



# KANSAS DRUG COURT FEASIBILITY STUDY

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FINAL REPORT



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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 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> Huddleston, 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.

## **APPENDICES**



## **Appendix A.: Description of Kansas Drug Courts by Jurisdiction**

### **CHASE AND LYON COUNTIES – FIFTH JUDICIAL DISTRICT**

The Fifth Judicial District Department of Community Corrections Drug Court Program began in 2003 as a result of the passage of Senate Bill 123 in the 2003 legislative session. This law established a non-prison sanction of certified drug abuse treatment programs for a targeted population of adult offenders for convictions of felony drug possession. The law also provided for mandatory evaluations and treatment of those convicted, prior to the court sending the offender to a penal institution, unless there were specific departure criteria, or the offender had previously been unsuccessfully discharged from a SB 123 treatment program. All defendants qualified under the provisions of SB 123, either directly or through the department procedures established by SB 123, are automatically admitted to the program when sentence is entered requiring the defendant to complete mandatory drug treatment.

The Fifth Judicial District Court Drug Court Program will accept Non-SB 123 sentenced defendants if the sentencing judge refers them for evaluation by the Drug Court team and the team agrees to accept the offender into the program. The Non-SB 123 defendants will not be assessed the \$300 treatment fee established by the Fifth Judicial District. Non-SB 123 defendants are required to pay for all evaluations and treatment required by the Drug Court program as directed by the treatment providers or sentencing court.

The Fifth Judicial District Department of Community Corrections Drug Court Program currently does not have a cost per client. The program has a capacity of 75 participants. The funding of the program is through the Community Corrections Grant Funds. However, participants are assessed a fee of \$300 through the SB 123 legislation. Similarly clients pay actual cost of all drug testing fees.

The Drug Court team is made up of treatment providers, probation officers, health department staff, county attorney's office, and law enforcement. There are three phases to the program and the program lasts a minimum of 12 months. Phase I is the

Assessment and Primary Treatment Phases lasting from 30 to 90 days. Phase I employs the use of Level of Service Inventory (LSI–R) assessment to determine participant treatment plans. Phase II Treatment can last between six to 12 months and Phase III Continuing Care and Graduation can last up to six months. Each phase has requirements that must be met before the Drug Court judge will consider advancement to the next phase. The following conditions must be met for an offender to be considered for graduation: (1) Satisfactory attendance at all treatment services; (2) Six months continuous clean drug tests; (3) Full-time W-2 employment and/or involved in an academic program (unless modified by the court); (4) Completion of a continuing recovery plan with the treatment provider; (5) Submission of a graduation application, with two letters of reference, after completion of at least one full year in the drug court program; and (6) Following approval of the offender's graduation application, they must submit a graduation essay prior to graduation. This essay addresses their understanding of personal problems of addiction, criminal thinking, and relapse prevention.

There are three local treatment providers serving on the Drug Court team: The Mental Health Center of East Central Kansas, Corner House, Inc., and Path to Recovery. For the last 30 years, the Mental Health Center of East Central Kansas has had a department dedicated to treating individuals with substance abuse disorders. The Center covers a broad geographic area, providing services in seven counties and has been a member of the Fifth Judicial Drug Court Program since its inception. Corner House, Inc. provides a wide range of wellness services including substance abuse assessment and treatment, counseling, employee assistance group services, and outpatient mental health treatment for Medicaid patients. Path to Recovery is an outpatient chemical dependency treatment program with a goal to reconnect the chemically dependent person to their community and family. The program is designed to introduce the client to a new way of thinking and behaving through an individual treatment plan.

This program has not been evaluated.

## **CITY OF WICHITA**

In March 2005, the City of Wichita submitted an application to the Bureau of Justice Assistance, U.S. Department of Justice for a Drug Court Discretionary Grant. Funding was sought that would allow for the payment of treatment cost for probation violators with substance abuse problems. Probation violators currently on probation would be placed into a Drug Court Program focused on repeat offenders with drug and/or alcohol related problems. In September 2005, the U.S. Department of Justice awarded a two-year enhancement grant allowing the probation violation component of the Drug Court Program to begin January 2006.

The City of Wichita Drug Court Probation Program is a 12 month program for Municipal Court both adult and juvenile defendants who have violated the terms of probation of misdemeanor offenses and are eligible for an incarceration sentence. The Drug Court Program is also available to those who are convicted of a misdemeanor crime or crimes and have substance abuse problems. While the program is a voluntary option afforded a defendant, the City of Wichita Drug Court Team may accept or reject applicants from the program.

The treatment costs are paid by the City of Wichita to the treatment provider with funds received from the Department of Justice Grant. The total amount of the grant is \$200,000. The budget submitted and approved provides that \$155,955 of the grant is for the defendant/participants' treatment costs. The remaining funds of \$44,045 are for training for members of the City of Wichita Drug Court Probation Program Team. The treatment provider, Sedgwick County COMCARE-ATS, submitted a proposal wherein drug and alcohol treatment would be provided at a cost of \$1,215.00 per person. This includes the cost of treatment for a one-year period. All participants are responsible for paying the costs of urinalysis testing and an approximate amount of \$300.00 during the course of the program treatment. It is anticipated that approximately 32 urinalysis tests will be given throughout the year. Depending on the defendant's individual needs, this amount may be adjusted with the frequency of tests ordered and additional charges may be applied to cover the additional fees. Conversely, if an individual is financially

unable to pay for testing, the team will review the budget to determine if there are funds available to assist with payment.

To monitor the progress of defendants/participants, a Drug Court Team is utilized. The five team members include a judge, prosecutor, public defender or retained defense attorney, probation officer, and treatment representative. Primary treatment is designed to last approximately 12 to 15 weeks, dependent on the defendant/participant's ability to meet the necessary requirements. Following the primary treatment course, Continuing Case/Life Skills section is designed to span 37 weeks, dependent on the defendant/participant's ability to meet the necessary requirements.

The City of Wichita Drug Court Program has taken reasonable steps to provide meaningful access to the Program and activities for persons with limited English proficiency (LEP). Translators are available for all stages of court proceedings. The program has not been evaluated; however, since its launch, 427 individuals have been referred to the program. Two hundred twenty-seven individuals have been removed from the program by being revoked, placed on standard probation or transferred to Mental Health Court. Currently, 54 individuals are actively engaged in the Drug Court Probation Program and 96 individuals have successfully completed the program.

### **COWLEY COUNTY – NINETEENTH JUDICIAL DISTRICT**

The Cowley County Drug Court was established in April 2009 after a local survey, Vision 20/20, was conducted in 2007 citing that substance abuse issues were the number one concern of the county's general population. The Drug Court began as a response to these concerns and the large number of felony drug convictions occurring in the county. The program focuses on the serious, non-violent, adult drug offenders that are being seen in the local system. As a post-adjudication program, the program focuses its limited resources and funding to persons with serious substance abuse problems. The program in Cowley County began without adding any additional staff to their existing adult intensive supervision program, Cowley County Community

Corrections. In Cowley County, a large percentage of the drug offenders are sentenced pursuant to the provisions of K.S.A. 21-4729; a statute requiring the sentencing judge to impose a non-prison sanction and to require the offender to complete a certified drug abuse treatment program.

The program started with a grant from a local group called the Cowley First, Vision 20/20 Grant and from the Kansas Department of Corrections Fiscal Year 2008 unexpended funds grant, creating a program budget of just over \$9,000 annually (\$9,146). Fiscal Year 2010 grant money is currently pending at the time of this report. The program is set up to work with non-violent, adult post conviction offenders. Funding for treatment is primarily covered by Kansas SB 123. In 2003, legislation became effective in Kansas that stated that certain adult offenders sentenced for a first or second drug possession are sentenced to community correction intensive supervision and are required to successfully complete a certified drug treatment program in lieu of being sentenced to a state correctional facility. The Purpose of SB 123 was to provide state funds to help pay for drug treatment while on community supervision in order to reserve correctional facility capacity for more serious, violent offenders.

To offset costs, the offender may meet criteria to receive AAPS funding through the Substance Abuse center of Kansas to help pay for their treatment. Additionally, at sentencing the judge will order any offender who qualifies under SB 123 to pay \$300 for reimbursement back to the Kansas Sentencing Commission to help off-set the cost of their treatment paid for by the state. All participants are required to pay \$300 for their drug testing. All offenders are set up on a payment plan in order to give them adequate time to make payments towards all of these obligations. All fees, court costs and any restitution must be paid in full before the offender graduates the drug court program.

The Program was designed to be 12 to 18 months in length where the participants are closely monitored and where the assessment team will assist them in achieving long-term recovery. The drug court team is made up of a judge, a drug court coordinator (Deputy Director of Community Corrections), Community Corrections (Probation) Officers, treatment providers, defense and prosecuting attorneys, law enforcement agencies, mental health provider, and occasionally the health department

and case managers from local social services agencies. The Community Corrections Officer who is certified in performing the Substance Abuse Subtle Screening Inventory (SASSI) and Additional Severity Index (ASI) will conduct screenings to determine what level of treatment is needed for each participant. Community Corrections Officers will employ Level of Service Inventory (LSI-R) screening as well.

Cowley County is a rural community with a limited number of resources. This limits the program's capacity to a maximum of 45 participants at any one time (currently 32 participants are entered into the program). While the program works intensively with many local social services, work placement and treatment agencies, the program has still not undergone evaluation.

### **JOHNSON COUNTY – TENTH JUDICIAL DISTRICT**

The Juvenile Drug Court of the Tenth Judicial District, Johnson County, is a 12 month diversion program offered to first time juvenile offenders of misdemeanor and felony offenses who have been deemed to have a serious drug or alcohol problem. Prior to implementation of the Drug Court Program, juveniles with serious drug or alcohol problems were rarely considered successful on diversion. The goal of the program is to provide a much higher level of supervision than that found in standard diversion programs, keep close contact with families, treatment providers, schools and courts, and to immediately sanction the youth for infractions with increased treatment/drug screens or other related sanctions, rather than pursue revocation.

The Johnson County Juvenile Court Services was awarded a Juvenile Accountability Incentive Block Grant (JAIBG) Drug Court Program from the Juvenile Justice Authority in August 2001. The first staff person began accepting cases that October. In the first quarter of the grant, 23 clients were served. The initial grant application set a limit of 30 to 40 cases on the caseload in an attempt to maintain a high level of contact between the clients and the Drug Court officer. The program currently proposes that it has capacity for 120 participants at any one time. Participants are assessed at the beginning of the program to determine their level of treatment. Drug

Court staff use a combination of the SASSI and Adolescent Alcohol/Drug Use Patterns resources to make this determination.

The participants of the program are assessed a program fee of \$310 which must be paid by the time of graduation. Additionally, participants are responsible for the payment for each drug test required throughout the program set at an \$18 fee. Court Services was able to maintain funding for several years through the JAIBG Drug Court program. In the last year of JAIBG funding (2004/2005) a grant request was made for Alcohol Tax Funding (ATF) which is overseen by the Drug and Alcohol Council (DAC) of Johnson County. ATF funds are used solely to provide for the salary and benefits of the Drug Court Office Court Services Officer (CSO). The CSO is responsible for the implementation of the Drug Court program and monitoring of the participants. The DAC has continued to recommend funding of the Drug Court Program since that time. Unfortunately, sustainability of ATF funds have been a concern over the last year due to state budget cuts. Since 2007, requests for funds from the ATF have been made ranging between \$45,000 and \$50,000. All treatment, drug screens, and program fees are paid by the participants in the program. The program's total proposed operating budget for FY 2010 was \$78,960. Office space and supplies are provided by Johnson County Government and the Drug Court judge does not require additional funding for their participation in the program.

The Drug Court operates through Johnson County Court Services and participants may enter the program after being referred by the Courts or through a procedural process in which the juvenile is placed in the program through the District Attorney's office prior to attending court. If the juveniles have a drug related arrest, they are required to receive a drug/alcohol evaluation to determine the level of substance abuse problem present. The juveniles are placed in a level of Option Planning, ranging from Option 1, which requires only education, through Option 6, requiring inpatient treatment. Following the initial stage of treatment, each juvenile in the program must attend aftercare treatment for four to six months.

In addition to the intensive outpatient counseling, the Drug Court participants must attend Drug and Alcohol education classes, take frequent random drug screens,

complete community service, and follow other diversion guidelines such as adhering to the diversion curfew and obeying parents and the law. Participants must also attend Drug Court hearings regularly, at which time they report to the Drug Court judge on their progress in the program. Each Drug Court participant must complete three phases of diversion; the first focusing on treatment, the second on education, and the third on relapse prevention. The CSO will also refer participants to any other services as necessary. The CSO monitors each participants' compliance with the program through frequent collateral contacts, school visits, office visits, and curfew/compliance checks. The CSO also facilitates monthly Drug Court hearings in conference with the Drug Court Judge.

There is no license or certification required for the CSO position; however, the Drug Court Officer position does require a college degree and experience in the juvenile justice field. Forty hours of continuing education are required annually. The program has not been evaluated.

## **POTAWATOMI NATION**

The Prairie Band Potawatomi Nation Healing to Wellness Court was established in 2009, with the mission of providing support and incentives to reduce substance abuse and the negative effects on the community and families with culturally appropriate services through collaborative partnerships. The Prairie Band Potawatomi Nation Healing to Wellness Court program is a collaborative effort involving a number of Tribal Departments. The Court is located in Mayetta, Kansas and the Healing to Wellness Court program is on the federally recognized Prairie Band Potawatomi Nation Reservation. The Prairie Band Potawatomi Nation Healing to Wellness Court was developed by a local advisory team to offer both pre and post-adjudication services. Within the first six months, the court team was able to hire a Healing to Wellness Court Coordinator, revise their preliminary budget and policy manual, and create the Healing to Wellness Court forms.



Based on the number of drug and alcohol violations that have been filed in the District Court, the Healing to Wellness Court anticipates that the program could effectively reach a 25 to 30 person capacity. While the program accepts adults with both misdemeanor and felony drug charges, there has been some difficulty in accepting all referred applicants due to violent criminal charges.

Enrollment in Healing to Wellness Court will typically last between 15 and 18 months and occurs in four phases. The Healing to Wellness Court is constantly collaborating with other programs, including Alcohol and Drug, Social Services, and their Language department, to help ensure that the program can offer the clients the best support. The Healing to Wellness Court has *not been evaluated*; however, it has great support from the community and employs numerous volunteers. The Court Team is also working with the community elders to obtain better knowledge of cultural ways and practices and the team is also traveling to other bands of the Potawatomi to compare and learn from their traditions. Maintaining the local tradition is integrated throughout the program as seen in the traditional supper and prayer ceremonies that take place at each of the four phases of the program to recognize the work and accomplishments of the participants.

## **SEDGWICK COUNTY ADULT DRUG COURT – EIGHTEENTH JUDICIAL DISTRICT**

In 2003, the Board of County Commissioners hired the Institute for Law and Policy Planning (ILPP) to perform a Jail Population and Criminal Justice System Study. As a result of the study, the ILPP made recommendations for justice system improvements including the development of a Criminal Justice Coordinating Council (CJCC) and implementation of a system of alternatives to incarceration. The Sedgwick County CJC was formed in early 2004 and concentrated its efforts in studying the local criminal justice system to formulate cohesive plans and programs for change. In December 2006, a CJC Drug Court Committee was created to determine if a drug court for the Eighteenth Judicial District would be beneficial for the community and its impact on the jail population.

Sedgwick County has three existing programs that target individuals with drug and/or alcohol additions. The City of Wichita has been operating a successful drug court since 1995. The District Attorney's office operates a drug diversion program that targets individuals charged with a single case with the offense of simple possession of controlled substance. The Department of Corrections is obligated by SB-123 to offer adult intensive supervision and substance abuse treatment instead of prison for many criminal offenders convicted of low-level drug offenses. The CJC Drug Court Committee, therefore, agreed that the population to be served by the Drug Court should be those offenders most in need of services and whose addictions most negatively impact the community. The Sedgwick County Drug Court was then implemented in 2008.

Participants are post-adjudication offenders who enter Drug Court at the time of a probation violation. Offenders are typically high-risk, felony offenders who have been convicted of presumptive probation or border box offenses. Participants exclude SB 123 offenders and those offenders with other pending charges outside of Sedgwick County. The Sedgwick County Drug Court Program is an 18 to 24 month program that consists of four phases through which participants must advance to be able to graduate. The program has not been evaluated.

Application and entry into the program entails a full assessment of the individual's need for supervision regarding their legal circumstances and treatment needs. Assessment Tools used are the LSI-R, Kansas Client Information System and Placement Criteria (KCPC), CEST, TCU-Drug Screen II. Criminogenic risk assessment helps to define the level of supervision for the participants. The ISO provides the necessary supervision as well as conducts trainings to address the offenders' behavior. Interventions are geared toward understanding the risks and needs of the individual and responding to identified barriers to treatment success. Both supervision and treatment have a strong cognitive and behavior change focus.

The funding for this program comes from the Sedgwick County General Fund. The 2010 budget for the program is \$763,845 for its 120 participants. The Drug Court program does not have an accurate per client cost at the time of this report. However, it

is believed that the program can and will grow over time to approximately 180 participants as some individuals require less intensive intervention, reducing demand on court and supporting resources. If the program achieves 180 annual participants, this would reduce per capita costs to between \$4,090 and \$ 4,455. Participants are required to pay a total fee of \$360 and can pay in \$20 monthly installments if needed.

### **SHAWNEE COUNTY – THIRD JUDICIAL DISTRICT**

The Third Judicial District Drug Court Program in Shawnee County was established in 2002 as a pre-adjudication program as an alternative to incarceration penalties. Participants in the program must be charged in Shawnee County adult criminal court for felony possession or attempted possession of a controlled substance (Level 4D Felony Drug Offense). Program participants must participate in the program a minimum of 12 months with a maximum of 36 months in order to successfully graduate. Additionally, a \$300 fee must be paid in full prior to graduation. Treatment is paid based upon a sliding scale.

### **WYANDOTTE COUNTY JUVENILE DRUG COURT TWENTY-NINTH JUDICIAL DISTRICT**

The Wyandotte County Juvenile Drug Court was established in October 2004. The Juvenile Drug Court has been based on a model of therapeutic jurisprudence; which emphasizes intensive treatment and other specialized services combined with frequent and continuous judicial supervision over the substance-abusing juvenile offender. The Wyandotte County Juvenile Drug Court received initial technical assistance training and funding support through a U.S. Department of Justice Drug Court Implementation Grant. Planning for the program began in December 2003 with a Drug Court Team consisting of representatives from the judiciary, probation and law enforcement, as well as from the public defender's and the prosecutor's office. The Unified Government's Department of Community Corrections agreed to establish and manage the new program. The Drug court began receiving its first participants in

October 2004, and within two and a half years the program served a total of 30 participants.

The Wyandotte County Juvenile Drug Court program is a year long, post-adjudication program addressing both misdemeanor and felony drug convictions that utilize a defined three-phase structure. In the first phase of the program, contacts with the juveniles are frequent at three times per week and typically last between 20 and 60 minutes. Phase one also requires the juveniles to meet with the Intensive Supervision Officer (ISO) once per week and once weekly in court. Phase Two of the program reduces individual contact to one time per week and only two times per month in Phase Three.

An external evaluator conducted a process study in May 2007 after the court had been in operation for just under three years. The study focused on three areas: substance abuse treatment, Drug Court program services, and program development since the initial Phase I study in 2006. At the time of the 2007 evaluation, the program did not use a formal risk assessment tool, nor did Court Services staff administer a formal assessment prior to the youth's assignment to Drug Court. At the time of the evaluation, however, the program was exploring the possibility of incorporating into the program the same formal assessment process that the Department of Community corrections currently used with non-Drug Court youth. Once a juvenile offender has gone through the intake process and accepted into the Drug Court, the service provider conducts assessments which include the Adolescent Substance Abuse Subtle Screening Inventory (A-SASSI) and two more comprehensive, multi-dimensional assessments, the Addiction Severity Index (ASI) and the Kansas Client Information System and Placement Criteria (KCPC). Assessments were scheduled and a summary of the assessment results are generally provided to the Drug Court within one to two weeks of Drug Court entry.

Through contracted services, the Wyandotte County Juvenile Drug Court supports a treatment component through which participants could receive outpatient treatment at no cost. Since 2005, a single contracted provider, Mirror, Inc., coordinated

all AOD treatment services for participants and provided outpatient treatment to most of the youth involved.

Over the years of operations, the Wyandotte Juvenile Drug Court continues to develop key aspects of programming. The intake process has become more highly structured. Greater attention is paid to transition planning for juveniles in the final phase of the program. Gaps in aftercare planning have been identified and staff are examining options for addressing aftercare issues. The treatment component was further integrated into the Drug Court program through treatment provider participation and through a detailed progress reporting. Structured activities designed to reinforce issues addressed in treatment were introduced into case management contacts with the juveniles. The incentive system has been further elaborated and customized to individual juveniles.

### **GEARY COUNTY -- EIGHTH JUDICIAL DISTRICT**

The Geary County Drug Court in the Eighth Judicial District is a Post-conviction Drug Court Program. Planning efforts for the program began in December 2006, with the first Drug Court session held in June 2008. The Geary County Drug Court Program is court supervised and designed to manage cases involving adult drug offenders. Drug Court is established by a team approach between the criminal justice system and the drug treatment organizations. The partnership structures treatment intervention around the influence and personal involvement of a single Drug Court judge. The Eighth Judicial District Community Corrections Drug Court Program aims at assisting participants to stop the cycle of chemical dependency and addiction, increase community safety, offer sanctions, rewards and treatment programming. The program utilizes a treatment team in serving offenders assigned to the Drug Court Program. The treatment team includes the Drug Court Judge, Drug Court Coordinator, probation officers, and Treatment Counselors. The Drug Court Committee that is responsible for the implementation and changes of Drug Court policies include the Drug Court Team, County Attorney's Office, Defense bar and the Geary County Sheriff's Department/Law Enforcement. The Eighth Judicial District Community Corrections requires potential candidates to be an adult

offender and resident of Geary County to be considered for admission to the Geary County Drug Court Program.

Upon conviction, the court will order Court Services to prepare a pre-sentence investigation. When an officer checks in for a PSI, the court services will have already noted if the offender is SB 123 eligible. If so, the offender is then directed to the Drug Court Coordinator. The Drug Court Coordinator conducts the LSI-R for all eligible Drug Court participants. Next, a licensed Social Rehabilitation Service (SRS) treatment provider will administer the Substance Abuse Subtle Screening Inventory III (SASSI-III) and administer the Addiction Severity Index (ASI) to determine the level of treatment needed by the participant. Since the program's inception, 45 total clients have participated.

There are three phases to the program and the program lasts a minimum of six months. Phase I is the Assessment and Primary Treatment Phase lasting from 30 to 90 days. Phase I requires 30 consecutive days of total abstinence from the use of drugs and alcohol. During this phase an individual treatment plan is developed, group therapy meetings, probation meetings and various other benchmarks are used to track a participant's progress. Applications must be made to the Court for phase advancement and approved by the Drug Court Team. Phase II – Treatment Phase can last between six to 12 months. This phase requires an additional 180 consecutive days of total abstinence from the use of drugs and alcohol, updated treatment plan, continued group therapy sessions and continued Drug Court appearances every two to six weeks. Phase III – Continuing Care and Graduation can last up to six months. Each phase has requirements that must be met before the Drug Court judge will consider advancement to the next phase. The following conditions must be met for an offender to be considered for graduation: (1) Program participation for a minimum of six months; (2) Acceptable level of sobriety as determined by treatment team; (3) Consistent employment and/or involved in an academic program; (4) No unexcused absence from Drug Court or other mandatory programming; (5) Achieve stable living arrangements and healthy interpersonal relationships as determined by the treatment team; (6) A written graduation application; (7) Accomplishment of goals as stated in the individual

treatment plan; (8) Proof of attendance at all other events required by the Drug Court team; and (9) Completion of community service work.

The Drug Court Program participants are required to pay a \$300 supervision fee (this helps to pay for drug testing supplies, office supplies etc.) as well as the \$300 SB 123 fee. At this time, all clients under the Eight Judicial District must be eligible for SB 123 programming to qualify for the Drug Court program. The total anticipated Drug Court costs for FY12 will be just over \$96,000. This will fund the Drug Court Coordinator and one part-time ISO. The Kansas Department of Corrections (KDOC) allocations currently fund 60 percent of the Drug Court Coordinator's salary; Geary County funded approximately \$15,000 in 2006 and has funded \$30,000 per year since 2007. The program coordinator is hopeful that eventually the supervision fees will help to cover any reductions from either KDOC or Geary County. The current planned budget for FY12 including all KDOC funds (allocation and carryover) and Geary County Funds totals just over \$83,000 for salary and benefits. Facility (rent, utilities, and phones) supplies, equipment, travel expenses, training and contractual costs are figured by Full Time Equivalency (FTE) across the budget. Drug Court FTE for KDOC is figured at 0.60 (for the Coordinator), for Geary County the FTE is figured at 0.90 (where 40 percent of the Coordinator and 50 percent of a part-time worker are included) and KDOC carryover funds equate to a 0.50 FTE position (50 percent of a part-time worker). Total planned agency operating expenses for FY 12 outside of personnel is \$151,516.

## **Appendix B: Various Funding Strategies**

### **A. Statewide Funding Strategies**

For drug courts to be sustainable over the long run they need to be integrated in the very fabric of public policy. State legislators are perhaps the best catalysts to incorporate drug courts into renewable funding streams. State legislative support can provide a local drug court with initial and ongoing funding or continuation of funding after federal grants have run their course. With state legislative support, drug courts can receive specific appropriations through a drug court fund or receive funding through budget modifications to state agencies that trickle down to drug courts. A number of benefits emanate from state legislation, including: (a) the clear legitimization it provides for drug courts, which in turn fosters support in the legal community; (b) best practices and standards can more easily be promoted; (c) the creation of new positions or titles in the judicial branch and other branches of state government to run the drug court program, which bolsters drug court infrastructure; (d) the formalization of legal eligibility standards, which reduces localized legal challenges to program entry, allowing programs to reach capacity; and (e) improved essential interagency collaboration and permanent cost sharing.

States have been very creative in finding funding strategies for drug courts. In this section of the report NCSC presents several strategies employed by different states, regions and local drug court authorities. Most of the information in this section is taken from a publication from the National Drug Court Institute entitled *Ensuring Sustainability for Drug Courts: An Overview of Funding Strategies*.<sup>19</sup> NCSC strongly recommends that the Court review this publication for additional ideas on how drug courts may be funded.

Several states have employed state-wide initiatives to support local drug courts. Four examples of different state funding strategies are provided below.

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<sup>19</sup> The link to this monograph is <http://www.ndci.org/sites/default/files/ndci/Mono8.Sustainability.pdf>.



## **CALIFORNIA – CREATION OF A STATEWIDE STRUCTURE**

The California legislature has enacted funding bills (Comprehensive Drug Court Implementation (CDCI) Act of 1999; Drug Court Partnership Act of 1998) for drug courts by providing the Department of Alcohol and Drug Programs with two grants: \$7.6 million from State General Funds awarded to the Drug Court Partnership (DCP) Program and \$8.8 million awarded to the Comprehensive Drug Court Implementation (CDCI) Program. These programs built a statewide structure for drug courts, including a drug court partnership steering committee, that served to supplement funding for established drug courts, provided a mechanism for planning new drug courts and established funding for the evaluation of drug courts.

When the original Drug Court Partnership grant program expired, grant funding was extended by an assembly bill which redirected \$7.6 million from the Department of Corrections to continue to fund the DCP program. The original base CDCI grant award was for \$6.5 million, and an additional \$2.3 million was redirected to the CDCI program from the Department of Corrections. The funding from the Department of Corrections was restricted to serve convicted felons for whom supervision and education had not produced results. The legislature only redirected funds from the Department of Corrections after research demonstrated the positive results and cost-savings produced by California's drug courts.

The Department of Social Services entered into an interagency agreement with the Department of Alcohol and Drug Programs to award an additional \$1.8 million through the CDCI grant to support dependency drug courts. In this agreement the county alcohol and drug program administrator and the presiding judge in the county develop and submit a comprehensive multi-agency drug court plan for implementing cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court. The court must provide a local action plan for implementing cost-effective drug court systems, including developing information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the local action plan in achieving its goals.

Acceptable uses of the funds include drug court coordinators, case management, training, drug testing, treatment, and transportation.

### **WASHINGTON – REVISING SENTENCING GUIDELINES**

The legislature in the State of Washington passed a Senate House Bill (S. 5419, 2001) revising sentencing guidelines for non-violent drug offenders in state prisons, resulting in significant incarceration savings. This act revised sentences for drug offenses with a new drug offense sentencing grid. The resulting incarceration savings from the sentencing changes will be used for substance abuse treatment and drug courts. Seventy-five percent of the savings, with a cap of \$8.25 million per year, will now be transferred from the General Fund into the Criminal Justice Treatment Account (CJTA).

Because the bill provides for a balanced response to the drug problem, it received strong bipartisan support from both the House and the Senate. The bill, which set minimum requirements for participation of offenders in drug courts, states that criminal defendants are not entitled to any specific sentencing option, sanction, alternative or substance abuse treatment.

Research has indicated that drug courts in Washington State generate \$1.74 in benefits for each dollar of costs (Barnoski & Aos, 2003). CJTA funds may be used for substance abuse treatment and support services provided through a drug court program. The Division of Alcohol and Substance Abuse (DASA) was named as the fiscal agent for CJTA and must dispense 70 percent of CJTA funds to counties according to a methodology to be developed by a process outlined in the state legislation. The remaining 30 percent will be distributed as grants.

The Division of Alcohol and Substance Abuse (DASA), in consultation with a broad group of parties with expertise, established a fair and reasonable methodology for distribution. A designated panel must approve county plans submitted for the expenditure of formula funds. The county chemical dependency specialist, the county prosecutor, county sheriff, county superior court, county drug court professional, and a

substance abuse treatment provider appointed by the county's legislative authority jointly submit a plan for disposition of all the funds provided from the CJTA within that county. The plan must be approved by the county's legislative authority and must be used solely to provide approved alcohol and substance abuse treatment and treatment support. Counties are encouraged to consider regional agreements. Any county found not to have used the funds appropriately must repay the fund. The Washington State Institute for Public Policy is evaluating the effectiveness of Washington's drug courts and the impact of the new sentencing guidelines.

### **IDAHO – APPROPRIATED GENERAL FUNDS AND SURCHARGES**

The State of Idaho has supported drug courts through a dedicated drug court fund. The Idaho state legislature has been extremely supportive of drug courts since 2001, when expansion of drug courts to all seven judicial districts was set as a collaborative priority of the Governor's office, the Supreme Court and the legislature. In the 2001 legislative session state general funds were specifically appropriated to support basic infrastructure for drug court operations such as drug court coordinators and drug testing, as well as for expansion of drug and alcohol abuse treatment.

However, when an economic downturn resulted in drastic reductions in tax revenues, financial support for drug courts was seriously threatened. The Idaho legislature remained committed to funding drug courts and passed the Idaho Drug Court and Mental Health Court Act (2001) to create a dedicated fund for drug courts and family court services. Funds from a 2 percent surcharge on the gross sales of beverage alcohol sold by the Idaho State Liquor Dispensary system are appropriated by the legislature for the support of drug court and family court services. This surcharge is projected to produce approximately \$1.5 million per year.

In addition, state general funds continue to be appropriated for drug and alcohol abuse treatment services. These funds are combined with federal substance abuse block grant funding and other state funds administered by the single state substance abuse agency, the Idaho Department of Health and Welfare.

Further demonstrating their support for drug court efforts, the 2005 Idaho legislature appropriated added funds from an increase in maximum fines. These new funds will enable the expansion of drug court capacity as well as the implementation of mental health courts. The Department of Health and Welfare also allocated added funds for treatment, bringing the total treatment allocation to \$3.2 million.

### **TENNESSEE – REPLACEMENT OF FEDERAL FUNDING**

The Tennessee General Assembly awarded an appropriation in Fiscal Year 2004 for the medical needs of the Davidson County Drug Court Residential Program (DCDCRP), to cover lost federal and non-profit grant funding. In addition, the DCDCRP technically "houses state prisoners" at a rate of \$37 per day, per resident. According to the Tennessee Department of Corrections, in 2004 the average cost of housing state prisoners was \$62 per day, per resident. Clearly, the DCDCRP produces a tremendous cost savings for the State of Tennessee, which has bolstered legislative support for additional funding.

### **NORTH CAROLINA – STATEWIDE SUSTAINABILITY PLAN**

North Carolina has had state appropriations dedicated to drug treatment court operation since the program's inception in 1995. These appropriations were used initially to fund court operations, treatment, drug testing, and transportation for the initial five pilot courts started in North Carolina. Federal grant funds were used to implement additional courts. As those funds were exhausted, the state appropriation was stretched to fund or partially fund each of the existing courts.

The North Carolina Administrative Office of the Courts (NC AOC) was asked to submit a "Sustainability and Expansion Plan for North Carolina's Drug Treatment Courts (DTC)," considering funding opportunities beyond the state appropriations. The NC AOC submitted a plan simultaneously with a request to expand appropriations. The expanded appropriations would fund the many operational drug treatment courts that had no other funding source.

With the support and participation of drug court team members and state-level stakeholders, the NC AOC sought creative answers to sustain the courts based upon the leveraging of existing resources dedicated to the populations served by North Carolina's adult, juvenile, and family treatment courts. Their plan included a proposal to use Medicaid funds to pay for treatment, with particular applicability to juvenile and family DTC participants. To effectively utilize resources, the plan required all drug courts to target populations mirroring the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services state-funded treatment target populations. As result, all adult DTC participants must be high-risk, community-based offenders on probation. Because of this stipulation, the North Carolina Division of Community Corrections assumed primary case management duties for drug court participants and took over responsibilities associated with a minimum of two drug/alcohol tests per week.

The NC AOC was also able to parlay commitment from the North Carolina Department of Juvenile Justice and Delinquency Prevention to assume primary case management and drug testing responsibility for all juvenile DTC participants. As a result, the NC AOC was able to use the \$1.1 million in expanded appropriations (and any approved increase) to fund a case coordinator position for each adult, juvenile or family DTC, office supplies, computers, and a management information system to manage data and produce reports for the use of the courts. Finally, as a result of the sustainability plan, NC AOC has sought to provide cross-agency training for all DTC teams and help with ancillary costs associated with treating the drug court population including transportation, emergency housing and basic incentives.

State and local memoranda of agreement define roles and responsibilities of each agency and team member. There is also a set of state *Guidelines for North Carolina's Drug Treatment Courts* that further defines the planning and operation of the courts.

The considered leveraging of existing, dedicated resources in conjunction with shared planning for growth, and a united voice regarding the use and continued need

for resources to serve this population has strengthened the partnerships between North Carolina drug treatment courts and state and local agencies.

### **INDIANA – VOLUNTARY STATE CERTIFICATION**

The first drug courts in Indiana began in 1996. As the number of drug courts increased, several drug courts began to seek support and certification from the Indiana Judicial Center (IJC) similar to that provided to other Court Alcohol and Drug Programs. In 2001, the Judicial Conference of Indiana Court Alcohol and Drug Program Advisory Committee (CADPAC) formed a subcommittee to conduct a pilot project to examine the possibility of developing a certification program for drug courts. The pilot project was completed in 2001 and provided the subcommittee with a framework for drafting drug court legislation and drug court rules.

In 2002, the Indiana General Assembly enacted drug court legislation for adult and juvenile drug courts requiring them to submit to certification procedures overseen by IJC. In 2003, the Judicial Conference of Indiana adopted drug court rules, which provide a framework for certification of drug courts operating under the statute.

To obtain certification by IJC, drug courts must demonstrate compliance with the drug court statute, drug court rules, and the Ten Key Components (NADCP, 1997). The certification procedure examines six key areas including application procedures, administration, the Ten Key Components, program management, drug court operations, facilities, fiscal management, and personnel management. Drug courts that demonstrate compliance with each of these areas may receive a certificate of approval to operate as a certified drug court for up to three years, at the end of which time the drug court must submit to recertification procedures as required by the drug court rules.

The drug court statute authorizes certified drug courts to assess and collect a user fee of up to \$500 per referral to cover drug court services including screening for eligibility, clinical assessment, education, referral, service coordination, case management, and other appropriate services. In addition, only certified drug courts are

eligible for drug court related training, grants, and scholarships administered by IJC and the Indiana Criminal Justice Institute.

## **KENTUCKY – REGIONAL FUNDING**

A local congressman and the Kentucky Supreme Court Chief Justice used their combined political influence to create Operation UNITE, a nonprofit organization that receives federal grants and corporate donations. Operation UNITE funds 22 drug courts throughout Kentucky. Operation UNITE has funded the development of 17 drug courts that serve 20 counties, and continues to support 5 previously funded drug courts. In order to maximize resources, UNITE drug courts are funded on a regional basis. Drug court staff is shared across jurisdictions. In the beginning, staff worked on a part-time basis and courts accepted 15 participants per county. However, UNITE has increased funding to \$3.2 million in order to expand the capacity of Kentucky's drug courts

### **B. Court Assessments and Fee Systems**

Some states have used revenues collected from offenders to fund their drug courts. Drug court assessments have been included in traditional court costs and are often held centrally for distribution. States have also imposed drug court fees assessed on all drug convictions or drug court litigation taxes, which is a tax on all drug and alcohol related treatment fees, assessed to every DUI conviction, are used widely by DUI courts to support services. States have also enacted increased court proceeding fees on a wide variety of infractions and violations to support intervention and treatment for drug court clients. Litigation taxes on criminal cases have also been distributed to indigent defense funds, which may support drug court programming.

## **MISSISSIPPI – LEGISLATIVELY MANDATED FUNDS**

The State of Mississippi created a state strategy for sustainable drug court funding that established an administrative foundation for drug courts through the passage of legislation. However, the statute did not fund treatment services rendered by drug court programs. According to the statute, the costs of alcohol and drug services could be paid by the participant, through user fees, or through other state, federal or

private funds that may be made available. The statute also allowed courts to assess reasonable fees for participation. According to state coordinator Joseph Craft, “the minimal amount of monies created from this code section were not enough to sustain a drug court program. Several successful drug court programs in the state were in jeopardy of closing unless a stable long-term funding strategy was developed”.

Mississippi’s State Drug Court Advisory Committee recognized the critical need for a statewide sustainability plan. The State Drug Court Advisory Committee developed a series of initiatives to fully support Mississippi’s drug courts and presented these ideas to the state legislature. Legislators incorporated these ideas into a bill, which was widely supported by the legislature and was approved by the Governor’s Office.

As a result, Mississippi Code Ann. § 99-19-73 was amended to provide fee assessments on certain criminal offenses to be deposited in a newly created special fund known as the Drug Court Fund. The monies derived through these assessments would be used to provide supplemental funding to all drug courts in the state. The statute adds a \$10 assessment to violations including traffic violations, implied consent law violations, game and fish law violations, litter law violations, and any felony violations not specified by the law. The statute also adds an \$8 assessment to all misdemeanor violations not specified by the law, stating that monies from this fund derived from assessments under Section 99-19-73 shall be distributed “to the drug courts where the respective violations occur in the state, and funds from other sources (municipalities and counties without drug courts), shall be distributed to the drug courts based on a formula set by the State Drug Court Advisory Committee”. The law is expected to generate approximately \$5.1 million for Mississippi’s drug courts.

### **NEVADA – ADMINISTRATIVE ASSESSMENT**

In Nevada, when a defendant pleads guilty or is found guilty of a misdemeanor, including the violation of any municipal ordinance, the judge includes in the sentence the sum of \$7 as an administrative assessment for the provision of specialty court programs. The judge renders a judgment against the defendant for the assessment.



Even if a defendant is sentenced to perform community service in lieu of a fine, the sentence must include the administrative assessment. The money collected for an administrative assessment must be stated separately on the court's docket and must be included in the amount posted for bail. If bail is forfeited, the administrative assessment included in the bail must be disbursed to a special account in the State General Fund administered by the Office of Court Administrator.

The Office of Court Administrator allocates the money credited to the State General Fund to assist with the funding or establishment of specialty court programs. Money that is apportioned to a court from administrative assessments must be used by the court for specified purposes. The money must be used to fund treatment and testing or to hire personnel and staff, to provide training and education, to study the management and operation of the program, to conduct audits of the program, or to acquire or use appropriate technology.

### **TENNESSEE CONVICTIONS ASSESSMENT**

The Alcohol and Drug Addiction Treatment Fund (ADAT), which is administered by the Tennessee Department of Health, has permitted many multiple DUI offenders to obtain a continuum of alcohol and drug treatment services drug courts have relied heavily on this funding for its treatment services for DUI offenders. Eligibility for ADAT funding is premised on having two or more DUI convictions, inability of the client to pay for treatment (treatment indigency), and a court order requiring treatment, usually as a condition of probation. The ADAT fund was initially started by a grant to Tennessee from the National Highway Traffic and Safety Administration (NHTSA) and the fund is renewed with a portion of the costs collected on every DUI conviction entered in the state of Tennessee.

The State of Tennessee Code also created a county DUI fund, which is segregated from county General Funds, and may only be expended for the purposes of providing treatment for alcohol and drug abuse, or for education efforts related to alcohol and drug abuse. The funds are collected from DUI offenders as part of their

court costs. Much of this money goes to DARE programs, but a portion is used for treatment for addicted offenders and for drug court programs.

Tennessee Code also authorized each county to implement an indigent defense fund, also referred to as the “\$12.50” tax, which is a litigation tax on all criminal cases. A 5 percent portion of the money is reserved by the clerk, and the balance is a semi-discretionary fund accessed by the public defender for indigent defense. Those monies have been, in part, used to access treatment for drug court offenders.

Furthermore, the Tennessee legislature approved the Tennessee Drug Court Litigation Tax, which is a tax on all drug and alcohol related criminal warrants settled in Tennessee. The clerk of the affected courts is to collect \$75 on each such warrant, reserve a 5 percent clerk’s commission and the balance of those funds are to be used by the drug court for that particular county. If no such drug court exists, the funds are remitted to the Tennessee Drug Court Association after 1 year. Those funds are then available statewide to any drug court program on a grant basis. These funding initiatives were enacted through legislation written by the Tennessee Association of Drug Court Professionals.

The Tennessee Department of Health also administers the federal “Access to Recovery” grant. Funds for alcohol and drug treatment with a broad range of ancillary services are made available on a voucher system, and the fund is administered in much the same fashion as the ADFAT fund referred to above, which is also administered by the Department of Health. To maximize available services, faith-based providers are included under this program.

### **C. Interagency Agreements**

State agencies with common missions often join together to fund and support drug courts. State agencies may also have their own potential for grant funding opportunities that can be utilized to support or strengthen program components. State commissions, formed to reduce crime, improve highway safety, or increase access to treatment may be approached for court or program funding. State agencies also fund

drug courts through the utilization of supervision fees including pretrial or probation supervision fees or conviction surcharges imposed on offenders convicted of drug offenses. Education and prevention programs mandated for at risk offenders are often sources of funding for drug courts, utilizing lower level offenders' program fees to support higher level offender treatment and supervision costs.

### **COLORADO – COURTS AND PROBATION FUNDING**

The Denver District Court was the location of the first Colorado drug court in 1994, funded through federal grants and the contribution of in-kind staff resources from both the trial courts and probation department. When the federal funding ended the scope of the drug court was reduced such that the cost of operation could be absorbed within existing court and probation budgets. Since then the majority of the drug courts in Colorado have followed a similar path, moving from partial federal funding support to absorbing as much of the operation as can be sustained into existing resources. There are now 21 drug courts operating in Colorado, in 9 of the states' 23 judicial districts.

As the drug courts reduced their reliance on federal funding, the Division of Probation Services has been able to provide some limited long-term financial assistance to some of the courts. Defendants sentenced to probation in Colorado are required to pay a monthly probation supervision fee of \$50, and the revenue from collection of these fees is deposited in the Offender Services Cash Fund. This is the source of an annual allocation to the 23 probation departments in the state for the purpose of purchasing treatment and services for offenders. In fiscal year 2006-2007 the Offender Services Cash Fund provided approximately \$1.35 million in supplemental funding to nine drug courts, with 16.5 percent of the funding supporting court staff, 5 6.4 percent supporting probation staff and 17.1 percent supporting supplemental treatment resources.

### **MISSOURI – DRUG AND ALCOHOL ABUSE AGENCY FUNDING**

The State of Missouri is advancing the link between drug courts and the Missouri Division of Alcohol and Drug Abuse. 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 (2001). The statutory commission is comprised of four judicial appointments and four executive branch appointments from the Missouri Departments of Social Services, Corrections, Public Safety, and Mental Health. The Missouri General Assembly has provided general revenue funding to the Resources Fund for several years. The funds can be used for treatment services, drug testing, contract services, wraparound services, sanctions, and educational materials. The funding is provided to adult, juvenile, family, and DUI drug courts.

A unique interagency agreement was formed between the State of Missouri drug courts, the American Liver Foundation (ALF), and the Option Care organization. These organizations have joined together to provide Hepatitis C testing and treatment for drug court clients and their partners. The ALF and Option Care arrange for doctors in each community to test and receive the results of Hepatitis C tests. Prior to the testing, an educational program about Hepatitis C is provided to all participants. For those who test positive and are unable to pay for treatment, the ALF and Option Care organizations provide assistance in arranging free or reduced cost treatment. The need for this partnership was evident as the national and state average for testing positive for Hepatitis C is 3 percent, and the drug court average is approximately 17 percent.

## **FLORIDA – CHILDREN AND FAMILY AGENCY FUNDING**

Treatment sustainability for Volusia County's adult and juvenile drug court shifted when funding that was previously provided by the Bureau of Justice Assistance federal grants changed to funding from the Florida Department of Children and Families (DCF). DCF contracts with local agencies to provide substance abuse treatment across the state. DCF funding includes both state general revenue and federal Substance Abuse Prevention Treatment (SAPT) block grant dollars. By using this funding approach, court-mandated offenders are prioritized for treatment funding. Chet Bell, executive vice president of the Stewart-Marchman Center in Daytona Beach, Florida says, "the reality is that DCF funding is totally appropriate for financing drug court treatment. In fact, the additional motivation to remain engaged in treatment through the leverage applied by the drug court team results in improved outcomes for those clients referred from drug court relative to other referral sources. This means making choices about where to put dollars to achieve the best outcomes for clients, but also the best outcomes for the community". The process for obtaining funding is relatively simple. The treatment agency annually negotiates a contract with DCF. In that contract, the provider specifies the modalities of treatment to be offered and the number of units of service to be provided. A DCF funded treatment provider can negotiate with DCF to take over funding for those services.

## **VERMONT – PARTNERSHIPS JUSTIFY APPROPRIATIONS**

The Court Administrator's Office in Vermont has worked with other partner agencies to provide staff, resources, and services to drug treatment courts, based on the understanding that these agencies would be providing services to drug court participants in the absence of a drug court. At the local level, these partners include attorneys, probation officers, law enforcement, various treatment providers and case managers. The Court Administrator's Office works with these partners to maximize the effectiveness of the present service delivery system. Each local team first determines what local partners can do differently to meet the needs of the drug court, and only then assesses the need for additional funding.

At the state level, the Court Administrator's Office has worked with the Agency of Human Services (AHS), Division of Alcohol and Drug Abuse Programs (ADAP) to secure and increase funding for coordination and case management for drug treatment courts. Presently, ADAP provides funding for coordination in two counties and case management in four counties. The Court Administrator's Office receives state funding for the state treatment court coordinator. Additional funding from the governor's office for the DETER program (Drug Education, Treatment, Enforcement and Recovery) has funded some of the case management services.

Interagency partnerships both sustain and enhance treatment resources, and have also been used as a justification for the state legislature to continue and increase legislative appropriations for treatment services and case management for drug court participants. The legislature presently allocates a total of \$175,000 for drug treatment court coordination and case management.

The Court Administrator's Office is also working with evaluators to disseminate process and outcome evaluation reports and implement changes or recommendations from evaluations. Reports will include information on the cost-effectiveness of drug courts as well as cost avoidance in other agencies. The state treatment court coordinator has presented overviews of the process evaluations and preliminary outcome evaluation to the Court Administrator's Office, Department of Health Division of Alcohol & Drug Abuse Prevention, the Vermont State legislature, and local communities to justify state funding.

Drug courts in Vermont are working to develop relationships with local colleges and universities and offer internship opportunities in the areas of screening, evaluation, and substance abuse. Drug courts also participate in collaborative community efforts to secure federal and state grants to provide treatment and prevention services. In an effort to engage community stakeholders, local courts continue to seek support from community members for participant incentives programs. Volunteers work with local businesses to secure funding and in-kind donations for incentives. Court staff members give presentations in the community to increase awareness of drug court programs.

## **D. Medicaid and Managed Care**

Medicaid, a state-administered medical services reimbursement program, has been used to cover treatment for many drug court participants. Medicaid is a combination federal and state funded program that has been used in a variety of ways to support the treatment necessary for drug courts. In some states, legislation has allowed for Medicaid reimbursement for all “court mandated” treatment services provided under the Medicaid system. In other states, county governments have provided funds to the state to match the federal Medicaid dollars. Courts have also been able to take advantage of some court discretionary funding to match Medicaid supported treatment. Likewise, courts have sought to work in partnership with managed care organizations to provide necessary treatment services to drug court populations by utilizing health management liaisons in the court and expediting qualification procedures by improving assessment practices.

The federal law sets forth a list of services that states must cover under their program (“mandatory services”) and a list of services that a state may choose to cover (“optional services”). Each state’s Medicaid program is described in its state Medicaid plan, a document that specifies the amount, duration, and scope of benefits provided; the qualifications of providers; and other aspects of the program. The federal agency that administers Medicaid, the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services, approves each state’s Medicaid plan by evaluating the state’s choices against federal requirements. Within these broad national guidelines, each state establishes its own eligibility standards and therefore has the ability to incorporate drug court treatment services into the state’s Medicaid plan.

### **NEW YORK – STATUTORY REIMBURSEMENT AND DEFICIT FUNDING**

The New York Social Services Code (Medicaid Managed Care Act of 1996) requires Medicaid managed care organizations (MCOs) to provide services to drug court participants provided that such services are within the Medicaid benefits package and are reimbursable under Title XIX of the federal Social Security Act. If an MCO enrollee exceeds the benefits while under a court order for alcohol and substance

abuse services, the benefits continue and the plan bills Medicaid via a stop-loss program, which ensures that the provider continues to receive payment for services rendered. All court-ordered services delivered by New York State Office of Alcoholism and Substance Abuse Services licensed Medicaid reimbursable programs will be paid for by the managed care organization. Additionally, an MCO plan is obligated to pay for out-of-network services ordered by the court if that provider is participating in Medicaid. However, local plans are encouraged to include the service providers preferred by the court in their network. When it is necessary to use an out-of-network provider to comply with a court order, such reimbursement is at the Medicaid fee-for-service rate. The court can determine the type of treatment, the length of treatment, and the provider of treatment, and the managed care organization is obliged to cooperate. New York State has a “deficit funding system” that draws on money from the state Office of Alcoholism and Substance Abuse Services to meet the cost of services that are not reimbursed under Medicaid or other payment systems.

### **RHODE ISLAND – CROSS SYSTEM COLLABORATION**

The Rhode Island Family Court Juvenile Drug Court utilizes Medicaid reimbursement to fund substance abuse treatment and mental health services for participants in the drug court program. This funding source has been critical to the success of the court as it enables the program to pay for many services that would otherwise be unavailable. The family court was extremely proactive in collaborating with the Rhode Island Department of Human Services (DHS) to coordinate and implement this initiative. DHS's intention was to establish and operate an accounting system for the purchase of appropriate, effective, high-quality, intensive intervention services for juveniles referred by the drug court.

To accomplish this, DHS certified two case coordination providers (CCPs). CCPs conduct an independent comprehensive assessment of individual and family needs. Based on the assessment, an individualized treatment plan is proposed for review by DHS and approval as a court order of the juvenile drug court for service and payment authorization by DHS. The CCPs are the key parties responsible for keeping the



process moving in an integrated fashion. To be effective, the CCPs are required to work across systems that impact the lives of youth. The CCPs must navigate various systems and social settings to bring together the ingredients for success, which includes working and communicating directly with the drug court. The CCPs work with DHS in such areas as Medicaid eligibility determination, service, and payment prior authorization, and reporting. The CCPs also work with medical care providers and health insurers/HMOs to ensure that physical health needs are identified and met. This process aims to guarantee insurance coverage, to access benefits provided through HMOs, and to identify and track third party liability opportunities where possible. The CCPs work with the substance abuse and mental health treatment providers to monitor treatment, including drug screens, outlined in each treatment plan. The CCPs also assure active collaboration with the school system and neighborhood groups and communities, as part of a comprehensive community linkage plan.

### **NEW YORK – BUILDING RELATIONSHIPS WITH HMOs**

The Buffalo Treatment Court team recognizes the importance of building “a working relationship” with local HMOs, based on mutual cooperation instead of the power of a legislative order. Judge Robert Russell, who presides over the Buffalo Treatment Court, has encouraged managed care organizations “to cooperate voluntarily”. The director of Medicaid managed care for the Erie County Department of Social Services has improved communication between managed care organizations and the criminal justice system by assigning a member of his staff to work full-time in each of Erie County’s six drug courts. The result is that court-ordered mandates for treatment are determined on site to be appropriate recommendations for placement based upon thorough assessment and review. An additional benefit is that the Department of Social Services no longer closes cases when a client is jailed if the jail term is a sanction of the drug court.

## **PENNSYLVANIA – MEDICAID AND MANAGED CARE: CREATION OF MANAGED CARE ORGANIZATION**

The City of Philadelphia has taken a unique approach to provide health care for citizens. To combat fragmented arrangements that once existed for mental health and drug and alcohol treatment, the city formed a unique partnership with the Commonwealth of Pennsylvania to create its own managed care organization under the city's Department of Behavioral Health. This organization, called Community Behavioral Health, was designed to provide behavioral health coverage for all citizens and is one of the only city agencies in the nation to do so. As a result, the city has realized substantial savings through improved management efficiencies that are reinvested to expand services even further. This development was the result of an award from the Robert Wood Johnson Foundation's Program for Chronic Mental Illness. The grant was used to explore how to create a unified system in which funding could be used more flexibly and creatively to provide affordable housing, effective case management, and a broad range of treatment services and supports. The grant enabled Philadelphia to analyze the implications of creating one system in which all three funding streams (Medicaid, state hospital dollars, and state program dollars) could be integrated. When in 1990 the state closed Philadelphia State Hospital, consumers, family groups, treatment providers, advocates, and government officials successfully lobbied the commonwealth to transfer \$60 million from the hospital closure to the city to develop this unified approach to providing health care.

In February 1997, the city launched Community Behavioral Health (CBH), a nonprofit corporation, to provide a variety of social services. Philadelphia's system has become a national model for the delivery of high-quality, cost-effective, managed behavioral health services and has produced significant savings that are being reinvested in a wide range of programs for homeless persons, children in schools and other support services; increased access to treatment; better coordination of services across all jurisdictions and funding streams; and greater accountability to consumers of services and their families, including involvement in planning and monitoring services.

As a result, the Philadelphia Treatment Court works with two distinct funding streams, which are both government funded. Clients entering the court are usually uninsured and have to submit an application to Community Behavioral Health for coverage. Until the approval comes through—and it can take up to 30 days—the client's treatment is paid on a separate city budget line. This temporary funding allows the program to engage the client and conduct an evaluation by a physician on staff who can verify that the client is unemployable. This evaluation is used to expedite the process of receiving benefits from Community Behavioral Health.

### **LOUISIANA – SUPPORT FROM MEDICAID REIMBURSEMENT**

The Jefferson Parish Juvenile Drug Court in Gretna, Louisiana, has continued past the expiration of federal implementation grants by tapping into several sources. The drug court is diversely funded through state appropriations, Medicaid and some local nonprofit funding. The Louisiana State Legislature dedicates state appropriations to the Louisiana Supreme Court. Each jurisdiction applies to the state Supreme Court for funding.

However, the state appropriation does not provide enough money for the entire program. As a result, each month the treatment provider must assist funding treatment for drug court clients by drawing down Medicaid dollars for the client's mental health services. This funding is invested in the juvenile drug court program, as opposed to the general treatment pool. Through these resources, the Jefferson Parish Juvenile Drug Court has actually been able to expand its capacity. According to program coordinator Dawn Palermo, only the continued support and dedication of the treatment providers and the drug court team has allowed the court to provide the highest quality of services to this challenging population.

## **E. Local Strategies for Drug Court Sustainability**

### **HALL COUNTY, NEBRASKA – COUNTIES AND MUNICIPALITIES: REGIONAL PLANNING**

The Central Nebraska Drug Court is a prime example of regionalization. The Central Nebraska Drug Court started taking participants in March of 2002. This was the culmination of 5 years of planning and working together. According to Sheriff Jerry Watson, past executive director for the Central Nebraska Drug Court, in 1997 the drug court in Hall County began to consider ways to develop a program with a larger population base. According to Watson, at the time Hall County had approximately 53,000 residents. The drug court team began to think about including two other adjoining counties, Adams County, population 30,000, and Buffalo County, population 42,000, in their court. Combining all three counties would give the court a population base of 125,000 people.

Once visits were made to each jurisdiction, both Adams County and Buffalo County decided to participate. Within a few months, Phelps County, population 9,700, contacted the team to express their interest in participating. In 2001, Central Nebraska Drug Court was formed to serve these four counties. Sheriff Watson says, “this was by far the most important decision made when looking down the road at sustainability of the program. It just made more sense to spread the overall costs of the program between four funding sources.”

The planning team faced several obstacles in creating this multi-jurisdictional court, but was able to succeed through cooperation and concession. “One obstacle that needed to be overcome was that egos needed to be checked at the door. Everyone sitting around the table was a leader,” said Watson. According to Watson, “it was pretty daunting, the first few meetings, with four county attorneys, four district court judges, four public defenders, probation, and law enforcement from each county sitting around one table. Concession and cooperation are two key ingredients that must exist before this can be successful”. Eventually, the team developed a solid interlocal agreement and memorandum of understanding. Each county will fund the drug court program.

According to the plan developed, each county will contribute a portion of the program's budget based on the number of participants in the program from that county.

### **JACKSON COUNTY, MISSOURI – ANTI DRUG SALES TAX**

The family drug court and juvenile drug court in Jackson County, Kansas City, Missouri says that during the family drug court federal grant period, their court laid the groundwork to incorporate program salaries and ancillary services covered by those grants into the regular court budget. Penny Clodfelter, the family drug court and juvenile drug court program manager, says “there was no magical thinking other than the grants will be ending and the money had to come from somewhere”. Jackson County has many prevention and treatment programs that are supplemented by a quarter-cent sales tax in Jackson County, known as COMBAT (Community Backed Anti-Drug Tax). The family drug court and juvenile drug court program receive some of that funding and some of the staff salaries are paid through that fund. State funding is utilized for client-centered services such as urinalysis testing, short-term transitional living, and assistance with housing deposits or bus passes. Treatment is funneled through the Missouri Department of Mental Health, where the Children's Division provides dedicated case managers for most of the cases in family drug court. Local law firms provide pro bono attorneys for families in the family drug court program. The court also partners with an established network of service agencies to provide a complete range of services. Penny Clodfelter says “there is the old adage, if you pay now, it is less [later] ... we have tried to adhere to that premise”.

### **SHAWNEE COUNTY, KANSAS – DRUG PARAPHERNALIA LICENSING FEES**

A recent initiative to sustain the Third Judicial District Drug Court Program, in Shawnee County, Kansas, developed after drug court staff observed local stores selling and marketing drug paraphernalia as “tobacco paraphernalia.” Drug court staff were unable to understand how stores were openly selling items used to consume illegal drugs. Drug court coordinator Jared Harsin began to notice a distinct marketing and advertising scheme associated with these items. Stores were placing “FOR TOBACCO

USE ONLY” signs next to the items, thus avoiding prosecution for selling drug paraphernalia.

Mr. Harsin decided to draft a resolution and ordinance to regulate the sale of drug paraphernalia items. The ordinance included penalty provisions for sale to minors (which did not previously exist). Mr. Harsin worked with the local sheriff to develop a plan that would benefit both agencies. In addition, Mr. Harsin initiated contact with the district attorney and city prosecutor. Both liked the idea of holding the owners of these retail stores accountable for the sale of these items through a licensing process as proposed in the ordinance. Licensing fees were to be used to support drug court operations. All parties continued to fine-tune the draft of the proposed resolution with the help of judges, assistant district attorneys, and local law enforcement. It became clear that this initiative held great promise and the licensing fees were projected to impact over 200 retail stores in the county. This potentially could generate over \$100,000 of revenue for the drug court program. Ultimately, both the city council and county commission passed the resolution/ordinance, which will provide for regulation of tobacco paraphernalia in Shawnee County as well as much needed revenue for the drug court program.

#### **F. Client Fees**

##### **OGDEN, UTAH – ENTRY AND PARTICIPATION FEE**

The Weber Adult Felony Drug Court in Ogden, Utah utilizes an entry fee of \$250 for attorney’s fees and a participation fee of \$30 per week. This drug court also uses a testing fee of \$5 per test. There are also monetary sanctions for missed groups which are given to a nonprofit provider for the development of incentive systems. Weber Adult Felony Drug Court’s coordinator reports that tobacco settlement funds have also been accessed to support drug court operations.

##### **ST. CHARLES, MISSOURI – FEES COMBINED WITH COMMUNITY SERVICE**

The drug court of the St. Charles Circuit Court of St. Charles, Missouri reports the use of program participation fees of \$50 per month at the beginning of the program.

The fees eventually increase to \$100 per month. It is projected that the fees will cover 70 percent of treatment costs. Clients are also required to complete up to 20 hours of community service per week in order to justify the remaining costs, which are paid through state funds.

### **HALL COUNTY, NEBRASKA – A PATCHWORK OF FUNDING**

The Central Nebraska Drug Court's funding strategy is to use client fees and a patchwork of funding. The group applied for and received a planning grant through the Department of Justice. While elated at receiving a planning grant, Nebraska's drug court remained aware that this money would soon run out. They felt it was necessary to look at other avenues and applied through the State Crime Commission for funds from the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The Bureau of Justice Assistance (BJA) awards grants to states for use by states and units of local government to improve the functioning of the criminal justice system and enforce state and local laws that establish offenses similar to those in the federal Controlled Substances Act. Grants may be used to provide personnel, equipment, training, technical assistance, and information systems for more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of offenders who violate such state and local laws. The Central Nebraska Drug Court received \$21,000 from JAG to help pay a portion of the drug court coordinator's salary. Other federal funding came through appropriated funds from Congress, specifically the Meth Hot Spots money, for which the group qualified. In fiscal year 2004 the court received \$42,000 from this program to help pay for treatment costs and support services for the court. The court was recently notified that they will receive another \$20,000 from the Meth Hot Spots funding.

Nevertheless, the team realized that they needed to make the program as self-sufficient as possible. Thus, when they set up the program, they agreed that participant fees needed to be substantial, and decided to charge each participant \$25 per week while they were in the program. The group soon came to realize that not all participants could pay these fees, especially when first starting the program. The team made it a

requirement that before clients are allowed to graduate, all of their fees must be paid in full. Usually family and friends come forward to help participants pay their fees after they start to see positive results. Past executive director Sheriff Jerry Watson says, “We have stuck to our guns and last year, with around 100 participants in the program, we collected almost \$80,000”. After a few months the team also realized they needed to set a maximum fee that could be charged to participants. The team decided to set the maximum at \$2,300 per participant. The drug court collects from \$80,000 to \$100,000 in client fees. The drug court’s overall annual expenses run just a little over \$200,000, so client fees contribute significantly to the budget.

The drug court also had to locate additional treatment dollars for the program. The team discussed their treatment needs with the state Health and Human Services agency. As a result of that conversation, \$123,000 was made available annually from the Tobacco Settlement funds and specifically earmarked for drug court treatment. On the local level, the drug court has pursued keno funds (county funds obtained from the legalization of keno, a gambling game) and now receives \$5,000 annually from one county. The drug court also receives STOP funding from each county in the amount of \$5,000 per county. The STOP program is a diversion program for traffic offenses. The offending motorist can opt to take a class and pay a set fee for the program, and in return their ticket is set aside by the county attorney. In addition, the drug court received money from a local foundation in one of the counties for \$2,500.

## **G. Local Interagency Partnerships**

### **HALL COUNTY, NEBRASKA – STATE PATROL DONATIONS**

The Central Nebraska Drug Court has been creative in building partnerships with local partners. Past executive director Sheriff Jerry Watson recognized that the court was finding it difficult to secure adequate transportation to service a four-county area. Sheriff Watson contacted the colonel of the Nebraska State Patrol to ask if there was any possibility of obtaining seized vehicles for use by the drug court. The state patrol apprehends the seized vehicles after arresting the occupants for hauling substantial quantities of illicit drugs or drug tainted money on state roadways. The colonel advised



he would be happy to help and provided the court, at no charge, with three vehicles which the staff uses daily. Sheriff Watson also talked to officials from law enforcement agencies in each area who already had large fleets and convinced them to increase the size of their fleets by one. The drug court transferred the titles of the donated vehicles to the law enforcement agencies so they could cover insurance costs. The drug court pays for fuel and repair and other expenses. Sheriff Watson says, "As you can see, we have felt that diversification is the key to sustainability of any program. There are many resources out there, new resources that I'm sure we will continue to discover. There will undoubtedly be a time when our court will need support from the counties we are serving. When this happens, it will be a minimal amount because we will continue to seek other sources of funding and we can spread it over four counties".

## **H. Community Partnerships**

### **LAS CRUCES, NEW MEXICO - FOSTERING A RELATIONSHIP BY GIVING BACK**

The drug court in Las Cruces is giving back to the community. On May 5, 2004, the adult drug court program donated money, raised by the members of the adult drug court team, to the Las Cruces Police Department to purchase a canine for their canine unit. Virginia Acosta, coordinator of the court says, "To my knowledge, we are the first drug court program that has ever done such an endeavor. We did receive local radio and TV coverage about our donation, which we timed during the first week of National Drug Court Month. We raised money from raffles primarily and a nonprofit entity held the money for us until the time of the donation when the money was given to the police department".

The Las Cruces Drug Court has received a small amount of funding through the police department from law enforcement grants. Ms. Acosta used those funds, disbursed through a law enforcement block grant, to send the team representative from the police department to two national drug court trainings as well as the New Mexico state conference. Unfortunately, the block grant was changed and the drug court is no

longer able to use that money; however, a representative from the local police department remains a part of the team.

The drug court has also shown their gratitude to the court's law enforcement team members by inviting the officers to a luncheon and giving them donated gift certificates. The team has also sent letters of appreciation to the chiefs of the local law enforcement agencies.

Adult drug court participants also participate in the "Make a Difference Day" national campaign. After the donation to the police department to purchase a canine, participants in the "Make a Difference Day" project donated canned food to a local food bank. For past "Make a Difference Day" projects, program participants have donated children's books to the local homeless shelter. This project promotes children's literacy and provides the homeless shelter with reading materials for children. "I think our project also touched many drug court participants, too. Our book donations demonstrate that our program needs to be involved in our local community" Virginia Acosta says.

## **Appendix C: Types of Drug Courts and Supporting Research**

Adult drug court programs have been widely studied and there seems to be little doubt that a program that adheres to the 10 key components is effective at reducing recidivism and helping individuals maintain sobriety. Less research has been done on Family Drug courts, Juvenile Drug courts and DUI courts but there is evidence that all of these programs produce positive results. Below is a brief description of the research done on each type of drug court. Because of the volume of research, NCSC has chosen to focus on those studies most widely cited and accepted as well documented studies.

### **A. Adult Drug Courts**

An adult drug court is a treatment based program for adults who are charged with certain crimes and facing criminal prosecution. Generally, the underlying reason for the crime is the offender's misuse of drugs or alcohol. Depending on the eligibility requirements of the court, the crime may be either a misdemeanor or a felony but in almost all instances it must be a nonviolent offense. The purpose of the adult drug court program is to offer non-traditional and individualized treatment for chemical dependency as an alternative to traditional prosecution. The program features a team approach to rigorous treatment, coordinated with intensive supervision, random drug and alcohol testing, and regular and frequent court appearances. A combination of rewards and sanctions are utilized to motivate and encourage participants toward recovery. The participants' progression through the various phases of the program is appropriately recognized.

The NCSC team hesitates to show bottom line numbers when it comes to cost of savings because this is determined on various factors. Each drug court is different in their workflow processes, contributors, funding sources, etc. Kansas should keep in mind several of these factors when preparing for a drug court. There is no guarantee Kansas will see these exact savings; however, this section of the report is to provide evidence that shows drug courts have a correlation to reducing recidivism and

potentially cost to the county after a period of time. Exact dollar amounts cannot be determined nor predicated in this project's scope.

### **1. What Does the Current Research Say About the Effectiveness of Adult Drug Courts?**

NCSC has selected three reports that give a good overview of the successes and challenges facing drugs. The first report reviewed is referred to as the GAO Report of 2005. It is a meta-analysis of several studies done by various drug courts to evaluate their performance. The second report is the Multisite Adult Drug Court Evaluation (MADCE) through the National Institute of Justice, which has only released partial information with the final report due to be published in January 2011. The MADCE report picks up where the GAO Report of 2005 left off. The GAO report essentially concluded that drug courts reduce recidivism but showed mixed results for other outcomes. The MADCE report looks at those other outcomes and whether drug courts have a positive impact on them. The final report is one of the most extensive reports done on a single program. It is from Multnomah County Oregon and reports on the outcomes of the drug court program over a ten year span. More details of these studies are provided below.

### **2. GAO Report on Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes**

The 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act required the Government Accountability Office (GAO) to assess the results of methodologically sound, published empirical evaluations of adult drug court programs. In particular, the GAO was to look at recidivism outcomes of drug court participants with other comparable offenders; substance use relapse of drug court participants with other comparable offenders; program completion by participants, and the costs and benefits of drug court programs. In 2005, the GAO undertook the task of reviewing 27 evaluations which reported information on 39 unique adult drug court programs

implemented between 1991 and 1999. This meta-analysis indicated that the reports on the effectiveness of drug courts to reduce recidivism were largely accurate. The report concluded that drug courts have had a positive effect on recidivism rates thereby breaking the cycle of the “revolving door” where inmates are released only to be admitted to the criminal justice system again due to a new violation of the law. Lower recidivism rates mean fewer people in detention facilities alleviating some of the pressure placed on overcrowded jails. Jail beds are saved while the individual is in drug court instead of sentenced to a jail term and when the individual successfully completes the program and does not recidivate. Thirteen of the 27 drug court programs in the meta-analysis reported overall re-arrest data. Of these 27, ten found statistically significant reductions in overall re-arrest rates for drug court program participants; the lower re-arrest rates ranged from 10 to 30 percent below the comparison group.<sup>20</sup>

Reconviction rates were examined for a period starting with entry into the drug court programs and extending three years out. When compared with the comparison group that went through the conventional court process, the reconviction rates were lower for new offenses for participants of the drug court program. Furthermore, evidence showed recidivism reduction specifically for felonies and drug offenses, an indicator of decreased involvement in substance abuse.

The type of intervention employed by the drug court correlates with observed reductions in recidivism. Two specific types of drug court interventions were examined. First a treatment docket, consisting of an intensive treatment-only intervention; second a sanction docket, consisting of an intervention treatment with graduated sanctions for following protocol. Statistically significant reductions in re-arrests were observed with the treatment and sanctions docket; while the treatment only docket did not show statistically significant results in re-arrests rates.<sup>21</sup>

The net benefits of drug court programs, according to the GAO report, are derived mainly through reductions in recidivism. The GAO reported that monetary

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<sup>20</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, pg. 44.

<sup>21</sup> Ibid at pg. 47.

benefits of reduced recidivism can be placed into two categories: (a) reduction of future expenditure by criminal justice agencies; and (b) reduction in future victimization. Any arrest is a cost to a number of criminal justice agencies, including police, prosecutors, courts, corrections departments, and probation agencies. Reducing arrests by reducing recidivism would benefit these agencies.<sup>22</sup> The report goes on to observe that there is a reduction in costs to individuals who would have been victims of future crimes, stating “[t]he costs to potential victims of crime that are thus avoided include direct monetary cost, such as the value of property not stolen and expenses for health care that are not incurred, and quality-of-life cost, such as costs for pain and suffering that are not experienced.”<sup>23</sup>

The studies included in the GAO report found that the cost to operate drug court programs range from about \$750 to \$8,500 per participant over and above the costs of providing conventional case processing. However, taking into account the drug court programs benefits (especially the reduced costs of crime associated with reduction in recidivism), the evaluation reported a net benefit ranging from about \$1,000 to \$15,000 per participant, mostly because of reduced victimization.<sup>24</sup>

In summary, the GAO report concluded that drug courts have a positive impact on recidivism and reconviction rates both in the short term and the long term. Although it may cost more in up-front costs to put an individual through a drug court program, the long term benefits of less crime and less victimization make the programs a net benefit. Drug court programs that incorporate graduated sanctions with treatment are significantly more successful at reducing re-arrest and reconviction rates than programs that only offer treatment.

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<sup>22</sup> Ibid at pg. 72.

<sup>23</sup> Ibid at pg. 73.

<sup>24</sup> Ibid at pg. 72.

### **3. National Institute of Justice Research Summary: Multisite Adult Drug Court Evaluation (MADCE)**

Drug courts seek to reduce recidivism by assisting offenders to stop using drugs through treatment, testing, legal pressure, judicial review, and the systematic use of sanctions and rewards. However, efforts to determine the efficacy of drug courts have been limited by methodological challenges and inconsistent implementation of key drug court strategies. The objective of the Multi-Site Adult Drug Court Evaluation (MADCE) is to analyze the effects of different drug court models on participant outcomes. The evaluation will address the following questions:

- What is the impact of adult drug courts on drug use, criminal recidivism, employment and other functional outcomes?
- What community, program and offender characteristics predict these short- and long-term outcomes?
- How do changes in short-term outcomes—such as offender perceptions and attitudes—mediate the impact of programs on long-term outcomes?
- Are there cost savings attributable to drug court programs?

#### **a. Methodology**

The five-year MADCE was designed to compare court participants to offenders with similar addiction and drug use profiles and criminal history in comparison jurisdictions that do not offer drug courts. The sample included nearly 1,800 drug court and non-drug-court probationers from 29 rural, suburban and urban jurisdictions across the United States (23 drug court sites and six comparison group sites in eight states: Florida, Georgia, Illinois, New York, Pennsylvania, North Carolina, South Carolina and Washington). The analyses examined the influence of both individual and court-level characteristics in testing the hypothesis that drug court participants have lower rates of drug use and criminal activity and show improved functioning compared to similar offenders not offered drug court.

#### **b. Evaluation Components**

The MADCE employed a multi-level hierarchical model and involved the following evaluation components:

- Process evaluation documenting caseload, service delivery and resources in relation to its planned target population, policies and procedures.
- Impact evaluation measuring the effect of the program intervention on the target population; outcomes of interest include changes in recidivism and relapse rates among program participants, in contrast to nonparticipants.
- Cost Evaluation measuring the cost savings attributable to drug court programs.

### **c. Data Collection**

Data from MADCE included:

- Three in-person, computer-assisted interviews<sup>25</sup> at baseline, six months post-baseline, and 18 months post-baseline. (Note: Although the study was primarily a community-based study (with most study participants on probation or another form of community supervision), many study respondents were incarcerated or in residential treatment programs at any given interview period.)
- Collection of an oral fluid swab to test for the presence of illegal substances at the final 18 month interview.
- Collection of administrative records on treatment and recidivism and drug detection tests for offenders.
- Court observation and interviews with site staff and other stakeholders.
- Detailed budget and other information for cost studies.

### **d. Results from the Evaluation**

Although the MADCE is an ongoing project and the final report has not been published, the researchers have produced preliminary results which address the fundamental question of the evaluation: What is the impact of adult drug courts on alcohol and other drug use, criminal recidivism, employment and other functional outcomes?

The following summary results were presented by the Center for Court Innovation at the annual NIJ Conference in June of 2010.<sup>26</sup>

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<sup>25</sup> Computer Assisted Personal Interviewing: Rather than paper and pencil, interviewers use computers with software that guides them through the interview process and allows them to record responses directly into electronic data.

<sup>26</sup> Green, Mia and Michael Rempel. 2010, June. *Do Adult Drug Courts Work? National Results from the Multi-Site Adult Drug Court Evaluation (MADCE)*. PowerPoint presentation given at the annual NIJ Conference 2010, Arlington, VA, June 2010. Center for Court Innovation. <http://www.urban.org/publications/412151.html>.



- Drug court participation does significantly affect **drug use**.
  - The percent of individuals who used drugs from baseline to 18 months was significantly lower than the comparison group.

<b>Drug</b>	<b>Drug Court (N=764)</b>	<b>Comparison (N=383)</b>
Any Drug	26%	46%
Any Serious Drug	20%	27%
Marijuana	12%	21%
Cocaine	15%	21%
Opiates	6%	7%
Amphetamines	1%	2%
PCP	0%	2%

- Drug court participation does significantly affect **crime rates**.
  - The percent of individuals with criminal activity from baseline to 18 months was significantly lower than the comparison group.

<b>Activity</b>	<b>Drug Court (N=951)</b>	<b>Comparison (N=523)</b>
Criminal Activity	40%	53%
Drug Related Activity	36%	50%

- Drug court participation does significantly affect **incarceration rates**.
  - Days incarcerated over 18 months:
    - Drug Court Participants (N=877) is 64.1 days
    - Comparison Group (N=474) is 97.5 days
- Drug court participation does significantly affect **employment status**.
  - Employment status at 18 months:
    - Drug Court Participants (N=951) 61 percent employed
    - Comparison Group (N=523) 55 percent employed
- Drug court participation does not significantly affect **school enrollment status**.
  - School enrollment status at 18 months:
    - Drug Court Participants (N=951) 11 percent in school
    - Comparison Group (N=523) 10 percent in school

- Drug court participation does significantly affect **annual income**.
  - Annual income at 18 months:

Source	Drug Court (N=951)	Comparison (N=523)
All Sources	\$17,172.00	\$14,304.00
Employment	\$12,746.00	\$10,532.00
Friends and Family	\$1,712.00	\$2,159.00
Public Assistance	\$1,394.00	\$945.00

#### 4. The Impact of a Mature Drug Court Over Ten Years of Operation: Recidivism and Costs

Multnomah County Drug Court in Portland, Oregon is the second oldest drug court in the country. This report examined a ten year period of the court's operation and compared drug court participants with those traditionally adjudicated. The study analyzed the overall impact of the drug court model on criminal recidivism and developed a cost benefit estimate for the impact of the drug court during a ten year period from 1991 to 2001. The study showed consistent levels of success in reducing re-arrest each year of the ten year period. However, the author cautioned about the first two years of the program. While overall demonstrating a positive effect over the ten year period, the drug court has had better years and worse years. The study concluded that the early years of implementation for a drug court are not the best years to choose to examine the court's effectiveness. For the most part, the court showed significant results in reduction of re-arrest rates during the later five year period.<sup>27</sup>

Additionally, the study concluded that the use of jail as a sanction had a significant negative effect. Those with more sanctions had higher rates of re-arrests: "at least in Portland, this suggests that the use of sanctions, particularly jail sanctions, does not lead to offsetting reductions in subsequent recidivism."<sup>28</sup> The study also found

<sup>27</sup> Finigan, M., Carey, S., Cox, A. (2007) The Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs. *NPC Research*, pg. 30.

<sup>28</sup> Ibid at pg. 36.

that the greater the length of time, in days, a participant is in treatment, the lower the recidivism rate, showing that treatment correlates to recidivism.

The study developed a cost benefit estimate for the impact of the drug court, specifically the investment costs in drug courts and the costs invested in the non-drug court (comparison group). Drug court participants spend less time in court, fewer days in jail (29 days less) and in treatment (20 days less), similarly drug court participants spend less time on probation (132 days less) and in prison (25 days less). The report concludes, “drug court participants had significantly fewer re-arrests and bookings. If the number of re-arrests and bookings after drug court is taken as a reasonable indication of criminality, it appears that public safety is safeguarded more by the drug court process than by traditional court processing. In addition, less criminal activity results in less time in court, jail, and on probation, which in turn results in lower costs.”

The study also revealed that there are cost savings in outcomes for drug court participants across every transaction. The greatest benefit is due to less use of jail days by drug court participants followed by less use of prison beds. For Multnomah County the total outcome cost savings is nearly \$7,000.00 for each drug court participant. The data from over ten years of operation showed that the drug court process cost less than a non-drug court process, specifically about \$1,392 per participant less. Drug court sessions are generally short in duration, and less preparation time is required for the attorneys and the judge for each court appearance. This drug court saved the taxpayers more than \$9 million over the ten year period.<sup>29</sup>

The study in Oregon and the GAO study both investigate the effectiveness of treatment and sanctions in a drug court. Specifically, the Oregon report (2007) stated, “those with more sanctions had higher rates of re-arrests. At least in Portland, this suggests (even if the participants receiving sanctions have characteristics predictive of re-arrest) the use of sanctions, particularly jail sanctions, which consumes jail resources, does not lead to offsetting reductions in subsequent recidivism.”<sup>30</sup> Additionally, the GAO report looked at two types of drug court interventions within one

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<sup>29</sup> Ibid at pg. 46.

<sup>30</sup> Ibid at p. 36.

drug court, the D.C. Superior Court. The program overall did not show positive results when looking at recidivism within the program; however upon further investigation, it was found that only the sanction docket which consisted of an intervention that combined referrals to treatment with graduated sanctions showed a statistically significant reduction in re-arrests.<sup>31</sup> The GAO report did not specify what sanctions were used. It could be implied that sanctions and treatment referrals as a form of intervention help reduce re-arrest rates.

## **5. Other Studies**

A recent study of nine adult drug courts in California reported that re-arrest rates over a four year period were 29 percent for drug court clients (and only 17 percent for drug court graduates) as compared to 41 percent for similar drug offenders who did not participate in drug court. This indicates that re-arrest rates decrease if the offender is involved in a drug court program. Additionally, the offender does not have to be a graduate to show a decrease in re-arrest rates. Another study of four adult drug courts in Suffolk County, Massachusetts, found that drug court participants were 13 percent less likely to be re-arrested, 34 percent less likely to be re-convicted, and 24 percent less likely to be re-incarcerated than probationers who were not part of the drug court program.<sup>32</sup>

As New York's first drug court, the Brooklyn Treatment Court has had dramatic results in its re-offending rate. Over the past nine years the treatment court has placed 2,788 defendants in treatment and just under half have graduated successfully from the program. The Brooklyn Treatment Court focuses on assisting nonviolent substance-abusing offenders to drug treatment programs instead of incarceration as a punitive measure. A psychiatric nurse and vocational/rehabilitation counselors are just a few of

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<sup>31</sup> United States Government Accountability Office, (2005) *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*. (GAO-05-219). Washington, DC: U.S. Government Printing Office, (p.47).

<sup>32</sup> Huddleston, 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. Print.

the services the court provides to its participants. Defendants who successfully complete the treatment program have their case dismissed.

This treatment court keeps a watchful eye on all of its offenders. The defendants who plead guilty must follow the strict mandates of the court in order to have the charges dismissed. Each defendant is required to report the progress of their treatment to the court. Recommendations to the judge are made from psychosocial and case management assessments. The judges teach participants that their behavior has a consequence. Sanctions are placed on the participant by assigning jail time while rewards vary from acknowledgement and praise in the courtroom to a reduction in court appearances. Graduates of the program may join an Alumni Bureau, where they are privileged to use the courts social services that are offered.<sup>33</sup>

## **B. Family Drug Courts**

Family drug courts are the offspring of adult drug courts and a direct response to those societal and legislative factors that require courts to alter the manner in which they process child welfare cases involving substance-abusing parents and their parental rights.<sup>34</sup> Compared to traditional court processes, family drug courts (FDCs) require and provide a coordinated multi-system environment (courts, child welfare agencies, and substance abuse treatment providers) to address the complex issues of parental substance abuse, child safety and welfare, and the family as a unit. The integration of the various systems' efforts and resources enhances the likelihood of safe family reunification or permanency for children by reducing or eliminating drug abuse and drug dependent behaviors.

Common goals of FDCs include providing the parent(s) opportunities, services, and support mechanisms to (1) achieve and maintain sobriety, (2) resist further criminal

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<sup>33</sup> "Brooklyn Treatment Court: What's in It for Me?" New York State Unified Court System. 2005. Web. 02 Jan. 2006. <<http://www.courts.state.ny.us/courts/2jd/brooklyntreatment/forme.shtml>>.

<sup>34</sup> *Juvenile and Family Drug Courts, An Overview* Am. Univ. Sch. Pub. Aff. (OJP Drug Court Clearinghouse and Technical Assistance Project, Wash. D.C.) Rev. 1999, at <http://www.american.edu/justice/publications/juvoverview.htm>. These cases include abuse and neglect, dependency, termination of parental rights, custody and visitation, and guardianship.

activity, (3) develop and maintain effective parenting and coping skills on a daily basis, and (4) develop skills that facilitate emotional, financial, and personal self-sufficiency.

FDCs also distinguish themselves from adult drug courts in that:<sup>35</sup>

- The welfare of the child(ren) is central. The approach is family-focused (as opposed to the individual client focus in adult drug courts) and priority is given to the impact of court action upon the welfare of the child(ren).
- Comprehensive assessments for substance abusing parent(s) (as in adult drug courts) are required, but other needs of each client are also assessed, including their skills training deficits, developmental capabilities, and any mental health issues. There also are comprehensive evaluations of the child(ren)'s health, safety, and developmental needs.
- The objectives of parental sobriety and program compliance is required (similar to adult drug courts), but also the development of mature and responsible parenting skills including the demonstrated ability to provide a safe and permanent placement for the child(ren).
- Sanctions levied against parents must have as little adverse impact on the child as possible (versus sanctions in adult courts that are based primarily on the criterion of their appropriateness for the individual's noncompliance).

According to the Substance Abuse and Mental Health Services Administration (SAMHSA) family drug courts improve outcomes for children and families in child welfare cases.<sup>36</sup> SAMHSA, as well as the findings from the handful of family drug court evaluation studies, suggest that family drug courts may reduce the time for final disposition of the abuse and neglect case, reduce the length of stay in foster care, and increase the likelihood of family reunification.<sup>37</sup>

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<sup>35</sup> Richard Washousky and Hank Pirowski, *Erie County Family Treatment Court Evaluation*, Erie Community College: Department of Alcohol and Substance Abuse, 2003.

<sup>36</sup> Substance Abuse and Mental Health Services Administration, Request for Proposal Number 270-02-7107, *Family Treatment Drug Court Evaluation*, Attachment 1, Issued April 5, 2002.

<sup>37</sup> *Family Drug Court Evaluation, Final Report* by NPC Research submitted to Substance Abuse and Mental Health Services Administration March 2007.

## **1. What Does Current Research Report About the Effectiveness of Family Drug Courts?**

The Family Drug Court Evaluation, final report published by SAMHSA in 2007 examined four Family Treatment Drug Court's (FTDC) located in California (San Diego and Santa Clara Counties), Nevada (Washoe County), and New York (Suffolk County). The report focused on outcome for mothers and their families by comparing 739 FTDC cases with 1,120 comparison cases. The report asked "Do Drug Courts Work?" and looked at three outcomes, treatment, child welfare, and court outcomes. Although the study found several significant results within each outcome category, the overall effect was relatively small and may not be observed in all family courts.

- Treatment Outcome FTDC parents were more likely to enter treatment more quickly, stay in treatment longer, and were more likely to complete treatment than comparison groups. Only treatment completion was directly related to the likelihood of reunification.
- Child Welfare Outcomes Children of FTDC mothers spent fewer days in out-of-home placements and were more than twice as likely to be reunified with their parents, compared to non-FTDC children. FTDC participation contributed to the likelihood of reunification above and beyond its effect on treatment.
- Court Outcomes FTDC mothers were significantly less likely than comparison mothers to have indications of non-compliance in their court record. FTDC cases were significantly longer than comparison cases; however, many of the cases were still open and actual length of many of the cases could not be determined. Length of court cases results should be interpreted with caution.

## **2. How and for Whom do Drug Courts Work?**

The report investigated the effects of FTDC experiences on outcomes, the impact of treatment experiences and whether FTDC participation, over and above its contribution to treatment outcomes, had a unique, 'value added' contribution to reunification. In Santa Clara and Washoe Counties where a more 'traditional' FTDC model which focused on parents whose children had been removed from their care and involved frequent court appearances, timely access to quality treatment services, significant results were observed:

- 55-60 percent increase in the length of stay in treatment for participants
- 40-54 percent increases in the rate of treatment completion for participants
- 14-36 percent reduction in the number of days spent in out-of-home placement
- 42-50 percent increases in the percentage of children reunified with their parents

The study also looked at various characteristics of the parents, such as demographics, income, social standing. These characteristics could not be linked to overall success, suggesting that the model is effective for a broad range of parents. Successful parents who graduated from FTDC and who were reunified with their children were those who had timely access to treatment services and who were able to remain in, and complete treatment. FTDC's influence on treatment experiences is significant and an important factor in parents' success. Similarly, parents who participated in FTDC who had positive treatment experiences were more likely to be reunified with their children than comparison groups.<sup>38</sup>

### **C. Juvenile Drug Courts**

Juvenile drug courts are intensive treatment programs established within and supervised by juvenile courts to provide specialized services for eligible drug involved youth and their families. Cases are assigned to a juvenile drug court docket based on criteria set by local officials to carry out the goals of the drug court program. Juvenile drug courts provide (1) intensive and continuous judicial supervision over delinquency and status offense cases that involve substance-abusing juveniles and (2) coordinated and supervised delivery of an array of support services necessary to address the problems that contribute to juvenile involvement in the justice system. Service areas include substance abuse treatment, mental health care, primary health care, family and relationship development, and education.<sup>39</sup>

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<sup>38</sup> Worcel, Sonia D., Beth L. Green, Carrie J. Furrer, Scott W. Burrus, and Michael W. Finigan. Family Treatment Drug Court Evaluation: Final Report. Rep. Portland: NPC Research, 2007. Print.

<sup>39</sup> Cooper, C. (2001). *Juvenile Drug Court Programs*. OJJDPJ Juvenile Accountability Block Grants Series, Bulletin, NCJ 184744, <http://www.ncjrs.org/pdffiles1/ojjdp/184744.pdf>.



The number of juvenile courts has increased significantly in the last ten years. As of June 2009, there were 482 juvenile drug courts in operation within the United States and 51 juvenile drug courts in the planning stages.<sup>40</sup> Typically, a juvenile drug court consists of a docket within a juvenile court to which selected delinquency cases, and in some instances, status offenders are referred for handling by a designated judge. The youth referred to this docket are identified as having problems with alcohol and/or other drugs. The juvenile drug court judge maintains close oversight of each case through frequent (often weekly) status hearings with the parties involved. The judge leads and works as a member of a team that comprises representatives from treatment, juvenile justice, social services, school and vocational training programs, law enforcement, probation, the prosecution, and the defense. The team determines how best to address the substance abuse and related problems of the youth and his or her family that have brought the youth into contact with the justice system.<sup>41</sup>

Juvenile drug courts share many commonalities with adult drug courts in terms of structure, goals and philosophy; however, the age and maturity of juvenile court clients dictates that juvenile drug courts operate in a distinct manner from adult drug courts. One challenge unique to juvenile drug courts is the engagement of youth fully into treatment, including their acceptance of the help that is needed in order to face their drug abuse. Many youth do not feel that they have a problem with drugs, and are often in denial about the problem. At the same time, the difficulty of establishing a pattern of abuse or addiction is present due to adolescents having a shorter history of use than adults.<sup>42</sup>

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<sup>40</sup> BJA Drug Court Clearinghouse Project (June 2009). *Summary of Drug Court Activity by State and County, Juvenile and Family Drug Courts*. American University, Washington D.C. Bulletin accessed at <http://www1.spa.american.edu/justice/documents/2153.pdf>.

<sup>41</sup> Charles McGee, John Parnham, Thomas T. Merrigan, and Michael Smith (June 2000 rev.), *Applying Drug Court Concepts in the Juvenile and Family Court Environments: A Primer for Judges*. Carolyn S. Cooper, ed., Washington, D.C.: American University. <http://www1.spa.american.edu/justice/documents/1935.pdf>.

<sup>42</sup> State of Ohio Office of Criminal Justice Services (July 2005). *Juvenile Drug Court Executive Summary*. [http://www.publicsafety.ohio.gov/links/ocjs\\_JCexec1.pdf](http://www.publicsafety.ohio.gov/links/ocjs_JCexec1.pdf).

## 1. What Does Current Research Report About the Effectiveness of Juvenile Drug Courts?

Fewer evaluations of juvenile drug courts have been conducted than with their adult counterparts. However, the evaluations that have been conducted point to similar promising results including higher school retention and graduation rates and lower recidivism levels. Other positive outcomes include increased academic success, physical fitness and health, healthier family relationships, and births of drug-free babies.<sup>43</sup> The Utah Juvenile Drug Court Evaluation completed in 2010 found that re-arrest rates for JDC participants at 30 months after initial arrest was 34 percent while the comparison probation group re-arrest rate was 48 percent.<sup>44</sup> Even more striking is the Clackamas County Juvenile Drug Court Outcome Evaluation<sup>45</sup> (Portland, OR) completed in 2004 which found that the re-arrest rate for JDC participants at 24 months after initial juvenile court entry was 44 percent while re-arrest rate for the comparison group was 82 percent. Furthermore, the Clackamas County Evaluation found that participation in the JDC after two years resulted in a net savings of \$971 per JDC participant compared to the comparison group when considering the total program, law enforcement and detention costs.

## 2, Juvenile Drug Court Evaluations

Research on Juvenile Drug Treatment Courts (JDTCs) has lagged considerably behind that of its adult counterparts. Although evidence is mounting that JDTCs can be effective at reducing delinquency and substance abuse, the field is just beginning to identify the factors that distinguish effective from ineffective programs. The following summarizes a recent conference paper, *The Facts on Juvenile Drug Treatment Courts*,

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<sup>43</sup> BJA Drug Court Clearinghouse Project (1998), *Juvenile and Family Drug Courts: An Overview*. <http://www.ncjrs.gov/html/bja/jfdcoview/dcpojuv.pdf>.

<sup>44</sup> Erin E. Becker, Audrey O. Hickert, M.A., M.C.J. and Moisés Próspero, Ph.D. (January 2010) *Evaluation of Utah Juvenile Drug Courts*. Utah Criminal Justice Center, University of Utah. <http://www1.spa.american.edu/justice/documents/2818.pdf>.

<sup>45</sup> Shannon M. Carey, Ph.D., NPC Research (February 2004) *Clackamas County Juvenile Drug Court Outcome Evaluation*. US Dept of Justice, Bureau of Justice Assistance. Assistance. <http://www.npcresearch.com/Files/CCJDC%20Outcome%20Evaluation%20Final%20Report%20-%20February%202004.pdf>.

presented at the 2010 Drug Treatment Court Conference in Winston-Salem, NC.<sup>46</sup> This paper systematically reviews and summarizes the most recent and significant Juvenile Drug Court evaluations completed around the country in the last five years.

Prior to 2006, meta-analytic studies<sup>47</sup> concluded that JDTCs reduced delinquency by an average of only about three to five percent greater than comparison programs, such as juvenile probation. Although marginally statistically significant, this difference is small in magnitude. Fortunately, newer findings are more encouraging, which suggests the programs may be getting better at their operations with increasing experience.

A recent large-scale study in Utah found that participants in four JDCs recidivated at a significantly lower rate than a matched comparison sample of juvenile drug involved probationers. At 30 months post-entry, 34 percent of the JDC participants had been re-arrested for a new juvenile or adult offense, as compared to 48 percent of the probationers. In addition, the average time-delay before the first new arrest was approximately a full year later for the JDTC participants. Similarly, a multi-site study in Ohio found that JDTC participants were significantly less likely than matched juvenile probationers to be arrested for a new offense at 28 months post-entry (56 percent vs. 75 percent).

The most reliable findings come from experimental studies, in which participants are randomly assigned to different treatment conditions. In a well-controlled experiment, randomly assigned juvenile drug involved offenders to traditional family

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<sup>46</sup> Douglas B. Marlowe, J.D., Ph.D. (2010). *The Facts on Juvenile Drug Treatment Courts*. National Association of Drug Court Professionals. Conference paper presented at the 2010 Drug Treatment Court Conference, Winston-Salem, NC.

<sup>47</sup> Meta-analysis is an advanced statistical procedure that yields a conservative and rigorous estimate of the average effects of an intervention. It involves systematically reviewing the research literature, selecting out only those studies that are scientifically defensible according to standardized criteria, and then statistically averaging the effects of the intervention across the good-quality studies (e.g., Lipsey & Wilson, 2002).

court services, JDC, or JDC enhanced with additional evidence-based treatments.<sup>48</sup> The results revealed significantly lower rates of substance use and delinquency for the JDC participants as compared to the family court, and the effects were further increased through the addition of the evidence-based treatments. This study provides strong scientific support for the potential effectiveness of JDCs in reducing substance use and delinquency.

Early studies on JDCs yielded mixed results, but recent findings are giving cause for greater optimism as the programs have become more adept at their operations. Significant positive outcomes have been reported for JDCs that adhered to best practices and evidence-based practices identified from the fields of adolescent treatment and delinquency prevention. These practices include requiring parents or guardians to attend status hearings; holding status hearings in court in front of a judge; avoiding over-reliance on costly detention sanctions; reducing youths' associations with drug-using and delinquent peers; enhancing parents' or guardians' supervision of their teens; and modeling consistent and effective disciplinary practices. More research is needed to replicate these findings and identify other practices that can further enhance outcomes in JDC programs.

#### **D. DUI Courts**

Alcohol impaired driving is one of America's most-often-committed and deadliest crimes. In 2007, 41,059 people nationwide were killed in motor vehicle traffic crashes and alcohol-impaired driving accounted for 32 percent of these fatalities.<sup>49</sup> In 2007, of the 17,036 alcohol-related fatalities, 54 percent (or 9,173) involved a hardcore offender defined as a person with a BAC of .15 or greater, or with a prior DUI arrest.<sup>50</sup>

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<sup>48</sup> The enhanced evidence-based treatments were Multi-Systemic Therapy (MST) and contingency management (CM), alone and in combination. MST is a manualized intervention that trains parents, teachers and other caregivers to assist in managing the juvenile's behavior. CM involves providing gradually escalating payment vouchers for drug-negative urine specimens and other positive achievements.

<sup>49</sup> *Home | National Highway Traffic Safety Administration (NHTSA)*. Web. 02 Nov. 2010. <<http://www.nhtsa.com>>.

<sup>50</sup> *National Transportation Safety Board*. Sept. 2009. Web. 2 Oct. 2010. <<http://www.nts.gov/>>.

Traditional sanctions and methods for dealing with hardcore offenders have been unsuccessful: Punishment, unaccompanied by treatment and accountability, does not seem to be an effective deterrent for the hardcore offenders. DUI courts are the offspring of adult drug courts, as a response to the lack of success in dealing with hardcore offenders, are a relatively new strategy which has been developed as a way more effectively fight these hardcore impaired drivers.

Stated simply, a DUI Court is an accountability court dedicated to changing the behavior of hardcore offenders arrested for DUI. The goal of DUI Court or DUI/Drug Court is to protect public safety by using the Drug Court model to address the root cause of impaired driving: alcohol and other substance abuse.<sup>51</sup> DUI drug courts provide (1) intensive and continuous judicial supervision over their program participants and (2) coordinated and supervised delivery of support services necessary to address the problems faced by hardcore DUI offenders including substance abuse treatment, mental health counseling and education. While DUI courts generally have the same goals as standard Drug Courts, they have a slightly different emphasis to address the concerns specific to meeting the needs of hardcore driving offenders. For example, DUI Courts assist participants in developing transportation plans to enable participants to continue to work and/or go to school, receive treatment, and attend self-help meetings. The Guiding Principles of DUI Courts as endorsed by the National Association of Drug Court Professionals<sup>52</sup> are as follows:

1. Determine the Population (hardcore impaired drivers)
2. Perform a Clinical Assessment: (determine client needs)
3. Develop the Treatment Plan
4. Supervise the Offender
5. Develop Agency, Organization, and Community (enhance credibility, bolster support, and broaden available resources)
6. Develop a Judicial Leadership Role
7. Develop Case Management Strategies

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<sup>51</sup> DUI Courts: Information from the National Center of DUI Courts." *Colorado Department of Public Safety*. DCJ/ORS, 17 Sept. 2009. Web. 02 Nov. 2010.  
<<http://cdpsweb.state.co.us/cccj/PDF/Sentencing%20Subcommittee/Drug%20Policy%20task%20force/Docs/DUI%20Courts.pdf>>.

<sup>52</sup> Profession Service Division of NCDP. "The Guiding Principles | NCDC." The Guiding Principles of DUI Courts. NCDC. Web. 02 Nov. 2010.  
<<http://www.dwicourts.org/learn/about-dwi-courts/-guiding-principles>>.

8. Address Transportation Issues
9. Evaluate the Program (document behavioral change and evaluate program success)
10. Ensure a Sustainable Program (strategic planning)

### **What Does Current Research Report About the Effectiveness of DUI Courts?**

Taken as a whole, research findings suggest that good-quality DUI Courts can significantly reduce DUI repeat offenses and other recidivism when they are fairly and appropriately evaluated; however, it should be noted that evaluations of DUI Courts have yielded inconsistent findings.<sup>53</sup> The mixed results, at least in part, may be attributed to wide variability in the integrity of the DUI Court programs themselves, as well as to variability in the quality of the research designs. Positive outcomes for DUI Courts have been reported when at least three conditions were met. These include:

- The researchers first conducted a process evaluation to ensure the programs were in compliance with the *Ten Guiding Principles of DUI Courts* or the *Ten Key Components of Drug Courts* (NADCP, 1997).
- The participants were followed for at least two years from entry, which allows sufficient time for recidivism to occur and be detected by law enforcement.
- The sample sizes were large enough to provide adequate statistical power for the data analyses.

A strong evaluation of a DUI Court was recently completed on the Waukesha (Wisconsin) Alcohol Treatment Court. The DUI Court sample consisted of third-time DUI offenders, 94 percent of whom had been diagnosed as alcohol dependent. Outcomes at 24 months post-entry were compared to those of a wait-list sample of third-time DUI offenders from the same county who served out their jail sentences before a program slot became available. Wait-list comparisons are generally considered to be the next best approach after random assignment because the mere happenstance of a full census is unlikely to lead to the systematic exclusion of

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<sup>53</sup> Douglas B. Marlowe, J.D., Ph.D. (2010). *The Facts on DUI Courts: A Systematic Review of DUI Court Program Evaluations*. National Association of Drug Court Professionals. Conference paper presented at the 2010 Drug Treatment Court Conference, Winston-Salem, NC.

individuals with more severe problems or poorer prognoses, and therefore is unlikely to bias the results.

Before conducting the outcome evaluation, the researchers first completed a process evaluation to document the program's adherence to the *Ten Key Components*. Using an intent-to-treat analysis which included all participants who entered the program, recidivism rates for any new offense were found to be significantly lower for the DUI Court participants than for the comparison sample (29 percent vs. 45 percent).

Positive findings were also reported in a three-county evaluation of DUI Courts in Michigan (Michigan State Court Administrative Office & NPC Research, 2007). The comparison samples consisted of matched DUI offenders from the same counties who would have been eligible for the DUI Courts but had been arrested in the year prior to the founding of the programs. Outcomes were evaluated at one and two years post-entry and were performed on an intent-to-treat basis including both graduates and unsuccessful terminations.

The DUI Court participants were significantly less likely in two out of the three counties to be arrested for a new offense within two years of entry, and were significantly less likely to be arrested for a new DUI offense in one of the counties. In nearly all of the comparisons, the trends favored better outcomes for the DUI Court participants; however, small sample sizes contributed to insignificant results in some instances due to inadequate statistical power.

When DUI offenders have been placed into traditional drug court programs, without any specialized programming designed to meet their particular clinical and supervisory needs, outcomes have been considerably poorer than for the other drug court participants. It does not appear warranted to simply mix DUI offenders into "hybrid" DUI/Drug Court programs without making meaningful efforts to match the services to their unique needs and clinical profiles.

Taken as a whole, research findings suggest that good-quality DUI Courts can significantly reduce DUI and other recidivism when they are fairly and appropriately evaluated. The critical issues include ensuring the programs adhere to best practices

and evidence-based practices, following the participants for a sufficient period of time (at least two years) for recidivism events to occur and be detected by law enforcement, and examining large enough samples to statistically power the analyses. The onus now is on the DUI Court field to improve the quality of DUI Court program evaluations and ensure fidelity to the DUI Court model in day-to-day practice.

### **E. Reentry Courts**

Reentry courts have been in existence for a decade or more but have expanded greatly in recent years. The United States Department of Justice, Office of Justice Programs has played an important role in fostering the development of these courts, the funding of program evaluations, and the development of best practices. The Second Chance Prisoner Reentry bill of 2008 provided additional federal impetus for creation of reentry courts modeled on those for non-violent drug offenders. A large number of reentry courts have been based on a drug court model and the performance criteria associated with that model.<sup>54</sup> The purposes of reentry courts vary considerably, but the overarching core elements of these courts are highly similar: offender assessment and planning that begins prior to release; active offender oversight; accountability to the community; graduated and parsimonious sanctions; access to a variety of support services; and positive judicial reinforcement.

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<sup>54</sup> The National Drug Court Institute survey identified 28 Reentry Courts as of December 2007. See Table 5, page 19 in Huddleston, 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](http://www.ndci.org/publications/PCPII1_web.pdf) <[http://www.ndci.org/publications/PCPII1\\_web.pdf](http://www.ndci.org/publications/PCPII1_web.pdf)>. National Drug Court Institute (May 2008).



## 1. What Does Current Research Report About the Effectiveness of Reentry Courts

The following excerpt was taken from the Reentry Policy Council<sup>55</sup> website accessed at: [http://reentrypolicy.org/announcements/reentry\\_courts\\_emerging\\_trend](http://reentrypolicy.org/announcements/reentry_courts_emerging_trend).

Following the summary a list of resources for further information is provided.

From the Reentry Policy Council Website:

Reentry courts are designed to address the unique circumstances of prisoner reentry and increase the likelihood of successful community reintegration. Over the past five years, they have begun appearing around the country. This feature explores the emerging reentry court trend by asking five questions: (1) Where do reentry courts exist? (2) Whom do reentry courts serve? (3) What are the goals of reentry courts? (4) How are reentry courts administered? And (5) how effective are reentry courts? Resources for more information on reentry courts are also included.

## 2. Where do Reentry Courts Exist?

Reentry courts are an extremely new addition to the spectrum of alternative criminal justice proceedings, and their nationwide implementation has been quite limited. The main driver of reentry court implementation to date has been the Office of Justice Programs' (OJP) Reentry Court Initiative (RCI), which was launched in February of 2000. The RCI established nine pilot reentry court sites:

- San Francisco, CA
- El Paso County, CO
- New Castle County, DE
- Sussex County, DE
- Broward County, FL

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<sup>55</sup> About the [Reentry Policy Council](http://reentrypolicy.org): The Reentry Policy Council (RPC) was established in 2001 to assist state government officials grappling with the increasing number of people leaving prisons and jails to return to the communities they left behind. The RPC was formed with two specific goals in mind: (1) To develop bipartisan policies and principles for elected officials and other policymakers to consider as they evaluate reentry issues in their jurisdictions; and (2) to facilitate coordination and information-sharing among organizations implementing reentry initiatives, researching trends, communicating about related issues, or funding projects.

The Reentry Policy Council is a national project coordinated by the Council of State Governments Justice Center, a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The Justice Center provides practical, nonpartisan advice and consensus-driven strategies – informed by available evidence – to increase public safety and strengthen communities. To learn more about the Justice Center, visit <http://justicecenter.csg.org>.

- Cedar Rapids, IA
- Fayette County, KY
- Campbell and Kenton counties, KY
- Harlem (New York City), NY
- Richland County, OH
- Mineral, Tucker, and Grant counties, WV

In addition to the RCI sites, preliminary research has identified at least two other reentry court sites, one in Allen County, IN, which was also established in 2000, and a combined "reentry drug court" in Delaware, which was founded in 1993. There does not appear to be an exhaustive, centralized repository of information on reentry courts, and it is likely that there are additional reentry court programs in other jurisdictions.

### **3. Whom do Reentry Courts Serve?**

Unlike most other alternative court-based programs, reentry courts serve individuals who have already been convicted and incarcerated. In general, reentry courts enroll parolees who have been screened and selected for participation and who have consented to the jurisdiction of the reentry court. In some cases, participants may not be on parole and may instead be compelled by sentence or other court order to participate in the reentry court docket.

Though criteria for selection vary across courts, participants are generally selected based on the nature of their offense, their criminal history, and their assessed likelihood of recidivism. Most courts aim to serve non-violent offenders at a high risk for recidivism. In at least two cases, Kentucky and Delaware, the reentry court is combined with a drug court model, and specifically targeted at parolees with a need for substance abuse treatment.

### **4. What are the Goals of Reentry Courts?**

As stated in the RCI documentation, the goal of the program is to "establish a seamless system of offender accountability and support services throughout the reentry process." As part of the system of offender accountability, reentry courts aim to establish a program of graduated sanctions and rewards that can be used to influence parolee conduct without automatically resorting to incarceration, the most expensive

and extreme sanction. From another perspective, the implicit goal of reentry courts is to reduce recidivism among participating individuals.

## **5. How are Reentry Courts Administered?**

Across the identified reentry courts, there is not a consensus as to an ideal reentry court's administrative structure. In some cases, administrative authority is vested in the judiciary, while in others authority is retained by administrative law judges and/or a parole board.

Depending on the administrative authority, the mechanisms for enrolling reentry court participants also vary. In some cases, individuals are released from prison into judiciary-administered reentry courts via a court order issued prior to release. In other judiciary-administered programs, participation in the reentry court is compelled at the initial sentencing. In cases where parole is used as the release mechanism, participation in the reentry court is usually established as a condition of release.

In general, regardless of the administrative authority, all reentry courts require that participants appear before the court on a regular basis for review, and establish a personalized program plan for each participant to follow. Most programs require between six months and one year of reentry court participation.

## **6. How effective are Reentry Courts?**

There is some outcome data available for some of these reentry courts; however, none of it can be considered particularly conclusive. In all cases, sample sizes were extremely small and outcomes were not necessarily significant. In most cases, because of the relatively recent inception of these programs, it may take several years before extensive evaluations involving robust samples and adequate follow-up periods can be conducted. Nevertheless, preliminary outcome data in most cases are promising. In Harlem, for example, reentry court participants were less likely to be convicted of a new felony or misdemeanor within one year of release than similar releasees who did not participate in the program.

Evaluation data from the reentry/ drug court in Delaware, and RCI pilot program in Kentucky also show promising results. Further investigation may uncover additional evaluation reports for other sites; an overall outcome evaluation of the RCI pilot program has not yet been conducted.

### **Additional Resources on Reentry Courts**

Bureau of Justice Assistance (2002). *Strategies for Court Collaboration With Service Communities*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

<http://www.ncjrs.org/html/bja/collaboration/index.html>

Close, Daniel, Melissa Aubin, and Kevin Alltucker (2008). *The District of Oregon Re-entry Court: Evaluation, Policy Recommendations, and Replication Strategies*. United States District Court, District of Oregon.

[http://ftp.uscc.gov/TRAINING/National\\_Seminar\\_Materials/008c\\_Reentry\\_Court\\_Doc.pdf](http://ftp.uscc.gov/TRAINING/National_Seminar_Materials/008c_Reentry_Court_Doc.pdf)

Farole, Donald J., Jr. (2003). *The Harlem Parole Reentry Court Evaluation: Implementation and Preliminary Impacts*. Center for Court Innovation, New York State Division of Criminal Justice Services and Bureau of Justice Assistance.

<http://www.courtinnovation.org/uploads/documents/harlemreentryeval.pdf>

Gebelein, R. (2003). *Delaware's Reentry Drug Court: A Practical Approach to Substance Abusing Offenders*. Dover, DE: Superior Court of Delaware.

[http://courts.state.de.us/Courts/Superior%20Court/pdf/?Reentry\\_France\\_27Mar03.pdf](http://courts.state.de.us/Courts/Superior%20Court/pdf/?Reentry_France_27Mar03.pdf)

Lindquist, C, Hardison, J, and Lattimore, P. (2003). *Re-Entry Courts Process Evaluation (Phase 1). Final Report*, National Institute of Justice, Washington, D.C. National Institute of Justice Sponsored. <http://www.ncjrs.gov/pdffiles1/nij/grants/202472.pdf>

Maruna, Shadd and Thomas P. LeBel (2003). *Welcome Home? Examining the "Reentry Court" Concept from a Strengths-based Perspective*. Western Criminology Review.

<http://wcr.sonoma.edu/v4n2/manuscripts/marunalebel.pdf>

Office of Justice Programs (1999). *Reentry Courts: Managing the Transition From Prison to Community*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs. <http://www.ncjrs.org/pdffiles1/ojp/sl000389.pdf>

Wilkinson, R.A., and Bucholtz, G.A. (2003). *Prison Reform Through Offender Reentry: A Partnership Between Courts and Corrections*. Unpublished paper. Columbus, OH: Ohio Department of Rehabilitation and Correction.

<http://www.drc.state.oh.us/web/Articles/article93.htm>