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Drug Courts and the Criminal Justice System

edited by
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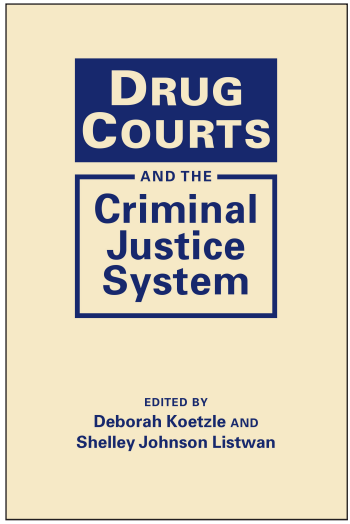

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1

The Drug Court Movement

Deborah Koetzle and Shelley Johnson Listwan

Drug courts first emerged in 1989, largely in response to the growing number of drug offenders cycling through the criminal justice system. What started as an ad hoc model for providing community-based treatment and supervision has evolved into a well-respected sentencing alternative for drug offenders. The success of the drug court model has spawned a plethora of problem-solving courts, including specialized drug courts (e.g., juvenile, veterans, mental health), reentry courts, prostitution courts, and truancy courts. According to the National Drug Court Resource Center, there are over 3,000 drug courts (NDCRC, 2015) and nearly 1,300 specialty courts in existence in the United States and its territories (NDCRC, 2014). Drug courts have extended beyond the United States to countries including Australia, Bermuda, Brazil, Ireland, the United Kingdom, and Norway.

The widespread replication of the drug court model can be attributed to both political and empirical support. Within five years of their development, the federal government committed funding to the drug court model via the 1994 Crime Act. Today, the government provides support to the National Association of Drug Court Professionals (NADCP) and the National Drug Court Institute (NDCI) and continues to fund the expansion of the model through implementation and enhancement grants. Critical to drug court success has been the government's mandate for evaluation. In addition to providing funding, the federal government required evaluation as a component of any grant activities and often included researchers as part of the drug court team. This requirement provided important feedback not only to individual drug courts but also to the broader community of drug court practitioners and scholars.

Despite their success, drug courts have not been immune from criticism. Legal scholars have raised questions about the legal and ethical implications of mandatory treatment and Fourth Amendment waivers, whereas others have aimed criticism at drug court practice. The lack of a clear theoretical model has led to a wide range in drug court practice. The NADCP has attempted to address this by identifying the core components and key standards of a drug court; however, variation in practice still exists, and by extension, it is likely there is variation in quality of service. Finally, although drug courts were designed to divert offenders from prison, many target lower-risk offenders, which may have the unintended consequences of net-widening and trapping people deeper within the criminal justice system.

In spite of these criticisms, it seems likely that drug courts will continue to serve drug offenders for the foreseeable future. The NADCP recently developed Adult Drug Court Best Practices (NADCP, 2013, 2015) to provide guidance to both existing and newly developed drug courts in terms of policy and practice. By drawing on the empirical research both on drug courts themselves and on the broader literature on addictions, behavioral health, and pharmacology, the standards provide a road map for jurisdictions that wish to reduce substance use and recidivism in a fair and just manner.

As drug courts near their thirtieth-year anniversary, it seems a logical juncture to examine the policies, implementation, and effectiveness of the model in an effort to provide further direction to the continued development and evaluation of other specialty courts. This book is designed to provide a framework for a review of the model and the issues surrounding it. The text consists of original work by leading researchers and scholars in the field, and each chapter is designed to stand alone for those wishing to focus on a specific aspect of the drug court model. At the same time, the text can serve as a complete reader for those wishing to gain an in-depth understanding of the drug court model, as each chapter references the core components and highlights best practices through different lenses.

This book is designed to provide readers with a comprehensive understanding of key issues surrounding the drug court model, but it is unique in that it presents these issues within the broader context of best practices in corrections. Within this framework, Chapters 2–5 highlight the development of the drug court movement and provide a summary of important legal and theoretical issues; Chapters 6–8 review the key features of the drug court model and highlight why each is an important component necessary for effectiveness. Finally, Chapters 9–10 look at the current state of knowledge regarding implementation and direction for the future. Each chapter is described in detail below.

Understanding the Drug Court Movement

Chapter 2 provides a framework for the chapters that follow by reviewing the historical context surrounding the development of the drug court model. It provides an understanding of how social and political factors associated with the war on drugs led to a significant prison-crowding crisis. This crisis, combined with empirical support for community-based drug treatment, led to a number of alternatives to incarceration. With financial support from the federal government, drug courts surged ahead of many other alternatives and now symbolize what has become a system-wide interest in rehabilitation for drug offenders.

Building upon the therapeutic foundation of the model, Chapter 3 provides a consideration of the theoretical basis for drug court success. Although scholars initially designed an atheoretical drug court model, they have sought to apply a theoretical underpinning to the model. A review of these perspectives, with a particular emphasis on therapeutic jurisprudence, offers the reader a better context for understanding the therapeutically driven drug court model. The therapeutic-jurisprudence model provides a richer understanding of how the courtroom within the drug court model becomes a collaborative rather than an adversarial environment. In this environment, relapse can be considered a normal part of the recovery process instead of simply a violation of probation. The collaborative approach toward relapse and drug use in general is relevant to political discussions today as the nation struggles with opioid abuse.

The discussion of therapeutic jurisprudence provides a context for understanding the model and the drug court team, followed by Chapter 4, which reminds the reader of the ethical and legal considerations facing the drug court model. In particular, there are concerns that the collaborative model could undercut defendants' due process rights. The authors note that other writings often compare the drug court model with a pure version of the adversarial process in which each case is vigorously contested. This chapter takes a different approach. It compares the ethical dilemmas posed by what takes place in a drug court with the dilemmas resulting from plea bargaining, the method of resolution for the overwhelming proportion of cases in U.S. criminal courts. This comparison represents a closer approximation of what occurs in a collaborative courtroom built upon the foundation of therapeutic jurisprudence. The authors review the ethical and legal issues that are inherent in the roles of the judge, prosecutor, and defense attorneys. Recognizing these challenges is important for fully comprehending the constraints within which drug courts operate.

Finally, though the focus of the book is on adult drug courts, Chapter 5 reviews the emergence and operations of other specialty courts, with a particular emphasis on the juvenile drug court (JDC). Despite the mixed

evidence surrounding JDCs, they continue to be supported in the field and there are continuing efforts to improve this specialized version of a drug court. Chapter 5 provides an overview of the emergence and operations of JDCs and, more important, critically considers their effectiveness. Reporting on results from a multisite study of JDCs, the authors offer recommendations for sustaining this model.

Key Elements of the Drug Court Model

Understanding the role of the judiciary, the collaboration between the various players in the courtroom, and the integration of treatment and supervision is critical for appreciating the unique nature of the drug court model and, by extension, other specialty courts. Chapters devoted to these aspects of the drug court model will provide readers with a solid understanding of the hallmarks of the model and how each component influences its effectiveness.

The role of the judiciary is the subject of Chapter 6. The role of the judge within a drug court is unique, given the high level of involvement through the use of status-review hearings. The judge is seen as the team leader and is often tasked with representing the court's interests among stakeholders. Chapter 6 provides an understanding of the role of the status-review hearing in the context of the risk principle, which is an important issue facing corrections today. This chapter also outlines the features of judges that increase their effectiveness, including their training, experience, and use of a firm but fair manner when interacting with participants.

Next, the drug court team takes center stage. Chapter 6 makes the case that the judge provides leadership for the team, followed by reminders in Chapter 7 that the remaining members are equally important. The authors argue that the drug court team is often taken for granted in the drug court model, yet its collaborative function is a key feature. As such, Chapter 7 provides a review of the team's function and its cooperative nature, describing how the theory of collaboration is transferred into actual practice. The chapter ends with a discussion of why we must give strong consideration to team dynamics, decisionmaking, and collaboration if we are to fully understand the "why" behind drug court outcomes.

Chapter 8 provides an overview of the risk, need, and responsivity framework, and the importance of that framework for drug treatment effectiveness. As noted in earlier chapters, the risk principle is a key consideration for drug courts, given that treatment and rehabilitation using the drug court model are both intense and long-lasting in duration. The chapter also points out that it is important to consider the criminogenic needs of the individual that coexist with drug abuse, namely, criminal attitudes, peers, lack of employment and education, and family issues, which must also be

considered. Finally, the chapter provides a review of medicated-assisted treatment, which has received recent attention by the National Association of Drug Court Professionals that recently issued a set of standards for adult drug courts. Those standards encouraged drug courts nationwide to allow for the use of medicated-assisted treatment.

Future Directions

The final three chapters of the book provide the reader with an understanding of the challenges faced by practitioners and researchers when planning, implementing, and evaluating drug courts, along with the current state of knowledge on drug court effectiveness. Chapter 9 discusses the importance of attending to implementation. Implementation science is an issue that has gained popularity in recent years because of the strong correlation between implementation and effectiveness. The authors note that despite the Ten Key Components that were introduced early on in the drug court movement, the implementation of drug courts still varied across the country. This chapter more explicitly reviews the Adult Drug Court Best Practice Standards recently developed by the NADCP. These standards address target populations; meeting the needs of historically disadvantaged groups; the roles and responsibilities of the judge; incentives, sanctions, and therapeutic adjustments; substance abuse treatment; complementary treatment and social services; drug and alcohol testing; multidisciplinary team; census and caseloads; and monitoring and evaluation. The implementation of these best practices is key, and the authors argue that there are critical elements that remain underdeveloped, undocumented, and unmeasured. The chapter concludes with a discussion of core components of implementation, or implementation drivers, relevant to drug court programs and their effectiveness.

Chapter 10 reviews the findings from key outcome evaluations, meta-analytic reviews, and more recent research examining the effectiveness of drug courts across different types of offenders. The review provides an accounting of earlier studies that relied on quasi-experimental designs and then examines random control trials and meta-analyses. The use of these better designs and techniques has allowed for a deeper understanding of the effectiveness of the drug court model and its impact on substance use and recidivism. Meta-analyses have also allowed researchers to better understand the role of program characteristics in the context of the model. The chapter summarizes the meta-analytic findings of the individual characteristics that can impact success (age, race, gender, drug of choice, risk level) and components of the court. Despite the mixed results of early outcome evaluations, the meta-analytic results make it clear that drug courts reduce

recidivism. However, the authors argue that the size of the effect is somewhat minimal, in light of research suggesting treatment programs have the ability to reduce recidivism up to 40 percent. The authors argue that the relatively small effect may be a function of variation in drug court participants, programmatic practice, and overall quality. As such, the chapter concludes with recommendations for improving drug court effectiveness.

Building upon the importance of implementation to increase effectiveness, Chapter 11 provides additional direction for drug courts. The authors assert that we need a clearer understanding of *how* these courts work to identify gaps in current practices. The authors report on findings from a national survey of 141 drug courts. The results of the survey provide the foundation of this chapter, illustrating that each of the areas discussed in the previous chapters of this book—therapeutic jurisprudence, judicial involvement, team collaboration, and treatment services—has room for improvement. Recommendations for improvement are offered in the context of these findings.