



# THE DESIGN AND OPERATION OF DRUG COURTS



## CRITICAL ISSUES FOR DEFENDERS

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### INTRODUCTION

There are now over 300 drug court programs nationwide. Increasingly members of state governments are recognizing that attempting to address miscreant behavior exclusively by building prisons is cost prohibitive. Support for drug treatment courts from many sources is continuing to build. It is important that defenders occupy influential positions of leadership in these endeavors to ensure genuine and fair treatment of their clients.

### THE DEFENSE ROLE IN DRUG COURTS

The role of defense counsel in the traditional adversarial criminal justice system revolves primarily around an effort to avoid entirely, or minimize, any loss of liberty or the-imposition of other sanctions upon clients. Such a role does not contemplate a focus on life outcomes. Moreover, the normal role encompasses considerable skepticism concerning the bona fides and/or ultimate effectiveness of any alternative justice system dispositional approaches to substance abusing clients. Such alternatives are generally regarded as mere stratagems to carefully monitor and detect the inevitable infractions that will occur in the lives of addicted clients who do not receive genuine treatment, the result being more punitive sanctions being applied to those clients.

Within the context of a properly designed drug court the adversarial quality is virtually eliminated and a defender operates cooperatively with a team comprised of the judge, prosecution, treatment provider and correctional personnel to implement a medical model blended with justice system responses to effectively address the fundamental roots of addiction. Representatives from all of the relevant entities collaborate to contribute to a therapeutic environment, with courtroom activities becoming part of the treatment continuum.

### INITIAL DEFENDER INVOLVEMENT

It is of extraordinary importance that there be defender involvement at the earliest stages of planning for a drug court to ensure that all legal and policy issues are appropriately resolved, and a sensible organizational and operational design is produced, so that substantive and procedural flaws are not later construed to be client failure to put forth sufficient effort, and to prevent any client who actually is unsuccessful in the program from being in worse shape legally as a result of having participated.

A steering group should be convened to accomplish the planning. The initial committee should be comprised of executive level personnel from each agency to facilitate the process, to expeditiously resolve issues and to provide buy-in at the upper echelon, **so** that later committees with non-executive level personnel will **be** comprised of people who are confident that the Head of each agency has made drug court a priority mission. The Chief Public Defender or an executive level manager with full authority to bind the Office should be so involved.

criminal justice professionals are no better suited to design a successful treatment program than treatment providers are to establish wise legal doctrine. Consequently a reputable experienced treatment provider should be involved at the inception of the planning.

## POLICY ISSUES

Decisions must be made concerning whether the program will be pre-adjudication diversionary, deferred entry of - judgment diversionary or post judgment; voluntary or involuntary; include felonies and misdemeanors, juveniles and adults; as well as determine the legal consequences of successful completion or failure to complete, admissibility of evidence (e.g. statements, urinalysis results), include drug and non-drug charges, and eligibility and suitability criteria.

## PROGRAM DESIGN ISSUES

The defender should insist that the program design takes into account the notion that one size does not fit all, as well as a careful response to issues relating to gender (including care provider dynamics), cultures, ethnicity, language, mental health, physical health and sexual orientation. Likewise, transportation, housing, educational needs, remedial education, vocational training, job placement and housing must be provided for in the design.

The program design should also include appropriate risk assessment criteria for entry and realistic measures of success to evaluate the results. The results will be partially determined by the qualifications and commitment to ongoing training in treatment methodology on the part of the judge, prosecutors, probation officers, defenders and other personnel. Most important is the selection of an reputable and

successful treatment provider that has experience with the target population.

## OPERATIONAL ISSUES

Upon implementation a team should be established comprised of the actual personnel who operate all aspects of the drug court program, to meet regularly to resolve problems, revise procedures and evaluate progress. Should any of the professional participants fail to contribute beneficially to outcomes the committee is a forum in which to redress such situations. In the event of a failure to resolve such matters in the operational committee, resort may be had to the executive level policy and organizing committee.

## PROGRAM PHILOSOPHY

The treatment philosophy will influence all facets of the design and operation of the program so the defender should lobby in favor of a practicality. The treatment provider is often a fertile source of valid suggestions in this regard.

Since addicts are most amenable to successful intervention when they are in the crisis of initial arrest and incarceration, intervention must be immediate. This dictates a heavy front-end resource loaded program, and the reason the system should be non-adversarial ab initio, to seize the prime opportunity for success by being a pre-adjudication program. It is recommended that the treatment provider, public defender and probation officer interview the client prior to first court appearance and that the client appear in drug court within two days of arrest.

Addiction to drugs is a long-standing, debilitating condition, so treatment must be long term and comprehensive; the program design should accommodate completion of one year program in 18 months to allow for recycling due to relapse.

Relapse and intermittent progress are part of the recovery process. Therefore, progressive sanctions and incentives should be integral to the drug court strategy. Court appearances are considered part of therapy. Defense counsel should actively participate in the design of the "theater" of the courtroom appearance. Court appearances should be frequent in the early stages to promptly reinforce positive behavior and to check poor progress before it becomes intractable and out of control. Drug court professionals who attend court should orchestrate their responses sometimes explicitly and sometimes implicitly. Defenders should stress with clients the reality of consequences and the legitimacy of the drug court program.

Defenders should broaden the areas in which they intercede and provide useful input. Defense counsel should attend some of treatment providers' regular staff meetings at which they discuss the progress of

all the clients to avoid the elimination of difficult cases or clients simply because they present a greater challenge. Defenders should visit some of the sites at which service is delivered to the clients to ascertain if an appropriate level of service is being provided and to induce the provision of high quality service.

Defenders should influence programs to administer urine analyses as frequently as is feasible, according to progress achieved, and to provide contemporaneous feedback of results to clients to promote appropriate reinforcement or more intensive treatment to support the client. Whenever feasible defenders should recommend that clients be charged something for their treatment so they will invest themselves more deeply into making and consolidating progress they achieve.

### OTHER ISSUES

Defenders should propose a "customer service survey" to gather anonymous candid input from clients who have been consistently successful,, those who have been recycled several times, and if possible from those whose lack of progress is ultimately considered a failure resulting in termination from the program. The results of such a survey may be useful in fine tuning the program and the techniques utilized. Defense counsel should propose enlisting the assistance of governmental and quasi-governmental entities that administer funds for housing, treatment, education,, -vocational training, job placement and mental health services as well as private philanthropic sources to support the program.

### CONCLUSION

Obviously the extraordinary re-engineering of the role of the defender in a drug court is only justified if there is simultaneously a commensurate change in the role of all the other criminal justice agencies and the court. Many defenders and their clients are experiencing a salutary change in jurisdictions that have legitimate drug treatment courts; this is assisting in the recovery process to the benefit of the individual defendant and the community at large.



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