence-based practices such as cognitive-behavioral therapy techniques and matching treatment services to clients' stages of change can improve the performance outcomes of drug court participants. Making improvements in the treatment component of the drug court program can only help to reduce drug abuse among offenders, which in turn reduces their criminal behavior (Harrell and Roman 2001: 207; Harrell, Roman, and Sack 2001: 32-7).

### **Conclusion**

Drug addiction is first and foremost a health issue. Although it commonly leads to criminal behavior, it is more effectively addressed as a health rather than a criminal problem. Whereas 44% of the people who leave prison are rearrested within one year (Langan and Levin 2002: 3), only 16.4% of drug court participants are rearrested within one year (Roman, Townsend, and Bhati 2003: 27). Because drug abuse is prevalent among offenders (Krebs et al. 2007: 57) and in some cases the direct cause of criminal behavior, providing mental health care aimed at treating substance abuse problems might break the cycle that returns offenders to prison and reduce the overcrowding that plagues our prison system today. Drug court has emerged as a comprehensive treatment model to rehabilitate drug-abusing offenders by providing them with much needed mental health care, educational services and social services.

Studies have overwhelmingly shown that drug court reduces recidivism, substance use, and the cost of treatment. In light of profuse research, the answer to the question of whether or not drug courts work is yes. Considering how they work (Cissner and Rempel 2005: 1), current research shows that the efficacy of the drug court model

depends on a variety of different factors; among these are the key components of drug court as defined by the NADCP (1997: 9-38), the implementation of these components, and how they interact with participant attributes. More specifically, judicial status hearings, sanctioning, and substance abuse treatment have been shown to be significant predictors of subsequent criminal behavior and drug use. Participant attributes, such as risk status (i.e. presence of antisocial personality disorder and/or a history of substance abuse treatment) and motivation to complete the program, interact with key components to produce certain outcomes and must be taken into consideration when implementing a program.

In the past decade research pertaining to how drug courts work and their most effective practices has greatly increased and continues to proliferate today. The drug court model is unique in that local jurisdictions have the freedom to tailor their programs to meet the needs of their clients. However, if these jurisdictions heed recommendations emerging from research that has begun to discern the most effective practices, the positive impacts of the drug court model can be further enhanced.

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