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**The Criminal Justice System Needs to Expand the Utilization of
Specialized Drug Courts**

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ABSTRACT

One of the major issues facing the United States Criminal Justice System for the last half century is the increased problem of drug usage and addiction. The legislature's initial response was to increase the punishment for possession and distribution of controlled substances. This caused a dramatic increase of the number of Americans incarcerated for non-violent drug related offenses and cost to the American tax-payer (Pratt, 2009). Faced with these statistics, a group of criminal justice leaders formulated an innovative idea of treating the addiction rather than curtailing the endless supply of narcotics. The concept that these leaders formulated was the drug court. The drug court consists of a specially appointed judge who has been trained and educated in the pharmacology of drug addiction. The drug court consists of drug treatment, counseling, and periodic urine analysis under court direction. The goal of the drug court is to reduce recidivism and assist the defendant in overcoming their addiction. The drug court dictates its success rate of the program through the decrease in recidivism rates of participants by 71% compared to non-participants (Virginia, 2008).

The criminal justice system needs to expand the utilization of the specialized drug courts in order to efficiently and effectively deal with the epidemic of drug usage in communities across the United States thereby creating an economic impact. Drug usage is costing the American taxpayer billions of dollars. The drug court model attempts to address change in the offender's life and the cause of the offense instead of utilizing incapacitation. The American criminal justice system must embrace innovative new ideas to curtail the recidivism rate of drug offenders in America.

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INTRODUCTION

The original drug Court was founded in 1989 in Dade County, Florida. This was a time period in which the United States was seeing a huge influx of cocaine from Colombia. The American public was inundated with the drug culture from the nightly news to the television show "Miami Vice". Cocaine was prevalent and readily available in every community across the United States. The Reagan/Bush Administrations were proposing mandatory sentencing to remove the discretion from judges that were viewed as too liberal. The Colombian drug lord Pablo Escobar was a common household name and a frequent topic of newscasts. The War on Drugs was active. In 1980, there were fewer than 250,000 incarcerated in the United States (Pratt, 2009). It is estimated that today, there are an estimated 2.2 million Americans incarcerated, which is a 500% increase over the past 30 years (The Sentencing Project, n.d.). This is a failure of the deterrence theory of criminal justice. The increasing number of Americans incarcerated and the costs involved in safeguarding and caring for these inmates caused a group of criminal justice leaders to develop a new program and approach to solve the expanding drug crisis. The program developed by these criminal justice leaders is known as the drug court. The drug court was designed to understand the mental health issues and physical characteristics of addiction to drugs.

The drug courts consist of a specially trained judge who understands the pharmacology of drug abuse. The counselors, prosecutor, and defense attorney attempt to work in synergy to assist the defendant in overcoming the drug addiction. Each component understands the reality that the defendant will most likely relapse during their treatment. Instead of the judge simply revoking the probation of the defendant, he

will utilize the options of a short sentence in jail, increased treatment, or court oversight. Participation in the drug court program is generally voluntary as the defendant is attempting to avoid a lengthy prison sentence. Voluntary participation assists in the commitment of the defendant to be successful in defeating the drug addiction. The drug court has created efficiencies in the court system by removing nonviolent offenses from the district courts and moving them to specialized courts therefore decreasing the back log of many violent offenses awaiting trial.

The corrections systems in the United States currently house 2.4 million Americans with 70% of the violations being non-violent offenses (Pratt, 2009). Many jurisdictions are attempting to use empirical data from the success of the Dade County experiment to offset the number of incarcerated citizens and decrease recidivism rates. The intensive program consists of proven addiction treatment, regular urine analysis, and counseling programs. The court is based on the creation of a non-adversarial courtroom environment. All participants, defendant, judge, prosecutor, defense attorney and counselors, work for the betterment of the defendant in overcoming the physical addiction and poor decision making skills. In order for the offender to participate in the drug court program, he must voluntarily plead guilty to the offense and being willing to accept treatment for the addiction ("Planning and Implementing Drug Courts in Texas," 2005).

The guide for "Planning and Implementing Drug Courts in Texas" (2005) stated that treatment and rehabilitation must be "reality based." First, drug courts must recognize that the drug user has the best chance of success with the drug court if the intervention occurs during the initial arrest and incarceration. Second, the court must act

swiftly with the attorneys, counselors, and probation officers working in conjunction for the benefit of the drug abuser. Third, the drug court must understand that the effects of drug addiction are long term and difficult to terminate; therefore, treatment must be long term and comprehensive to deal with the effects of the disease. Fourth, the drug courts must understand that drug addiction is rarely isolated. There are other underlying issues that must be identified and treated such as mental health disease or victimization of sexual abuse. The most important characteristic that the court must accept is that the drug addict is going to have relapses which should be addressed through a continuum of progressive sanctions such as short intervals of incarceration, increased community service, and increased treatment plans. This characteristic is contra to the normal offender in which the judge expects all terms of probation to be fulfilled under the penalty of long-term incarceration ("Planning and Implementation Drug Courts in Texas," 2005). The judge's specialized training and education allows for the insight that the offender may relapse during the rehabilitation program. The judge, instead of revoking probation, has the authority and knowledge to incarcerate for a short period of time or enroll the offender in a residential drug addiction program ("Planning and Implementation Drug Courts in Texas," 2005).

The judge's knowledge of the physical characteristics of addiction allows him to understand the physical alterations of the neuro-transmitters that affect the dopamine receptors of the brain. The dopamine receptors are the opiate receptors that cause the body to crave drugs. The strength of the drug court is that it builds synergy between the medical community and the criminal justice system to combat the disease of addiction ("Planning and Implementation Drug Courts in Texas," 2005).

The Texas Association of Drug Court Professionals gives the following purposes for the drug courts being established. The first goal is “to improve public safety by reducing recidivism” (“Planning and Implementing Drug Courts in Texas,” 2005, p. 6). The second goal is to “reduce costs associated with criminal case processing and re-arrest” (“Planning and Implementing Drug Courts in Texas,” 2005, p. 6). The third goal is to “reduce overcrowding in jail, detention centers and prisons” (“Planning and Implementing Drug Courts in Texas,” 2005, p. 6). The fourth goal is to introduce “participants to an ongoing process of recovery designed to achieve total abstinence from illicit/illegal drugs” (“Planning and Implementing Drug Courts in Texas”, 2005, p. 6). The fifth goal is “to promote self-sufficiency and empower substance abusers to become productive and responsible members of the community” (“Planning and Implementing Drug Courts in Texas”, 2005, p. 6). The most important goal of drug court and benefit to society is “to reunify families and protect their children” (“Planning and Implementing Drug Courts in Texas”, 2005, p. 6).

The drug courts exemplify their cost effectiveness and efficiency by the manner in which they move cases through the courts and their results in decreasing recidivism. The traditional methodology of incarceration of drug offenders is a poor utilization of taxpayer funds and does not address the underlying issue of drug abuse. It is for these reasons that the criminal justice system should expand the utilization of the specialized drug courts in order to efficiently and effectively deal with the epidemic of drug usage in our communities.

POSITION

The first goal of the drug court is “to improve public safety by reducing recidivism” (Planning and Implementing Drug Courts in Texas, 2005, p. 6). The studies have shown that drug courts are effective at reducing recidivism (Johnson, 2011; Rempel, Green, & Kralstein, 2012; Senjo & Leip, 2001). A study completed by Columbia University’s National Center on Addiction and Substance Abuse, showed that “the average recidivism rate over three years for those that complete the Drug Court program is between 4-29%, compared to 48% for those who do not participate in a Drug Court program” (Virginia, 2008, p. 7). The reason for the diversity of results from 4-29% is that Drug Courts are regulated on the local basis with a variance of programs (Virginia, 2008, p. 7).

The studies showed that certain key characteristics affect the success of the offender (Johnson, 2011; Rempel, Green, & Kralstein, 2012; Senjo & Leip, 2001). Characteristics that affect the program success rate are the length of the program, the intensity of the program, previous criminal history, education, age, family relationship and employment history. The “longer duration of substance abuse treatment is associated with improvement in outcomes, such as reducing on-going substance use and future criminal behavior” (Brown, Allison, & Nieto, 2010, p.136). It appears that on a national basis, most of the drug court intervention is from 6 -12 months. The duration of oversight and treatment have a significant impact on the success rate of overcoming the drug addiction. The usage of empirical data has shown that drug courts are meeting their objective of reducing recidivism by treating the causes of addiction. A study by the American Bar Association of the six New York City drug courts showed “that over one

year post-program, the reconviction rate was 71% less for graduates compared with nonparticipants” (Virginia, 2008, p.13). The success rate of the Drug Courts has caused the creation of 1,872 courts in all 50 states, Puerto Rico, DC, Guam and Mariana Islands that deal with the addiction to controlled substances of our population (Virginia, 2008).

One of the benefits of the drug courts has been to the budgetary function of the criminal justice system. The expense of incarcerating a drug offender costs the American taxpayer “between \$20,000 and \$50,000 per year. The cost of building a jail cell can be as high as \$80,000” (Virginia, 2008, p. 15). A drug court can manage an offender for an annual cost of \$2,500 to \$4,000 per year. America’s addiction to incarceration is costing the American public approximately \$50 Billion per year (Pratt, 2009). The court system needs to consider more effective means of dealing with issues that affect the drug crisis in America. Statistics show that for every \$1 invested in drug courts, communities are seeing a rate of return in saved expenses from \$2-\$4 for a rate of return of 200% - 400%. The savings to the community can be in the form of the delivery a non-addicted baby who can have complications that cost society from \$1,500 to \$25,000 per day for treatment. The care of developmentally challenged children can cost the community for special education and counseling up to \$750,000 over 18 years (Pratt, 2009).

Even with these results in savings, the legislature and criminal justice system has continued to stand fast with their commitment to incarceration and retribution principles. The Texas legislature, in their goal to trim \$10 billion from the budget, allowed the Texas Department of Criminal Justice to present a budget that cut 52% from the adult

probation funding in order to keep from reducing funds for prison guards. The state decreased the number of residential treatment beds for drug offenders from 4,751 to 2,735, even though the cost of a treatment bed is \$7,957 per year versus a prison bed of \$40,538 (Kanelis, 2003). The toughest fight that drug courts have is getting the legislature to understand that their desire to fulfill campaign promises of being tough on crime are standing in the way of budgetary savings and real impact into the recidivism rate of offenders.

The review of numerous studies and articles on the effectiveness of the drug court demonstrate the success in decreasing recidivism by addressing the criminological and physical factors that cause drug addiction. The utilization of the drug court shows that the future of the criminal justice is founded on evidence based solutions. The United States must move away from the failed criminal justice models of the deterrence and punitive theories and move forward with policies based evidence based theories of the future. The American criminal justice system must become more efficient and effective.

COUNTER POSITION

The incapacitation theory is utilized in communities across the United States because it removes criminals from interaction with society and appeals to common sense (Pratt, 2009). Individuals who are found guilty of drug violations should be treated punitively because they have violated the law. These individuals should receive their just deserves and should be removed from society so that they cannot commit another crime. People believe that if a criminal is not present, there will be no one to commit the crime. They do not understand the replacement theory which states that another

person will commit the crime in their place (Cullen & Johnson, 2012). The weakness of the incarceration or incapacitation model is that research shows that simply caging offenders leaves their criminal propensities unchanged or strengthens them. This is the reason that the court system needs to address criminal actions in new methodologies rather than failed traditional methodologies. The criminal justice system needs evidence based procedures rather than emotional, feel good procedures. The “War on Drugs” campaign of Nancy Reagan with the television commercial that showed a broken egg in a skillet with the slogan, “This is your brain and this is your brain on drugs,” failed to deter the underlying characteristics of drug addiction. However, the drug court is founded on empirical statistics of reality based treatment programs.

Per capita, the United States incarcerates more of their population than the totalitarian societies of Russia and China (Pratt, 2009). One in four people incarcerated in the world are locked up within the United States criminal justice system. These figures are further exasperated by the fact that 2/3 of released inmates are returned to prison within three years. The United States has been the training grounds for the criminal justice theories of practitioners from retribution, deterrence, incapacitation, restorative justice, rehabilitation to early intervention (Pratt, 2009). The criminal justice system needs evidence based procedures rather than emotional, feel good procedures in the criminal justice system. This is the strength of the drug court model; it attempts to address change in the offender’s life and the cause of the offense instead of utilizing costly and ineffective incapacitation.

Recently, there has been a movement across the United States of legalizing drugs. In 2012 and 2014, the states of Colorado, Washington, Alaska, Oregon and

Washington, DC passed voter initiatives for the legalization of marijuana. Many Americans are struggling with the concept of legalized marijuana. For generations, many Americans believed that marijuana was a dangerous and powerful drug that caused drug addiction and criminal activity. Many studies have been initiated to link marijuana usage to it being a stepping stone to more dangerous narcotics. It appears that the general public is dismissing these studies in favor of studies to the contrary that marijuana is no more harmful than alcohol.

This has caused a change in the direction from treatment to legalization. The key aspect of the legalization movement is that criminalization or prohibition does not work and are too costly. It is estimated that the United States spends approximately \$50 billion dollars a year to incarcerate drug offenders (Patton, 2010). The marijuana legalization movement has pushed the legislation based on the cost savings and taxes generated by taxing marijuana (Patton, 2010). It is interesting that each state that legalized marijuana has publicly stated that the increased taxable funds are being utilized in the K-12 education system. Some of the legislation that has been proposed in California extends the legalization of marijuana to a retroactive clause expunging all previous convictions for marijuana possession and active probation termination (Patton, 2010).

The idea that the United States lost the “War on Drugs” and should just surrender is simply a defeatist attitude. All one must do is to see the effects of drugs on society is to drive through the drug ridden neighborhoods to see the cost of drug usage on families and the individual users. There are personal, social, and economic costs of problematic drug usage. These costs include the cost of long term care of a child born

to a crack addicted mother; these babies are born addicted to opiate or other narcotics which they were exposed to utero, which will have serious birth defects and require special medical care. The child must take its first breaths while dealing with the side effects of exposure during the development phases of life. The effects include low birth weight, under developed lungs from premature birth, physical handicaps, learning disabilities, Fetal Syndrome Disorder (FSD), and mental developmental issues. (Taylor, 2011) In the 1980's, these children were seen addicted to cocaine but, today, the hospitals are seeing the effects of exposure to prescription drugs.

The fiscal and emotional costs to society and the family members of addicts are overwhelming. The Adoption and Foster Care Analysis and Reporting System (AFCARS) reported that in 2009, there were 789,000 children within the foster care system in the United States. It is estimated that 80% of the children removed from their homes is due to maltreatment by their addicted parent or guardian (Taylor, 2011). It is estimated that child protective services costs the American public approximately \$25.7 billion annually for the child welfare system. The leading cause of death involving children dying at the hands of their parents involves the usage of drugs and alcohol. Taylor (2011) stated, "Half the children who died (51%) were victims of abuse; 44% from neglect; and 5% died from multiple forms of maltreatment" (p. 729).

Drugs, even marijuana, cause alterations within the brain by bonding to the receptors and causing unnatural reactions of releases of nuero-transmitters. This alteration of the brain is the underlying cause of withdrawal symptoms when a drug user attempts to terminate its use voluntarily or involuntarily. The withdrawal can be severe if the long term drug user's body has adapted for the presence of the drug. This is the

reason that many long term drug users must be weaned off the drug using Methadone or another low dose narcotic. Studies of adolescent users show alterations in the brain regions utilized for learning and memory. A major concern with marijuana is that “heavy marijuana users generally report lower life satisfaction, poorer mental and physical health, more relationship problems, and less academic and career success compared to non-marijuana-using peers” (“Drug Facts,” 2014, para. 1). The greatest risk to America’s children is that the legalization of marijuana in many states will cause the availability of marijuana to increase within these states. This will cause a greater “likelihood that children will be offered these substances before children have the opportunity to develop the maturity and judgment to refuse them” (“Drug Facts,” 2014, para.1).

RECOMMENDATION

The criminal justice system should expand the utilization of the specialized drug courts in order to efficiently and effectively deal with the epidemic of drug usage in our communities. Drug usage is costing the American taxpayer billions of dollars and causing dysfunctional family units that are characteristic of the destruction of neighborhoods and generations of Americans. The strength of the drug court model attempts to address change in the offender’s life and the cause of the offense instead of merely utilizing incapacitation. The review of the information presented in the studies showed that the results differed from program to program. There should be additional studies to develop the best practices model to be utilized by the drug courts. Future studies should be developed to address the recidivism rate based on the following factors: age of the offender, type of drug, first time criminal offenders-vs- offenders with

criminal records, completion of high school diploma before entering drug court program, and the establishment of a functional family support unit.

If the results of these studies show that certain characteristics in the offender's background, lifestyle, or present offense show that the chances of success in a standard program are poor, professionals should continue to explore options that will build a successful program. Offenders should not be set up for failure. They should be given the tools and skills to overcome their addiction. The offender should obtain the skills necessary to re-enter the community as a productive member of society. The success of the drug courts has caused some communities to explore DWI courts, domestic violence courts, and "deadbeat dad" courts. These courts are utilizing evidence based solutions to address the underlying issues from the perspective of the criminal justice theory of rehabilitation rather than emotional criminal justice theories of incarceration and retribution. The utilization of evidence based programs will allow for effective and efficient utilization of resources while solving the problems that are occurring within our communities.

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