
The Future of Drug Courts: Comprehensive Drug Court Systems

By Judge Jeffrey Tauber

The future of drug courts is a concern to all practitioners. Focus groups held over the next two years will develop a strategy for the next century. In this commentary, Judge Jeffrey Tauber builds on findings of the February, 1998 focus group held at American University, in arguing for the expansion of drug courts into comprehensive drug court systems.

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ARTICLE SUMMARIES

DRUG COURT SYSTEM (DCS)

[23] Drug courts are having a limited impact in the criminal justice system because only two or three percent of drug using offenders are involved.

DRUG COURT SYSTEM (DCS)

[24] Today, drug-using offenders mostly remain in the community and are passed over for the drug court's comprehensive controls because they are too serious an offender or too disinterested a participant.

DRUG COURT SYSTEM (DCS)

[25] The average drug-using offender spends an average of three months in jail but 24 months on probation and living in our communities. (BJS, 1995)

DRUG COURT SYSTEM (DCS)

[26] It makes no sense to limit drug court programs to the least serious offenders when the research clearly demonstrates that drug courts provide the most comprehensive and effective supervision.

DRUG COURT SYSTEM (DCS)

[27] A drug court system deals with all drug-using offenders on probation and living in our communities.

DRUG COURT SYSTEM (DCS)

[28] Denver initiated a drug court system in 1994 that handled all drug using offenders living in its community.

INTRODUCTION

Drug courts are profoundly impacting the criminal justice system. Where drug-using offenders often received little jail time and even less supervision, drug courts are mandating frequent drug testing, supervision, treatment, judicial monitoring and sanctions for drug-using offenders. Their impact can be measured by the growth of the field to nearly 400 drug courts from the 12 that existed four short years ago; by the more than 100,000 persons who have entered drug courts since the first drug court program opened nine years ago; and by the more than 70 percent of participants across the nation who either have successfully completed a program or remain as active participants in one.

The effect that drug courts are having on the criminal justice system can be readily seen in the level of program coordination, the links to community organizations, the collaboration between governmental agencies, the extraordinary involvement of judicial leadership, the innovative linkages with law enforcement and the commitment and dedication of program staff. Drug courts are rejuvenating the criminal justice system and changing the way in which it deals with drug-using offenders.

[23] However, while drug courts clearly are having an extraordinary effect on the criminal justice system, it is a limited one. Drug testing of arrestees at dozens of jails across the nation shows that 66 percent of all arrestees test positive for illegal drugs.¹ A report of Columbia University's National Center on Addiction and Substance Abuse (CASA) concludes that 80 percent of all offenders in the criminal justice system—some 1.4 million individuals—are substance abusers.² Despite those statistics, it is estimated that no more than three percent of that population participate in drug court programs. Overall,

about two-thirds of all probationers supervised in our communities (approximately two million adults) may be characterized as alcohol or drug involved.³ However, drug court programs involve no more than one or two percent of probationers supervised and living in our communities.

Drug court practitioners have come to the realization that to have a substantial impact on the overall criminal justice system, their programs need to extend to a broader population. While drug courts initially dealt with less serious offenders in diversionary programs, American University's Drug Court Clearinghouse (AU) reports that 70 percent of all drug courts already have probation-based and post-plea based programs that work with offenders with more extensive criminal histories and that the typical drug court participant has at least a 15-year history of drug usage.

Certainly, those drug offenders who are violent, predatory or significant traffickers must continue to be sent directly to prison for the appropriate term. However, what happens to offenders who are considered "too serious" for drug court but nonetheless are going to live in our communities on probation (even if they spend between six months to one year in jail)? What happens to those persons testing positive for drugs upon arrest, who are released back into the community on bail or on their own recognizance to await trial? What happens to those placed on probation who are uninterested, unwilling or seemingly unable to stop using illegal drugs?

PROBATIONERS LIVING IN OUR COMMUNITIES :

[24] Today, drug-using offenders mostly remain in the community and simply are passed over for the drug courts' comprehensive controls because they are too serious an offender or too disinterested a participant. Consider the alternatives to drug courts currently offered in

the overwhelming number of communities across the nation: light jail sentences with little or no drug testing, supervision, judicial monitoring or treatment thereafter.

Critics sometimes argue that drug courts are soft on crime and therefore, should be limited to first time or “less serious” offenders; that drug-using offenders should be removed from our communities and given long jail sentences. The facts, however, demonstrate otherwise.

CASA has completed a review of the comprehensive research, evaluations and literature of the drug court field and determined that “a number of consistent findings emerge from the available drug court evaluations.”

Drug courts have been more successful than other forms of community supervision in closely supervising drug offenders in the community through frequent monitoring and close supervision including frequent drug testing, placing and retaining drug offenders in treatment programs, providing treatment and related services to offenders who have not received such services in the past, generating actual and practical cost savings and substantially reducing drug use and recidivism while offenders are in the program.⁴

As to the assertion that drug courts are soft on crime, consider the fact that 58 percent of the more than 400 judges who have presided over drug court programs are former prosecutors, as compared to only 23 percent who are former defense attorneys.⁵

[25] Finally, it would remind those who believe drug-using offenders are removed from their communities for long periods of time, that *the average drug-using offender spends an average of three months in jail but 24 months on probation and living in your community.*⁶ [26] It makes no sense to limit drug court programs to the least serious drug-user on probation, when more serious drug-

using probationers are exactly the ones who most need the comprehensive judicial monitoring, probation supervision, frequent drug testing, treatment services and immediate sanctions that a drug court provides; when the research clearly demonstrates that drug courts provide the most comprehensive supervision and lower return to drug usage and criminality for drug-using offenders when they are in the program and living in our communities.

DRUG COURT SYSTEMS:

Drug court systems offer society the opportunity to deal comprehensively and systematically with a community's drug-using offender population. The nucleus of **drug court systems** already exists in the nearly 400 communities with drug court programs (including nearly all of our major cities). What is needed is a way to augment existing programs, creating **drug court systems** that can deal with a greatly expanded population base and ultimately, all drug-using offenders living in our communities. Some drug courts are leading the way. Denver, Colorado; Tampa, Florida; and Minneapolis, Minnesota are examples of communities that have successful, comprehensive **drug court systems** in place. (See Appendix A.)

Denver's **drug court system**, implemented in 1994, provides an excellent example. Currently, the Denver Drug Court team includes a judge and a magistrate who handle 75 percent of all drug-related cases filed in the 20-judge bench—over 40 percent of all felonies filed in the jurisdiction. All arrestees are drug tested, and those determined to have a drug abuse problem are screened to determine the level of drug abuse, history of criminality, seriousness of offense, treatment and rehabilitation needs, personal resources, (*e.g.*, housing, education, and employment) and appropriateness for community release.

Based upon a comprehensive assessment, drug-using offenders are placed in one of three drug court tracks. Those tracks provide different program components appropriate for the range of drug-using offenders. First time, minor offenders are offered a drug diversion program; less serious offenders are given straight probation; more serious offenders, with a criminal history or other aggravating condition, are placed on probation, go to jail and then into the drug court program only upon completion of his or her jail term. Serious offenders are sent directly to prison. (See Appendix A for a more detailed description)

[27] Such a **drug court system** deals with all drug-using offenders, tailoring the level of intervention and resource commitment to the needs of the offender but more importantly, to the needs of the community. First time offenders may need little more than a drug-testing and education regimen, but those with a long-term drug history may require significant residential treatment in addition to a term of incarceration. Every decision, from the determination of the drug testing, supervision and treatment conditions of bail or own recognizance release, to the sentencing of the serious offender to prison, would be the responsibility of the drug court team. The team consists of well-trained, dedicated and efficient practitioners, including judges (more than one where participant numbers dictate it), district attorneys, public defenders, treatment and rehabilitation providers, probation officers, corrections and law enforcement personnel and community leaders.

CONCLUSION

Drug courts have had a major impact on our communities. However, they have the potential to ac-

comply much more. Drug courts can provide the nucleus for comprehensive, community-wide systems for dealing with all drug-using offenders. Such **drug court systems** would combine early drug testing and screening of arrestees, jail and prison-based treatment for those in need of incarceration and appropriate, judicial monitoring, probation supervision, drug testing, treatment and rehabilitation services for those under court control in the community. In the future, **drug court systems** will provide the foundation for an effective new community-wide, community-involved strategy to reduce drug use and crime in our communities.

REFERENCES

1. National Institute of Justice. *Drug Use Forecasting: 1995 Annual Report on Adult and Juvenile Arrestees*. Research Report. Washington, D.C.: U.S. Department of Justice.
2. CASA. *Behind Bars: Substance Abuse and America's Prison Population*. NY: The National Center on Addiction and Substance Abuse at Columbia University: 1997.
3. Bureau of Justice Statistics. *Substance Abuse and Treatment of Adults on Probation*. Washington, D.C.: U.S. Department of Justice: 1995.
4. Belenko, Steven. *Research on Drug Courts: A critical Review*. New York City. The National Center on Addiction and Substance Abuse: 1998.
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APPENDIX A**THE DENVER, COLORADO DRUG COURT**

[28] The city of Denver has a population of approximately 500,000, with a population of 2.3 million in the Denver metropolitan area, which includes Arapahoe, Jefferson and Douglas counties. Over 7,000 participants have entered the program since it began operations on July 1, 1994. It currently has 1,000 active participants and over 2,000 have graduated from the program. The primary drugs of choice are cocaine, marijuana and heroin.

This drug court handles 75 percent of all drug cases filed in the city and county of Denver. All drug cases, with the exception of illegal aliens, all offenders with companion non-drug felony case arrests, or who have two or more prior felony convictions, are processed through this court. Most are assessed within 24 hours of arrest. The pre-trial case managers monitor offenders on bond, while they await entry into the program.

This is a hybrid model that diverts offenders into one of three tracks, based on the level of supervision needed to control their behaviors. Track one is restricted to offenders with minimal or no prior felony convictions, while offenders with a more lengthy record, but who are appropriate for community supervision, are diverted into track two. Lower risk offenders in track one are supervised by probation, while higher risk offenders in track two can be placed on intensive supervision or community corrections to enhance surveillance of their behaviors. Track three is a fast track for offenders who are not appropriate for tracks one or two.

Initially, offenders in tracks one and two appear before the drug court judge twice a month and submit to random drug testing two to three times a week during

phase one. Offenders in phase one are required to attend treatment and report to either their probation officer or community corrections case manager as required. Contacts with the drug court judge, treatment provider, probation officer or community corrections case manager diminishes as the offender advances through the program.

The majority of treatment is handled by a core of six to eight treatment agencies. However, the court makes referrals to another 20 providers throughout the metropolitan area, to meet the geographical, cultural, gender and ethnic needs of offenders. The probation department and Office of the Drug Court Coordinator have a central role in this drug court, providing supervision, case management, and coordination of treatment and pre-trial services.

Funding comes from the Department of Justice, Office of Justice Programs, Drug Courts Program Office, local and state resources.

THE 13TH JUDICIAL CIRCUIT, HILLSBOROUGH COUNTY, FLORIDA

The 13th Judicial Circuit encompasses Tampa, Hillsborough County, Florida and has a population of approximately 980,000. Approximately 680 participants have entered the original drug court program (the adult diversion program) since it began operation in June of 1992. There have been 265 graduates of the program. Currently, the program has 225 active participants. The primary drugs of choice are cocaine and marijuana.

The adult diversion program targets first time, adult offenders arrested for felony possession of illegal substances. Evaluated in June of 1994, there was an overall 67% successful completion rate. Of the participants who successfully completed the program and had

been out of treatment for 12 months or longer, 81% had not re-offended. To date, only nine participants have been arrested for new offenses while in the program, six of which were for new drug offenses.

An adult post-adjudication program was begun in 1994 and was reviewed at the time of the diversion evaluation. Although it was too early to measure the program's success, 80% of the program participants were still under judicial supervision, 9% had successfully completed the program and 9% had been terminated from the program.

The Tampa court created a formal drug division of the court in 1994. All cases involving drug charges are filed in the drug division, except where a defendant has a companion charge involving a violent offense. Approximately 42% of the felony caseload is filed in that one division. The department of corrections, as well as the drug court judge, supervises offenders who participate in this program.

The administrative office of the courts uses four county-funded positions to provide the court with offender assessments that allow appropriate treatment choices. Participants in this program are non-violent offenders who have pled guilty or *nolo contendere* and have admitted that they have a substance abuse problem.

In addition to the adult programs, on February 7, 1996, the 13th Judicial Circuit began Florida's first juvenile drug court. Since the program's inception, there have been 287 participants. Of that number, 84 have successfully graduated from the program while 70 have been terminated. Currently, there are 129 youths in the program.

HENNEPIN COUNTY, MINNEAPOLIS, MINNESOTA DRUG COURT

Hennepin County has a population of 1.6 million people. Approximately 2,000 participants have entered the drug court program since it began operations on January 6, 1997. There have been 30 graduates of the program. Since the drug court is new, many of those who have entered the program remain as active participants. Currently, the program has 1,800 active participants. The primary drugs of choice are crack cocaine, marijuana, heroin and methamphetamine.

The drug court targets all individuals arrested on felony drug charges and deals with all companion charges that a drug court defendant might have. A primary feature of the drug court is rapid intervention. Individuals often appear before a judge in the drug court on the same day or the day after arrest. Contemporaneous with the immediate appearance is a chemical health assessment and drug test with immediate results and, if appropriate, placement in treatment. Drug court participants often begin treatment the day after their arrest.

The drug court is divided into three tracks. The first two tracks are diversionary. The third is a post-conviction treatment track. Track one is organized through a probation reporting center, is divided into a maximum of three phases and may last between one to two years. It provides drug education with scheduled, but infrequent drug testing and judicial contact. The second track is similar to the first but provides more structure, with frequent drug testing and judicial oversight. Track three, the most comprehensive, is divided into a maximum of five phases and may last between one to two and one-half years. It provides frequent drug testing and judicial contact, as well as job training, drug education, hous-

ing assistance and various other support services. The drug court offers a range of 13 treatment programs (*e.g.*, inpatient or halfway house).

Initially, the drug court program used one judge. However, due to the large volume of cases and concomitant judicial supervision, additional judicial resources have been allocated. Currently, two full-time judges and one part-time referee are assigned to the drug court project. In 1997, the drug court handled 1,782 felony drug cases, representing a 47% increase in the number of these cases handled in 1996. Funding for the drug court program is provided by a combination of county, state, federal and private sources.

APPENDIX B

A NATIONAL COMPREHENSIVE DRUG COURT SYSTEMS ACT

The following model statute describes national legislation that could provide the necessary support for drug court systems across the United States.

I. FUNDS FOR DRUG TESTING ALL ARRESTEES AND SCREENING OF THOSE DETERMINED TO HAVE A DRUG ABUSE PROBLEM

Analysis: Drug testing and immediate drug screening is the necessary foundation for any comprehensive **drug court system**. With this information, the court will be able to make informed bail and own recognizance determinations, with appropriate conditions for continued drug testing, supervision, treatment, sanctions and judicial monitoring. Early determinations as to eligibility for different drug court tracks will accelerate the adjudication process and save court resources.

II. FUNDS FOR DRUG TREATMENT AND REHABILITATION SERVICES IN JAILS AND PRISONS

Analysis: For those receiving significant jail time before their releases into the community, jail provides an important opportunity to begin the drug court process. Drug testing, education and treatment should be provided in a separate, jail-based treatment facility for those with drug abuse problems. Those released from custody would

remain on probation status and be placed under the direct control of the drug court judge and program staff. For those who do poorly in the community phase of the drug court program, because of continued drug usage or failure to comply with other program conditions, jail sanctions offer the opportunity to work with the offender in a controlled atmosphere, guaranteeing his or her undivided attention.

Those sent to prisons are in a significantly different situation from those serving jail sentences. In most states, a state prison sentence translates into a substantial period of incarceration, usually measured in years. While the start-up point, length and mode of treatment may differ depending on the circumstances, what is clear is that it is in the community's interest for the offender to be returned to that community, drug-free and drug-resistant. To accomplish this, substantial funding is needed for proven, prison-based programs.

Upon completion of a prison sentence, the offender (whether on parole or split parole/probation status) would be similarly situated to a probationer released from jail into a drug court program. The offender would be required to complete a significant period under the control of a drug court program or a parole program based on the drug court model.

III. FUNDS FOR EXPANDED SUPERVISION TREATMENT AND REHABILITATION SERVICES IN THE COMMUNITY

Analysis: The expansion of community-based services envisioned in this act, while substantial, should be viewed in perspective. Those being drug-tested, supervised and treated in the community within a comprehensive **drug court system** would otherwise be in one of two

situations. They either would be incarcerated at a far greater cost or would be ignored by the criminal justice system, left alone to continue their drug usage and criminal lifestyle in our communities.

Furthermore, initial screening and continuing evaluations should allow the program to apply the appropriate level of intervention, (ranging upwards from drug testing and education for first-time offenders) minimizing resources expended. Finally, it should be noted that drug courts should not require any additional resource expenditures within the criminal justice system. As a matter of fact, drug court systems should provide substantial savings to the court system, law enforcement community and correctional establishments.

The comprehensive **drug court system** is an efficient, cost-effective approach for dealing with the drug-using offender. As evidenced by the Denver Drug Court Program (*see* Appendix A), cases are disposed of earlier, because of immediate screening and placement in drug court tracks, and there are commensurate reductions in judicial resources, attorneys' time, investigative fees and court expenses. Finally, law enforcement and corrections spend fewer resources engaged in the investigation, arrest, detention and incarceration of frequently drug tested and supervised drug court participants.

Note: Funds (although not necessarily under this section) should be available for law enforcement/community policing linkages with drug court programs. Community police liaisons are proving to be among the most impressive and innovative components of drug court systems. They provide monitoring and support functions (*e.g.*, delivering bench warrants or making house visits) as well as deliver critical information for decision-makers as to appropriate participant placement within a drug court system.

IV. FUNDS PROVIDED UNDER THIS ACT MUST BE DISTRIBUTED THROUGH A COMMUNITY STEERING COMMITTEE REFLECTING THE COMMUNITY-WIDE PARTNERSHIP THAT COMPRISES A DRUG COURT SYSTEM.

Analysis: Ultimately, the comprehensive **drug court system** delineated here will be the responsibility of the greater community. Without community “buy-in,” commitment and involvement in the development and implementation of the system, the program may fail when federal support is withdrawn. By requiring policy and resource decisions to be made by a community-wide steering committee, the act will insure the involvement and commitment of program partners. This will ensure that the **drug court system** will access existing community resources, create new linkages with community organizations and cement itself into the community’s infrastructure.