



# KANSAS DRUG COURT FEASIBILITY STUDY

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FINAL REPORT



**Project Staff:**

**Mary Beth Kirven, Project Director**  
**Erika Friess, Project Consultant**  
**Nathan Hall, Project Consultant**  
**David Sayles, Project Consultant**

**Daniel J. Hall, Vice President**

Court Consulting Services  
707 Seventeenth Street, Suite 2900  
Denver, Colorado 80202-3429  
303-293-3063

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## **Introduction**

The Kansas Supreme Court contracted with the National Center for State Courts (NCSC) to research the feasibility and practicality of instituting state-wide level management over drug courts within the state. To date, there has been no centralized, statewide effort to encourage the growth of drug courts or exercise any state-level administration and oversight of traditional drug courts within the state. Seven drug courts are currently operating in Kansas – all of them homegrown by court personnel who sought to meet the needs of their individual jurisdictions. Some of these drug courts operate in conjunction with state mandated Senate Bill 123 (SB 123) programs. Kansas has institutionalized the SB 123 programs which provide treatment to adults convicted of a first or second drug possession offense.

The question now facing Kansas is whether it should support and institutionalize, at the state level, the development of traditional drug courts. Research accumulated over the last two decades when drug courts first started clearly supports the conclusion that drug courts are effective for high-risk/high needs offenders. Drug courts have been shown to reduce recidivism, reduce costs, and help individuals maintain sobriety. Long term cost reductions are achieved through the avoidance of law enforcement efforts, judicial case processing, and victimization resulting from re-offending. Short-term cost reductions are achieved because individuals are diverted from jail or prison at least for the time that they are in the program. Utilization of traditional drug court models have benefited a significant number of offenders who enter the criminal justice system with serious substance abuse problems and have lowered prison and jail costs by closing the revolving door that seems to trap so many addicts in the cycle of drug abuse and criminal behavior. Drug courts seem to strike the proper balance between the need to protect community safety and the need to improve public health and well being; between the need for treatment and the need to hold people accountable for their actions; between hope and redemption on the one hand and good citizenship on the other. Drug courts keep nonviolent drug-addicted individuals in treatment for long periods of time and supervise them closely, which is the cornerstone of their success.

The challenge facing many drug courts now is how can they be sustained and become integrated into the criminal justice system. If drug courts are to be a long term answer to the problem of drug addiction and crime, drug courts must be institutionalized by the state. Institutionalization has been described as “the process by which individual drug courts evolve from separate experimental entities to a statewide network that is stable, far-reaching, reliably funded and closely monitored.”<sup>1</sup> Whether drug courts should be institutionalized in Kansas is the question before the Supreme Court and the Kansas Sentencing Commission. So far drug courts have developed in Kansas without concerted state assistance and are very limited in the number of people they can serve because of limited resources. If drug courts are institutionalized in Kansas then more drug courts can be established with less concern about sustainability because in addition to local and federal funding, state funds would be made available.

Drug courts usually start with an initial grant from the Department of Justice which generally runs for three to five years. After that period the drug court has to find other resources either at the local level or the state level to sustain it. The most precarious time for drug courts is when they have to shift from guaranteed federal funding to local or state funding. More and more, states are stepping up to fund drug courts because drug courts have been shown to effectively reduce recidivism thereby reducing jail and prison bed costs.

During the institutionalization phase, drug court practitioners and policy makers are no longer grappling simply with the logistics of developing new specialized dockets, but tackling a host of new responsibilities. Four specific challenges face states in trying to establish drug courts across the state. These include: (1) centralizing authority; (2) establishing best practices; (3) developing collaborative relationships; and (4) increasing capacity. This report addresses these four issues in light of what Kansas already has in place and how Kansas might be able to sustain drug courts on a statewide basis.

This report is composed of three chapters. Chapter One discusses what is currently happening in Kansas in terms of existing drug courts and SB 123 programs

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<sup>1</sup> Aubrey Fox and Robert V. Wolf, *How States are Mainstreaming the Drug Court Model*, The Future of Drug Courts, 2004.

and how SB 123 programs could either evolve into traditional drug courts or be supplemented with traditional drug courts. It then goes through the challenges enumerated above and what Kansas has in place to meet these challenges. Chapter Two provides a brief discussion of four comparable states and how they have institutionalized drug courts statewide. To examine how drug courts are implemented elsewhere, NCSC has chosen four states that are comparable to Kansas and examined their infrastructure. Each state's program is detailed in Chapter Two of the report but they will be referred to in Chapter One to exemplify specific aspects of institutionalization. The four states are New Mexico, Missouri, Nebraska and Utah. Chapter Three gives a detailed description of just what a drug court is and the two most common models of drug court. Three appendices are attached to the document, the first provides a brief description of every drug court now operating in Kansas; the second appendix is a compilation of funding strategies from other jurisdictions; the third appendix is an update on the latest research on the various types of drug courts.

## **Chapter One**

### **What Does Kansas Have and What Will Kansas Need?**

#### **A. Current Infrastructure in Kansas**

##### **SB 123 Programs and Drug Courts**

The Supreme Court of Kansas commissioned this report to determine how other states have institutionalized drug courts on a state-wide basis and what infrastructure Kansas would need to institutionalize drug courts. Right now traditional drug courts operating in Kansas do so at the initiative of local court personnel who believe that drug courts fill a need in their jurisdiction. The drug courts operate through the collection of fees, grants and other monies from the federal and local level; the majority of courts operate without state funds or state support although some support does come through the Department of Corrections (DOC). Although Kansas has not institutionalized drug courts, it has institutionalized what are commonly known within the state as SB 123 programs. SB 123 programs do not follow the traditional drug court model, but they do treat drug offenders. If the offenders are unsuccessful in completing the treatment regimen, they are required to serve a prison or jail sentence. Given the similarities between SB 123 programs and drug courts, the level of institutionalization of SB123 programs and the fact that some jurisdictions are running the two programs side by side, NCSC believes that Kansas should take a close look at the possibility of using SB 123 programs as a jumping off point for drug courts by either evolving SB programs into traditional drug courts or supplementing them with drug courts as some jurisdictions have done.

In November 2003, Kansas Senate Bill 123 mandated that adult offenders be sentenced to non-prison based drug abuse treatment programs within their community if they had been convicted of a felony drug possession charge. The purpose of the bill is to reduce the prison population by diverting non-violent felony offenders from prison and to stop the revolving door of recidivist offenders whose substance abuse is the underlying cause of criminal behavior. SB 123 programs have been in effect for seven years and are well known to the audience of this report; therefore NCSC will provide



only a brief description of the program and then contrast it with traditional drug court programs, which are described in detail in Chapter Three of this report.

As mentioned previously, SB 123 (which has been codified as K.S.A. 21-4729 but will continue to be referred to as SB 123 in this report) targets a population of nonviolent adult offenders who have been convicted of a first or second drug possession offense and have no prior convictions of drug trafficking, drug manufacturing or drug possession with intent to sell. Individuals convicted of drug possession charges are subject to drug abuse assessments and standardized risk assessments as part of the presentence investigation to determine the level of services that should be offered. The drug abuse assessment measures the offender's level of substance abuse/dependence and the standardized risk assessment assesses the offender's criminogenic needs and risk of reoffending. If the offender meets the requirements of SB123, the court sentences the offender to treatment in a certified substance abuse treatment program and to community supervision through a community corrections agency. (SB 123 sentencing is mandatory for individuals who meet the criteria set forth in the statute.) The length of treatment depends on the particular modality of treatment the individual receives as well as the individual's progress in treatment. The state will only pay for 18 months of treatment.

Funding for SB 123 programs comes from two sources: the cost of treatment is paid for by the Kansas Sentencing Commission (KSC) from funds specifically identified for this purpose by the legislature. Funding for supervision by community corrections officers comes from the Department of Corrections. Offenders who have insurance are required to use that insurance to cover the costs of treatment. If an offender has the ability to pay for treatment then payment is expected. Everyone is expected to pay at least \$300 for treatment. This fee is imposed by the judge at the time of sentencing and is used to offset the state's costs and is payable to the KSC.

The fact that SB 123 is mandated has helped the programs become institutionalized much quicker than it would normally take a program to gain momentum. The program suffered from the usual barriers to implementation such as lack of awareness and lack of treatment resources. The difficulty of providing treatment to rural

residents persists because of the lack of providers in each community and the added requirement that treatment providers for the SB 123 programs be certified through the DOC. SB 123 has been more fully implemented in urban areas; however, every year more SB 123 programs are being implemented across the state.

The KSC and the DOC have been instrumental in creating uniformity in the implementation of SB 123 programs through the development of the “Operations Manual.”<sup>2</sup> The Operations Manual covers issues related to SB 123 programs. It provides users with a thorough explanation of the statutes impacting the implementation of SB 123, the statutes themselves provide the procedures to follow for every aspect of the program from getting treatment providers certified to getting funding from the KSC and the DOC. It also provides samples of the forms necessary for the operation of the programs.

Such an extensive outlay of information is a valuable asset to the program and could easily be the foundation for a drug court policies and procedures manual. Of particular value are the sections on assessments and the importance of integration of treatment modalities. Much of what Kansas would need in terms of infrastructure for drug courts has already been put in place for the SB 123 programs. The institutionalization of SB 123 programs provides the following advantages for starting drug courts whether drug courts evolve to replace SB 123 programs or supplement them:

- SB 123 programs have heightened the awareness of legislators, stakeholders and the public of the need to treat offenders with drug addictions differently than other offenders.
- Treatment providers have been certified to treat drug offenders by the Department of Corrections.
- A detailed operations manual has been created which could readily be used as the foundation for a drug court manual.
- The Kansas Sentencing Commission has experience in overseeing treatment programs.

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<sup>2</sup> “2003 – Senate Bill 123 Alternative Sentencing Policy for Non-Violent Drug Possession Offenders Operations Manual Kansas Sentencing Commission and Kansas Department of Corrections. July 1, 2008.

- Screening of offenders is in place and people have been trained on the use of a variety of assessment instruments. The same instruments would be used to screen drug court candidates.
- Funding has been allocated by the state legislature for SB 123 programs.
- Methods for distributing funds through the KSC and reimbursing the KSC are in place and the same mechanisms and fees could be used for drug courts.
- Jurisdictions are actively trying to meet the SB 123 mandate and are beginning to put the program in place even if they do not yet have all the elements available. (This is apparent from the growing number of SB 123 programs within the state.)

Using the current infrastructure for SB 123 programs for the development of drug courts in Kansas would make the implementation of drug courts state-wide a smoother process than if the state had to start from scratch. The following table gives a side by side comparison of SB 123 programs and drug courts.

### Comparison of SB 123 Programs and Drug Courts

| Characteristic          | SB 123 Program   | Drug Court   |
|-------------------------|--|--|
| Type of Drug Court      | Adult  | Adult, Juvenile, Family, Re-entry  |
| Offenses                | Felony possession offense.   | Any nonviolent traffic, misdemeanor or felony offense where drug or alcohol was the underlying cause.  |
| Target Population       | 1st or 2nd offense--can be either high or low risk; high or low needs; non-violent history.              | Usually multiple prior convictions - High risk/high need; failed at treatment before; nonviolent history.  |
| Assessment              | LSI-R pre-sentence; SB 123 Package<br>Additional assessments done throughout the process.                | LSI-R or similar, ASI or similar done either pre-or post-sentencing.   |
| Model Type              | Post-Conviction.   | Pre or Post Conviction depending on the severity of the crime.   |
| Team Members            | Treatment Provider, Community Corrections Officer.   | Judge, District Attorney, Defense Attorney, Probation Officer, Drug Court Coordinator, Treatment Provider.   |
| Appearance Before Judge | No regular appearances before a judge.   | Regular appearance before a judge. Usually will start with weekly appearances and decrease as progress.  |
| Rewards                 | None specified.  | Small gifts, applause, graduation to next phase, less frequent court appearances, less frequent random drug tests, praise from the judge.                |
| Sanctions               | Jail, electronic monitoring, fines, community service, intensified treatment, house arrest, termination. | Jail, community service, essay writing, additional appearances, additional drug tests, increased supervision, SCRAM, electronic monitoring, termination. |
| Fees                    | Offender uses insurance, pays full cost of treatment if able, pay \$300 fee.                             | Offender uses insurance, pays full cost if able, usually pays fee for program and/or for drug testing.   |
| Funding                 | State funded.  | Federal, state and local funding mix.  |

One of the substantial differences between SB123 programs and drug courts is that drug courts are evidence based programs with established best practices. The SB 123 programs are not evidence based and best practices have not been established for these types of programs. Evidence based means that there is a definable outcome; it is measurable and it is defined according to practical realities (recidivism, victim satisfaction, etc.). A best practice does not necessarily imply attention to outcomes, evidence, or measurable standards. Best practices are often based on the collective

experience and wisdom of the field rather than scientifically tested knowledge. In terms of drug courts the following are true regarding evidence-based practices and best practices:

- Scientific evidence shows that drug courts with judicial supervision are more effective than treatment alone or probation alone.
- Judges play a critical role in the drug court program by requiring frequent court appearances where individuals are held accountable for their actions. This combination of treatment, judicial supervision and probation supervision is what makes drug courts successful.
- Research shows definitively that drug courts are most effective for high risk/high needs offenders. Most high risk/high needs individuals have multiple convictions, are highly addictive and have failed at treatment before.

A full process and outcome evaluation needs to be conducted on the SB 123 programs to determine their true effectiveness. The evaluation completed by the Vera Institute in 2006 was primarily a process evaluation as the programs were too young to undergo a complete outcome evaluation. An evaluation of the effectiveness of SB 123 programs is beyond the scope of this project. Given that a complete outcome evaluation has not been done, specific data on outcomes is not available.

SB 123 participants are screened using the LSI-R assessment tool which measures the risk level for reoffending and the criminogenic needs of the offender. The assessment tool places individuals into one of four categories: Category I is the highest risk level requiring the most intense level of supervision while Category IV is the lowest risk category requiring the least intensive supervision. Initial data provided by KSC does not provide recidivism rates but indicates that participants do seem to change from more intense supervision needs to lower supervision needs while enrolled in the SB 123 program. It is not possible for NCSC to determine which level of supervision benefits the most participants. An outcome evaluation of the program needs to be conducted to determine who is being helped and the recidivism rate. The programs have existed for seven years now so there should be ample evidence to determine outcomes.

NCSC believes that Kansas would see a greater cost benefit if SB 123 programs or drug courts were available to a broader range of offenders. By accepting only first and second time offenders for drug possession, the programs are not catching the

individuals who are caught in the revolving door of substance abuse and criminal behavior. SB 123 is not targeting addicts who commit crime to support their addiction. It is widely accepted that it is this population that gets caught in the revolving door and increase prison costs. The SB 123 program is treating some high risk/high needs individuals but it is also spending resources on individuals who in all likelihood will not have another offense and not take up a prison bed.

Scientific evidence indicates that the presence of a judge who can give praise when warranted and, more importantly, enforce quick and sure consequences for missteps is essential for participants to complete the prescribed treatment regimen and graduate from the program. This is a concern for the SB 123 programs and their effectiveness, which do not require judicial involvement. Community Corrections Officers generally only have one hammer to use and that is revocation, which they are probably reluctant to use because it is a heavy hammer and it defeats the ultimate goal of saving prison beds.

Outcome data from the SB 123 programs is not being tracked. To determine the long term effectiveness of these programs, data on recidivism must be tracked. Right now the courts are tracking the number of beds saved by diverting individuals from prison to SB 123; however, since recidivism rates are not collected the long term savings of the program remain ambiguous. Data that should be collected includes:

- Rates of recidivism.
- Effectiveness of treatment – which treatment modalities are being employed and are they achieving the desired results: how many people get sober and how many stay sober.
- How many high risk/high needs individuals are being treated.
- How many low risk/low needs individuals are being treated.

Moving to a drug court model which is evidence based and proven to reduce recidivism for the long term (at least 2-3 years, and in some cases much longer) would provide long term savings for the criminal justice system. The savings would not just be in jail beds but also the cost of prosecuting individuals and reduced victimization especially when targeting offenders who are committing crimes to support their

addiction. Taking the team approach with the involvement of the prosecutor, defense attorney, probation officer, treatment provider, judge, and drug court coordinator is more effective than having just the treatment provider and probation officer as a team especially for the high risk/high needs offenders.

Kansas may want to keep SB 123 for offenders in the lower risk/lower needs categories and implement drug courts for the high risk/high needs offenders. Without more information on the longer term impact of SB 123 programs, Kansas will have a difficult time determining if SB 123 is as effective as drug courts. Whether Kansas decides to keep SB 123 or move to drug courts it should broaden the type of offenders that are directed to the program. Just targeting first and second time felony offenders for possession will not yield the same return on investment as targeting repeat offenders who commit crime to support their addiction or otherwise have addiction as the underlying reason for criminal activity.

Kansas should undertake an outcome evaluation of the SB 123 programs to determine their true strengths and weaknesses and then determine if the programs should be expanded, operate alongside drug courts or be replaced by drug courts. Scientific evidence suggests that the long term impact of SB 123 may not be as strong as that observed with drug courts throughout the country. Kansas can use the infrastructure created through the establishment of SB 123 programs to institutionalize drug courts across the state. Although Kansas has some infrastructure in place, it will still face challenges in establishing statewide oversight of drug courts. The challenges to be met are discussed below.

## **B. Centralizing Authority**

*While some amount of centralized authority seems necessary for drug courts to thrive, questions remain about the dynamic. Which functions should be centralized and which should be left at a local level? How can Kansas balance the need for quality control and uniformity with the desire to encourage local flexibility? Which state agency or branch of government should lead the drug court effort?*

An issue that every state considering centralizing drug court operations faces is how much control a statewide overseer should have. Since drug courts' success has long been attributed largely to leadership at the local level, many drug court practitioners are wary of rules or regulations that are not home-grown. This can put leaders at the state level in a bind as they try to define their role and scope of responsibilities. Over the last few years, policymakers have increasingly moved to a centralized authority to obtain more funding to support drug courts and use the grant process to set and enforce minimum standards at a local level.

It appears that the KSC and the DOC exert quite a bit of control over the SB 123 programs. KSC and DOC have drafted the Operations Manual that is a definitive statement of how SB 123 programs are to operate. Although the Operations Manual is thorough, it does not strictly dictate the forms of the programs. Some jurisdictions are running SB 123 programs right alongside their drug courts while other jurisdictions have made a clear distinction between drug courts and SB 123 programs. So while KSC and DOC have provided guidelines for the operation of SB 123 programs, they have not dictated the exact form they must take. Therefore, it appears that Kansas has found the appropriate balance between providing guidelines and dictating how things must be set up. This is a difficult task as the legislation is written such that very little leeway is given either to KSC, DOC, judges or individual program directors.

Kansas will have to grapple with whether it needs to create new statewide positions and/or commissions or committees to oversee drug courts. Much of this will depend on whether Kansas wants the oversight of the drug courts to be strictly a judiciary function, strictly an executive function or a combination of judiciary and executive functions. If the current infrastructure is used and traditional drug courts



either supplant SB 123 programs or grow along side of them then a combined model is most appropriate with KSC as the entity charged with oversight. However, Kansas could opt to create a separate commission or committee under the judiciary and have a strictly judiciary model.

Utah and Missouri are examples of states that use a combination of judiciary and executive functions in overseeing their drug courts. In Utah the position of state drug court coordinator is filled by the Deputy Court Administrator who spends approximately 15 percent of his time overseeing drug courts. The reason that so little time is required by the judiciary is that the majority of functions are carried out by the executive branch through the Division of Substance Abuse and Mental Health (DSAMH) of the Utah Department of Human Services. DSAMH receives funding from federal and state sources and disperses the funds to applicants whose applications are reviewed by members of the judiciary, DOC and DSAMH (the state court administrator, the Secretary of Corrections and the head of DSAMH). The role of the judiciary is limited to certifying drug courts and assisting in the application process. In Missouri, the state drug coordinator is a member of the judicial branch but disbursement of funds from the state legislature is through a commission composed of members from both the executive branch and the judicial branch. Jurisdictions that want to start a drug court apply through the commission but all reporting of data and case management is done through the judiciary.

New Mexico and Nebraska are examples of strictly judicial oversight. The New Mexico Supreme Court established a permanent committee known as the Drug Court Advisory Committee (DCAC). DCAC's role is to create a set of drug court standards detailing uniform operational, data collection and performance reporting standards for the state's programs. The State Drug Court Coordinator is a non-voting member of the committee and assists local drug courts through the application process. In addition to assisting courts in obtaining funding, the State Drug Court Coordinator tracks whether the drug courts are implementing best practices and following the 10 key components. In Nebraska, the Supreme Court established the requirements for starting a drug court in the Supreme Court Rules. As with New Mexico, the application for funds is to the

judiciary and all reporting and oversight is done to by the judiciary through the state drug court coordinator.

It should be noted that all four states have a state drug court administrator who supports either the committee or commission or other entity tasked with distributing funds. The coordinator is also responsible for ensuring that drug courts operate within the bounds of best practices and the 10 key components. In all likelihood, Kansas will need to employ a state drug court coordinator, regardless of which model it chooses. Some of the advantages of having a state-level drug coordinator are:

- Fosters uniformity of practices by establishing comprehensive screening and assessment systems and statewide standards or guidelines for drug court operation. (This has already been done in Kansas by the DOC.)
- Develops funding allocation and accountability mechanisms, receives and administers federal and other grants.
- Provides training opportunities, fosters communication, develops statewide management information and evaluation systems and works to build interagency collaborative relationships.

It should also be noted that the state drug court coordinators do not have a large staff. In Utah and Missouri the support staff consists of individuals to conduct annual evaluations. Utah has one individual doing this task while Missouri has two. Nebraska does not have additional staff support for the drug court coordinator. New Mexico has an assistant drug court coordinator who splits her time between drug courts and court improvement programs. If KSC were to take on the responsibility of overseeing drug courts then they would have the support of the Commission's current staff. Whether drug courts would add an additional burden would have to be determined by the Commission and depend on whether drug courts are in addition to SB 123 programs or whether they replace SB 123 programs.

The Kansas Supreme Court has expressed specific interest in the model adopted by Missouri; therefore additional information on the Drug Court Commission (DCC) in Missouri is provided here. Before the creation of the DCC, local drug courts sought funding by whatever means were available at the federal, state and local level. Funding was granted without much oversight and no one entity was tracking who got money,

where it came from or how it was used. Supreme Court Judge William Price realized that this was untenable and, through legislative action, created the multi-agency DCC to oversee drug courts around the state. The DCC is a committee composed of representatives of key state agencies (Mental Health, Corrections, Courts, Public Safety) that administers, in a single fund, a pool of money related to drug courts. Funding for the pool of money comes from the DOC, the legislature, grants and the Department of Public Safety. DCC has also published guidelines on what standards a drug court should meet. This is geared towards outcomes and not process. Local courts are allowed to set up any model that suits their needs but to get funding they must show outcomes such as – how many participants got sober, how many stayed sober and how quickly people got into treatment.

In Kansas, the Office of Judicial Administration (OJA) has experience in overseeing programs such as the CASA programs and the Citizen Review Boards. The Kansas Supreme Court's standards and administration of Court Appointed Special Advocates (CASA) and Citizen Review Board programs could serve as a model for the administration of drug courts. CASA programs are governed by Supreme Court Rule 110, Kansas Supreme Court Standards and Guidelines and undergo an annual recertification through the Office of Judicial Administration. Kansas Citizen Review Boards go through a similar process annually. The OJA administers the Permanent Families Account which provides all of the funding for CRB programs and a portion of the funding for CASA programs. In addition to funding, CASA and CRB programs receive general administrative support and technical assistance from OJA staff including onsite board and volunteer training, assistance with budgets, records and reporting, and screening for volunteers and staff. Both programs provide annual reports to the Office of Judicial Administration. Recently, CASA programs have implemented state-wide software to report information to the Office of Judicial Administration. Citizen Review Boards report data quarterly to the OJA. CRB programs receive funding through a competitive grant process. CASA programs receive funding based on a formula developed with considerable input and support from CASA Directors. The two OJA staff responsible for CASA and CRB dedicate between 40 percent and 60 percent of

their time to the support of these two programs. Statewide, there are 24 CASA programs and 11 CRB programs.

### **C. Establishing Best Practices**

*The challenge for state leaders is identifying a set of best practices that work in all environments- in big cities and rural counties, in communities with numerous treatment resources and those with limited capacity. Another challenge is updating best practices as new research adds to an understanding about how and in what circumstances drug courts work.*

An essential component of institutionalization and oversight is ensuring that all drug courts funded by the state are using the money to create evidenced-based programs grounded in best practices. This means that the state should provide best practice guidelines for drug courts to follow. Disseminating best practices is viewed as a way to ensure a minimum level of quality throughout a state's varied drug court programs. Various ways have been employed to promote best practices. Some states enforce best practices as a condition of receiving grant funding. Others have promoted a set of voluntary practice guidelines for drug courts to follow.

Kansas is familiar with the difficulties of setting best practices for a state so diverse in its population distribution. The state is well aware of the difficulties rural areas have in obtaining the proper treatment providers - those that are licensed and certified and can provide the type of treatment needed. Just as KSC and DOC were able to create an operations manual for SB 123 programs, the state can create a series of best practices for drug courts to implement. As Kansas knows well from the SB 123 programs, not all jurisdictions will be able to implement all aspects of the best practices and allowances will have to be made in certain circumstances. As seen with the SB 123 programs each year more programs are established as conditions in each jurisdiction allow.

In all four of the comparison states the state drug court coordinator ensures that best practice guidelines are met. In Utah the guidelines were created by the judiciary

and are enforced by the judiciary and failing to comport with the standards results in the suspension of funding from DSAMH. Missouri links compliance with best practices to funding. Although both Utah and Missouri have a combined judiciary and executive model, the judiciary is charged with creating the standards and enforcing them. Both states have employees of the judiciary who evaluate the drug courts to determine whether the local courts are following the 10 key components and the guidelines; and both enforce the guidelines by terminating or suspending funding until the programs are in compliance. In New Mexico, the guidelines were created by DCAC and the state drug court coordinator and are enforced through self-assessments and random checks by the judiciary. The Nebraska Supreme Court has enumerated the standards and requirements for drug courts in the Supreme Court Rules. The state drug court coordinator ensures that the standards are met through regular reporting requirements.

KSC and the Department of Corrections have created the Operations Manual for SB 123 programs which can serve as the foundation for a policies and procedures manual for drug courts. This is because the manual already provides information on such things as assessment tools and how to use them; community correction supervision standards; treatment provider standards; and reimbursement requirements. Although there is no doubt that instituting drug courts would mean that many of these documents would have to be re-written, the basic foundation has been laid. Information provided in the Operations Manual far exceeds the guidelines that most drug courts operate under. A plethora of information is available on best practices and guidelines provided by the drug court community that can easily be accessed and modified to fit any model that Kansas adopts. As an example of what other states are doing.

#### **D. Developing Collaborative Relationships**

*To advance institutionalization, who needs to be on board? Which individuals and agencies need to be cultivated?*

Drug courts require cooperation from many stakeholders including treatment providers, judges, district attorneys, defense attorneys, probation and the community. Leadership is the single most important element in institutionalizing drug courts. In

almost every instance drug courts have advanced, whether at the local level or the state level, because of the leadership of a small group of individuals. As drug courts have advanced so has the level of commitment by individuals in the federal, state and local governments. Drug courts have been proven to work and are now supported by individuals at all levels of government including, state chief judges, heads of executive branch agencies and elected officials. The most effective way to institutionalize drug courts is to create statewide offices and commissions to guide drug court operations, developing collaborative relationships between agencies at the highest level of state government and assuming financial responsibility over drug courts.

One of the reasons that NCSC recommends the implementation of drug courts through the KSC is because it is composed of just the leaders necessary to increase the profile of drug courts in the state. The Commission has members representing every stakeholder group and all three branches of government. This gives Kansas a great jumping off point for the development of drug courts statewide. The collaboration necessary is already in place it just needs to be fostered.

If Kansas drug courts are to survive the transition from a series of isolated experiments to an institutionalized feature of a state's criminal justice and drug-treatment systems, they will need to maintain and even expand the support that they've so carefully cultivated over the years for the SB 123 programs. KSC and DOC have fostered the financial, logistical and political support necessary to institutionalize SB 123 programs. The fact that SB 123 programs are mandated does not detract from the work that KSC and DOC have had to undertake to see the programs flourish. This harnessing of resources is, again, a great foundation for drug courts. However, much more work will have to be done because drug courts require even more cooperation from stakeholders and agencies that play a limited role in SB 123 programs. The most critical players for drug courts are the judges and attorneys.

The scientific evidence indicates that the judge is a critical player in the success of drug courts. Having that authority figure who issues rewards and sanctions is not only the hallmark of drug courts but the essential factor in getting and keeping people in treatment. Buy-in by the prosecutor and the defense attorney is also critical. The

prosecuting attorney must believe that a drug court is an effective means for limiting future criminal activity and that it is stringent enough to deflect the notion that the prosecutor may be “soft on crime.” Defense attorneys must be convinced that drug court is in the best interest of their client in the long term. A client may be sentenced to less time than it takes to go through a drug court program but the long term impact is much greater. Therefore, defense attorneys must be convinced that the drug court programs are well run and produce the outcomes predicted.

If Kansas is to institutionalize drug courts, judges, attorneys and clerks will have to be convinced to start drug courts and bring together high-level executives from state agencies (courts, corrections, police, public health, social services, etc.). This will send a signal to local jurisdictions that drug courts are a priority. Given the level of commitment the KSC has shown in collaborating with various agencies to institutionalize the operations of the SB 123 programs, it appears that Kansas has the necessary leadership and collaboration between agencies to establish drug courts on a wider basis and have oversight resting with the state.

### **E. Increasing Capacity**

*For drug courts to reach their full potential, they need to reach as many potentially eligible clients as possible.*

One of the advantages that a drug court will have over an SB 123 program is increased capacity. Generally, drug courts take non-violent felons who have drug or alcohol abuse as an underlying cause for criminal behavior. SB 123 programs are limited to first or second drug possession offenses. It is widely accepted in the drug court community that two populations should be target populations of drug courts – those who are prison bound and those who are leaving prison and are in danger of probation revocation. As stated earlier, drug courts are most effective for high risk/high needs offenders. This must be the target population for Kansas to obtain the best return on its investment of resources. A frequent criticism of drug courts is that they are expensive given the limited capacity at which many of them operate. Many within the

drug court community believe that drug courts with greater capacity rather than more drug courts are needed.

Capacity will be an issue in some rural areas where the number of offenders may not be high enough to sustain a drug court, especially if a drug court is limited to non-violent offenders with non-violent histories. Federal grant dollars come with the stipulation that the funds not be used for individuals charged with a violent offense or with a violent history. This greatly reduces the pool of potential participants and some jurisdictions are using state and local funds to treat all drug offenders regardless of their history or level of offense. An example of a jurisdiction that is doing this is Hennepin County, Minnesota which has approximately 4,000 drug court clients at any given time. That is about one-third of the county's total criminal caseload. In Hennepin County the percentage of drug offenders going into treatment has steadily increased from about 45 percent when the court first started in 1997 to 74 percent in 2002.

Dade County, Florida took a different approach. Since it could not convince the prosecutors and defense bar of the value of a post-plea program, it added judicial monitoring to probation sentences. Therefore, the offender had to report back to the judge on how treatment was progressing. The court administrator educated judges on the basics of drug court operations including the role of rewards and sanctions. This sidestepped the objections of the prosecutor and defense bar and has essentially institutionalized drug courts in Dade County.

The drug court literature is replete with creative solutions to building capacity and getting drug courts institutionalized within a criminal justice system. Kansas will have to experiment and work with the unique circumstances surrounding its diverse court culture to determine what will work in each jurisdiction.

Institutionalizing drug courts in Kansas is a large task, but given the infrastructure in place and the head start Kansas has because of the implementation of the SB 123 programs, it will be less difficult than starting from scratch. The KSC and the DOC have already demonstrated their ability to work as a team and to involve other agency partners. Kansas is well positioned to take one of two options – either supplant SB 123



programs with drug courts or operate drug courts alongside SB 123 programs. In either event Kansas has laid the foundation for getting drug courts started state-wide in a relatively short period of time because of the infrastructure already in place.

#### **F. Current Drug Courts in Kansas**

Some Kansas Drug Court programs have been established within the past decade. Seven jurisdictions and one Indian Nation are currently operating in the state with a second Wellness court in the start-up phase.<sup>3</sup>

Three of these jurisdictions treat juvenile offenders – the City of Wichita accepts both juvenile and adult offenders as does Wyandotte County. Johnson County is the third jurisdiction with a juvenile drug court. The City of Wichita only accepts misdemeanor offenders while the juvenile courts in Wyandotte and Johnson Counties accept misdemeanor and felony offenders. Sedgwick, the Fifth Judicial District, Cowley and Shawnee Counties operate adult drug courts for felony offenders. The Potawatomi Nation operates an adult wellness court for felony and misdemeanors offenders.

Wyandotte and Sedgwick County have programs for offenders post-conviction and offenders who have violated probation because of substance abuse. The Fifth and Nineteenth Judicial Districts only have post adjudication. Johnson and Wyandotte County juvenile programs have pre-adjudication programs. The City of Wichita only has a probation violation program. Potawatomi Nation has both post adjudication and pre adjudication; clearly showing that each program is set-up differently.

The Level of Service Inventory (LSI-R) appears to be the primary assessment tool for most programs; however, Cowley and Sedgwick Counties indicated that other tools such as the SASSI and KCPC, CEST, and TCU drug screening test are also used.

The length for these programs is a minimum of 12 months and can last up to 18 months. However, Sedgwick and Shawnee indicated their programs can last as long as two to three years. The average adult drug court accepting felony offender's participant

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<sup>3</sup> The five jurisdictions with drug courts are Fifth Judicial District, Cowley, Johnson, Sedgwick, Shawnee, Wyandotte; the City of Wichita operates a drug court; and the Wellness Court is run by the Potawatomi Nation.

capacity is 60. The range is large and varies between counties as the smallest capacity size in Wyandotte is 20 while Sedgwick County holds 120 participants. Johnson juvenile program holds 120 participants while Wichita holds 65.

Only two Kansas courts accept offenders sentenced under SB 123 program— the Fifth and Nineteenth Judicial Districts. In these judicial districts traditional drug court clients pay for their own treatment while the SB 123 program offenders pay a fee of \$300. The balance of the cost for SB 123 program offenders in the Fifth and Nineteenth Judicial Districts is paid by grants, some of which come from the state through the DOC and some from outside sources. Johnson County pays for the juvenile court with funds obtained from a grant from the Alcohol Tax Fund (ATF) and county funds. Johnson County also requires that participants pay a fee of \$310 and that participants pay for their own drug tests at \$18 each.

Non SB 123 programs, Shawnee County, Wyandotte County, and City of Wichita's fees are \$300 while Sedgwick County fees are slightly higher at \$360. Participants can pay in monthly installments of \$20 if needed. These counties do not charge additional drug fees; however, Shawnee County may charge drug fees if the drug tests results are positive. The program fees should be paid prior to graduation.

Only two counties have broken down their cost per client. City of Wichita reported cost per client per year of \$1,215. While Shawnee County reported a maximum of \$3,600 per client; however, cost per client was not broken out by year. Budgets appropriated also varied greatly. Johnson County reported a budget of \$78,960 that included monies coming from the ATF funds and range between \$45,000 and \$50,000, respectively. Meanwhile Sedgwick County has a budget of \$763,845 in funds coming from the county's general fund. The City of Wichita reported monies are awarded through the Department of Justice Grant in the amount of \$200,000. The approved budget provides \$155,955 of the grant monies go to treatment cost while \$44,045 to be used for training.

Only two programs, Shawnee County adult program and Wyandotte County juvenile program have had an evaluation.

## **Chapter Two**

### **What Do Statewide Drug Court Models Look Like in Other States?**

One of the essential issues the Kansas Supreme Court has asked NCSC to review is whether the state should have oversight over local drug courts and if so, what would such a model look like. The Court asked NCSC to look at different jurisdictions and examine their authorizing legislation, funding mechanisms, requirements and/or guidelines for local drug court program structure and operations, and the role of state-level oversight in general and the responsibilities of state drug court coordinators specifically. NCSC has chosen four states that are similar to Kansas in terms of population, geographic area and distribution of population between urban and rural areas. All of the states selected have a state drug court administrator to oversee local drug courts, which is the structure that Kansas is interested in implementing. The four states selected are New Mexico, Missouri, Nebraska, and Utah. NCSC reviewed the websites for each state and interviewed the Drug Court Coordinator in each state to acquire information on where each state is in terms of providing drug court services to their residents; how they got to that place; how they plan to expand; and how each state sustains funding for drug courts.

Below is a table that provides a comparison of the basic structure of each state's drug court program. Following the table is a detailed discussion of each state's drug court program.

### Comparison State Drug Court Models

|  | <b>New Mexico</b>  | <b>Missouri</b>  | <b>Nebraska</b>   | <b>Utah</b>                        |
|--|--|--|---|------------------------------------|
| <b>Model Type</b>                              | Judicial Branch  | Judicial and Executive Branches                                  | Judicial Branch   | Judicial and Executive Branch      |
| <b>Committee/Commission</b>                    | Drug Court Advisory Committee (DCAC)                                   | Drug Court Coordinating Commission (DCCC)                        | None  | None                               |
| <b>Is There Enabling Statute</b>               | No   | Yes  | Yes   | Yes                                |
| <b>Number of Courts</b>                        | 46   | 127  | 23  | 47                                 |
| <b>Is there a State Drug Court Coordinator</b> | Yes  | Yes  | Yes   | Yes                                |
| <b>FTE Level</b>                               | 100%   | 100%   | 100%  | 15%                                |
| <b>Is there Assistant Staff</b>                | Yes  | Yes  | Yes   | Yes                                |
| <b>Support Staff FTE</b>                       | 0.5  | 2  | 1   | 0.5                                |
| <b>What Entity Distributes the Funds</b>       | DCAC   | DCCC   | AOC   | DSAMH                              |
| <b>Data Collection</b>                         | Data is through an Access database created by University of New Mexico | JIS has screen specifically set up for treatment court programs. | Case management and evaluation requirements by AOC through Statewide DC MIS | Through regular reporting to DSAMH |
| <b>Type of Drug Court</b>                      | Post Adjudication  | Pre-plea diversionary programs                                   | Post Adjudication   | Post Adjudication                  |

#### A. New Mexico

##### 1. Enabling Statute and Supreme Court Orders

New Mexico does not have enabling legislation for the development of drug courts; however, it is a unified court system where the Supreme Court exerts a certain level of control over the courts. Hence, enabling legislation was deemed unnecessary. In 2003, the Supreme Court recognized that the operation and function of drug courts had become an integral component of criminal disposition in a significant number of courts at all levels, with more than 40 drug courts operating in the state (17 adult drug courts; 17 juvenile drug courts; four family drug courts; eight DUI courts). In recognition

of the need for centralized operational and financial oversight of the state's proliferating drug court programs, the Supreme Court issued an order in February 2003 establishing the Drug Court Advisory Committee (DCAC) as a permanent committee. In its order making the DCAC permanent, the Court stated:

[I]t is in the best interest of the continuing viable operation of drug courts in New Mexico that the Drug Court Advisory Committee exist to (1) provide ongoing review and revision of drug court standards, (2) assure communication and continuity in the operation of New Mexico drug courts, (3) provide ongoing review and recommendations to the Judiciary regarding statewide drug court funding and budget issues, (4) develop a five-year strategic plan, with annual updates, for ancillary programs that include goal and objectives, including access to such programs in all courts by more offenders, and a schedule of when federal funding will be sought and lost for the programs, and when the legislature will be asked to take over program funding, and (5) address future drug court issues as they arise.<sup>4</sup>

The DCAC is composed of representative of all stakeholder positions in the drug court process including: five judges, the Deputy Chief Public Defender, the Director and Deputy Director of Probation and Parole and three Drug Court Coordinators. Also sitting on the committee, as non-voting members, are the General Counsel for the AOC and the Statewide Drug Court Coordinator. Each voting member serves a three year term. A real effort is made to ensure that the composition of the committee reflects the geographic diversity of the state to avoid overrepresentation of one portion of the state.

## **2. Development of a Strategic Plan for Funding and Expansion**

As stated above, the Order identified several of DCAC's responsibilities, including creation of a set of drug court standards detailing uniform operational, data collection and performance reporting standards for the state's programs. As part of its order, the Supreme Court directed DCAC to develop a five-year strategic plan. The DCAC completed this mandate by creating a strategic plan for FY 2007-2011. The goals of the strategic plan are twofold:

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<sup>4</sup> A link to the Order can be found at <http://joo.nmcourts.gov/joomla/pscourts/index.php/advisory-committee-dcac>.

- (a) Make drug court programs accessible to every New Mexico resident who could benefit from their services.
- (b) Provide a reasonably stable and predictable level of funding requests to the legislature each legislative session.

For strategic growth purposes, DCAC defined the first goal to mean the implementation of a drug court program in every county in the state while also considering expansion of existing drug court programs where need is greatest. To meet the second goal, DCAC has defined an application process by which courts will make known their interest in starting a new drug court enabling DCAC to guide each court through the planning and implementation process. This will further allow DCAC to help schedule the creation of new drug courts, spreading their implementation over the next five fiscal years, and allowing the judiciary to make reasonably stable and predictable funding requests on behalf of drug courts during the next five legislative sessions.

New Mexico's five-year strategic plan is based on a simple progression for each new drug court, as follows: (1) Training – to establish the drug court team, and its operational philosophy and procedures; (2) Grant Funding – to cover one-time startup costs as well as operational expenses for a two to three year grant term; and (3) State Recurring Funding – to replace lapsing grant funds and institutionalize the now fully functional and well-established drug court. This process will take five years for a new drug court to be implemented.

Year One – Court applies for (Spring) and receives (Fall) Drug Court Planning Initiative (DCPI) grant.

Year Two – Court applies for (Spring) and receives (Fall) federal implementation grant, while attending DCPI training throughout the year.

Year Three through Year Five – Court starts its drug court program using the federal grant.

Year Four – Court presents budget request for replacement of lapsing federal funds to DCAC for proposed inclusion in Judiciary's Unified Budget for upcoming legislative session.

Year Five – Court's federal funds lapse and are replaced with recurring state funds due to legislative response to Judiciary's Unified Budget Request.

The strategic plan was in effect for almost three years when the Supreme Court suspended it due to the economic downturn. The Supreme Court believed that with the state suffering from acute budget cuts, it would be inappropriate for the Court to request funding for drug courts. The strategic plan is suspended until the Court deems it appropriate to continue the plan. When the plan restarts it will restart in year four of the overall plan.

### **3. Role of the State Drug Court Coordinator**

Shortly after creating the permanent DCAC, the Supreme Court hired a State Drug Court Coordinator to oversee the implementation of the strategic plan and assist individual courts in establishing programs. The State Drug Court Coordinator is a full time position and is assisted by another professional that divides her full time position equally between the drug courts and the Court Improvement Program (CIP). The Drug Court Coordinator and the Deputy Drug Court Coordinator are supported by one half-time administrative support staff. The major responsibilities of the Office of the State Drug Court Coordinator is to help individual courts establish and maintain their drug court programs by employing the progression of steps outlined in the strategic plan. The Coordinator is also a non-voting member of the DCAC and provides support to that committee. The Coordinator works closely with the chair and is charged with keeping meeting minutes and conducting research as needed by the committee. The DCAC is open to the recommendations and insights of the Coordinator who has a more hands on relationship with individual courts.

The workload between the Drug Court Coordinator and his Deputy is divided by the type of drug court program and where it is located within the court system. The Deputy has oversight over the eight DUI courts now in place in New Mexico. The DUI courts are all located in the Magistrate Courts, which are New Mexico's courts of limited jurisdiction. These cases are located in the Magistrate courts because the first three DUI offenses are considered misdemeanors under New Mexico law and second and third offenders are often referred to the DUI court. The Coordinator has oversight over 17 adult drug courts, 17 juvenile drug courts, and four family drug courts all of which are located in district courts, the courts of general jurisdiction.

#### **4. Funding Distribution**

Because of the structure of the budget and distribution of funds, the coordinators have more control over the DUI courts than of the drug court programs in the district courts. All drug court programs seeking funding from the state legislature submit their requests to the DCAC which determines whether the funding requests are reasonable and in line with what a drug court of a particular size should need to operate effectively. The DCAC then makes a recommendation to the AOC about how much money should be requested for drug courts in the unified court budget. The unified court budget is submitted to the legislature and the funds allocated to the AOC. Once the money is allocated to the AOC, the money for each adult, juvenile and family drug court is given to the respective court and the money is put into that court's base budget with the presiding judge serving as administrator of the funds. The individual court is then responsible for allocating the money to the appropriate program. The Coordinator is kept apprised of how the money is being spent through required quarterly reports to his office. The quarterly reports state how much it costs for each participant to go through the program and on what services the money is being spent, including salaries, testing and treatment services. The Coordinator has no direct oversight of an individual drug program in the district court. The coordinator cannot hire or fire drug court coordinators or exert any authority over how the money is spent. The Coordinator is also responsible for seeing that the drug court programs operate in accordance with the "New Mexico Judiciary Drug Court Standards" promulgated by the DCAC. This is done through the use of a self-evaluation questionnaire which each court is required to complete and through quarterly reports that the courts must submit to the Coordinator.

Money allocated to the AOC by the legislature for DUI courts is not placed in the individual magistrate courts' base budget. The AOC retains control of the money and distributes it as necessary. Therefore, the Deputy Coordinator has more control and oversight over the DUI courts than the Coordinator has over the district courts. The Deputy Coordinator works very closely with the DUI courts to ensure that the money is used for its designated purpose. The Deputy Coordinator has direct oversight over the DUI courts and can hire and fire the drug court coordinator and determine how the



money will be spent. Even with this oversight, the magistrate courts are required to submit quarterly reports and complete the self-assessment questionnaire. The DUI courts are also expected to follow the drug court standards.

## **5. Data Collection and Compilation**

The recording of data for all drug courts, including DUI courts, is via an Access database. The database was created for the court by the University of Mexico. Use of the database is mandated by the New Mexico Judiciary Drug Court Standards, therefore it is used statewide but it is not centralized. This means that none of the courts are linked through the database. The Coordinator can review the data put into an individual database to check that the numbers in the quarterly report reflect what the database reports. The Coordinator does regular spot checking of the data by entering each database. The Coordinator stated that this reporting system is not ideal and the AOC is considering moving to a web-based platform.

### **B. Missouri**

#### **1. Enabling Legislation**

Missouri has enabling statutes establishing drug courts throughout the state. Today Missouri has 127 drug courts or related programs operating in the state. This includes 72 adult drug courts, 13 juvenile drug courts, 12 family drug courts, 10 DUI courts and two veterans' courts and one re-entry court. The courts are funded through a combination of federal, state and local funding streams. When it comes to funding, the enabling statute did two things. First, it allowed drug courts to assess fees for participation without those fees being considered court costs, charges or fines. Second, the legislation established a Drug Court Resources Fund in the state treasury. Annually, the state legislature appropriates a fixed amount for the Fund. The amount appropriated for 2010 was approximately \$5.75 million with \$5.2 million being allocated to drug courts and the remaining amount going for administration. Allocation of the Drug Court Resources Fund is overseen by the statutorily created Drug Court Coordinating Commission. (Drug courts obtain approval for funding through the

Commission; however, the Office of State Courts Administrator (OSCA) actually manages the budget for the Commission.)

The eight member Commission is composed of four members of the judiciary—one Supreme Court Justice; one appellate court judge; and two circuit court judges—and a member of each of the following departments: Department of Corrections, Department of Social Services, Department of Mental Health and one member selected by the state courts administrator. The Commission is charged with the following tasks: (a) evaluating resources available for the assessment and treatment of persons assigned to drug courts; (b) securing grants, funds and other property and services necessary to facilitate drug court operations; and (c) allocating such resources among the various drug courts operating within the state. Funds allocated by the Commission are for treatment, drug testing and supervision only. The funds do not pay for personnel costs. Drug courts seek funding from the Fund only if federal funding grants have expired and/or local funding is not sufficient to operate the drug courts. For example, Jackson County (Kansas City, MO) has in place an antidrug sales tax specifically set aside to support drug courts. With this funding stream Jackson County does not seek additional funding through the Commission.

## **2. Funding of Individual Drug Courts**

The initial start-up funding for many of Missouri's drug courts is obtained through federal grants or local funding streams. The Commission will provide support to drug programs by assisting them in the application process. The Commission will provide a letter of support stating how the new program fits into the state's overall strategy for providing treatment to people in need and how the state will provide support and oversight and long-term funding.

For established drug courts to obtain funding from the Drug Court Resources Fund, individual drug courts must respond to a request for proposals (RFP) released by the State Treatment Court Coordinator announcing the availability of funds. The RFP requires the drug courts to submit an application to the Commission that provides an explanation of their program including: (a) how they will serve their clients; (b) the

intended capacity of the program; (c) the composition of the drug court team; (d) how the money will be spent; (e) the cost per participant; (f) previous spending history; (g) compliance with 10 key components and best practice guidelines; and (h) performance based on performance measures including recidivism, graduation and retention rates. Due to the current fiscal conditions, the amount of money available in the Fund is also a factor in selecting which programs are funded.

Funding from Drug Court Resources Fund is reviewed annually. The Treatment Court Coordinator has two treatment court specialists who make annual site visits to the drug courts receiving funding and conduct a process evaluation. The specialists determine whether the program is adhering to the 10 key components and best practice guidelines, can account for funds spent and is keeping mandated records. If the drug court does not pass the evaluation, it will not be funded the following year.

This year the Drug Court Resources Fund made 53 awards to 122 programs. Some jurisdictions have multiple programs but the money is given in a lump sum and the individual jurisdictions allocate the money to the various programs under their purview. The allocation is then reported back to the Commission. With 127 programs active in Missouri, only five jurisdictions do not request money from the Fund because they have local funding. The approximate cost to the Fund is \$2,200 dollars per year per participant.

### **3. Operation of Individual Drug Courts**

Most of the drug courts in Missouri are pre-plea diversionary programs. Therefore, if the participant successfully completes the program, the charges will be dismissed. There are some programs, however, that deal with more high risk offenders and the court may require a guilty plea and make drug court a mandatory condition of probation. Drug courts in Missouri are presided over by a circuit judge. In some jurisdictions this may be a drug court commissioner. The enabling legislation allows the majority of circuit judges in a judicial circuit to appoint a drug court commissioner who has the same qualifications and compensation as a circuit court judge and is appointed to a four year term. Drug court commissioners also have the same power and authority

as the circuit judge; however, any order, judgment or decree of the commissioner needs to be confirmed or rejected by an associate circuit or circuit court judge. If the actions of the commissioner are confirmed then the action has the same effect as if it were done by a circuit court judge. Funding for the drug court commissioners is paid by the circuit not from the Drug Court Resources Fund.

Money from the Drug Court Resources Fund will pay for treatment, drug testing and supervision. Treatment is provided through local non-profit providers by the Division of Alcohol and Drug Abuse (ADA) which is a division of the Department of Mental Health. The Missouri Division of Alcohol and Drug Abuse has provided Medicaid and state funds to substance abuse treatment programs around the state including those serving drug court clients. Many clients in drug courts qualify for Medicaid or a reduced fee, which allows state point-of-service dollars to be used for those clients. In addition, county governments are allowed to provide a match in order to receive additional Medicaid dollars for drug court clients. The new director with the Missouri Division of Alcohol and Drug Abuse has indicated that drug courts will become a priority and a new treatment model for drug courts will be developed for statewide use.

The primary funding source for drug court programs is through the Drug Courts Resources Fund that is administered by the Drug Courts Coordinating Commission. The state estimates that it is now paying about \$1.2 million dollars on treatment, including Medicaid dollars, for drug court participants. This figure also excludes the hidden costs that are part and parcel of probation and parole services.

#### **4. Role of the State Treatment Court Coordinator**

Responsibilities and duties of the Treatment Court Coordinator include:

- Provides oversight and technical assistance to treatment courts.
- Develops and coordinates training programs for treatment court and general court personnel.
- Serves as liaison with other state agencies to meet common objectives.
- Provides staff support to the Drug Courts Coordinating Commission.
- Provides information for the Judicial Budget pages for drug courts, in coordination with the Administration and Budget Division.

- Develops and implements a strategy for the distribution of funds to drug courts associated with the Drug Court Resources Fund and other funds available for drug courts and monitors the expenditure of funds through fiscal reports.
- Supervises and coordinates work activities of professional treatment court staff.
- Monitors and provides reports on drug court programs that receive funding through the Drug Court Resources Fund and other funds to determine their level of effectiveness based upon the Key Components of drug courts.
- Provides technical assistance to courts interested in establishing treatment courts.
- Provides technical assistance to judges and other court personnel on the availability of alcohol and drug abuse treatment and education programs for consideration in sentencing decisions.
- Develops training programs for judges and other court personnel on a variety of alcohol and drug abuse issues including proposed and new legislation, availability of education and treatment programs, and current topics in the field.
- Coordinates the exchange of information with OSCA professional staff, the Division of Alcohol and Drug Abuse, Department of Corrections and other agencies and provides liaison and communications when working on shared or joint projects.

As stated above, the Treatment Court Coordinator has two specialists who handle the field work under the auspices of the Missouri Drug Court Coordinating Commission. Their duties include:

- Providing technical and administrative assistance to local courts to ensure more efficient and effective operation of drug courts.
- Writing and editing manuals or other case processing procedures.
- Responding to inquiries for specific case processing information.
- Evaluating, collecting and analyzing data on drug court participation.
- Analyzing drug court expenditures through the Drug Court Resources Fund.
- Monitoring drug court program effectiveness through the use of the drug court Key Components.
- Assisting with the development and implementation of a strategy for the distribution of funds to drug courts associated with the Drug Court Resources Fund and other funds available for drug courts.
- Performing evaluations of drug court programs specifically related to compliance with the drug court Key Components.
- Making onsite court visits to provide technical assistance and issue resolution.
- Developing, organizing, coordinating, and maintaining systems for uniform record keeping of drug court data.

- Conducting research and making recommendations on a variety of topics related to drug court programs and disseminates information to courts through web site, Lotus Notes, or other means of mass communication.
- Preparing training materials and conducting local or regional seminars to familiarize drug court personnel with new or changed RFP or other funding mechanism rules and procedures.
- Assisting with training and support of the Judicial Information System (JIS) for treatment court data collection.
- Assisting with treatment court data monitoring and evaluation for presentation of the information to legislature, and the Drug Court Coordinating Commission.
- Providing staff support to the Drug Court Coordinating Commission and sitting on numerous OSCA and interagency committees.
- Researching professional literature, and attending training to stay current on national trends, best practices, new methods, and procedures for drug courts.
- Informing drug court personnel of pending or passed legislation that affects the funding of the drug court programs.

## **5. Data Collection**

The case management system known as the Justice Information System has screens specifically set up for treatment court programs. Every court that receives funds from the Drug Court Resources Fund is mandated to complete a form for each participant that includes demographics, employment, education level, assistance dollars they may be receiving, and drugs of choice. An exit form is also mandated which requires information on the participant's progression in the program. Because the CMS is only accessed through court computers, the Commission has mandated that additional information about treatment, testing and supervision also be entered into the system. Whether the treatment court is maintaining accurate records in the CMS is one of the critical elements the specialists evaluate when they conduct their site visits to determine if funding should continue.

## **C. Nebraska**

### **1. Enabling Legislation**

Nebraska has enacted legislation (Neb. Ct. R § 24-13020) which allows for the establishment of drug courts and other problem solving programs and for funds to be appropriated separately to the Supreme Court for such programs. Nebraska's Court Rules provide substance to the legislature's intent that drug court programs be instituted throughout the state. The rules state that all such programs must be post-plea or post-adjudication with the purpose of reducing offender recidivism by fostering a comprehensive and coordinated court response composed of early intervention, appropriate treatment, intensive supervision, and consistent judicial oversight. Neb. Ct. R. § 6-1206 (2010). The Court also created the Nebraska Supreme Court Committee on Problem-Solving Courts with the stated purpose:

[T]o evaluate the feasibility of implementing "drug courts" or other similar "community courts" in Nebraska. The committee will advise the Supreme Court as to whether such courts would have a positive effect on the administration of justice in the State and, if so, to provide the Court with recommendations as to the structure and integration of such courts into our judicial system.

### **2. Starting a Drug Court in Nebraska**

Explicit instructions for starting a drug court in Nebraska can be found in the Nebraska Court Rules. Rule § 6-1207 requires that a program receive approval from the Supreme Court before establishing itself. The specific requirements of the Supreme Court are (a) adherence to the 10 key components as identified by the National Association of Drug Court Professionals and utilization of evidence-based practices as identified by applicable social science research and literature; and (b) submission to the Administrative Office of the Courts (AOC), a written application for approval by the Nebraska Supreme Court. The application to the AOC must contain the following:

- A general program description
- A description of the target population it intends to serve
- Program goals and how they will be measured

- An established eligibility criteria for participation in the drug court which includes a standardized, validated risk instrument as approved by the AOC
- The process or procedure by which an individual gains acceptance to participate in the drug court
- Drug/alcohol testing protocol
- A protocol for adhering to appropriate and legal confidentiality requirements and a plan to provide all team members with an orientation regarding the confidentiality requirements
- The terms and conditions of participation in the drug court, including, but not limited to, treatment, drug testing requirements, phase requirements, graduation/completion requirements, graduated sanctions and rewards, and any applicable program service fees
- The process or procedure by which a participant's progress in the drug court is monitored
- Developed policies and procedures governing its general administration, including those relating to organization, personnel and finance

### **3. Operational Requirements**

By Supreme Court Rule all drug courts in Nebraska are post-plea or post-adjudication in nature with the exception of family dependency drug courts. The drug courts are also required to utilize probation personnel whenever appropriate for treatment and supervision and must have agreements with the Office of Probation Administration in place before they can receive funding from the AOC. If the drug court is not utilizing the Office of Probation Administration, then it must enter into an agreement with the AOC to receive treatment dollars. Regardless of who the agreement is with, the drug court must outline roles, responsibilities and obligations and collection of probation fees in the inter-local agreement.

The Supreme Court places other operational mandates on drug courts operating in Nebraska including the following:

- Drug courts shall not deny participation to anyone based on a person's financial status, gender, age, race, religion, physical or mental disability, or ethnicity.
- Participants must sign an appropriate consent for disclosure upon application for entry into a drug court in accordance with confidentiality requirements.
- Drug courts shall have a core team of professionals responsible for the case management of participants.



- Drug courts shall advise the AOC, in writing, of the source(s) of all program funding. Drug courts eligible for available federal funding or other grant-based funding are encouraged to make all reasonable efforts to secure such funding.
- Drug courts in which the collection of state or local fees applies shall not deny entrance nor terminate from the program based on an individual's inability to pay.
- All drug court participants shall remit all state or local fee payments to the clerk of the court.

#### **4. Case Management**

Case management and evaluation requirements are also set forth by the Supreme Court. Drug courts are required to collect and record the data necessary to permit the AOC to facilitate outcome and process evaluations. The drug courts are required to provide data in a timely manner to the AOC as requested and to fully participate in any process or outcome evaluation. Data mandated to be collected includes information relating to participant census such as the number of active participants, the total number of participants served by the court; demographic information for each participant; the number of participants who have graduated and the number terminated from the program. Compliance with the program is also an essential element of the evaluation process. The Court requires the recording of compliance with treatment attendance, drug testing, phase movement and attendance for other services imposed by the court.

### **D. Utah**

#### **1. Enabling Statute**

Utah has enabling statutes that allow the creation and expansion of drug courts within the state.<sup>5</sup> A drug court may be established in any judicial district that demonstrates (a) the need for a drug court program; and (b) the existence of a collaborative strategy among the court, prosecutors, defense counsel, corrections, and substance abuse treatment services to reduce substance abuse by offenders. The statute sets forth the definition of a drug court and also determines the allocation of funds between the Department of Human Services and the Administrative of the Courts.

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<sup>5</sup> Utah Code Ann. § 78A-5-201.

The following requirements are placed on drug courts by statute. The collaborative strategy in each drug court program is required (a) to include monitoring and evaluation components to measure program effectiveness; and (b) be submitted to, for the purpose of coordinating the disbursement of funding, the (1) executive director of the Department of Human Services; (2) executive director of the Department of Corrections; and (3) state court administrator. The statute goes on to say that a drug program must provide continuous judicial supervision and a cooperative approach with prosecutors, defense counsel, corrections, substance abuse treatment services, juvenile court probation, and the Division of Child and Family Services as appropriate to promote public safety, protect participants' due process rights, and integrate services, substance abuse treatment with justice system case processing.

Eligibility requirements are also set forth by statute and include:

- A plea to, conviction of, or adjudication for a nonviolent drug offense or drug-related offense.
- An agreement to frequent alcohol and other drug testing.
- Participation in one or more substance abuse treatment programs.
- An agreement to submit to sanctions for noncompliance with drug court program requirements.

## **2. Funding**

By statute, funds disbursed to a drug court program are allocated such that the Department of Human Services receives 87 percent of the funds for testing, treatment, and case management while the Administrative Office of the Courts receives 13 percent of the funds for increased judicial and court support costs.<sup>6</sup> (This allocation does not apply to Federal Block Grant funds.) A large portion of the funding for drug court programs in Utah comes from the general fund and tobacco settlement money. Utah created the "Tobacco Settlement Restricted Account" within the General Fund.<sup>7</sup> To the extent that funds are available for appropriation in a given fiscal year, \$193,700 will be allocated to the Administrative Office of the Courts and \$ 2,325,400 to the Department of Human Services for the statewide expansion of the drug court program.<sup>8</sup> In 2007,

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<sup>6</sup> Utah Code Ann. § 78A-5-201.

<sup>7</sup> Utah Code Ann. § 51-9-201.

<sup>8</sup> Utah Code Ann. § 51-9-201(4)(c).

Division of Substance Abuse and Mental Health (DSAMH) reported that spending for drug courts broke out as follows:

- \$2,175,000 General Fund
- \$1,647,200 Tobacco Settlement Restricted Account
- \$784,876 Federal Block Grants
- \$166,000 SAFG grant

Every drug court must be certified each year to receive funding. If a drug court is not in compliance with the 10 key components or implementing best practices, then DSAMH will suspend funding until the program gets back on track. DSAMH will work with a drug court that is not in compliance to become compliant. Once the drug court is certified, the suspension is lifted and the drug court receives the remainder of funds allocated for that three year period.

### **3. Establishing a Drug Court in Utah**

Since the DSAMH through the Utah Department of Human Services receives funding for testing, treatment and case management, applications for funding go through this Division. Applicants submit applications to DSAMH which are then reviewed by a committee composed of members of the judiciary, DSAMH, and the Department of Corrections. This committee then makes recommendations about which programs should be funded to the State Court Administrator, the Secretary of DOC and the head of DSAMH who make the final determination about funding. The Administrative Office of the Courts has very little oversight over the drug court programs and relies heavily on the reports provided by DSAMH. DSAMH puts out requests for proposals (RFP) to jurisdictions with existing programs for money to expand the program and RFPs to jurisdictions that have yet to start a program for startup funds. However, it is expected that most drug courts will apply for federal start-up grants and apply to DSAMH as an existing program. Some awards are limited to drug courts that currently have DSAMH funding.

#### **4. Drug Court Administrator**

The Drug Court Administrator position in Utah is filled by the Deputy Court Administrator who spends approximately 15 percent of his time administering the drug courts. The funding and reporting structure of the drug courts makes extensive involvement by a drug court administrator unnecessary. The only thing that is done out of the Drug Court Administrator's Office is the certification of drug courts. Certification is done by a retired judge who visits each drug court annually and determines that they are engaged in best practices and in compliance with the 10 key components. If the drug court is in compliance it will be certified. To ensure consistency statewide, drug courts must be certified to hold themselves out as a drug court. When the public is involved with a drug court they know what that means and what standards the drug courts adhere.

## Chapter Three

### What is a Drug Court?

The national drug court institute describes drug courts as the coordinated efforts of the judiciary, prosecution, defense bar, probation, law enforcement, mental health, social services, and treatment communities to actively and forcefully intervene and break the cycle of substance abuse, addiction, and crime.<sup>9</sup> Today, the National Association of Drug Court Professionals aims to establish a sustainable drug court program in each of the United States' counties. Its goal is to take drug courts to scale in order to "transform communities nationwide by fostering systemic change in the way addicted persons are treated in the adult, juvenile and family justice system."<sup>10</sup> Drug courts use the criminal system to treat drug addiction through judicially monitored treatment rather than incarceration or probation. Drug courts are judicially supervised court dockets that handle the cases of nonviolent substance abusing offenders under the adult, juvenile, family and tribal justice systems. Drug Courts operate under a specialized model in which the coordinated efforts of the community help non-violent offenders find restoration in recovery and become productive citizens. In the USA, there are currently over 2,459 Drug Courts representing all 50 states.

In 1997, the National Association of Drug Court Professionals published *Defining Drug Courts: The Key Components* designed to provide courts with a model which can be adapted to fit the specific needs of the community. The 10 key components to which drug courts must adhere to obtain federal funding are:

1. Drug Courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the Drug Court program.
4. Drug Courts provide access to a continuum of alcohol, drug and other related treatment and rehabilitation services.

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<sup>9</sup> Burke, Judge Kevin S. "Just What Made Drug Courts Successful." *New England Journal on Criminal and Civil Confinement* 1st ser. 36.39 (2010): 40.

<sup>10</sup> Ibid at pg. 42.

5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs Drug Court responses to participants' compliance.
7. Ongoing judicial interaction with each Drug Court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective Drug Court planning, implementation, and operations.
10. Forging partnerships among Drug Courts, public agencies, and community-based organizations generates local support and enhances Drug Court effectiveness.

## **A. General Structure of Drug Courts**

### **Two primary models – Pre-Plea Model and Post-Plea Model**

To obtain federal funding drug courts must adhere to the 10 key components set forth by the Department of Justice. These components provide guidance for operating a drug court but leave room for individual programs to develop policies and procedures that best serve their constituents; therefore, each drug court is somewhat unique. Drug courts have flexibility under the 10 key components to determine at what point in the criminal justice proceedings defendants will be accepted into the program. Courts have three options: (a) pre-plea/pre-adjudication; (b) post-plea/pre-adjudication, and (c) post-adjudication. Whether the program is diversionary or post conviction can have a profound impact on defendants because in one instance (pre-plea/pre-adjudication) defendants will not have a criminal conviction on their record if they successfully complete the program while in the other instance (post-plea) defendants who successfully completes the program will have a conviction on their criminal record.

In pre-plea/pre-adjudication programs, defendants enroll in drug court without entering a guilty plea or going through the trial process. If they complete the program, the charges are dismissed. If they fail to complete the program, the traditional court model is imposed and no increased sanction for failure is imposed. In post-plea/pre-adjudication programs, defendants enter a plea that is held in abeyance until the program is completed. If a defendant completes the program, the charge is dismissed. If the defendant fails the program, the deferred plea is entered and sentence imposed. Finally, in post-adjudication programs, defendants plead guilty and are given a

suspended sentence while in drug court. If they succeed in drug court the sentence is considered complete or mitigated; if they fail a prison sentence is imposed. It is very similar to being on probation.

Each drug court operates on its own unique protocol, as each have its own local legal culture. Most drug courts accept defendants who have been charged with drug possession or another non-violent offense and have either tested positive for drugs or had a known substance abuse problem at the time of their arrest. The pre-plea/pre-adjudication model is not widely used, especially in adult drug courts. It may be more widely accepted in juvenile drug courts. Judge Kevin Burke author of *Just What Made Drug Courts Successful?* outlines the two most widely used models of a drug court:

Drug courts generally operate under one of two models, deferred prosecution programs or post-adjudication programs. Differed prosecution programs divert certain eligible defendants to the drug-court system before they plead to a charge. Post-adjudication programs, on the other hand, require a defendant to first plead guilty to the charges before making treatment options available. The drug court then defers or suspends the defendant's sentence while he or she participates in a drug-court program. If the defendant successfully completes the program the sentence may be waived and the offense may be expunged. Defendants who fail to complete drug-court programs usually must return to the traditional criminal court for disposition of their criminal case.<sup>11</sup>

The deferred prosecution (diversion) model approach is intended to capitalize on the trauma of arrest and offers defendants the opportunity to obtain treatment and avoid the possibility for a felony conviction. The post adjudication (post-plea) drug court program approach provides an incentive for the defendant to rehabilitate because progress toward rehabilitation is factored into the sentencing determination. Both approaches provide the offender with a powerful incentive to complete the requirements of the drug court program. Some drug court programs use both deferred diversion and post-plea approaches and assign defendants to an approach depending on the severity

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<sup>11</sup> Burke, Judge Kevin S. "Just What Made Drug Courts Successful." *New England Journal on Criminal and Civil Confinement* 1st ser. 36.39 (2010): 41.

of the charge. Some programs may also combine aspects of both these models into a combined approach.<sup>12</sup>

Adult drug courts comprise the majority of operational problem-solving court programs in the United States. Unlike the first generation of adult drug court programs, which tended to be diversionary or pre-plea models, today only seven percent of adult drug courts are diversionary programs compared to 59 percent that are strictly post conviction. Interestingly, another 19 percent of adult drug courts report serving both pre-adjudication and post-plea participants. 78 percent of adult drug courts nationwide have a probationary or post-plea condition; suggesting that drug courts are working more often with a higher risk and higher need offender population.<sup>13</sup>

Defense attorneys have been critical of the post-adjudication model and would like most programs pre-plea/pre-adjudication. The National Association of Criminal Defense Lawyers (NADCL) published an article entitled *America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform*. The argument that the defense attorneys put forth is that they believe defendants are often rushed into entering a guilty plea before all the facts of the case against the defendant are known. Defense attorneys assert that drug court attempts to short-circuit the discovery process by not providing complete discovery which makes it difficult to advise clients about entry of a guilty plea. Defendants are often encouraged to plead guilty and get into the drug court program as an alternative to prison prior to an investigation of their case or even a full understanding of the requirements of drug court. In this rush to get defendants into the drug court program, the drug court is denying defendants the time to effectively evaluate the charges against them and the opportunity to carefully consider the impact of having a conviction on their record even if they successfully complete drug court. In this initial phase of the criminal justice system, defendants are usually scared and

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<sup>12</sup> United States. Government Accountability Office. *Adult Drug Courts Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes: Report to Congressional Committees*. [Washington, D.C.]: U.S. Government Accountability Office, 2005. 37.

<sup>13</sup> Huddlestone, C. West., Douglas B. Marlowe, and Rachel Casebolt. *Painting the Current Picture: a National Report Card on Drug Courts and Other Problem-solving Court Programs in the United States*. 1st ed. Vol. 2. Alexandria, VA: National Drug Court Institute, 2008. 4-5.



willing to do anything to avoid jail so they may not fully understand the consequences and long term effects of entering a guilty plea.

Defense attorneys go on to argue that a pre-plea/pre-adjudication model offers defendants better protection of their constitutional rights and more time to make a decision that will profoundly impact their lives. It is imperative that defense counsel must have an opportunity to review discovery, investigate the case, advise clients, and litigate motions before entry into a drug court program that requires a guilty plea. At the same time, nothing is lost to the criminal justice system or the prosecution if the defendant fails drug court and proceeds through the traditional process.

The NADCP published a response to the NACDL's publication countering that the Defense Bar has incompatible policy recommendations. On the one hand they want drug courts to accept high-risk offenders including violent offenders who would otherwise be jailed or prison bound. On the other hand it wants drug courts to be pre-plea programs that do not require a guilty plea for entry. This would mean that serious and potentially dangerous offenders would face no legal repercussions if they failed to complete treatment. Following months of noncompliance with supervision and continued abuse of illegal drugs, they would be placed back in the same legal position as if they had never attempted drug court.

The NADCP argues that as drug courts have evolved, research has shown that drug courts are more successful for recidivist and higher-risk participants. Therefore, although drug courts started out as pre-plea/pre-adjudication diversionary programs as they have taken on more serious offenders, they shifted to the post-plea model. In this model, defendants are required to plead guilty to the charges or stipulated to the facts in the arrest report as a condition of entry; however, the plea or stipulated agreement is held in abeyance and may be vacated or withdrawn upon successful completion of treatment. This arrangement provides additional leverage for programs to keep the offenders engaged in treatment and ensure they meet their obligations to public safety.

## B. Participants

Drug Courts generally accept defendants charged with drug possession or other nonviolent offenses such as property crimes. Some drug court programs allow defendants who have prior convictions to participate, whereas others do not. Federal grants administered under Title II of the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act should not be awarded to any drug court program that allows either current or past violent offenders to participate in its program.<sup>14</sup>

Selected demographic and socioeconomic characteristics of drug courts revealed that participants in the drug court programs were generally in their early 30s, predominantly male, and generally unemployed and had less than a high school education at the time of program entry. The average age at program entry ranged from 24-36 years old; and about half of the participants were white. In some programs, most participants were predominantly of one racial or ethnic background. Most participants were not first-time offenders. Most evaluations reported some information on criminal justice system involvement. Research noted that less than one-third of prior convictions in all courts were drug-related; this indicates that participants are involved in a wider range of criminal activity.

In most drug courts participants are required to stay substance free without arrest from six months to one year in order to successfully complete the program. Participants interact closely with the judge and clinical staff throughout the duration of the program. If a participant misses a hearing or fails a drug test, they may be punished through sanctions which may consist of more frequent hearings or drug tests, admonishment in open court, or jail time. As an effort to reestablish the participant in the community and support sobriety, participants may be required to obtain a GED, hold a job, have a sponsor in the community, pay child support and/or pay drug-court fee payments while in the program.

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<sup>14</sup> United States. Government Accountability Office. *Adult Drug Courts Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes: Report to Congressional Committees*. [Washington, D.C.]: U.S. Government Accountability Office, 2005.

High risk offenders are especially likely to benefit from the drug court model. Participants perform better if their offenses were more serious and, hence, face more severe legal consequences if they fail. When comparing those processed through the drug court with those processed through conventional court, studies show that the drug court makes a greater relative difference in reducing the likelihood of re-offending for those with prior criminal records. Therefore, drug courts produce better outcomes if they expand their eligibility criteria to defendants with a prior criminal record, previous failed treatment, and other risk factors. Conversely, limiting the drug court opportunity to less serious types of offenders will reduce program efficacy. In particular, courts accepting participants over whom they can exercise more legal coercion stand to produce better outcomes.

Participants who have more to lose tend to be more successful in the program, as their incentive to graduate is focused on losing less in their lives. In general drug courts work better at reducing crime related to drug use and addiction but relatively less well with crime driven by other criminal impulses or motivation. When selecting candidates for drug court, reviewing all charges filed, and the severity of charge may help in the selection process.<sup>15</sup>

There is an evolving movement away from mandatory sentencing towards evidence-based sentencing as a problem-solving technique to reduce recidivism and promote fairness in the courtroom. Modern practices rely on scientifically proven risk-assessment tools, so that the level of interventions afforded each individual is tailored to their needs and considers multiple factors. Risk-assessment instruments measure the likelihood that a defendant will reoffend so that resources can go to the highest-risk offender, and low-risk offenders can be managed with fines, volunteer work, and other low-level sanctions. Drug courts will be peer accredited and employ industry standards

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<sup>15</sup> Cissner, Amanda B., and Michael Rempel. *The State of Drug Court Research: Moving beyond 'do They Work?'* New York, NY: Center for Court Innovation, 2005.

through the 10 key components and accompanied by performance benchmarks which seek to further refine the principles of the key components.<sup>16</sup>

### **C. Treatment Components**

Treatments are designed to last at least one year and are generally administered on an outpatient basis with limited inpatient treatment, as needed, to address special detoxification or relapse situations. Many of the programs operate with the philosophy that because drug addiction is a disease, relapses can occur and the court must respond with progressive sanctions or enhanced treatment, rather than immediate termination. The objectives of drug court program treatment are generally to eliminate the program participant's physical dependence on drugs through detoxification; treat the defendant's craving for drugs through stabilization (referred to as rehabilitation stage) during which frequent group or individual counseling sessions are generally employed; and focus on helping the defendant obtain education or job training, and remain drug free.

Drug court programs can also either directly provide or refer participants to a variety of other services and support, which may include medical or health care, mentoring, and educational or vocational programs. The use of a community-based treatment and self-help groups such as Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), and aftercare programs also varies across drug court programs.

### **D. Drug Court Appropriations**

Sixty-seven percent of states and territories report that state appropriations and/or budgets fail to meet the demand for drug court services. However, 19 percent of states surveyed reported that their appropriation met the demand and need for drug courts. Another 14 percent could not answer the question. Of the states that reported sufficient funding for drug courts, all had implemented statewide sustainability strategies that enhance institutionalization and generate substantial funding to potentially take the

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<sup>16</sup> Fulton Hora, Hon. Peggy. "Through a Glass Gavel: Predicting the Future of Drug Treatment Courts." *Future Trends in State Courts 2009*. By Carol R. Flango, Amy M. McDowell, Charles F. Campbell, and Neal B. Kauder. Williamsburg, VA: National Center for State Courts, 2009. 134-39.

drug court model to scale. For every federal dollar invested to start, implement, and expand drug courts, the states invest \$4.40.<sup>17</sup> These state investments show how critical federal investments can be to starting and sustaining innovations in criminal justice.

### **E. Judicial Impact**

Without Judicial backing, drug courts won't work. The judge is the main enforcement and confidant with participants. Judicial backing allows for an overall acceptance of court culture to change, as well as, for the drug court to create a strong foundation so that the court may grow. Furthermore, judges take on the drug court docket in addition to current caseload. Already overworked judges must be excited about the potential impact the drug court could have on the community; otherwise, the drug court will not gain any momentum. The initial implementation of a drug court can overburden an already busy judge and court staff. Implementation of a drug court should be carefully considered to ensure that staff and judicial officers are capable of implementing the additional work the drug court will demand.

### **F. Advantages and Disadvantages**

Although the scientific evidence strongly shows that drug courts are successful, drug courts are not without disadvantages. A position paper published in 1999, in which CCJ/COSCA came out firmly in favor of drug courts, listed the advantages and disadvantages of drug court. After enumerating the advantages and disadvantages, CCJ/COSCA determined that the advantages overwhelming outweighed the disadvantages and endorsed the implementation of drug courts. The arguments for and against drug courts as discussed in the position paper have not changed over the decades so we thought it appropriate to reprint them here.<sup>18</sup>

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<sup>17</sup> Huddleston, C.W., Marlowe, D.B., Casebolt, R. (2008). *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States*. National Drug Court Institute and Bureau of Justice Assistance. Vol. 2. (1) p. 78-79.

<sup>18</sup> The full text can be found at <http://cosca.ncsc.dni.us/WhitePapers/TherapeuticJustice2-Aug-99.pdf>.

## **1. Advantages**

Beyond political and public relations concerns, there are sound practical and policy reasons for courts to actively lead the establishment of processes that utilize the principles of problem-solving courts:

- There is good reason to believe they work, particularly drug courts.
  - The ongoing empirical results of the hundreds of studies of drug courts are that recidivism rates among drug court graduates conservatively average out to about ten percent.
  - Drug courts also save money as compared to the costs of incarceration, free jail beds, reduce the number of drug exposed infants and children (thus avoiding medical costs), and successfully treat thousands of substance abusing individuals each year.
- They require and promote collaboration among a number of entities. Treatment providers, local governments, law enforcement, prosecution, defense counsel, private counsel, multiple state agencies and the courts are all generally required to communicate and cooperate in order to run one of these programs. This process of collaboration transcends the individual project and develops good will and institutional relationships that benefit the courts in subtle and not so subtle ways for years to come.
- Defendants are held accountable. The system demands respect and gets compliance. The treatment may or may not ultimately be successful, but the participant complies with the orders of the court, or they face swift consequences - frequently a sentence for an already entered guilty plea.
- There is a tremendous public relations benefit. Successful outcomes sell a lot better than sound process. Being able to tell these amazing stories of personal triumph over adversity, stories of caring and dedicated judges, and stories of firm but compassionate programs, all in the context of public safety, go a long way toward developing public trust and confidence in the judiciary.

## **2. Disadvantages**

While the public, politicians and advocates focus on these advantages to problem-solving courts, there are also disadvantages from the perspective of the courts:

- There is the potential impact on judicial neutrality. When a court system steps away from its traditional role of providing a process for dispute resolution and becomes a service provider intent on a specific outcome for those over whom it exercises control, the “separateness” frequently claimed by the judiciary is harder to justify. When judicial systems assume accountability for social programs, judicial independence is eroded, and the line between the branch that interprets the laws and the one that implements the laws is blurred.

- The rules and expectations about judicial conduct haven't in the past taken into account this therapeutic role. As the objectivity of the system can be called into question, so too can that of the judge. Among other things, the Code of Judicial Conduct requires judges to avoid the appearance of bias, and to deter ex parte communications. Yet when the judge is a part of a therapeutic team, bias may be inferred.
- Problem-solving courts strain basic court organization, administration and resources. Although most courts are organized into broad departments, or even smaller divisions, a general principal of drug courts is one judge one court. While there are exceptions, the idea is that the same judge needs to see the same participants repeatedly in order for consistent treatment and rapport to result. The larger issue is the toll these programs take on court resources. Obviously it takes more judge and clerk time to see a defendant 15 or 20 times over the course of a year or more than it does for a judge to take a plea and sentence someone. This additional workload affects not only the drug court judge and the court clerk or clerks, but also other judges and clerks in the judicial district that have to make up the difference.

The evidence that drug courts are effective is even more overwhelming today than it was when this position paper was first penned. More research on the effectiveness of drug courts is being published every day as the methods for measuring effectiveness have improved and more drug courts are being evaluated to ensure that they meet the promise of reduced recidivism, increased sobriety and decreased incarceration costs.