

**THERAPEUTIC JUSTICE: THE EFFICACY OF THE DRUG COURT  
MOVEMENT IN GEORGIA**

Institute for Court Management  
Court Executive Development Program  
Phase III Project  
May, 2002

Nolan E. Martin  
District Court Administrator  
Eighth Judicial Administrative District of Georgia  
Lyons, Georgia

## ACKNOWLEDGMENTS

Many thanks to the following people and organizations for their guidance, support, and direction:

Mary Sammon, National Center of State Courts

Kevin Bowling, Michigan Judicial Institute

Chief Judge Walter C. McMillan, Jr.

Judge Tom C. Rawlings

Ross Moroz

The Administrative Office of the Courts of Georgia

and

The judges, district court administrators, and drug court professionals  
of Georgia who assisted in making this project successful.

## **TABLE OF CONTENTS**

<b>Abstract.....</b>	<b>i</b>
<b>Introduction.....</b>	<b>1</b>
<b>SECTION I</b>	
<b>What is Therapeutic Jurisprudence?.....</b>	<b>6</b>
<b>History of Drug Courts.....</b>	<b>11</b>
<b>History of Drug Courts in Georgia.....</b>	<b>13</b>
<b>SECTION II</b>	
<b>State-wide Survey of Judges, Court Administrators, and Drug Court Professionals.....</b>	<b>18</b>
<b>Perceptions Reflecting Knowledge of Drug Addiction Issues and Drug Treatment Options.....</b>	<b>20</b>
<b>Existing Drug Courts in Georgia - Findings from the Research.....</b>	<b>23</b>
<b>Description of Drug Courts in Georgia - What the Research Indicates.....</b>	<b>25</b>
<b>Fiscal Issues and Analysis - Existing and Planned Drug Courts.....</b>	<b>33</b>
<b>Efficacy of Existing Drug Courts in Georgia.....</b>	<b>38</b>
<b>Planned Drug Courts in Georgia - Findings from the Research.....</b>	<b>49</b>
<b>SECTION III</b>	
<b>Obstacles to Additional Drug Courts in Georgia.....</b>	<b>52</b>
<b>The Issue of Authority to Create Drug Courts and the Need for Legislation.....</b>	<b>55</b>
<b>Conclusions from the Research and Public Policy Implications.....</b>	<b>66</b>
<b>APPENDIX</b>	
<b>BIBLIOGRAPHY</b>	

## **ABSTRACT**

Drug Abuse has been a cancer on our society from some time. No state is immune from this national problem, including Georgia. The costs to society and the personal toll on individuals and families is immeasurable. The legislative branches of federal and state government have dealt with this public crisis as a criminal justice issue and imposed harsher sentences and minimum mandatory sentences on abusers. But has this approached worked? Has it deterred future criminality? Has it been cost-effective? The answer is no.

For a little more than a decade, some judicial systems have experimented with drug courts as part of a larger therapeutic jurisprudence movement. Georgia has (on a limited basis) instituted this approach which attempts to address the root cause of addiction through long term drug education and treatment; while improving the education and employability of the drug offender.

Based upon a state-wide survey of judges, court administrators, and drug court professionals, this paper identifies existing drug courts in Georgia, provides a description of them, and determines the efficacy of Georgia's drug court movement. This research also reveals obstacles to implementation of additional drug courts in Georgia. One hindrance is the lack of legislation authorizing the formation of drug courts and establishing drug courts as a remedy for drug and drug related crime.

This research concludes that drug courts are effective and efficient. However, without legislative authorization, drug courts will never be institutionalized in Georgia and will not benefit a large majority of its citizens.



## Introduction

Social and political outcry in the 1980's over the ever increasing threat of drugs to our society precipitated the emergence of America's War on Drugs as a public policy. This national appeal resulted in dramatic increases in drug-related arrests. More than a million drug arrests were made in the United States in 1991, a 56 percent increase since 1982.<sup>1</sup> The number of people convicted of substance abuse offenses in federal courts increased approximately 50 percent from 1980 to 1987, while the number of defendants sentenced to prison increased over 70 percent.<sup>2</sup> In Georgia, over 30 percent of all inmates entering the prison system each year were incarcerated for drug crimes during those same years. And over 60 percent of all inmates entering the prison system every year admit to having a problem with drugs, alcohol, or a combination of both.<sup>3</sup> Some studies suggest that 80 percent of inmates have criminal histories because of substance abuse and addiction.<sup>4</sup>

The federal drug policies of the mid-80's were due in large part from the influx of powder cocaine and the base form known as crack cocaine.<sup>5</sup> Laws were created which

---

<sup>1</sup>Peter Finn and Andrea Newlyn, U.S. Department of Justice, Publication No. NCJ-142412, Miami's Drug Court: A Different Approach, 1993, p.2.

<sup>2</sup>The Office of the State Court Administrator, Treatment-Based Courts...a Guide. Supreme Court, State of Florida, (circa )1991, p.1.

<sup>3</sup>Mission New Hope, A Picture of Substance Abuse in Metro Atlanta. Atlanta, GA: Community Focus on Drugs, 1994, p.13.

<sup>4</sup>The National Center on Addiction and Substance Abuse at Columbia University, Behind Bars: Substance Abuse and America's Prison Population, 1998, p.6.

<sup>5</sup>Bureau of Justice Statistics, U.S. Department of Justice, Pub. No. NCJ-133652, Drugs, Crime, and the Justice System, p.21 and see also Lipton, Douglas, The Effectiveness of Treatment of Drug Abusers Under Criminal Supervision, 1995, p.3.

both expanded existing law and increased penalties for drug offenses. The 1984 Comprehensive Crime Control Act (see 18 U.S.C.A. § 3551), the 1986 Anti-Drug Abuse Act (see 21 U.S.C.A. § 801), and the 1988 Anti-Drug Abuse Act (see 21 U.S.C.A. § 848) are examples of federal legislation enacted as a part of the war on drugs. State legislatures followed the lead of the federal government by enacting similar laws that required mandatory minimum sentences and increased penalties for drug offenders.<sup>6</sup> Armed with these new laws, law enforcement and prosecutors filed their cases, while courts - besieged with the influx of drug cases - began to suffocate under the unprecedented caseloads.<sup>7</sup> Courts began to search for a way to keep pace.

In an effort to better manage the drug caseload, two strategies have been successfully implemented in many jurisdictions across the country. The first of these, expedited case processing or expedited drug case management (EDCM), came about when courts found their case processing techniques insufficient and unresponsive to the influx and special characteristics of drug cases. As a result, court officials reexamined standard case processing and began to introduce methods for differentiating the management of drug cases to permit the use of a variety of case-processing mechanisms.<sup>8</sup> As the term implies, the purpose of EDCM is to process the drug case through the courts as quickly and efficiently as possible. Courts stress early case evaluation by the

---

<sup>6</sup>Drug Policy Research Center, Rand, Mandatory Minimum Drug Sentences: Throwing Away the Key of the Taxpayers Money, 1997, pp.16-18.

<sup>7</sup>Davis, R. C., B. E. Smith, and A. L. Lurigio (1994). Court Strategies to Cope with Rising Drug Caseloads, 17:1 The Justice System Journal, pp.1-2.

<sup>8</sup>Cooper, C. S., and J. A. Trotter, Jr. (1994). Recent Developments in Drug Case Management: Re-engineering the Judicial Process, 16:3 The Justice System Journal, p. 84.

prosecution, early entry of defense counsel, early and credible plea negotiations, and meaningful events which contribute to the disposition of the case. Other common goals shared by EDCM courts include:

designating drug cases for scheduling priority which they may not otherwise receive if mixed with the general criminal caseload;

conserving the use of judicial resources and assure their availability for serious cases by limiting their application in those offenses which are less complex to process;

providing management continuity for complex drug cases or cases warranting multiple court hearings; and

dealing more effectively with convicted drug defendants who violate their probation.<sup>9</sup>

The second strategy developed was treatment-based drug courts or drug treatment courts (DTC). The DTC focuses on the defendant's addiction and attempts to alter his or her behavior through treatment and intensive rules and regulations. Substance abusing offenders present a special challenge to the criminal justice system because of the interrelated nature of addiction and criminal behavior. Many addicts commit crimes in order to support their substance abuse habit, while for others, substance abuse reflects more pervasive criminal values and an established criminal lifestyle.<sup>10</sup> A large percentage of the individuals with substance abuse problems are non-violent offenders who repeatedly cycle through the court, corrections, and probation systems without any

---

<sup>9</sup>Cooper, C. S., and J.A. Trotter, Jr. (1994). Drug Case Management and Treatment Intervention Strategies in the State and Local Courts, Washington, DC: American University .

<sup>10</sup>Mission New Hope, A Picture of Substance Abuse in Metro Atlanta. Atlanta, GA: Community Focus on Drugs, 1994, p.1.

behavior modification. This cycle known as the revolving door syndrome represents a recurring problem for both the criminal justice system and society.

DTCs attempt to alter permanently the behavior of substance abusers. As such these programs have the potential to reduce recidivism while participating in the program, reduce recidivism after graduation from the program, and produce a positive outcome for both the defendant and society. There are two well documented points of consideration which have encouraged the development of DTCs:

Incarceration has done little to break the cycle of drug use and crime.

Drug treatment is effective in reducing drug abuse and related crimes.<sup>11</sup>

This paper will focus primarily on the DTC movement in Georgia and seek to determine the efficacy of the DTC movement in Georgia as compared to national findings and standards. Section I of this paper will focus on defining and describing therapeutic jurisprudence, the history of drug courts, and a history of drug courts in Georgia consistent with the literature review. Section II describes the methodology used to survey judges, court administrators, and drug court professionals on a state-wide basis. The survey provides for a description and analysis of existing drug courts in Georgia, perceptions reflecting respondents knowledge of drug addiction issues and drug

---

<sup>11</sup>The American University, Drug Court Research Center Fact Sheet, Washington, DC: School of Public Affairs, Justice Program Office, 1995, p.1.

treatment options, an analysis of fiscal issues regarding existing and planned DTCs, the efficacy of existing drug courts in Georgia, an examination of planned/future drug courts and an evaluation of these DTCs including the findings and conclusions based on information provided as a result of the survey and research. This section includes an analysis of both existing DTCs and DTCs in the planning / implementation process. Section III will an examination of obstacles which may prevent state-wide development of DTCs, including survey responses demonstrating the perceptions of drug courts held by judges and court administrators in judicial circuits that neither have a drug court nor plan to develop one in the next three year. The issue of authority to create drug courts is examined in detail as well as, the need for legislation and an analysis of other states drug court legislation which may prove beneficial in Georgia s efforts to develop, implement, and fund drug courts.

This paper will establish conclusions based on outcomes and findings from this research including a determination of the efficacy of the drug court movement. An outline of relevant public policy issues associated with the drug court movement in Georgia is also included.

## SECTION I

### *What is Therapeutic Jurisprudence?*

Webster's dictionary defines therapeutic as of relating to the treatment of disease or disorders by remedial agents or methods...curative.<sup>12</sup>, while jurisprudence is the philosophy of law or the science which treats of the principles of positive law and legal relations.<sup>13</sup> Therefore, therapeutic jurisprudence may be defined as the philosophy of law that seeks to treat and thereby cure a disease or disorder and as a result restore or reinforce social order. Professor Christopher Slobogin refined the definition of therapeutic jurisprudence as the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects.<sup>14</sup> From an academic standpoint, therapeutic jurisprudence is the study of the role of law as a therapeutic agent. It suggests that society should utilize the theories, philosophies, and findings of various disciplines and fields of study to help shape the development of the law.<sup>15</sup>

From a historical perspective, therapeutic jurisprudence is relatively new. Professor David Wexler and Professor Bruce Winick, cofounders of the therapeutic jurisprudence concept, noted that law had developed based on a constitutional foundation

---

<sup>12</sup>Webster's Collegiate Dictionary 1223(10th ed. 1994)

<sup>13</sup>Black's Law Dictionary 854-855(6th ed. 1990)

<sup>14</sup>Peggy F. Hora, William G. Schma, John T.A. Rosenthal, Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America,<sup>74</sup> Notre Dame Law Review 443(1999).

<sup>15</sup>Ibid, p.444.

that emphasized protection of personal rights.<sup>16</sup> With this foundation, they posited therapeutic jurisprudence as the study of the extent to which substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic and anti-therapeutic consequences for individuals involved in the legal process.<sup>17</sup>

While traditional jurisprudence is an adversarial process, therapeutic jurisprudence is offered as a tool for gaining a new and distinct perspective on questions regarding law and its application. It will generally reveal important and previously unrecognized considerations on legal issues which should be placed into a comprehensive legal equation to balance them with or against any other meaningful and pertinent legal and social values that drive the enactment and enforcement of laws. Therapeutic jurisprudence does not resolve conflicts among competing values (thus, it is non-adversarial in nature); rather, it requires sufficient information to promote certain goals and to inform the normative dispute regarding the legitimacy or priority of competing values.<sup>18</sup> Consequently, therapeutic jurisprudence seeks to find the underlying cause of the dispute so as to address that cause rather than to address the manifestation of the dispute before the court from solely a legal approach which does not consider the potential therapeutic and anti-therapeutic consequences of the dispute resolution.

One of the most important aspects of therapeutic jurisprudence (applied in the

---

<sup>15</sup> David B. Wexler and Bruce J. Winick, Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research, 45 University of Miami Law Review, 979 (1991).

<sup>16</sup> Supra, note 14 at 442.

<sup>17</sup> Ibid, 74 Notre Dame Law Review 442 (1999).

<sup>18</sup> David B. Wexler and Robert F. Schopp, Therapeutic Jurisprudence: A New Approach to Mental Health Law, Handbook of Psychology and Law, 1999, pp 361-373.

context of a criminal proceeding/DTC) are the roles of judges, prosecutors, and defense attorneys. In the traditional criminal justice arena, the judge operates as a referee and ultimate determiner of right and wrong, handing out sentences within a framework created by the legislative branch of government. Both prosecutor and defense attorney battle for a win. The prosecutor is armed with public safety and punishment oriented goals, while the defense attorney shields the client from exposure to criminal sanctions and zealously works to weaken the state's case by placing doubt, the rule of law, and/or mitigating circumstances in the minds of the decision makers. That is, the defense attorney can generally cloud the issue of guilt by placing culpability on another, find technically legal loopholes, and/or develop a reasonable excuse for the criminal behavior. Conversely, therapeutic jurisprudence requires a special collaborative effort among judges, prosecutors, defense attorneys, and related criminal justice agencies along with treatment providers and other social services and community organizations. This collaborative effort is based on local needs and targeted population being served and may differ considerably among...courts. Specifically, (therapeutic jurisprudence) creates a new and different roles for judges, prosecutors, and defense attorneys.<sup>19</sup>

The judge takes on a role of central figure in a team effort, understanding the disease model of addiction and drug abuse behavior patterns. Without this knowledge the judge cannot intervene and apply sanctions necessary to keep the offender on the path to recovery<sup>20</sup> meeting established goals.

---

<sup>19</sup>General Government Division, U.S. Government Accounting Office, Drug Courts: Information on a New Approach to Address Drug-Related Crime, 1995, p.15.

<sup>20</sup>Supra, note 14 at pp.476-477.



Prosecutors depart from the traditional law enforcement role of evaluating each case for its prosecutorial merit to screening each case with an eye toward whether the candidate is appropriate for the program. Prosecutors must approach the case with the defendant's recovery as the goal.<sup>21</sup>

Defense attorneys must continue to ensure the defendant understands the legal rights afforded, as well as the requirements of the program, and the consequences should the defendant fail to complete the program. In contrast to the traditional role, the defense attorney tries to ensure the addicted defendant stays in treatment until graduation. Forgoing legal defense tactics such as motions to suppress evidence which may delay or prevent the defendant from accepting responsibility for drug use is typical.<sup>22</sup>

In Georgia, judges and court administrators have applied the principles of therapeutic jurisprudence in mainly three areas: Divorcing Parents Seminars<sup>23</sup>, Family Courts<sup>24</sup> and with the additional collaboration of prosecutors, defense attorneys and treatment providers, judges and court administrators have applied the principles of therapeutic jurisprudence to Drug Courts,<sup>25</sup> as well. This paper will limit the applicability of therapeutic jurisprudence solely to drug courts. While divorcing parents seminars and

---

<sup>21</sup>Ibid, pp.477-478.

<sup>22</sup>Ibid, at 479.

<sup>23</sup>Jugar, Richard, Seminars for Divorcing Parents in Georgia, Decatur, Georgia: Fourth Judicial Administrative District of Georgia, 1999, p.1.

<sup>24</sup>Fax of proposed budget for the State of Georgia indicating Fulton County Family Court appropriation, from Council of Superior Court Judges of Georgia to Chief Judge Walter C. McMillan, Jr., November 30, 2001 and see Standing Order in the Superior Court of Cherokee County, State of Georgia, Creating a Family Court, January 12, 2000, Anne M. Reneau, Clerk of Court.

<sup>25</sup>Georgia Supreme Court Committee on Substance Abuse and the Courts, Proposal for Georgia Tobacco Settlement, Atlanta, Georgia: Administrative Office of the Courts of Georgia, 2000, p.1.

family courts are applications of therapeutic jurisprudence in domestic and juvenile forums, drug treatment courts amount to the application of therapeutic jurisprudence in a criminal law context.

*History of Drug Courts*

The term drug treatment court (DTC) refers to a dedicated court docket and/or courtroom that provides judicially monitored drug education, treatment, drug testing, and other services to drug offenders. It had been established as a remedy to drug and drug-related crime as early as 1989 when the concept of DTC was introduced in Dade County, Florida.<sup>26</sup> DTC is punitive in nature in that after arrest, defendants eligible for DTC are identified and, if accepted, are referred immediately to a multi-phase outpatient treatment program entailing multiple weekly contacts with the treatment provider for counseling, therapy, education; frequent drug testing; frequent hearings before the drug court judge; and a rehabilitation program entailing vocational, educational, and other requirements.<sup>27</sup> Some DTCs require the defendant to maintain employment and pay a DTC fee, so as to have a financial commitment to the drug education and treatment program.<sup>28</sup>

The general idea of special drug dockets and courts is not new. Special drug courts convened in both Chicago and New York City in the early 50's. And in the early 1970's, when heroin was the primary drug of choice among offenders, special Narcotics Courts were established in response to harsher legislatively created drug laws. For the most part, these early efforts provided only limited access to treatment for offenders.<sup>29</sup>

---

<sup>26</sup>Office of Justice Programs, Looking at a Decade of Drug Courts, American University: Drug Court Clearinghouse and Technical Assistance Project, May, 1998, p.3.

<sup>27</sup>Ibid.

<sup>28</sup>Martin, Nolan, Dublin Judicial Circuit Drug Court Protocol, Lyons, GA: Eighth Judicial Administrative District of Georgia, September, 1998, p.3.

<sup>29</sup>Belenko, Steven, Research on Drug Courts: A Critical Review, Columbia University: National Center on Addiction and Substance Abuse, June, 1998, p.5.

Most DTCs did not emerge from a vacuum. Other methods and programs have been tried over the past 20 years to place offenders in drug treatment at various points in the criminal justice process.<sup>30</sup> Some DTCs evolved from existing programs or efforts to engage defendants in treatment such as Treatment Alternatives to Street Crime (TASC), diversion programs, conditional pretrial release, conditions of probation, or in conjunction with intermediate sanctions. These early efforts were often fragmented, inconsistently or inappropriately used, and/or not viewed as sufficiently effective. Multi-agency supervision of treatment, progress, and compliance was difficult to monitor as court-imposed conditions.<sup>31</sup>

As of May 1, 1998 DTC programs were operating in 42 states, the District of Columbia, Puerto Rico, and one federal district. About 300 programs had been implemented with at least 175 more about to start or in the planning process.<sup>32</sup> And between 1995 and 1998, 14 states had enacted legislation dealing with the establishment of and/or funding for drug courts, with one state having implemented a statewide drug court program.<sup>33</sup> And by January, 2000, there were over 600 drug courts in operation with at least one operating in every state.<sup>34</sup>

---

<sup>30</sup>Ibid.

<sup>31</sup>Ibid, p.5-6.

<sup>32</sup>Supra, note 20.

<sup>33</sup>Ibid.

<sup>34</sup>National Drug Court Institute, National Drug Court Institute Review, Volume III, Issue 1, Winter 2000. pp.28-29.

*History of Drug Courts in Georgia*

Prior to the development and implementation of drug courts in Georgia, some jurisdictions began to experiment with diversionary treatment programs as an alternative to incarceration. One such program, the Conditional Discharge Program of Columbus, Georgia, began its program in October, 1990.<sup>35</sup> This law enforcement driven program had a target population of offenders age 17 - 28 who had committed minor non-violent substance abuse related crimes. The program served 456 participants between October, 1990 and April, 1994.<sup>36</sup> Of the 456 participants, 191 successfully completed the program (and thus avoided a criminal record), 95 returned to the traditional criminal justice system and were sentenced, while 170 were actively enrolled in the program which continued after the reporting period.<sup>37</sup>

Diversionary programs operated both in lower courts and in pre-adjudicatory settings. In 1993, the Cobb County Magistrate Court sought to divert drug offenders from the superior court caseload while some district attorneys established programs that would offer drug treatment instead of the traditional prosecution and incarceration.<sup>38</sup> By having the ability to file a Nolle Prosequi ( a formal filing indicating the intent to not prosecute and therefore dismiss the case), lower courts and district attorneys utilized the carrot and the stick approach to encourage eligible defendants to participate in drug education and

---

<sup>35</sup>Wisham, Gary, Conditional Discharge Program: Executive Summary, Columbus, Georgia: April, 1994, p.2.

<sup>36</sup>Ibid, p.4.

<sup>37</sup>Ibid, p.2.

<sup>38</sup>Martin, Nolan, Eighth Judicial District Drug Diversionary Program, Lyons, Georgia: March, 1993, p.1.

treatment, further their education, maintain employment, and financially contribute to (and offset ) the cost of drug testing <sup>39</sup>;in exchange for filing a dismissal of the criminal case upon successful completion of the diversionary program.

The genesis of today s DTC in Georgia began when the Supreme Court of Georgia sponsored The Georgia Conference on Substance Abuse and the Courts. The conference, held October 27 and 28, 1993 at the University of Georgia, was funded through a grant from the State Justice Institute. This one and a half day conference brought together teams of judges, prosecutors, defense attorneys, court administrators, probation officers and other court personnel from Georgia s judicial circuits to learn more about court-sponsored options for drug offenders and to seek solutions to the increase in substance-abuse related cases.<sup>40</sup> Recommendations from conference participants were part of Georgia s effort to better manage court cases involving substance abuse. These recommendations fostered the development of drug courts<sup>41</sup> and the Supreme Court Committee on Substance Abuse and the Courts. The latter was formed to serve as a resource to courts interested in planning, developing, and implementing drug courts in Georgia. Issues identified by the conference participants would later be the focus for the Supreme Court Committee on Substance Abuse and the Courts.<sup>42</sup> A summary of the recommendations are as follows:

---

<sup>39</sup>Ibid, p.5.

<sup>40</sup>Administrative Office of the Courts, Georgia Conference on Substance Abuse and the Courts, Final Report, Atlanta, Georgia: Supreme Court of Georgia, 1994.

<sup>41</sup>Ibid, at page 3.

<sup>42</sup>Ibid, at page 4.

- \* □ Establish Drug Courts
- \* □ Provide Early Intervention and Assessment
- \* □ Establish alternatives to incarceration
- \* □ Streamline and standardize procedures
- \* □ Eliminate parole board independence and establish truth in sentencing
- \* □ Repeal mandatory sentencing in substance abuse cases
- \* □ Provide alternative schools to drug dependent students
- \* □ Seek increased funding for expanded, comprehensive substance abuse treatment before and after sentencing
- \* □ Provide a detention center, a diversion center and an intensive probation program for every circuit in the state
- \* □ Provide for education of court personnel regarding service providers, treatment alternatives and chemical dependency
- \* □ Enhance community involvement
- \* □ Develop and enhance communication<sup>43</sup>

The conference succeeded in achieving its objectives. Ideas and recommendations were the result of interactive participation by all the agencies and individuals involved to give Georgia's future efforts in combating substance abuse a coherent focus.<sup>44</sup>

After the Georgia Conference on Substance Abuse and the Courts, several courts became interested in implementing DTCs. The first, Bibb County (Macon, Georgia) Drug Court began its program in 1994.<sup>45</sup> Like other DTCs in existence in the United States, Bibb County DTC wanted to end the cycle of recidivism by drug offenders into Georgia's penal system. The Bibb County DTC served as a model for other drug courts by transforming the traditional roles of court personnel and developing a partnership among

---

<sup>43</sup> Ibid, at page 6.

<sup>44</sup> Ibid, at Abstract.

<sup>45</sup> Georgia Council on Substance Abuse, Description of the Drug Court Movement in the State, Atlanta, Georgia, Circa 2001, p.1.

judges, prosecutors, defense attorneys, and substance abuse treatment providers.<sup>46</sup>

Shortly after the development of the Bibb County DTC, the Georgia Supreme Court created the Georgia Supreme Court Committee on Substance Abuse and the Courts. The committee created by then Chief Justice Robert Benham, was charged with the responsibility of addressing substance abuse issues which included reducing the rate of recidivism in the criminal justice system. The primary goal of the committee was to support the establishment of and assist with the implementation of DTCs in the State of Georgia.<sup>47</sup> The committee has provided assistance in procuring funding for DTCs and has opened dialogue leading to substantive policy changes in the manner in which jurisdictions deal with drug abusing offenders. The committee's focus has also centered on case management techniques to assist courts with management of the drug-related caseload. By seeking alternatives to incarceration and providing research confirming that drug testing, education, and treatment interventions reduce crime and substance abuse,<sup>48</sup> the committee has sought to facilitate the implementation of drug courts throughout the state of Georgia.

Shortly after the creation of the Supreme Court Committee on Substance Abuse and the Courts, Mission New Hope, a coalition of Atlanta's top business and civic leaders, sought to find solutions to metro Atlanta's substance abuse and related criminal activity. The Fulton County (Atlanta, Georgia) Drug Court Advisory Committee was

---

<sup>46</sup>Ibid.

<sup>47</sup>Ibid, at page 2.

<sup>48</sup>Ibid.



formed to develop a DTC. Due to the work of Mission New Hope, the Fulton County DTC received grants which allowed it to open in 1996.<sup>49</sup> The collaboration of the courts, business community, and drug treatment providers to forge a partnership in an effort to reduce drug dependency and crime could be viewed as an innovation in the Georgia DTC movement.

At this point, the few operational DTCs began to interest a core group of judges throughout the state. This is evident by the fact that judges and court administrators began implementation of DTCs in Dublin, Athens, Brunswick and other jurisdictions throughout Georgia, bringing the total to 14 DTC programs by November, 2001.<sup>50</sup>

---

<sup>49</sup>Ibid, at page 3.

<sup>50</sup>Findings from the state-wide survey indicate the implementation date considered by each DTC program.

## SECTION II

### *State-Wide Survey of Judges, Court Administrators, and Drug Court Professionals*

In collaboration with the Georgia Association of Drug Court Professionals and the Georgia Council on Substance Abuse, a survey (see page A-1) was developed to gather descriptive data on existing and planned DTCs in Georgia. This included, but was not limited to, identification of the target population served, referral process, sentencing practices, and length of DTC program. A section regarding fiscal issues was included based on input from the pre-testing of the survey instrument at the Georgia Council on Substance Abuse Conference Reducing the Impact , held September 26-28, 2001 in Callaway Gardens, Pine Mountain, Georgia. Further, in order to measure the efficacy of Georgia's DTCs, data was gathered to compare the components of existing and planned DTCs to the ten key components of drug courts<sup>51</sup> established by the Drug Court Program Office of the Office of Justice Programs, U.S. Department of Justice. Success factors such as reduction in drug use among drug court participants, successful completion of the DTC, cost-effectiveness of DTC, recidivism rates, and other factors were included based on literature review to further measure the efficacy of these problem-solving courts. At the aforementioned conference it was determined that this survey should be sent to all superior court judges, chief judges of the juvenile courts, district court administrators, and drug court coordinators/directors of record. The selection of this target population was based on the fact that no DTC in Georgia has been developed without the input, support,

---

<sup>51</sup> See [www.ojp.usdoj.gov/dcpo/define/welcome.html](http://www.ojp.usdoj.gov/dcpo/define/welcome.html)

and active involvement of these groups<sup>52</sup>. The inclusion of such a broad based group as a target population not only would measure the efficacy of the existing DTCs but would also identify issues which may prevent further implementation of DTCs in Georgia. With the assistance of the Administrative Office of the Courts, 217 surveys were mailed to the target group of judges, court administrators, and drug court directors/coordinators on October 22, 2001 with a request to return the completed survey by October 31, 2001 (a self addressed stamped envelope was included to facilitate a prompt response and higher rate of return). Of the 217 mailed out, 118 or 54.3% were completed and returned. This includes at least one completed survey from each of Georgia's 48 judicial circuits. Follow-up telephone interviews were conducted to seek clarity to ambiguous responses and to clarify inconsistent responses/statements within a judicial circuit or drug court program. It is important to note that the responses received reflect a snapshot of the drug court movement in Georgia at the time the survey was conducted. Fluctuations in funding, changes in DTC policies and procedures, planning for the development of DTCs, implementation of new DTCs and other similar circumstances will alter the face of the drug court movement in Georgia.

---

<sup>52</sup>The selection of the target population to survey was a result of feedback received during the pre-testing of the survey instrument during the Georgia Council on Substance Abuse Conference Reducing the Impact held on September 26-28, 2001 in Pine Mountain, Georgia.

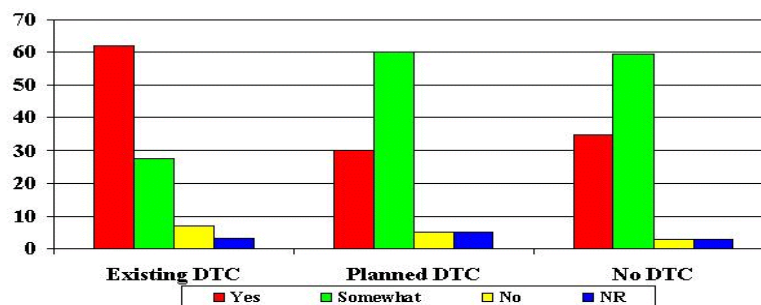
*Perceptions Reflecting Knowledge of Drug Addiction Issues and Drug Treatment Options*

The first (two part) question that all groups answered required a self-examination regarding the respondents' confidence level in the knowledge of drug addiction issues and drug treatment options available within their respective judicial circuit. The question was added to the survey as a result of the pre-testing of the survey instrument before the Georgia Council of Substance Abuse Conference Reduce the Impact <sup>53</sup> to provide the reader with some understanding of the perceptions of the respondents from each of the three groups (those with DTCs, with planned DTCs and no DTC) as it relates to the drug addiction issues. The survey results from the responses received are as follows:

**CONFIDENT IN THEIR KNOWLEDGE OF DRUG ADDICTION ISSUES**

	Yes	Somewhat	No	No Response
<b>EXISTING DTC</b>	18 of 29(62.0%)	8 of 29(27.5%)	2 of 29(6.8%)	1 of 29(3.4%)
<b>PLANNED DTC</b>	6 of 20(30.0%)	12 of 20(60.0%)	1 of 20(5.0%)	1 of 20(5.0%)
<b>NO DTC</b>	24 of 69(34%)	41 of 69(59.4%)	2 of 69(2.8%)	2 of 69(2.8%)

## Confident In Their Knowledge of Drug Addiction Issues

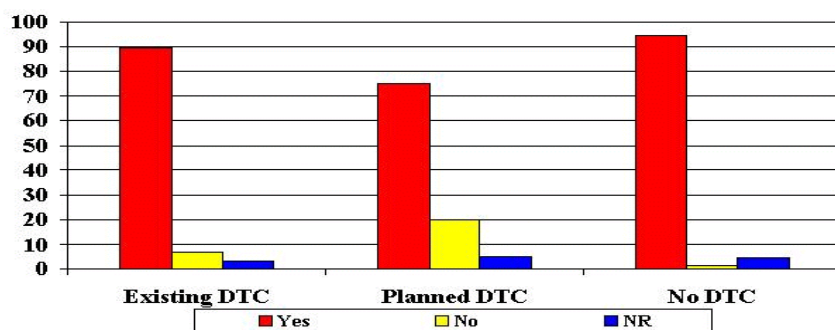


<sup>53</sup>Ibid

### AWARE OF THE DRUG TREATMENT OPTIONS AVAILABLE IN YOUR CIRCUIT

	Yes	No	No Response
<b>EXISTING DTC</b>	26 of 29(89.6%)	2 of 29(6.8%)	1 of 29(3.4%)
<b>PLANNED DTC</b>	15 of 20(75.0%)	4 of 20(20.0%)	1 of 20(5.0%)
<b>NO DTC</b>	65 of 69(94.2%)	1 of 69(1.4%)	3 of 69(4.3%)

## Aware of the Drug Treatment Options Available to Your Court



Predictably, the existing DTC responses indicate they are (per capita) more confident in their knowledge of drug addiction issues. Interestingly, the responses from planned DTCs and responses without a DTC were very similar in terms of confidence in their knowledge of drug addiction issues. One may have hypothesized that the planned DTCs would have a higher rate of confidence of drug addiction issues simply because they most likely had undertaken a study of the issues to be addressed relative to developing a DTC. That did not hold true. In fact, the confidence level from the respondents with no

DTC was slightly higher.

The real surprise was in the level of awareness in drug treatments options available in the respondent s respective circuit. Over 94% of the respondents without a DTC perceived they were aware of all the options available - compared to 89% of the existing DTC responses and 75% of the planned DTC respondents. In follow-up interviews after the survey, many respondents from rural areas indicated less availability of drug treatment facilities or programs and therefore a greater awareness of the (fewer) drug treatment options available.<sup>54</sup> This may be one explanation for the higher rates of awareness among respondents without a DTC.

---

<sup>54</sup>No study was actually conducted to compare the availability of drug treatment services in rural, suburban, and urban areas of Georgia to ascertain if this may account for the differences in knowledge of treatment options within a judicial circuit. 54% of the respondents from a sample of circuits with a population of 150,000 or less indicated only one drug treatment option available.

*Existing Drug Courts in Georgia - Findings from the Research*

Of the 118 survey responses, 29 (or 25 %) represented judges, court administrators, and drug court professionals affiliated with a drug court. These responses represent fourteen(14) drug courts in ten (10) of Georgia s forty-eight (48) judicial circuits. Of these fourteen, nine (9) serve as adult drug courts and five (5) characterize themselves as juvenile drug courts. Those circuits with drug courts are as follows:

Alcovy Judicial Circuit (Newton County) - Juvenile DTC

Atlanta Judicial Circuit - Adult DTC

Atlanta Judicial Circuit (Fulton County) - Juvenile DTC

Brunswick Judicial Circuit - Adult DTC

Cobb Judicial Circuit - Adult DTC

Cobb Judicial Circuit - Juvenile DTC

Coweta Judicial Circuit - Adult DTC

Dublin Judicial Circuit - Adult DTC

Dublin Judicial Circuit - Juvenile DTC

Eastern Judicial Circuit - Adult DTC

Macon Judicial Circuit - Adult DTC

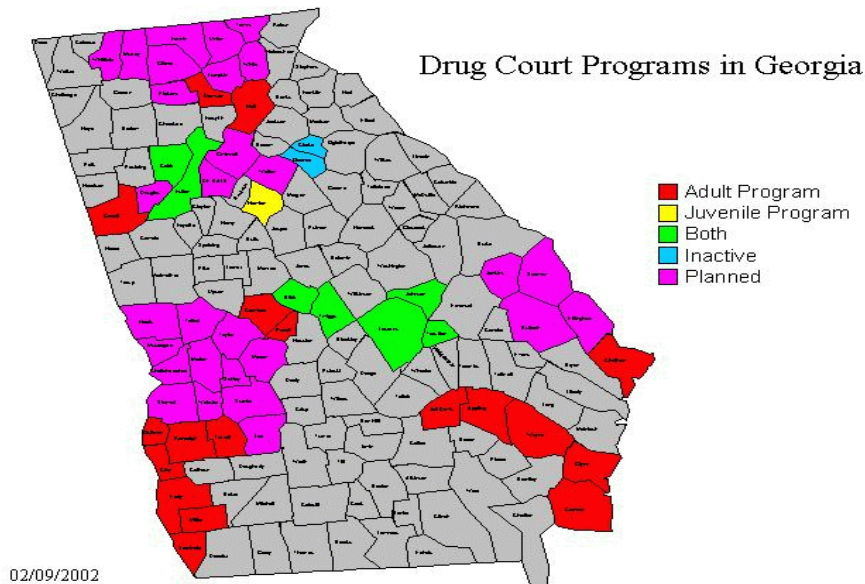
Macon Judicial Circuit (Bibb County) - Juvenile DTC

Northeast Judicial Circuit - Adult DTC

Pataula Judicial Circuit - Adult DTC<sup>55</sup>

---

<sup>55</sup>It is important to note that the Western Judicial Circuit of Georgia has a DTC which was not operational at the time of this survey and subsequently no response was received. Any analysis and conclusion in this study does not include the Western Circuit.



These responses represent a significant increase in the number of established DTCs when compared to the findings of the Georgia Council on Substance Abuse indicated in the abstract, Description of the Drug Court Movement in the State (circa 2000), which identifies only five (5) established DTCs in Georgia at the time the article was written. Of the DTCs listed above, eight (8) were formed in calendar years 2000 through 2001, while five were developed between January, 1994 and December, 1999 (one survey did not provide a response). This offers some indication that the DTC movement is gaining strength and the interest among those officials who are in a position to develop these pilot court programs.

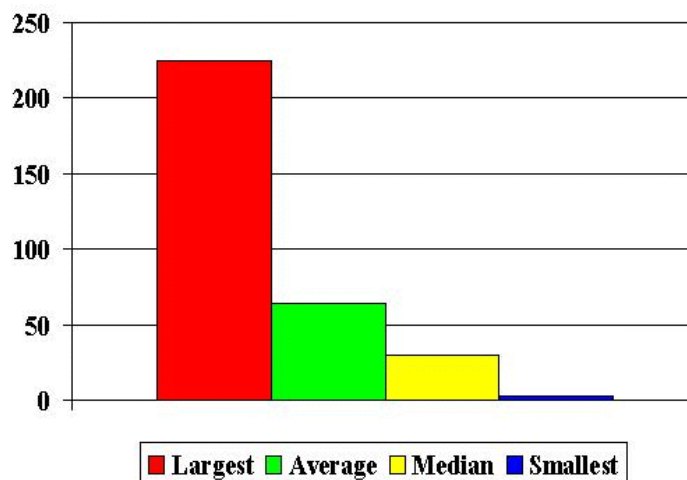


*Description of the DTCs in Georgia - What the Research Indicates*

What do the DTCs in Georgia look like? The survey provided an interesting glimpse at the organization, scope, and operations of the existing DTCs. The findings support a conclusion that despite many commonalities, they are as varied as they are many.

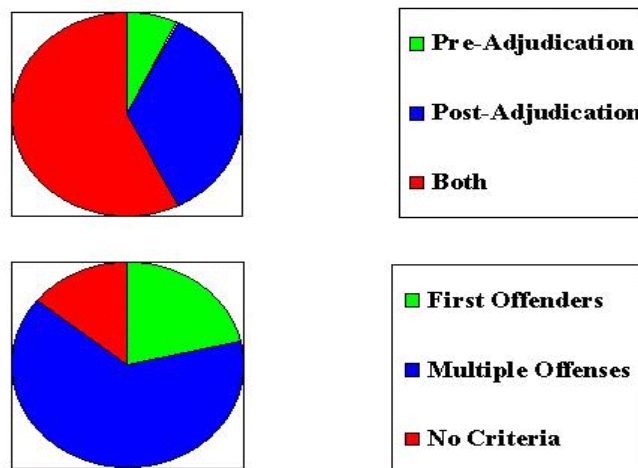
For instance, the size of the DTCs in Georgia vary greatly, while the larger urban and suburban courts serve over 200 clients (average monthly enrollment) some of the smaller rural DTCs serve as few as 2 to 15 clients per month. The average enrollment is 64 with the median number enrolled being 30. This indicates that over 900 drug offenders per month are being diverted from traditional prosecution to the 14 DTCs.

## The Size of Drug Treatment Courts Vary Greatly



The population demographics are less varied. Five programs indicate they accept only post adjudication drug offenders, one program only pre-adjudication drug offenders, and eight accept both pre and post-adjudication drug offenders. Interestingly, though drug courts are thought to be primarily a first offender based program<sup>56</sup>, nine of the fourteen programs accept offenders with multiple (or more than one previous) offenses. Three programs indicated they accept only first offenders, while two DTCs indicated they have no criteria.

## Population Demographics




---

<sup>56</sup>Belenko, Steven, *Research on Drug Courts: A Critical Review*, Columbia University: National Center on Addiction and Substance Abuse, June, 1998, p.4.

As discussed earlier, the roles of judge, prosecutor, and defense attorney are transformed in the DTC process from one adversarial in nature to a partnership which promotes public safety while protecting the due process rights of the accused.<sup>57</sup> The referral process, that is, how a defendant becomes aware of the option of a DTC program and the process by which they are screened is one example of the public safety partnership in the DTCs of Georgia. This research indicates that each DTC has a multi-door process to access the DTC as an option to traditional drug prosecution. The fourteen responding drug courts indicated a variety of referral sources. Ten indicated the public defender or private attorney (defense attorney) as a referral source of the program, eight indicated the assistant/district attorney (prosecution), three indicated the judge as a source of referral, two indicated the defendant initiates the referral, while six indicated other referral sources such as: law enforcement, probation staff, courthouse personnel, and public sources. Two programs did not indicate their referral sources.

## Referral Sources

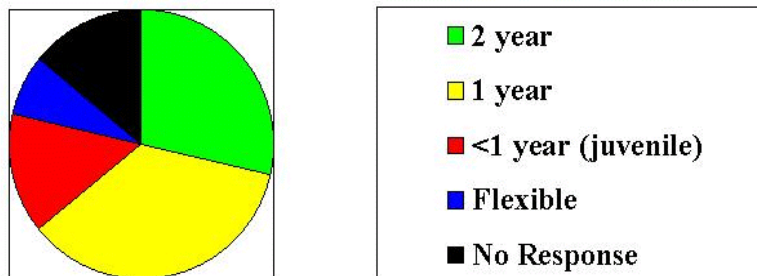



---

<sup>57</sup>See [www.ojp.usdoj.gov/dcpo/define/welcome.html](http://www.ojp.usdoj.gov/dcpo/define/welcome.html), Office of Justice Programs, Drug Court Program Office, Defining Drug Courts: The Key Components, January, 1997.

Once referred to the DTC, the participant will face a variety of treatment modalities depending upon the accessibility of DTC program. Four programs indicate a two year minimum program, while five DTCs have a year long program, two juvenile DTCs indicate their program is less than one year in length, one program describes the length of its program as flexible, based on the needs of the accused, and two programs did not provide a response to the survey.

## Treatment Modalities Length of DTC Program



This represents an important finding for the Georgia DTCs, primarily because studies have suggested that the length of time a patient spent in treatment was a reliable predictor of his or her post-treatment performance. Beyond a 90-day threshold, treatment outcomes improved in direct relationship to the length of time spent in treatment, with one year generally found to be the minimum effective duration of treatment (De Leon, in

Leukefeld and Tims, eds., 1988; De Leon, Melnick and Kressel, 1997).<sup>58</sup>

One of the more controversial portions of the research study involves questions relating to whether the participant enters the DTC program on a voluntary basis, possible (increased) penalties for not participating in DTC, and identifying to the extent possible, the nature of those harsher penalties. These three questions relate to the DTCs ability to coerce the defendant into selecting treatment over traditional prosecution of drug and drug related crimes.

In her article, *Drug Treatment: The Case For Coercion*, Dr. Sally L. Satel, M.D., Yale University School of Medicine, makes the case for coercion in drug treatment. She outlines the successes drug courts have realized in having drug involved offenders not only enter, but also remain in treatment for substantial periods of time. Dr. Satel argues that coerced treatment, specifically that found in DTCs, is far more effective in reducing criminality and drug abuse because offenders are retained for substantially longer periods than in (non-court related) voluntary treatment programs. She concludes that coercion has shown that addicts need not be internally motivated at the outset of treatment in order to benefit from it, and that coercion itself is a crucial tool in the rehabilitation of addicts through drug treatment.<sup>59</sup> Dr. Satel cites scientific research which indicates that offenders who abuse drugs are more likely than non-abusing offenders to return to crime following their release from incarceration (Taxman, 1998; Bureau of Justice Statistics, 1995). Evidence indicates that diversionary treatment programs have a benefit beyond the crime

---

<sup>58</sup>Satel, Sally L., Drug Treatment: The Case For Coercion, National Drug Court Institute Review, Vol.III, Issue 1, Winter, 2000, p.20.

<sup>59</sup>Ibid, p.1.

reducing effects of incarceration or probation as usual (National Center on Addiction and Substance Abuse, Columbia University, 1998; Harlow, 1998; Bureau of Justice Statistics, U.S. Department of Justice, 1997). Results from several categories of criminal commitment show that treated offenders have lower rates of recidivism. Crime itself can reasonably be used as indirect evidence of drug involvement, since the two activities are so highly correlated. Conversely, declines in drug use are accompanied by declines in crime (Speckart and Anglin, 1986; Nurco, Kinlock, and Hanlon, in Inciardi, ed., 1990; Chaiken, in Johnson and Wish eds., 1986)<sup>60</sup>

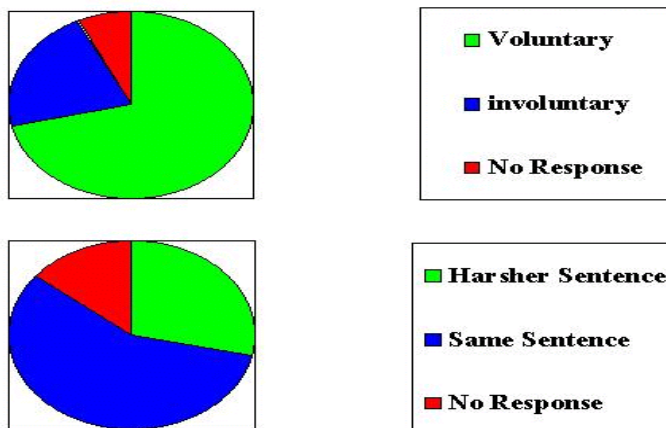
When questioned whether offenders initially participate on a voluntary basis, ten of the fourteen drug courts responding indicated they do require the participation in the DTC to be voluntary. Three programs indicated voluntariness was not a requirement, and one program did not respond to the question. This research may lead existing DTCs and drug court programs in the development/implementation stage to re-think their position relative to the criteria that entering the drug court should be on a voluntary basis.

Additionally, four programs indicated they intentionally have established harsher sentences for those offenders who reject the drug court option in favor of traditional prosecution. Three indicated an increase in the minimum sentence while one DTC program correspondingly reported an increase in time (incarceration) and fines for those offenders who reject DTC or are expelled from the DTC program.

---

<sup>60</sup>Ibid, p.18-19.

## Voluntariness and Related Sentences



This finding indicates a true carrot and stick approach is used in some Georgia DTCs to urge drug dependent offenders to participate in the program and is a not-so-subtle method of coercion. Successful completion of DTC is the carrot. The drug dependent offender may avoid the self-defeating, self-destructive power of drugs and build self-esteem through self-reliance<sup>61</sup> and possibly avoid a criminal record/incarceration. On the other hand, the four programs that instituted harsher sentences have developed a stick to (more severely) punish drug offenders who reject DTC and opt for traditional prosecution (that is, if they are found guilty in a jury/bench trial or enter a plea of guilty to the original drug offense).

---

<sup>61</sup>Martin, Nolan E., Protocol for the Dublin Judicial Circuit Drug Court, Lyons, GA: Eighth Judicial Administrative District of Georgia, September, 1998, p.1.

Those judges and courts which have elected to commit drug offenders to DTC on an involuntary basis, are focusing on the substantive therapeutic outcome rather than the procedural rule of law. Procedurally, Georgia requires judges to make a finding that the defendant (a.) knowingly and freely waives their right to trial by jury and (b.) is not under the influence of drug(s) or alcohol at the time the decision is made by the offender (see *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274, 1969). The fact that the offender has a substance abuse problem (which may be indicative of the offender being under the influence or at least not in a proper frame of mind) and is being involuntarily sentenced to DTC (indicating they may not have knowingly and freely waived their right to trial by jury) presents somewhat of a legal and ethical dilemma for the courts. This is further evidence that the formation of the partnership between judges, prosecutors, and defense attorneys is essential in order to overcome the procedural safeguards put in place by the appellate courts under traditional criminal justice jurisprudence. When the substantive outcome of a cure for drug addiction outweighs the procedural requirements which present an obstacle to the desired therapeutic outcome, the four DTCs have erred on the side of the positive effects of drug education and treatment which benefit both the individual and society.

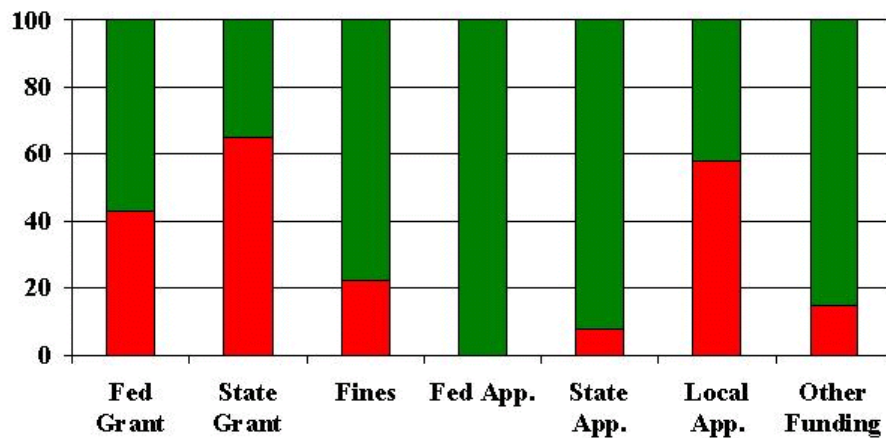


*Fiscal Issues and Analysis of Existing and Planned Drug Courts*

One of the critical issues facing the DTCs in Georgia is the lack of systemic funding. The fourteen DTCs identified multiple funding sources which indicates a piecemeal rubber-band and paperclip effort to sufficiently fund their respective DTCs. The methods of funding are as follows:

Federal Grant -	6 of 14 DTCs
State Grant -	9 of 14 DTCs
Fines/Forfeitures -	3 of 14 DTCs
Federal Appropriation -	0 of 14 DTCs
State Appropriation -	1 of 14 DTC
Local Appropriation -	8 of 14 DTCs
Other Funding -	2 of 14 DTCs

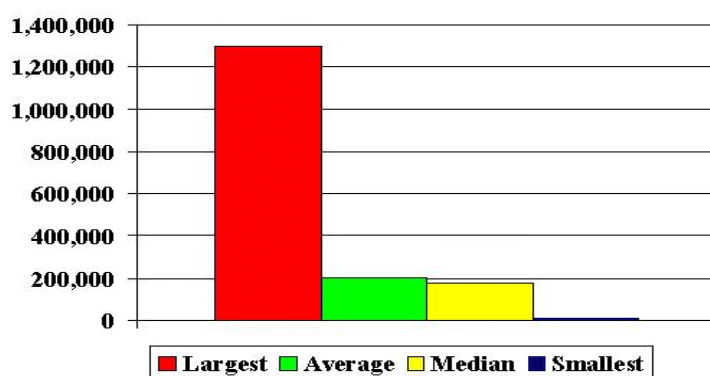
## Funding Sources



Percentage of DTCs receiving funds from various sources

The annual budgets for the fourteen DTCs range from a high of \$1,300,000.00 to a low of \$0.00 (where the drug offender pays the treatment provider based on a sliding fee scale and the offenders ability to pay). The average budget is \$201,928.00 and the median budget is \$175,000.00. It is important to note that four DTCs had annual budgets of \$51,000.00 or less.

## Overview of GA DTC Annual Budgets



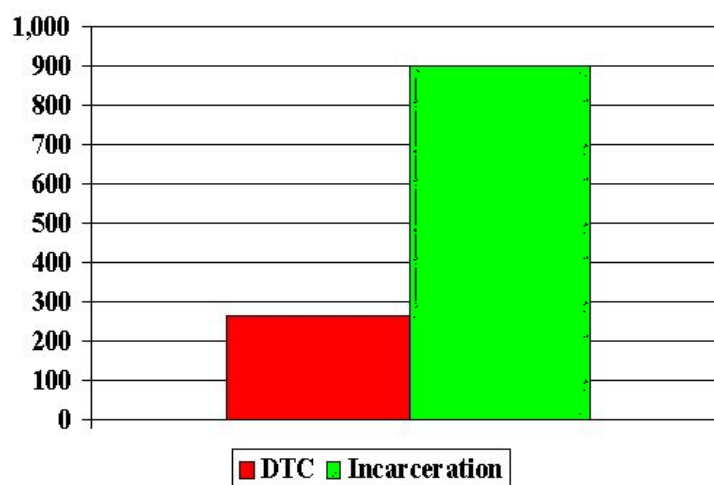
As stated earlier, approximately 900 drug offenders per month are enrolled in the fourteen DTCs, this brings the average cost per offender to \$262.00 per month. Even the most expensive DTC has a cost per offender of less than \$500.00 per month. When compared to incarceration costs that may run at least \$30.00 per day<sup>62</sup>, the minimum cost would be \$900.00 per month per offender or \$810,000.00 per month for the 900 incarcerated drug offenders. There is some apparent cost savings when compared to the

---

<sup>62</sup>This figure was determined from information provided by several of the DTC programs attempting to demonstrate the cost-effectiveness of their respective DTC. It represents the lowest cost of incarceration provided by the respective DTCs.

\$235,583.00 per month it currently costs to provide drug education, treatment, and testing to the same number of drug offenders as opposed to incarceration. Admittedly, this is not a scientifically conducted comparison, as not all of the 900 offenders would be incarcerated and many of the expenses associated with operating jails/prisons are fixed costs. Still the assumption about drug courts is that they are less costly than traditional means of adjudicating drug offenders.<sup>63</sup>

## Comparison of Costs Associated with DTC vs. Incarceration



---

<sup>63</sup>Belenko, Steven, *Research on Drug Courts: A Critical Review*, Alexandria, Virginia: National Drug Court Institute Review, Vol.1, Issue 1, Summer, 1998, p.15.

The Georgia Supreme Court Committee on Substance Abuse and the Courts has sought innovative ways to fund drug courts. In calendar year 2000, the committee developed a proposal to provide 12 years of funding for the development of drug courts from Georgia's share of the national tobacco settlement.<sup>64</sup> The proposal sought funds to offer population-based, declining, three year grants that would average \$300,000.00 the first year, \$200,000.00 for a second year, and \$100,000.00 for the third and final year. Participating offenders - through self-pay, Medicaid, private insurance, and private funds would provide continued funding. Funding for the twelve-year period was represented by annual requests as follows:

Year one - \$125,000.00  
 Year two through ten - \$1,500,000.00  
 Year eleven - \$750,000.00  
 Year twelve - \$450,000.00<sup>65</sup>

With these funds the committee proposed to establish 3 - 4 drug courts annually increasing the total from 6 current locations to 30 - 40 additional courts by the year 2013. These proposed drug courts would include both juvenile and adult locations.<sup>66</sup>

Remarkably, Georgia is keeping pace with this proposed implementation of drug courts - having 14 existing and 10 planned DTCs - despite the failure of this proposal and other efforts to provide meaningful, continuous funding for Georgia's DTCs.<sup>67</sup>

---

<sup>64</sup>Georgia Supreme Court Committee on Substance Abuse and the Courts, Proposal for Georgia's Tobacco Settlement, Atlanta, Georgia: Supreme Court Office of Programs and Commissions, 2000, p.8.

<sup>65</sup>Ibid.

<sup>66</sup>Ibid, p.2.

<sup>67</sup>Interview with Cynthia H. Clanton, J.D., Special Assistant to the Director for Grants and Special Projects, Administrative Office of the Courts of Georgia, December 10, 2001.

The planned DTCs - those not yet implemented - did not provide much fiscal data to analyze. With only 20% of the planned DTCs providing a response, the proposed annual budgets ranged from a high of \$120,000.00 to a low of \$82,000.00 - with an average of \$101,000.00 per DTC. This is significantly less than the average of the existing DTC (\$201,928.00) and is a result of DTC programs designed to serve fewer clients - a range of 10 to 100 with an average of 37 - than the average existing DTC which serves 64 clients per month.

Nine of the fourteen existing DTC programs require the drug offender to contribute toward the cost of DTC program with fees ranging from \$500.00 per year to \$1200.00 per year. The average fee is \$766.00 per year for those programs which require a fee. To include the five DTC programs that do not require a fee would reduce the average to \$492.00 per year.

Eight of the ten planned DTCs indicated they had not yet determined if they would require the drug offender to pay a fee or determined the amount of the fee. The two planned DTCs which did respond, indicated they planned fees of \$1200.00 and \$300.00, annually. Interestingly, this average - \$750.00 per year - is almost identical to the average of the existing DTCs (\$766.00, annually) despite having an average budget approximately one-half of the existing DTCs. This may be indicative of funding concerns among the DTCs and an increase in competition for resources. The planned DTCs are requiring drug offenders to pay a greater percentage of the cost for drug treatment, education, and testing.

*The Efficacy of Existing Drug Courts in Georgia*

The National Drug Court Institute reports that as of December, 2000, 73,000 adults and 1500 juveniles have graduated from drug courts in the U.S., representing a 70% retention rate with 75% having been previously incarcerated. The benefits have been more than 1000 drug free babies born, 3500 parents who regained custody of children, 4,500 re-engaged in child support payments, and 73% retained or obtained employment.<sup>68</sup> These results indicate the efficacy or power to produce a desired effect <sup>69</sup> of the DTC concept. This desired outcome is the true measure and captures the intent of therapeutic jurisprudence.

Some elements used to measure of the effectiveness and success of drug courts are retention rates, supervision, cost-savings, a reduction of drug use among DTC participants, and recidivism rates both during the DTC program and after offenders leave the program.<sup>70</sup> Other factors may include benefits for families and children, benefits to police and prosecution, and improved reallocation of criminal justice resources.<sup>71</sup> With these factors as a benchmark, existing DTCs were asked how they gauge their effectiveness or success of their respective drug court program. The responses were as follows:

---

<sup>68</sup>[www.ndci.org/courtfacts.htm](http://www.ndci.org/courtfacts.htm), 8/20/2001.

<sup>69</sup>The American Heritage Dictionary (2nd College Edition)1985.

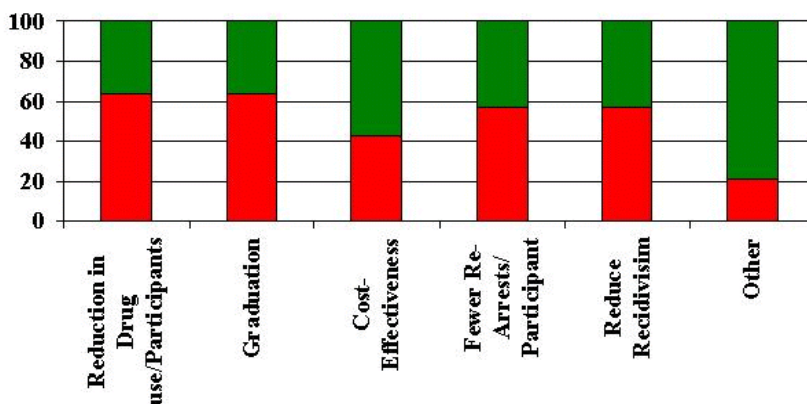
<sup>70</sup>Belenko, Steven, Research on Drug Courts: A Critical Review, Columbia University: The National Center on Addiction and Substance Abuse, June, 1998, p.4.

<sup>71</sup>Office of Justice Programs, Looking at a Decade of Drug Courts, American University: Drug Court Clearinghouse and Technical Assistance Project, May, 1998, p.7.

Reduction in Drug Use Among Drug Court Participants	9 of 14(64.2%)
Successful Completion/Graduation from Drug Court	9 of 14(64.2%)
Drug Court is More Cost-Effective than Traditional Sentencing	6 of 14(42.8%)
Fewer Re-Arrests Among Drug Court Participants	8 of 14(57.1%)
Reduction in Recidivism Among Drug Court Graduates	8 of 14(57.1%)
Other Factors or Measures of Effectiveness or Success	3 of 14(21.4%)

The other factors listed above included attainment of a higher degree of education, improved grade point average (in juvenile court program), and benefits to the family and society as a gauge of success.

## Gauge of Effectiveness



Percentage of DTCs measuring success by factors listed above

Another measure of success is the court's perception of how well it is doing relative to whatever gauge the DTC uses to determine effectiveness. Of the 14 DTCs represented in this study 9 (or 65%) indicated that their program was successful. Three programs indicated they were uncertain as to the success of the DTC either because no evaluation had been undertaken or the DTC had just begun and no data had been collected.

at the time this survey was conducted. Two programs did not respond to the question.

Yet another measure of the efficacy of the DTCs is compliance with the ten key components of drug courts.<sup>72</sup> They are listed as follows:

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.
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.

---

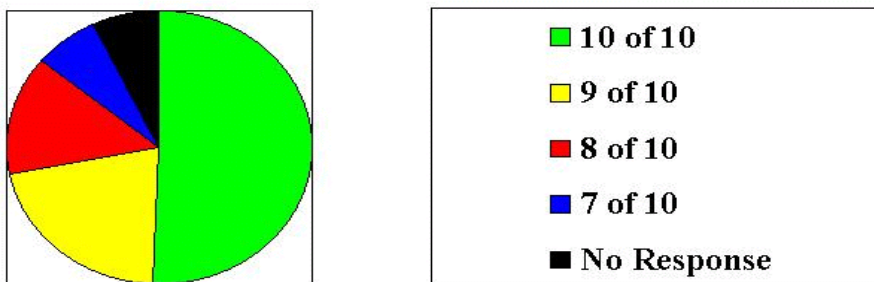
<sup>72</sup>Supra, note 34.



The compliance rate with these key components of drug courts with a listing of the key component(s) the DTC were not in compliance with - are as follows:

- 10 of 10 components - 7 DTCs (50%)
- 9 of 10 components - 3 DTCs (21%) - one #2 and two #3
- 8 of 10 components - 2 DTCs (14%) - both #2 and #3
- 7 of 10 components - 1 DTC ( 7%) - all #2,#3,and #4
- No Response - 1 DTC ( 7%)

## Compliance with 10 Key Components



The rate of compliance was surprisingly low. It is obvious from the findings that the existing DTCs have a difficulty with using a non-adversarial approach by prosecution and defense while protecting the defendants due process rights, early identification of participants and prompt placement into DTC, while one DTC indicated difficulty in providing a continuum of alcohol, drug and other related treatment and rehabilitation services. This non-compliance will adversely effect funding and performance of the DTCs if not corrected.

Fortunately, the existing DTCs can easily rectify their non-compliance with the Key Components of Drug Courts. For instance, every program must (at some point) identify participants and eventually place them into the DTC program. Using proper case management and case supervision techniques, the timetable for reviewing potential participants, offering the DTC option, and promptly placing them within the DTC program can be achieved.<sup>73</sup> Other issues can be addressed during the plan design phase while developing a DTC. If the Ten Key Components are included during the development /planning process and incorporated into the implementation stage, the result will be a more successful drug court.

In his article, *Research on Drug Courts: A Critical Review*, Dr. Steven Belenko indicates a number of consistent findings from available drug court evaluations nationwide. From the information provided by the survey of Georgia's DTCs - including program evaluations submitted by five (36% of) existing DTCs, a comparative analysis can be conducted to determine if the Georgia DTCs have similar performance based outcomes. The areas to be examined are: retention rates, population demographics, cost-savings, drug usage, recidivism during program, and recidivism after graduation.

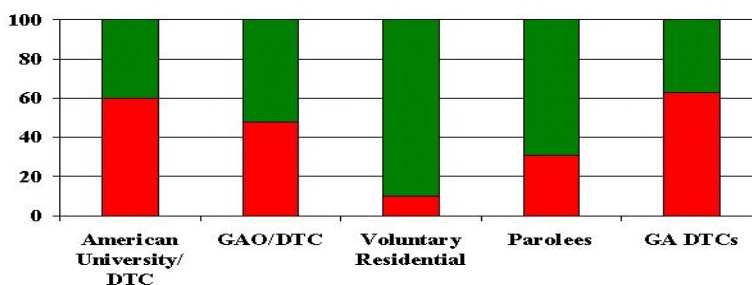
---

<sup>73</sup>Solomon, Maureen and Somerlot, Douglas K, Caseflow Management in the Trial Courts: Now and For the Future, Chicago, Illinois: American Bar Association, 1987, p.11 and p.20.

**Retention Rates.** Dr. Belenko found retention rates for drug courts are much greater than the retention rates typically observed for criminal justice offenders and treatment clients.<sup>74</sup> While American University drug court survey data indicates 60% of those who enter drug court remain in treatment - a General Accounting Office report estimates a minimum of 48% remain in treatment and complete a DTC program.<sup>75</sup> This compares to a 10% to 31% retention rates for (voluntary) residential or parolees referred to community-based drug treatment.<sup>76</sup>

The retention rates for the five Georgia DTCs that submitted data are above the national average. With retention rates ranging from 56% to 83%, the average retention rate is 63% based on the total number of clients in all five DTC programs. The average retention rate for the five DTC programs is 70.6% .

### Retention Rates




---

<sup>74</sup>Belenko, Steven, Research on Drug Courts: A Critical Review, Columbia University: The National Center on Addiction and Substance Abuse, June, 1998, p.4.

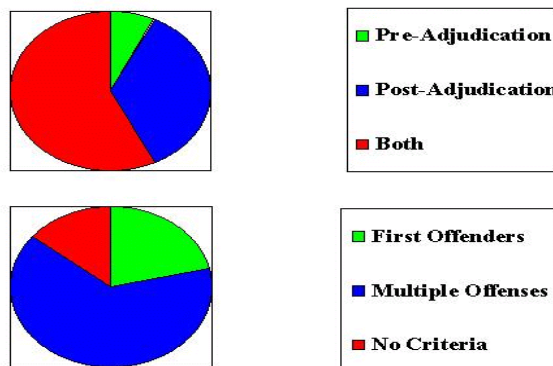
<sup>75</sup>Ibid, at p.21.

<sup>76</sup>Ibid, at p.22.

**Population Demographics.** The Belenko Study found that though drug courts are thought to target first offenders, many drug court participants have substantial criminal histories and many years of substance abuse.<sup>77</sup>

The population demographics for Georgia's existing DTCs are consistent with these national findings. While 22% of the DTC programs only accept first offenders, 78% indicate they accept drug offenders with previous (multiple) criminal histories or have no criteria and will accept any offender eligible for DTC. The population demographics for the planned DTCs are consistent as well. Eighty percent indicate a plan to accept offenders with prior offenses, while 20% plan on accepting only first offenders as part of their eligibility requirement.

## Population Demographics




---

<sup>77</sup>Supra, note 54.

**Cost-Savings.** Dr. Belenko determined that drug courts generate savings, at least in the short term, from reduced jail/prison use, reduced criminality and lower criminal justice costs.<sup>78</sup>

As stated earlier in Section II, *Fiscal Issues and Analysis of Existing and Planned Drug Courts*, the average cost per offender in Georgia's DTCs is \$262.00 per month compared to \$900.00 per month to incarcerate the same offender. Though it can be difficult to accurately determine cost-savings, Georgia's DTCs have reduced jail/prison use and reduced criminality - consistent with national findings. One DTC provided a cost-benefit analysis indicating that from January 1, 1996 to November 1, 1998 (the start of their respective DTC), 95,450 incarceration days were served by drug defendants representing a total cost of \$3,818,000.00. While from November 1, 1998 to May 1, 2001 only 28,856 incarceration days were served by drug defendants representing a total cost of \$1,154,240.00 - a difference of \$2,663,760.00. When the costs associated with DTC (\$1,174,824.00 for the diverted 294 drug offenders) are subtracted from the balance, the result is a cost savings of \$1,488,936.00. At (their calculated cost of) \$40.00 per day to house an inmate in the county jail, the cost of housing all 294 clients served for the average number of days in treatment (454.57) would cost \$5,327,560.40. This demonstrates Georgia's drug courts are cost-beneficial.

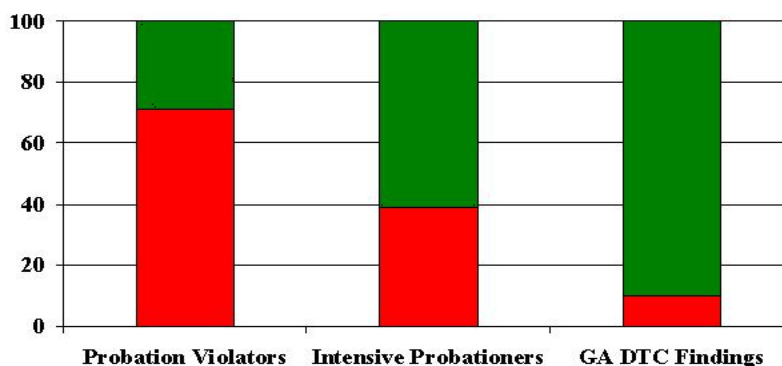
---

<sup>78</sup>Ibid

**Drug Usage.** The Belenko Study found drug use is substantially reduced while offenders are participating in drug court.<sup>79</sup>

Several DTCs provide statistical information regarding drug usage among offenders participating in DTC. In one study from November 1, 1998 to May 1, 2001 out of 12, 627 drug screens performed, only 4% tested positive. This compared to 132 non-DTC offenders brought back before the court on probation violations of 71 tested positive for drug abuse<sup>80</sup> and 39% of offenders on intensive probation testing positive for substance abuse, as well. All DTCs responding reported less than a 10 percent rate of either positive drug tests and/or usage among participants.

## Drug Use Among Participants




---

<sup>79</sup>Supra, note 54.

<sup>80</sup>From the data submitted it is difficult to determine the offender population of each group and to subsequently compare the percentages of drug usage among each group. The implication from the study: the drug court group had significantly less drug usage than the non-drug court group.

**Recidivism During Program.** Dr. Belenko found that criminal behavior is substantially reduced while the offenders are participating in drug court.<sup>81</sup>

While no Georgia DTC provided information about recidivism during the program, the successful retention rate noted earlier and the rate of recidivism discussed below (both during and after graduation from DTC) indicate that criminal behavior is substantially reduced while the offenders are participating in the Georgia DTCs - consistent with national findings.

**Recidivism.** The Belenko Study determined that based on limited data and to a lesser but still significant extent, drug courts reduce recidivism for participants after they leave the program.<sup>82</sup>

Five Georgia DTCs provided information on rates of recidivism. The range of rate was from a low of 0% (that is , no participant or graduate had been re-arrested at the time of this survey) to a high of 31%. The average rate of recidivism was an impressive 19.6% with a median of 25%. Though only five of the fourteen DTCs (36%) submitted data, it can be determined that DTCs reduce recidivism for those who have access to and participate in the drug court programs when compared to the U.S. Department of Justice report of a 45% rate of recidivism for defendants convicted of drug possession.<sup>83</sup>

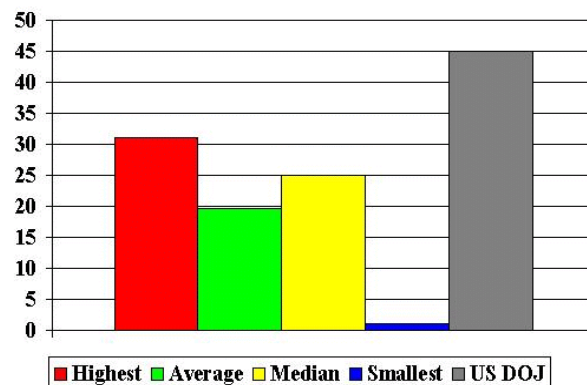
---

<sup>81</sup>Ibid

<sup>82</sup>Ibid.

<sup>83</sup>Fifth Judicial Administrative District, The Fulton County Drug Court: An Overview of a Comprehensive and Effective Alternative to Incarcerating Drug Dependent Offenders, Fulton County, Atlanta, GA: 2001.

## Comparing Rates of Recidivism in GA DTCs with National Rates



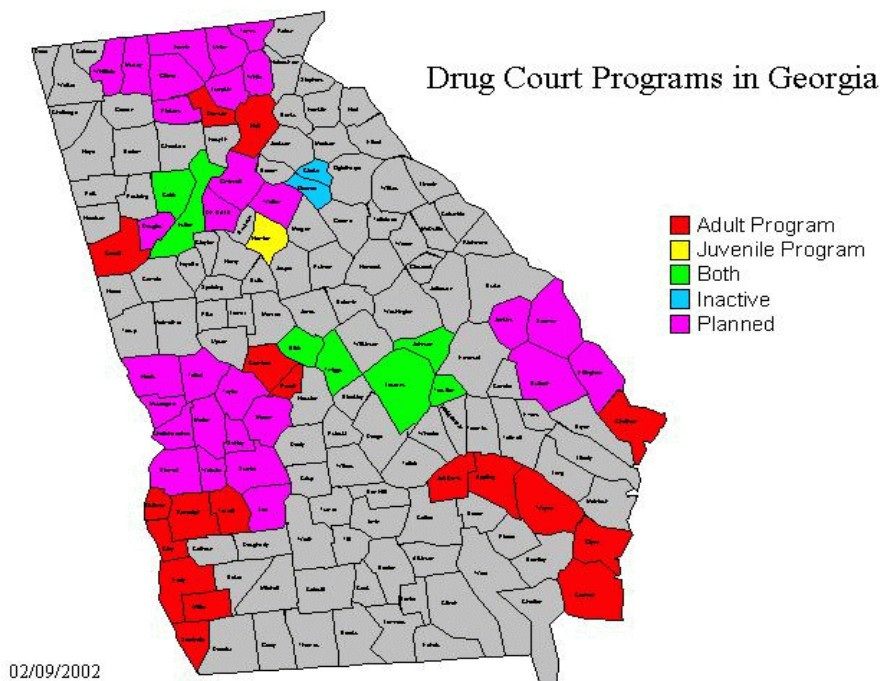
The Belenko study previously indicated was conducted in 1998. Since then, Dr. Belenko released, *Research on Drug Courts: A Critical Review 2001 Update*, at the 7<sup>th</sup> Annual National Association of Drug Court Professionals (NADCP) Training Conference in New Orleans, LA, May 30-June 2, 2001. The conclusions of this review are generally consistent with those findings of 1998 and 1999, indicating that drug use and criminal activity are reduced while participants are in the program. Among his latest findings: for those courts addressing retention and graduation rates, program completion rates are generally consistent with previous findings with an average of 47% of participants graduating. Studies using comparison or matched samples show lower rearrest rates for participants than for the comparison group(s). For those drug courts conducting cost analysis, estimates indicate that drug courts produce cost savings when compared to traditional adjudication<sup>84</sup>

<sup>84</sup>Wilkosz, Michael, *Research on Drug Courts: 2001 Update*, *NADCP News*, Volume VIII, No.2, 2001.



*Planned Drug Courts in Georgia - Findings from the Research*

Of the 118 survey responses, 20 (or 16.9 %) representing 7 superior courts and 3 juvenile courts are planning to implement a DTC within the next three years. This group represents 10 of Georgia's 48 judicial circuits - and if implemented - would represent a 100% increase in the number of circuits which have at least one operational DTC. The responses indicate that 60% of the planned DTC will be implemented between December, 2001 and December, 2002. While the remaining 40% plan implementation between January, 2003 and December, 2004.



The number of potential drug offenders served by these programs is uncertain. Four planned programs indicate a caseload analysis has not been conducted in order to identify the target population. The remaining six programs estimate a target population ranging from 10 to 100, with an average of 37 clients and a median of 30. Seven programs indicate they will offer drug education and treatment to both first time offenders and offenders with multiple charges and or previous criminal histories. Two potential programs indicated they will serve only first offenders, while one program indicated it would offer the program to all drug offenders including violent offenders. It is important to recognize and note that offering DTC to violent offenders may have undesirable consequences such as ineligibility for grants, bifurcation of treatment modality, and lower success rates in key areas - among others.<sup>85</sup>

As to the issue previously discussed relating to voluntary participation in the DTC and coercion as a part of the process, 6 programs indicated they are planning voluntary participation, 3 programs are planning for both voluntary and involuntary participation, and 1 program indicated it had not yet reached a decision on this issue in their planning process. Interestingly, while only 3 indicated they would involuntarily sentence drug offenders to DTC, 5 programs indicated they plan to impose a penalty/harsher sentencing for those defendants who choose traditional prosecution instead of DTC (this assumes the defendant either pleads guilty or is found guilty by a bench or jury trial). The responses indicate that 2 courts will increase time/incarceration - while 3 courts have not made a

---

<sup>85</sup>It was not clear from the survey response if this court would establish a separate DTC for violent offenders or if it had determined it would fund this violent offender group by alternative means.

determination as to what extent the penalty will be harsher. The other 5 programs indicate they do not plan on imposing harsher sentences to those offenders who do not elect participation in the DTC.

Unlike the existing DTCs, seven of the ten programs plan on a minimum DTC program length of at least 18 months to 2 years. Two programs will have programs that last 1 year, barring sanctions, and one program responded that it had not yet made a determination as to the length of the DTC program.

The referral process is much more broadly based in the planned DTCs rather than in the existing DTCs. Eight of the ten potential programs responded that the judge, assistant/district attorney, retained counsel, and/or public defender would be able to refer drug offenders to the program, while three of the ten indicated that the drug offender could self-refer to the DTC.

### SECTION III

#### *Obstacles to Additional Drug Treatment Courts in Georgia*

Undoubtedly, DTCs will continue to be developed and implemented in Georgia, incrementally. The success of the existing DTCs and the increasing rate of implementation of new DTCs lead to that conclusion. But in the midst of what appears to be a groundswell of enthusiasm for DTCs, lie some legitimate concerns about (a) the ability to sustain DTCs, (b) the proper role of the courts involved in DTCs, and (c) separation of powers issues - within a court culture that is fragmented<sup>86</sup> and where policy decisions must be based on collaboration among sheriffs, clerks of court, district attorneys, and judges which are all separately elected autonomous officials.

Of the 118 responses to the survey, 69 (68 superior court and 1 juvenile court) or 58.4% representing 28 of Georgia's 48 circuits, indicated no existing or planned drug court. This group had multiple concerns about starting a drug court. They included:

1. Lack of Funding. Thirty-two of the sixty-nine possible responses indicated that lack of sustained funding was a concern. Recall that the existing DTCs are funded from a patchwork of grants, some local funding, other sources, while only one DTC is funded by a direct state appropriation. There is a lack of systemic funding that would provide fiscal confidence to those groups interested in starting a DTC. The Georgia Supreme Court Committee on Substance Abuse and the Courts noted that because (drug) treatment

---

<sup>86</sup> Georgia has 159 counties within 48 judicial circuits. Each class of court: municipal, magistrate, juvenile, state, superior, court of appeals (intermediate appellate), and supreme court are autonomous. Thus the term fragmented.

capacity in Georgia is limited, start up costs for new programs have been a barrier to establishing drug courts in many communities<sup>87</sup> - further supporting the notion that lack of funding represents an obstacle to the implementation of new DTC programs.

2. Doubt the Effectiveness of Drug Courts. Twenty-seven of sixty-nine indicated that for them, the jury was still out as to whether or not drug courts are effective in deterring drug use among the offenders that come before them. This possibly indicates the potential value of this type of research. Educating judges as to the effectiveness and benefits of DTCs over traditional criminal sentencing practices is essential.

3. There is No Legislative Authority To Establish Drug Courts. Twenty-five of the sixty-nine responded that even if they thought DTCs were effective, they do not have authority under Georgia law to provide this remedy. This group identifies a separation of powers issue that will be discussed more thoroughly and in greater detail on following pages. For these judges and court professionals, just because drug courts are good doesn't make them a legal option for the court to consider. The question at issue: may judges create remedies to legislatively created criminal statutes not authorized by state law?

4. Lack of Support by the District Attorney or other Court Officials. Fifteen of the sixty-nine indicated an inability to gain the cooperation and support of key stakeholders in an effort to begin planning a DTC. This suggests that the respondents themselves may be interested in the development of a DTC. And future DTCs in Georgia may come from this group.

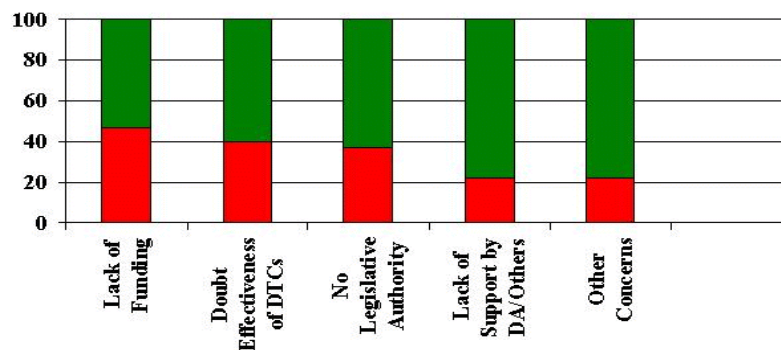
---

<sup>87</sup>Supra, note 42, at p.7.

5. Other Concerns. Fifteen responses indicated some other concern. They are as follows:

- a. potentially discriminatory sentencing standards and equal protection concerns
- b. the number of drug cases does not warrant creation of such a court
- c. resources strained on other court projects
- d. disparity in treatment of offenders - Equal protection issue
- e. drug treatment should be imposed incident to probation
- f. it reduces a judge down to an intensive probation officer
- g. should increase resources for probation department to perform these functions(executive branch function)
- h. drug rehabilitation is not a judicial function
- i. time constraints
- j. court directly involved in supervision which is the responsibility of probation(executive branch function)
- k. judges have not embraced the role of court as a treatment provider, probation officer and solution for social ills.
- l. drug courts do no more than I do in handling drug related cases
- m. uncomfortable with due process and equal protection issues regarding voluntariness of drug courts and disparity in sentences.
- n. don t believe it is the courts obligation to act as a social service agency
- o. creation of courts to deal with specific offenses either overemphasizes drug related offenses or diminishes the emphasis of offenses against persons and property.

## Roadblocks to further implementation of DTCs in GA



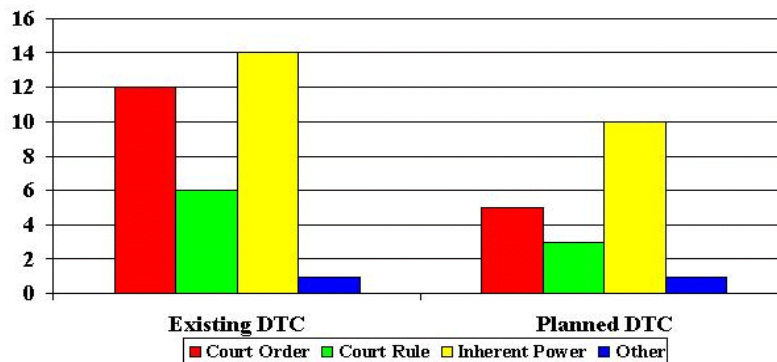
Percentage of Respondents indicating concerns about implementing  
DTCs

*The Issue of Authority to Create Drug Courts and The Need For Legislation*

As stated earlier, 25 of 69 or 37% of the respondents believe there is no legislative authority to establish a drug court. This raises the question, under what authority have the existing and planned DTCs established their drug court program? With a request to indicate all that apply to their respective DTC, the 14 existing and 10 planned program responses are as follows:

	Court Order	Court Rule	Inherent Power	Other
<b>EXISTING DTC</b>	12	6	14	1
<b>PLANNED DTC</b>	5	3	10	1

## Authority Used to Implement DTCs in Georgia



Note that the survey also provided the alternatives, state legislation and local legislation as reasonable responses to the question of authority. Neither of these options were selected by the respondents. Clearly, the courts that have implemented or plan to start a drug court have done so under the authority provided by the inherent power of the court. 100% of the DTC responses indicate that it is within the inherent power of the court to divert defendants from traditional prosecution or otherwise sentence drug offenders to DTC.

According to Justice Jim Carrigan, inherent powers consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists.<sup>88</sup> But the trial courts have mainly used inherent power to provide needed court personnel, facilities, and equipment.<sup>89</sup> This was acknowledged by the Georgia Supreme Court in *McCorkle v. Judges of Superior Court of Chatham County*, 260 GA 315, 317 (1990). Justice Hunt stated in his concurring opinion, "Needless to say, the exercise of such power [court's inherent power] by a judicial officer is the last resort and is indulged in only when all else has failed in an effort to reach an agreement with the county concerning the court's needs."<sup>90</sup> Therefore inherent power is an inappropriate vehicle to authorize creation of DTCs or to provide remedies other than those provided by legislatively created annotated codes of law. For instance, the following sections of the Official Code of Georgia Annotated outline the types of punishments

---

<sup>88</sup>Carrigan, Jim R., Inherent Powers of the Courts, Reno, Nevada: National Judicial College, 1973, p.2.

<sup>89</sup>Ibid, p.1.

<sup>90</sup>Superior Court, Eastern Judicial Circuit of Georgia, Civil Action No. x89-3115-c, In Re: McCorkle, et al, October, 1990, p.1.



authorized for certain drug crimes by the Georgia General Assembly:<sup>91</sup>

### Controlled Substances

16-13-1	Possession of Drug Related Objects
	1 <sup>st</sup> offense.....Misdemeanor
	2 <sup>nd</sup> offense.....1-5 years/\$1,000-\$5,000 Fine or Both
16-13-30	Purchase, Possess or Control Substances in Schedule I or II
	1 <sup>st</sup> offense.....2-15 years
	2 <sup>nd</sup> offense.....5-30 years
	Manufacture, Deliver, Distribute, Dispense, Sell, or Possess Substances
	Marijuana.....1-10 years
16-13-30.1	Unlawful Manufacture, Deliver, Distribution, Possession, or Sale of
	Non-Controlled Substances.....1-10 years
	Not more than \$25,000 Fine or Both

The above is indicative of an expression of the will of the people, through the state legislature with respect to the appropriate punishment for a specific crime. Therefore no legislative authority exists to sentence defendants or otherwise remand them to DTC. And legislation is needed if DTCs are to become a sentencing option in Georgia.

In support of this conclusion one may start by examining The Federalist Papers, Number 51, where there is a continuing argument on the separation of powers and the interdependence of the three branches of government: legislative, executive, and judicial. The implication is that the judiciary should defend the interests of the judicial branch, but not encroach on the legislative branch. Two sections support this conclusion:

[T]he great security against a gradual concentration of the several powers in the

---

<sup>91</sup> Kapoor, Sameer, Crimes and Punishments 2001, Decatur, GA: Georgia Indigent Defense Council, 2001, pp.67-68. These represent but a few of the crimes that may typically be referred to drug courts. The intention is not to focus on the type of crime and corresponding punishment, but to illustrate the specificity in which the legislative branch establishes punishment for specific crimes.

same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. <sup>92</sup>

[I]t is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. <sup>93</sup>

The case establishing the need for legislative authority to establish drug courts as a remedy to (drug and drug related) crimes continues in The Federalist Number 78: A View of the Constitution of the Judicial Department:

The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. <sup>94</sup>

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both;... <sup>95</sup>

It can be of no weight to say that the courts...may substitute their own pleasure to the constitutional intentions of the legislature. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. <sup>96</sup>

These quotes establish a prima facie case that there exists constitutional intent to rely on the legislative branch to establish what society deems criminal behavior and to

---

<sup>92</sup>Madison, James, The Federalist Papers , Number 51, Phase II Readings, Williamsburg, VA: National Center of State Courts, 2001, p.58.

<sup>93</sup>Ibid, p. 59.

<sup>94</sup>Hamilton, Alexander, The Federalist Papers, Number 78, Phase II Readings, Williamsburg, VA: National Center of State Courts, 2001, p.63.

<sup>95</sup>Ibid, p.64.

<sup>96</sup>Ibid, p.65.

subsequently establish remedies for those crimes.

The Georgia Supreme Court recognized the appropriate separation of powers between the legislative and judicial branches of government in *McCorkle v. Judges of Superior Court of Chatham County, GA* (260 Ga. 315, 1990) when they recognized the power of the judiciary is not a sword but a shield to prevent intrusion from the other branches of government. Therefore the judiciary does not have a sword to pierce the legislative authority which includes the establishment of remedies to violations of criminal law. The Georgia Court of Appeals in *Turney v. The State* ( 235 Ga. App.431, 1998) recognized the role of the legislature in establishing sentences and sentencing guidelines when they ruled:

Under Georgia's system, it is the exclusive province of the legislature to prescribe the range of punishment for criminal offenses. Where the legislature has established a minimum mandatory sentence for an offense...courts are simply not authorized to substitute their judgment for that of the legislature. Certainly judges and lawyers are authorized to inform the legislature of situations which call into question the wisdom of a particular statute. Indeed, judges and lawyers have a duty to do so.

It is apparent that the time has come for judges and lawyers to inform the legislature of the need for DTCs as a sentencing option. Legislative authorization is needed if DTCs are to become an institution in Georgia.

Procedurally, DTCs may be viewed by some as court pilot projects - an experimental undertaking to possibly attain a more desirable outcome as compared to the revolving door of traditional prosecution and incarceration under current Georgia law. The Georgia Constitution is clear on this possibility. The Constitution of the State of Georgia, Article 6, Section 1 at Paragraph 10 states:

The General Assembly may by general law approved by two-thirds majority of the members of each house enact legislation providing for, as pilot programs of limited duration, courts which are not uniform within their classes in jurisdiction, powers, rules of practice and procedure, and selection, qualifications, terms, and discipline of judges for such pilot courts and other matters relative thereto. Such legislation shall name the political subdivision, judicial circuit, and existing courts affected and may, in addition to any other power, grant to such court created as a pilot program, the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction. The General Assembly shall provide by general law for a procedure for submitting proposed legislation relating to such pilot programs to the Judicial Council of Georgia or its successor. Legislation enacted pursuant to this paragraph shall not deny equal protection of the laws to any person in violation of Article I, Section I, Paragraph II of this Constitution.

Despite the availability of this provision, there are no legislatively created DTCs classified as pilot courts or programs in Georgia nor have any been submitted to the Judicial Council of Georgia for consideration and approval prior to submission to the legislature.

Another legal issue that presents an obstacle to implementation of DTCs - as mentioned earlier (see *Obstacles to Additional DTC*, Section 5, Other Concerns) are issues related to equal protection because of potential disparities in sentences/punishments for the same offense.

Section 1 of the Fourteenth Amendment to the United States Constitution (ratified July 9, 1868) states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>97</sup>

The wisdom of having DTCs legislatively created is the application of the law on a

---

<sup>97</sup> Constitution of the United States of America, Amendment XIV, Section 1, Phase II Readings, Williamsburg, VA: National Center of State Courts, 2001, p.37.

state-wide basis. Since there are only 14 existing DTCs in Georgia at the time of this study, application of the judicially created remedy, DTC, is circuit-wide, at best. Therefore it is conceivable that disparate sentences exist which may raise the issue of equal protection under the law. Along judicial circuit boundaries one defendant may be arrested in a county for possession of controlled substance and face the minimum sentence established by the legislature; while in a contiguous county the drug offender (charged with exactly the same crime and similar circumstances) is remanded to a lengthy and intensive course of treatment under the DTC as a judicially created remedy of choice.

The Georgia General Assembly has enacted law to lessen disparate sentences. OCGA § 17-10-6, establishes the Sentence Review Panel of Georgia for the purpose of providing a remedy to those convicted who contend the sentence imposed is disproportionate to the crime or to sentences of others convicted of similar crimes. This in effect is a legislatively created (rotating) panel of judges who have the authority to (only) decrease a trial judges sentence if they find it is disproportionately harsh.<sup>98</sup> Further, OCGA § 17-10-35 (C, 3) (2000), requires the Georgia Supreme Court in some cases to consider upon the judgment becoming final in the trial court...with regard to sentence, a determination as to whether the sentence...is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The decision whether the sentence...is excessive or disproportionate to the penalty imposed in similar cases is not one to be made as such by the jury.<sup>99</sup> When taken in conjunction with the

---

<sup>98</sup>See *Mills v. State*, 244 Ga. 186, 259 S.E.2d 445 (1979)

<sup>99</sup>See *Blake v. State*, 239 Ga.292, 236 S.E.2d 637 (1977)

previously discussed Boykin Case [395 U.S.238 (1969)], XIV Amendment to the U.S. Constitution, and appropriate Georgia statutes and case law, this establishes the legislative branch as the creator of remedies as a fundamental principle of law and enforces the notion that defendants are to be afforded equal protection under Georgia law which lessens the opportunity for disparate sentences - unlike judicially created remedies such as DTCs.

To overcome the concerns about authority, disparate sentences, and equal protection issues, Georgia should follow the lead of other states and pass legislation establishing drug courts as a remedy to drug and drug related crime. For DTCs, enabling legislation could be considered the eleventh key component because of the institutional advantages derived from codification.

The benefits of legislation (both enabling and supporting DTCs) can be found by examining state statutes relating to drug court programs. Legislative authorization allowing the judicial branch to establish DTCs, providing uniform standards for the operation of DTCs, funding attached to legislation, and legislatively created organizations or commissions are but a few of the benefits not experienced in Georgia.

Missouri has an abundance of counties and a court system almost as fragmented as Georgia<sup>100</sup> with a patchwork of lower courts and overlapping jurisdiction. Still Missouri passed the Enabling Statute for Drug Court Programs, effective August 28, 1998 which is broad in scope of applicability. It can be found in the Official Code of Missouri 478.001

---

<sup>100</sup> A comparative analysis of court systems was conducted in Phase II of the Court Executive Development Program of the National Center of State Courts in Williamsburg, VA in June, 2001. Also see note 74.

through 478.006.<sup>101</sup> These statutes provide that:

(478.001) Drug Courts - Establishment - Purpose. Drug courts may be established by any circuit court pursuant to sections 478.001 to 478.006 to provide an alternative for the judicial system to dispose of cases which stem from drug use....

(478.003) Designation of Judge to Hear Cases - Appointment of Commissioners. In any judicial circuit of this state, a majority of the judges of the circuit court may designate a judge to hear cases arising in the circuit subject to the provisions of sections 478.001 to 478.006....a majority of the judges of the circuit court may appoint a person or persons to act as drug court commissioners [code section sets out terms, duties, compensation, and powers of said commissioner].

(478.005) Conditions for Referrals of Procedures - Admissibility of Evidence - Access to and Confidentiality of Records.

1. Each circuit court shall establish conditions of referral of proceedings to the drug court. The defendant in any criminal proceeding accepted by a drug court for disposition shall be a nonviolent person, as determined by the prosecuting attorney. Any proceeding accepted by the drug court program for disposition shall be upon agreement of the parties.
2. Any statement made by a participant as part of participation in the drug court program...shall not be admissible as evidence against the participant in any...proceeding. Notwithstanding the foregoing, termination from the drug court program and the reasons for the termination may be considered in sentencing or disposition.
3. Notwithstanding any other provision of law to the contrary, drug court staff shall be provided with access to all records of any state or local government agency relevant to the treatment of any program participant...

(478.009 pre-filed December 14, 2000 as a 2001 amendment) 1. In order to coordinate the allocation of resources available to drug courts throughout the state, there is established a Drug Courts Coordinating Commission in the judicial department...[section establishes composition and duties of said commission]. 2. There is hereby established in the state treasury a Drug Court Resource Fund , which shall be administered by the drug courts coordinating commission...drug court resources fund shall not be transferred or placed to the credit of the general revenue fund of the state at the end of each biennium, but shall remain deposited to the credit of the drug court resource fund.

---

<sup>101</sup>The Missouri code section and information relating to drug court programs was e-mailed to me by Ann Wilson, Office of the State Court Administrator, State of Missouri, on June 20, 2001.

Missouri has drug courts in 52 counties with some counties having several drug courts with varying target populations (that is, they have family court drug courts, juvenile court drug courts, adult pre-adjudication drug courts, adult post-adjudication drug courts, reentry drug courts, diversionary drug courts, and others.)<sup>102</sup>

Florida statutes enabling drug courts<sup>103</sup> authorize two types of drug courts. Pretrial intervention programs under Florida Statute 948.08 (1993) and probationary programs under Florida Statute 948-034 (1993). Defendants can be eligible for drug court under two different provisions of the former code section while the latter lists numerous categories of eligible defendants. Most DTCs currently operating in Florida were implemented under the criteria set forth in 948.08 - specifically, counseling, education, supervision, medical and psychological treatment for persons believed to have drug problems or charged with a specified criminal offense.<sup>104</sup>

The Florida state statutes relating to drug courts would work well in Georgia. By providing both pretrial and probationary DTCs, the legislature could satisfy both the courts that want to implement DTCs and those that sense drug treatment is more appropriate administered by probation/corrections.<sup>105</sup>

When comparing the effects of legislation on the formation of DTCs, it is clear the benefits of legislation - uniform standards, funding, and creation of

---

<sup>102</sup>Ibid.

<sup>103</sup>[www.american.edu/spa/justice/publications/florida.htm](http://www.american.edu/spa/justice/publications/florida.htm) 12/13/01

<sup>104</sup>Ibid.

<sup>105</sup>See Section III of this paper, *Roadblocks to Additional Drug Treatment Courts in Georgia*, Subsection 5. Other Concerns, (e), (f), (g), (h), (j), (k) which indicate these judges sense drug treatment is a function of the executive branch of government, specifically, the Department of Corrections, Probation Division.



organization/commissions - facilitate the implementation of DTCs. Missouri has 63 drug courts either operational or planned, while Florida has 64. Meanwhile, Georgia claims only 6 operational and 10 planned DTCs, as noted in the 2001 Office of Justice Programs Technical Assistance Project indicating drug court activity by state.<sup>106</sup>

---

<sup>106</sup> [www.american.edu/justice/drugcourts.html](http://www.american.edu/justice/drugcourts.html), August 8, 2001.

*Conclusions from Research and Public Policy Implications*

Georgia's DTCs hold promise for the future. By all accounts, the older and more well established DTCs have demonstrated considerable success. Above average retention rates, reduced drug use by participants, cost savings compared with traditional prosecution and lower recidivism both during and after graduation from the DTC program are but a few of the findings which are consistent with national studies of DTCs.

All programs that had conducted an evaluation of their respective DTC (65% of existing) deemed their program successful based on their own established criteria. Other DTCs (the remaining 35%) had not yet conducted an evaluation. While only 50% of existing DTCs complied with the Ten Key Components of Drug Courts, the areas of noncompliance can easily be rectified and should be as future funding will be subject to compliance with the key components of drug courts.<sup>107</sup>

One challenge which faces each existing DTC is particularly daunting. Funding has been so piecemeal that (in analyzing DTC budgets) several programs seem to spend all available resources on treatment and operational expenses - with little remaining to gather data and conduct the necessary studies which demonstrate the true benefits of DTCs. With 40% of the respondents without an existing or planned DTC indicating they doubt the effectiveness of drug courts, it becomes the responsibility of those interest groups<sup>108</sup> and

---

<sup>107</sup>To be eligible for funding from the superior court budget in fiscal year 2003, each DTC must comply with the Ten Key Components of Drug Courts. See Minutes of the Executive Committee of the Council of Superior Court Judges, Emory Conference Center, Atlanta, GA: August 28, 2001, p.2.

<sup>108</sup>Though there is no legislation in Georgia creating a (state sponsored) drug court organization, the Georgia Council on Substance Abuse and the Georgia Association of Drug Court Professionals are two such interest groups.

courts with DTC programs to educate these judges about the benefits of drug court over traditional prosecution and incarceration. Studies providing outcomes for statistically similar defendant populations before and after implementation of DTCs, comparison of outcomes for statistically similar groups (after implementation of DTC) - one accepting the DTC option, the other rejecting the DTC option with selection of traditional prosecution/incarceration measured over the same time period - are the types of studies that should be required to unequivocally prove the effectiveness of DTCs both from a cost-benefit and recidivism standpoint. The "catch 22" is these studies require significant funding which this research indicates is competitive and otherwise difficult to obtain. The Georgia DTCs are placed in the position of having to use all of their funds to operate their respective drug court programs and therefore cannot undertake detailed studies that may have the potential to yield increased and sustainable funding in the future. Still, Georgia's DTCs must do a better job of gathering the necessary data and properly evaluating their drug court programs.

From a public policy perspective, the leadership of Georgia's judiciary is demonstrating support for the implementation of drug courts. The Superior Courts have voted to request a state appropriation of \$500,000.00 for DTCs as part of their overall FY2003 budget request.<sup>109</sup> These funds - if appropriated - would be divided equally among ten judicial administrative districts. Fifty thousand dollars per judicial district is not much when one considers the median budget of an existing DTC in Georgia is \$175,000.00 per year and when one considers that the State of Georgia spends \$2,130,000.00 picking up

---

<sup>109</sup>Supra, note 107.

road-kill from its highways.<sup>110</sup> However, it is significant from a policy standpoint to have the superior court leadership embrace DTCs as a part of their meager state budget request.

Another demonstrative embrace of the drug court concept by the leadership of Georgia's judiciary took place this year. The final report of the Georgia Supreme Court Blue Ribbon Commission on the Judiciary calls for implementation of drug courts. According to the report, drug courts are necessary because [t]he relentless pressure of illegal drugs in our society is producing a criminal caseload that is extracting a personal toll on our judges and on our trial courts of general jurisdiction.<sup>111</sup> This would have been a golden opportunity to publicly espouse the benefits of DTC to society: the reduced criminality, cost-savings and other measure of success which DTCs offer. Unfortunately, these issues were not included in the report.

Special interest groups in Georgia are calling for redirected public policy. The Georgia Council on Substance Abuse indicates despite progress in understanding the behavioral and physical causes of addiction, and the promise of new prevention and treatment approaches, Georgia's public policy does not reflect this new knowledge. To make the most of current research and address the various consequences of substance abuse, The Georgia Council on Substance Abuse is calling for changes including:

Combating the stigma of addiction and changing the way we think about parity in insurance benefits.

---

<sup>110</sup>Fax from Buddy Gratton, Georgia Department of Transportation, Office of Maintenance, Atlanta, GA., Copy of e-mail indicating cost of debris removal from Georgia Highways in FY2001, March 11, 2002.

<sup>111</sup>Conley, Janet, *Panel Urges Big Changes In Judiciary*, Fulton County Daily Report, Volume 112, No.114, Atlanta, Georgia: June, 12, 2001, p.2.

Reallocating funds to emphasize more prevention and treatment programs.

Making prevention and treatment programs more accessible.

Addressing Georgia's shortage of substance abuse professionals through recruiting, training, and pay scale.<sup>112</sup>

Further, the Georgia Supreme Court Committee on Substance Abuse and the Courts in a June 28, 2001 memorandum to its membership indicated the need for legislation in the development of a five year plan. Any proposed legislation should include:

Establish drug courts in every judicial district, hold all DTCs to standards set by the Ten Key Components established by the National Association of Drug Court Professionals and provide funding to make this happen.

Fund adequate treatment resources including residential housing.

Clean up of existing legislation that may cause difficulties (conflict with the intent of drug court philosophy and therapeutic jurisprudence).

Mandate the relationship between treatment and the criminal justice system.

Create standards for treatment providers.

Combat measures against issues such as California proposition 36.<sup>113</sup>

These measures call for drug education and treatment in the form of DTCs as a shift in public policy away from mandatory minimum sentences of incarceration. These represent the differing philosophical approaches to punishment and/or rehabilitation as a means to resolve crimes against the state and restore or reinforce social order.

---

<sup>112</sup>Georgia Council on Substance Abuse, The Courage to Change, Atlanta, Georgia, 2001, p.3.

<sup>113</sup>Fax of memorandum from Donna Dixon, sub-committee chair, Georgia Supreme Court Committee on Substance Abuse and the Courts, 5 Year Plan for Drug Courts in Georgia, Atlanta, GA: June 29, 2001, p.5.

One of the most compelling public policy issues relating to DTCs in Georgia is the burgeoning costs of incarceration. A new 1600 bed prison has an estimated cost of \$200 million with continuation costs in excess of \$50 million per year.<sup>114</sup> These costs have caused Department of Corrections (DOC) budget for the State of Georgia to increase exponentially. In FY2001, the DOC budget comprised 59.6% of total criminal justice funding for the state and DOC's expenses exceeded 6% of the entire state budget.<sup>115</sup> In response to the runaway costs of incarceration, Governor Roy Barnes created the Governor's Commission on Certainty in Sentencing that same year. This commission is charged with developing sentencing guidelines in an effort to provide more uniformity in sentences, provide predictability in the need for prison beds, and ultimately reduce the rate of growth of the prison population.<sup>116</sup> Currently, data is being gathered to examine sentencing for a few select crimes - among them and in particular - controlled substances offenses,<sup>117</sup> with the report due sometime in 2003.

Unfortunately, while Georgia's political leadership is forced to come to grips with runaway prison costs, the state now faces an economic recession. In a letter to Georgia Supreme Court Chief Justice Norman Fletcher, the Office of Planning and Budget has requested the judicial branch to cooperate and follow the lead of executive branch agencies

---

<sup>114</sup>Pattis, Norm, *Wrong Rehab*, Fulton Daily Report, Atlanta, Georgia: August 9, 2001, p.7.

<sup>115</sup>Administrative Office of the Courts of Georgia, Meeting Agenda and Proposals of the Judicial Council of Georgia, Section 15, Georgia Indigent Defense Council Legislative Package, Atlanta, Georgia, December 14, 2001.

<sup>116</sup>Council of Superior Court Judges, Minutes of the Executive Committee of the Council of Superior Court Judges, Dawsonville, GA, October 17, 2001, p.2.

<sup>117</sup>Memorandum from Mike Cuccaro, Staff Attorney, Council of Superior Court Judges to the Officers of the Council of Superior Court Judges, Dated October 10, 2001.

in cutting their respective budgets by 2.5% in FY2003 and to prepare for a 5% reduction in FY2004.<sup>118</sup> This would appear to be an opportunity for the judicial branch to offer alternatives to incarceration by diverting future offenders charged with drug and drug related crimes to DTCs. This alternative holds a promise of controlling the prison population and reducing recidivism at significantly less expense than traditional incarceration.

But to make this possibility a reality will require the three branches of state government to cooperate in forming a plan to offer DTCs as an alternative to incarceration. Based on this research it can be concluded that any plan should include (but not be limited to) the following:

1. With judicial input the legislature should propose and pass legislation enabling the creation of both pre-adjudication and post-adjudication drug courts. This legislation should create juvenile, adult, and probationary DTCs. It should set uniform standards, provide funding for planned DTCs, and establish a drug court commission.
2. The executive branch through the Department of Corrections should reallocate necessary resources to eligible DTCs for each offender diverted to DTC that would have otherwise been remanded to the DOC.
3. Expand to each judicial circuit a post-adjudication drug education and treatment program modeled after DTC concept to be operated and supervised by staff of the probation division of the DOC.
4. The legislature should provide start-up funds for pre-adjudication DTCs in juvenile and superior courts which meet the uniform standards of the enabling legislation. and finally,

---

<sup>118</sup>Letter to Bill Tomlinson, Director of the Office of Planning and Budget from Chief Justice Norman S. Fletcher, Georgia Supreme Court, November 7, 2001. The letter reiterates the contemplated shortfalls in State revenue, the constitutional duties in light of budgetary restraints, and the overall reductions necessitated by current economic conditions in response to the letter from OPB on October 1, 2001.

5. Designate three prisons as Drug Education and Treatment Institutions. Each prisoner sentenced to the DOC should serve the first year of their respective sentence in a drug education and treatment program modeled after the DTC concept.

If states are laboratories of federalism with social and political experimentation flourishing in each of the 50 Petri dishes, then Georgia should demonstrate initiative towards developing a cure to the cancer of drug addiction that spawns criminality in our state. It is clear from this research that no single solution will cure the epidemic. DTCs are but one ingredient in a prescription of hope. Thus, it will be only with collaboration between the necessary leadership for this state to develop a strategic plan to save the next generation and offer a better quality of life for all Georgians.



## APPENDIX

## SURVEY OF JUDGES, ADMINISTRATORS AND DRUG COURTS OF GEORGIA

## Assessment of the Drug Court Movement in Georgia

Circuit: \_\_\_\_\_

1. Is there an established drug court within your circuit? \_\_\_\_\_ Yes \_\_\_\_\_ No  
(If yes, proceed to question 4)
2. If no, do you plan to implement a drug court within the next three years?  
\_\_\_\_\_ Yes \_\_\_\_\_ No  
(If yes, proceed to question 4)
3. If no, please indicate your concerns about starting a drug court - please check all that apply:
  - a. there is no legislative authority to establish a drug court \_\_\_\_\_
  - b. lack of funding \_\_\_\_\_
  - c. doubt the effectiveness of drug courts \_\_\_\_\_
  - d. lack of support by DA or other court official \_\_\_\_\_
  - e. other, please explain \_\_\_\_\_
- 4a. As a court official, are you confident in your knowledge of drug addiction issues?  
\_\_\_\_\_ Yes \_\_\_\_\_ Somewhat \_\_\_\_\_ No
- 4b. Are you aware of the drug treatment options available in your circuit?  
\_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered question 3 and 4 and you do not plan to or have a drug court - you have completed the survey! Please feel free to add any comments in regard to drug courts in the comments section of this survey.

5. If you answered yes to question 1 or 2, what date did/will your drug court begin?  
please provide date or proposed date of implementation: \_\_\_\_\_
6. Under what authority did you begin the drug court (please check all that apply):
  - court order \_\_\_\_\_
  - court rule \_\_\_\_\_
  - inherent power \_\_\_\_\_
  - pursuant to state legislation \_\_\_\_\_
  - pursuant to local legislation \_\_\_\_\_
  - other, please advise \_\_\_\_\_

- 7a. What is the target population served by your (proposed) drug court? Please check all that apply:
- |                 |                        |                         |
|-----------------|------------------------|-------------------------|
| _____ Adult:    | Pre-adjudication _____ | Post-adjudication _____ |
| _____ Juvenile: | Pre-adjudication _____ | Post-adjudication _____ |
- 7b. Level of offender? \_\_\_\_\_ 1<sup>st</sup> offender \_\_\_\_\_ 2<sup>nd</sup>/multiple \_\_\_\_\_ Violent offender
8. How many clients/defendants are/will be served by your drug court? (i.e the average monthly enrollment) \_\_\_\_\_
9. Does/will your drug court program operate on the presumption that the defendant/client initially participate on a voluntary basis? \_\_\_\_\_ yes \_\_\_\_\_ no
10. How is a defendant referred to the program or initially advised of the program?
- |                       |                        |           |             |
|-----------------------|------------------------|-----------|-------------|
| _____ public defender | _____ private attorney | _____ ADA | _____ Judge |
| _____ self referral   | _____ other            |           |             |
11. Are there any penalties (harsher sentencing) for a defendant who may choose traditional prosecution over drug court (assuming the defendant is found guilty or enters a plea of guilty) \_\_\_\_\_ yes \_\_\_\_\_ no
12. If yes, to what extent is the sentence more severe?
13. Barring sanctions, how long does the drug court program last? (ie. length of treatment) \_\_\_\_\_ <year \_\_\_\_\_ year \_\_\_\_\_ 18 months \_\_\_\_\_ 2 years
14. Which of the following statements accurately describes the components of your (planned or established) drug court? Please check all that apply.
- |   |       |
|---|-------|
| a. drug treatment services are integrated with justice system case processing   | _____ |
| b. using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting the due process rights of the participants                            | _____ |
| c. eligible participants are identified early and promptly placed in the drug court program - (if yes, within what period of time _____)  | _____ |
| d. a continuum of alcohol, drug and other related treatment and rehabilitation services are provided or are accessible to each participant  | _____ |
| e. abstinence is monitored by frequent alcohol and other drug testing   | _____ |
| f. a coordinated strategy governs drug court responses to participant compliance (ie. an established set of rewards and sanctions have been developed)                            | _____ |
| g. judicial interaction is an essential part of this drug court   | _____ |
| h. continuing interdisciplinary education among judges, treatment providers, and staff promotes effective drug court planning, implementation and operations                      | _____ |
| i. we have forged partnerships among the drug court, public agencies, and community-based organizations to generate local support and enhance the effectiveness of our drug court | _____ |
| j. monitoring and evaluation measure the achievement of program goals and gauge the effectiveness of our program  | _____ |

15a. How is/will your drug court funded (please check all that apply):

federal grant funds \_\_\_\_\_  
 state grant funds \_\_\_\_\_  
 fines/forfeitures \_\_\_\_\_  
 federal appropriation \_\_\_\_\_  
 state appropriation \_\_\_\_\_  
 local appropriation \_\_\_\_\_  
 other funds (please indicate) \_\_\_\_\_

15b. What is the annual budget for your drug court? \$ \_\_\_\_\_

15c. Is there a monthly fee for the defendant? \_\_\_\_yes \_\_\_\_no  
 If yes, how much is the fee? \$ \_\_\_\_\_

If you answered yes to question 2 (you have a planned drug court not yet implemented) you have completed the survey! Please feel free to provide any comments related to drug courts in the comments section of this survey. If you have an established drug court please answer the following:

16. Is your drug court program successful? \_\_\_\_yes \_\_\_\_no

17. How do you gauge the effectiveness or success of your drug court program? Please check all that apply:

a. reduction in drug use among drug court participants \_\_\_\_\_  
 b. successful completion/graduation from drug court \_\_\_\_\_  
 c. drug court is more cost-effective than traditional sentencing \_\_\_\_\_  
 d. fewer re-arrests among drug court participants \_\_\_\_\_  
 e. reduction in recidivism among drug court graduates \_\_\_\_\_  
 f. Other \_\_\_\_\_

If you have a report indicating the effectiveness of your drug court program (ie. the percentage of participants that graduate, rates of recidivism for drug court graduates, cost-effectiveness of drug court, etc.) please include a copy with this survey. Thank you.

18. Have you gathered any empirical data that would indicate the rate of recidivism (for similar crimes/charges) before and/or after implementation of your drug court program?

\_\_\_\_yes \_\_\_\_no

Person completing this form: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Thank you for your assistance in this matter. Please return survey form in the enclosed postage paid envelope.

COMMENTS:

### **A Note About the Drug Court Survey Results**

In an effort to improve the rate of responses regarding the survey and to ensure reliable data/reporting, it was implicit that the results, findings, and conclusions drawn from the survey would be printed under the veil of anonymity. Though the findings are summarized and conclusions drawn from the aggregate, some drug courts and or judges were mentioned or referenced for responses without identifying them individually. The reasons for this are twofold.

First, misinterpretation of the data could have an adverse effect on the future of a drug court. A higher than average drug court budget in a particular year, temporary noncompliance with the Key Components of Drug Courts, and higher than expected rate of recidivism are examples information which may be misinterpreted and subsequently have a detrimental effect on an individual court as it relates to funding, future grants, and public/political support.

Secondly, judges are bound by the Canons of Judicial Conduct from commenting or expressing an opinion about matters which they may have to rule upon in the future. Identifying judges and/or courts which expressed an opinion about drug courts with respect to issues regarding equal protection and the unauthorized creation of a remedy for legislatively created crime, may cause an individual judge to be challenged or call into question said judge's ability to hear and rule on similar matters involving therapeutic jurisprudence. This would adversely effect Georgia's judicial branch and would not bode well for future surveys regarding judicial perceptions, policies, and programs.

Therefore, none of the raw data or reports from individual courts is provided in this research paper. None of the data submitted as a part of this research project will be disseminated to any individual or organization. Anyone interested in a subsequent study of this subject matter may utilize the same methodology used in this research with respect to contacting the individual courts and requesting the needed information.

## BIBLIOGRAPHY

- American University. Drug Court Research Center Fact Sheet. Washington, DC: School of Public Affairs, Justice Program Office, 1995.
- Administrative Office of the Courts of Georgia. Meeting Agenda and Proposals of the Judicial Council of Georgia. Section 15, Georgia Indigent Defense Council Legislative Package, Atlanta, Georgia, December 14, 2001.
- Administrative Office of the Courts. Georgia Conference on Substance Abuse and the Courts, Final Report. Atlanta, Georgia: Supreme Court of Georgia, 1994.
- American Heritage Dictionary. (2nd College Edition)1985.
- Belenko, Steven. Research on Drug Courts: A Critical Review. Columbia University: The National Center on Addiction and Substance Abuse, June, 1998.
- Belenko, Steven. Research on Drug Courts: A Critical Review. Alexandria, Virginia: National Drug Court Institute Review, Vol.1, Issue 1, Summer, 1998.
- Black's Law Dictionary. 854-855(6th ed. 1990).
- Blake v. State, 239 Ga.292, 236 S.E.2d 637 (1977).
- Bureau of Justice Statistics. Drugs, Crime, and the Justice System. U.S. Department of Justice, Publication No. NCJ-133652.
- Carrigan, Jim R. Inherent Powers of the Court. Reno, Nevada: National Judicial College, 1973.
- Conley, Janet. Panel Urges Big Changes In Judiciary. Fulton County Daily Report. Volume 112, No.114, Atlanta, Georgia: June, 12, 2001.
- Constitution of the United States of America. Amendment XIV, Section 1, Phase II Readings, Williamsburg, VA: National Center of State Courts, 2001.
- Cooper, C. S., and J.A. Trotter, Jr. Drug Case Management and Treatment Intervention Strategies in the State and Local Courts. Washington, DC: American University, 1994.
- Cooper, C. S., and J. A. Trotter, Jr. Recent Developments in Drug Case Management: Re-engineering the Judicial Process, 16:3 The Justice System Journal 84, 1994.
- David B. Wexler and Robert F. Schopp. Therapeutic Jurisprudence: A New Approach to Mental Health Law. Handbook of Psychology and Law, 1999.
- David B. Wexler and Bruce J. Winick. Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research. 45 University of Miami Law Review, 979, 1991.
- Davis, R. C., B. E. Smith, and A. L. Lurigio. Court Strategies to Cope with Rising Drug Caseloads, 17:1 The Justice System Journal. 1994.
- Drug Policy Research Center, Rand. Mandatory Minimum Drug Sentences: Throwing Away the Key of the Taxpayers Money.



Fifth Judicial Administrative District. The Fulton County Drug Court: An Overview of a Comprehensive and Effective Alternative to Incarcerating Drug Dependent Offenders. Fulton County, Atlanta, GA., 2001.

General Government Division, U.S. Government Accounting Office. Drug Courts: Information on a New Approach to Address Drug-Related Crime. 1995.

Georgia Council on Substance Abuse. Description of the Drug Court Movement in the State. Atlanta, Georgia, Circa 2001.

Georgia Council on Substance Abuse. The Courage to Change. Atlanta, Georgia, 2001.

Georgia Supreme Court Committee on Substance Abuse and the Courts. 5 Year Plan for Drug Courts in Georgia. Atlanta, GA: June 29, 2001.

Georgia Supreme Court Committee on Substance Abuse and the Courts. Proposal for Georgia Tobacco Settlement, Atlanta, Georgia: Administrative Office of the Courts of Georgia, 2000.

Hamilton, Alexander. The Federalist Papers, Number 78. Phase II Readings, Williamsburg, VA: National Center of State Courts, 2001.

Jugar, Richard. Seminars for Divorcing Parents in Georgia. Decatur, Georgia: Fourth Judicial Administrative District of Georgia, 1999.

Kapoor, Sameer. Crimes and Punishments 2001. Decatur, GA: Georgia Indigent Defense Council, 2001.

Madison, James. The Federalist Papers , Number 51. Phase II Readings, Williamsburg, VA: National Center of State Courts, 2001.

Martin, Nolan. Dublin Judicial Circuit Drug Court Protocol. Lyons, GA: Eighth Judicial Administrative District of Georgia, September, 1998.

Martin, Nolan. Eighth Judicial District Drug Diversionary Program. Lyons, GA: Eighth Judicial Administrative District of Georgia, March, 1993.

Mills v. State. 244 Ga. 186, 259 S.E.2d 445 (1979)

Mission New Hope. A Picture of Substance Abuse in Metro Atlanta. Atlanta, GA: Community Focus on Drugs, 1994.

National Center on Addiction and Substance Abuse at Columbia University. Behind Bars: Substance Abuse and America's Prison Population. Circa, 1994.

National Drug Court Institute. National Drug Court Institute Review. Volume III, Issue I, Winter, 2000.

Office of Justice Programs. Looking at a Decade of Drug Courts. American University: Drug Court Clearinghouse and Technical Assistance Project, May, 1998.

OJP Drug Court Clearinghouse and Technical Assistance Project. Summary of Drug Court Activity by State and County. August 8, 2001. [www.american.edu/justice/drugcourts.html](http://www.american.edu/justice/drugcourts.html).

Pattis, Norm. Wrong Rehab, Fulton Daily Report. Atlanta, Georgia, August 9, 2001.

Peggy F. Hora, William G. Schma, John T.A. Rosenthal. Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America.<sup>74</sup> Notre Dame Law Review 443, 1999.

Peter Finn and Andrea Newlyn. U. S. Department of Justice Publication No. NCJ-142412. Miami's Drug Court: A Different Approach. 1993.

Satel, Sally. Drug Treatment: The Case For Coercion. National Drug Court Institute Review, Vol.III, Issue 1, Winter, 2000.

Solomon, Maureen and Somerlot, Douglas K. Caseflow Management in the Trial Courts: Now and For the Future. Chicago, Illinois: American Bar Association, 1987.

Superior Court, Eastern Judicial Circuit of Georgia. Civil Action No. x89-3115-c, In Re: McCorkle, et al, October, 1990.

The Office of the State Court Administrator. Treatment-Based Courts...a Guide. Supreme Court, State of Florida, Circa, 1993.

Webster's Collegiate Dictionary 1223(10th ed. 1994).

Wilkosz, Michael. Research on Drug Courts: A Critical Review 2001 Update. NADCP News. Volume VIII, No. 2, Summer, 2001.

Wisham, Gary. Conditional Discharge Program: Executive Summary. Columbus, Georgia: April, 1994.

[www.american.edu/spa/justice/publications/florida.htm](http://www.american.edu/spa/justice/publications/florida.htm). December 13, 2001.

[www.ndci.org/courtfacts.htm](http://www.ndci.org/courtfacts.htm), August 20, 2001.

[www.ojp.usdoj.gov/depo/define/welcome.html](http://www.ojp.usdoj.gov/depo/define/welcome.html). Office of Justice Programs, Drug Court Program Office, Defining Drug Courts: The Key Components. January, 1997.