Who Should Drug Treatment Courts Serve?

Maximizing Their Outreach and Potential Impact

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Introduction

No program should be expected to work for all individuals. Every professional discipline—from medicine to psychology to social work to criminology—has come to learn that interventions have target populations for whom they are most effective, and non-target populations for whom they may be ineffective, unduly costly, or even harmful. It is the sign of a mature profession that can match clients to the most appropriate services to optimize their outcomes and utilize resources most efficiently.

Drug treatment courts are no exception. More than two decades of research has identified which individuals respond best to the drug court model and yield the largest return on investment for taxpayers. These are the individuals who (1) have negative risk factors for failure in less intensive treatment or supervisory programs, and (2) are compulsively addicted to drugs or alcohol. These individuals are commonly referred to as “high risk/high need” offenders or the “high value” cases. This terminology is borrowed from a Canadian school of thought in criminology known as Risk, Needs, Responsivity Theory or RNR (Andrews & Bonta, 2010; Taxman & Marlowe, 2006).

Among the most carefully studied and well validated paradigms in criminology, RNR correctly predicts that intensive programs such as drug treatment courts should produce the greatest benefits for offenders who have more severe antisocial backgrounds, clinical impairments or treatment-resistant histories (Lowenkamp et al., 2006). Such individuals typically require intensive monitoring and sustained treatment interventions in order to dislodge their entrenched, negative behavioral patterns.

On the other hand, low-risk and low-needs offenders who do not have these characteristics are less likely to be on a fixed antisocial trajectory, and are apt to improve their conduct following a criminal arrest. Therefore, intensive interventions may offer few incremental benefits for these individuals, but at a substantial cost (DeMatteo et al., 2006). Worse still, low-risk participants may learn antisocial attitudes and behaviors from spending time with high-risk participants, which can make their outcomes worse (McCord, 2003; Petrosino et al., 2000).

High-Risk Participants

Among drug-involved offenders, the most reliable and robust risk factors for failure in standard correctional programs include:

- a younger age during treatment (especially younger than age 25);
- male gender;
• early onset of substance abuse or delinquency (especially by early adolescence);
• prior felony convictions;
• previously unsuccessful attempts at treatment or rehabilitation;
• a co-existing diagnosis of antisocial personality disorder (APD); and
• a preponderance of antisocial or substance-abusing peers.

(Butzin et al., 2002; Gendreau et al., 1996; Hiller et al., 1999; Marlowe et al., 2003; Peters et al., 1999; Roll et al., 2005).

Individuals with these high-risk characteristics typically perform relatively poorly in standard correctional rehabilitation programs; however, they exhibit unusually large improvements in drug treatment courts. Studies have revealed that drug treatment courts elicited the greatest benefits for participants who were relatively younger, had more prior felony convictions, were diagnosed with antisocial personality disorder or had previously failed in less intensive dispositions (Lowenkamp et al., 2005; Fielding et al., 2002; Marlowe et al., 2006, 2007; Festinger et al., 2002). This finding also translates into greater cost savings for taxpayers. Drug treatment courts that serve high-risk offenders are estimated to return approximately 50 percent greater cost benefits to their communities than those treating low-risk offenders (Bhati et al., 2008; Carey et al., 2008).

It is essential to bear in mind that, in this context, the term “high risk” refers to the likelihood that an offender will not succeed on standard supervision, and will continue to engage in the same pattern of behavior that got him or her into trouble in the first instance. In other words, it refers to a relatively poorer prognosis for success in standard rehabilitation services. For this reason, it is most accurately referred to as **prognostic risk** (Marlowe, 2009). The term “high risk” does **not** necessarily refer to a risk for violence or dangerousness. Most risk-assessment tools that are administered in routine criminal justice practice were validated against the likelihood that an offender will abscond on bond, violate the terms of probation or re-offend, and not against the likelihood of committing a violent act. Although assessment tools do exist to measure risk of violence, they are most commonly used when treating habitual sex offenders or conducting forensic evaluations in serious felony cases. They are infrequently used in routine criminal justice practice.

This distinction between prognostic risk and risk of violence is critical. Some drug treatment courts in the U.S. screen high-risk offenders out of their programs because they may perceive them (wrongly) as necessarily being a threat to others or somehow less worthy of the services. On the contrary, research indicates that the higher the risk level, the more appropriate it may be to refer the individual to drug treatment court if a community-based disposition is warranted and likely to be imposed in that case.

**High-Need Participants**

Individuals who are addicted to or dependent on drugs or alcohol commonly suffer from severe cravings to use the substance, and may experience painful or uncomfortable withdrawal symptoms when they attempt to become abstinent. These symptoms reflect a form of neurological or neuro-chemical damage to the brain (Baler & Volkow, 2006; Dackis & O’Brien, 2005; Goldstein et al., 2009). Formal treatment is required for such individuals to ameliorate their cravings and
withdrawal symptoms, teach them concrete skills to resist drugs and alcohol, and provide them with effective coping strategies to deal with daily stressors and challenges (Chandler et al., 2009). Co-occurring conditions, such as mental illness and brain injury, are also common in this population and require substantial remediation (e.g., Ross, 2008). Research is clear that failing to provide an adequate dose and modality of treatment for addicted individuals is associated with significantly poorer outcomes (De Leon et al., 2008, 2010; Karno & Longabaugh, 2007; Vieira et al., 2009; Belenko, 2006).

It is unwarranted to assume, however, that because a person was arrested for a drug-related offense, he or she must be an addict or in need of formal substance abuse treatment. In the U.S., at least half (over 55%) of drug-involved offenders abuse illicit drugs or alcohol but are not addicted (National Center on Addiction & Substance Abuse, 2010; Fazel et al., 2006; DeMatteo et al., 2009). These individuals may repeatedly ingest drugs or alcohol under circumstances which are potentially dangerous to themselves and others, but their usage is largely under voluntary control.

Research reveals that formal substance abuse treatment can be contraindicated for such individuals. Placing non-addicted substance abusers (especially youthful ones) into residential or group-based substance abuse treatment has been associated with significantly higher criminal recidivism and substance abuse (Lowenkamp & Latessa, 2005; Szalavitz, 2010). Perhaps spending time with addicted peers unduly normalizes the drug-using lifestyle, or perhaps treatment requirements may interfere with participants’ engagement in productive activities, such as work, school or parenting. Whatever the rationale, it appears that providing too much treatment is not merely a potential waste of precious resources. It can also lead to negative side effects in which outcomes may be made worse.

Drug treatment courts require their participants to complete an intensive regimen of substance abuse treatment, clinical case management, self-help recovery groups and adjunctive rehabilitation services (NADCP, 1997). For individuals who are not addicted to drugs or alcohol, this investment of resources may not be justified and may expose the participants to greater contact with drugs and drug-using accomplices. As will be discussed later, evidence suggests these individuals may be better served by alternative programs that do not rely predominantly on formal substance abuse treatment to achieve their desired effects.

Reaching the Target Population

Eligibility criteria for some of the earliest drug treatment courts in the United States were not appropriately targeted to the high risk/high need offender population. Largely in an effort to avoid appearing “soft on crime” and to gain the buy-in of prosecutors or other stakeholders, some of the earliest drug courts began as pre-plea diversion programs for first-time offenders charged with simple drug possession. The goal, however, was not to remain fixed on this low-severity population, but rather to expand and focus the admissions criteria once the programs proved their worth and research identified the best populations to serve.

In the ensuing two decades, drug treatment courts in the U.S. have met with mixed success in reaching their target population. On one hand, the clear national trend has been to dig deeper into the criminal justice system to serve offenders with more serious criminal histories. The pre-plea diversion model now accounts for less than 8 percent of all drug courts in the U.S. (Huddleston
In its place, most drug courts now follow a post-adjudication or post-
conviction model for individuals who have been sentenced to probation or charged with a violation of probation. In addition, a reentry model of drug court is becoming increasingly prevalent, which serves individuals returning to their communities from jail or prison.

On the other hand, research has uncovered a good deal of variability in the clinical severity and risk level of drug court participants. In some studies, low-risk participants accounted for nearly 30 percent of the sample in felony drug courts (Fielding et al., 2002) and approximately half of the sample in misdemeanor drug courts (Marlowe et al., 2006). A few studies have found that nearly one third of misdemeanor drug court participants did not exhibit evidence of a clinically serious substance use disorder (DeMatteo et al., 2009; Marlowe et al., 2004).

This has important ramifications for drug policy in the U.S. and other counties. Although drug courts have clearly been proven to reduce crime and substance abuse, these positive outcomes have not always been justified by the investment of resources. In some evaluations, drug courts proved to be effective but not necessarily cost-effective. This is because drug courts that treat low-severity populations may not, in fact, be offsetting serious crimes or reducing the use of jail or prison beds. A drug court that treats offenders charged with simple drug possession, for example, is unlikely to impact jail or prison overcrowding because such individuals are unlikely to receive an incarcerative sentence to begin with.

Facing huge budget deficits, many U.S. states are now seriously grappling with this issue. For example, the Georgia Department of Audits and Accounts (2010) was recently given the task of determining whether drug courts were working and saving money for the state, with the possibility of reducing funding if the results were not demonstrably favorable. In a report released in September of 2010, the conclusion was that Georgia drug courts were in fact reducing crime, cost 72 to 80 percent less than most other sentencing options, and produced net economic savings of approximately $18 million for the state. The recommendation was to further expand these programs to reduce the state’s correctional budget deficit.

In stark contrast, the Florida Office of Program Policy Analysis & Government Accountability (2010) concluded that drug courts in that state appeared to be serving individuals who were not otherwise likely to be sentenced to prison. As a result, it was projected that they were unlikely to produce net cost savings. The recommendation was either to require Florida drug courts to serve more serious offenders or else shift their funding to other prison diversion programs.

Providing treatment for everyone who needs it is an undeniably laudable goal. However, policymakers must make decisions in light of limited resources that can produce the greatest good for the greatest number of citizens, and offer the greatest protections to public safety. If drug treatment courts are to reach their highest potential, they must target their eligibility criteria not to the populations that are easiest to serve, but those that are hardest to serve and pose the greatest challenges to their communities. As will be discussed, less costly options may be utilized to meet the needs of other offender populations.
Eligibility and Exclusion Criteria

Reaching the appropriate target population requires drug treatment courts to think critically and strategically about their eligibility and exclusion criteria. In the U.S., as in some other countries, admission to drug court is often denied to individuals with certain types of criminal backgrounds. The most common exclusionary criteria are for offenders with a history of violence and drug dealers or manufacturers. The obvious intent of these limitations is to protect public safety and deny services to unpalatable individuals.

Whatever the political appeal of these exclusions, they do not appear to be justified by the research evidence. Studies have found that drug courts that admitted violent offenders were equally effective with these individuals as with other participants (Carey et al., 2008; Saum & Hiller, 2008; Saum et al., 2001). Similarly, studies have reported impressive results for drug courts that served addicted offenders charged with drug dealing or possession with the intent to distribute drugs (Marlowe et al., 2008). If these types of offenders are to be released to community supervision (and many of them are), then drug treatment court may in fact be the best place for them.

At a minimum, there appears to be no empirical basis for limiting drug court participation to individuals charged solely with drug offenses, such as possession or public intoxication. Drug courts that have expanded their eligibility criteria to serve drug-addicted individuals charged with non-drug crimes (such as theft and property crimes) have yielded nearly twice the effects and cost benefits as those accepting only drug-possession offenders (Carey et al., 2008; Bhati et al., 2008). The important consideration appears to be whether the individual is high risk and high need as defined earlier, and not simply the nature of the current criminal charge or the offender’s prior criminal record.

Alternate Tracks

In some communities, the drug treatment court may be the most effective, or perhaps only, program serving as an alternative to incarceration that has staff members with expertise in treating drug-involved offenders. Under such circumstances, it might be appropriate for the program to expand its eligibility criteria to reach needy individuals who would not otherwise fall within its ideal target population.

If this is the case, then it is generally advisable for the program to make substantive modifications to its curriculum to accommodate the divergent needs and risk level of the participants. For example, research indicates that low-risk participants can be managed safely and effectively on a drug court track that does not require frequent status hearings before the judge (Marlowe et al., 2006, 2007; Festinger et al., 2002). The low-risk participants performed at least as well, and sometimes better, when they were supervised instead by clinical case managers who reported on their progress to the judge and requested court hearings only as needed to address poor compliance in treatment. Not only does this arrangement reduce the supervisory burdens on the court, it also reduces the degree of contact between the high-risk and low-risk participants. As was noted earlier, mixing high-risk and low-risk offenders together can lead to negative side effects for the low-risk individuals because they may adopt antisocial attitudes or values.

Similarly, some studies have reported successful outcomes when offenders received gradually escalating punitive sanctions for positive drug tests and other infractions, without placing
any particular emphasis on formal substance abuse treatment (Harrell & Roman, 2001; Hawkin & Kleiman, 2009). Generically referred to as coerced abstinence programs, these interventions may be better suited and more cost-effective for non-addicted substance abusing offenders.

It is beyond the scope of this Chapter to discuss in detail how such alternative tracks might be structured. Other resources are available that review the relevant research in this area and offer practical suggestions for developing and administering alternative regimens (Marlowe, 2009).

**Conclusion**

Drug treatment courts combine the best practices of intensive substance abuse treatment with criminal justice supervision. Not surprisingly, therefore, they elicit the most effective and cost-effective outcomes for participants who require both elements of the intervention. Delivering treatment or supervision services to individuals who do not require those services is a potential waste of scarce public dollars, and has been known to cause negative side-effects in which crime and substance abuse have actually increased.

In recent years, drug treatment courts in the U.S. have made meaningful efforts to identify their target population and alter their admissions procedures to better reach these individuals. Some critics might argue that the pace of change has not been rapid or decisive enough. But in the scheme of things in the criminal justice system, twenty years is a short span of time for any program to take hold across a country or the world, marshal dozens of empirical studies to identify its target population, and then align its fundamental model with the requirements of that population. One would be hard pressed to name another program that has made equivalent progress within such a short period.

Regardless, more can and should be done to hone eligibility criteria for drug treatment courts. The programs should align their admissions criteria with the empirical evidence demonstrating superior effects for high risk and high need individuals, as these concepts were previously defined. Moreover, there is no empirical basis for across-the-board exclusions of offenders who have been charged with non-drug offenses, including property, theft, drug dealing and even violent offenses. If such individuals are legally eligible for and likely to receive a community-based disposition, then making participation in drug treatment court a condition of that disposition may be justified on public health and public safety grounds. Finally, where it may be appropriate or necessary to receive lower risk or lower need individuals into the program, drug treatment courts should adapt their regimens for these individuals so as to conserve resources and reduce any avoidable contacts with their higher-risk and higher-need peers.

If drug treatment courts do not take these matters into their own hands, the decisions might be made for them by policymakers or other stakeholders who may not have equivalent knowledge about the research literature or evidence-based practices. If government oversight bodies reduce or revoke funding for drug treatment courts, or impose arbitrary eligibility criteria that are inconsistent with best practices, drug treatment courts may have no one to blame for this but themselves.
References


