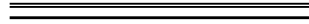


**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Drug Courts: An Alternative to Incarceration



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



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ABSTRACT

As long as the judicial system continues to ignore the chemical addiction issues of the substance abuse offenders of this country, more of the nation's resources will be squandered. It is time that the nation's elected officials bond together and reform the approach to the nation's health problem. Incarceration is not the answer; however, intervention of substance abuse offenders has the potential of being effective enough to facilitate the jail overcrowding.

Prosecutors, probation offices, and judges need to group together with the intention of utilizing the drug court concept to prevent relapse of substance abuse offenders. Being able to provide treatment to substance abuse offenders and maintaining sobriety during their stay in the program would allow the offender to complete his/her probation period with an opportunity for success. Along with maintaining sobriety, society will benefit in several different avenues. There is the potential of a reduction of overall crime rates and the expenses consumed to prosecute and maintain an incarcerated offender in a correctional facility would be reduced.

Although the drug court concept is a popular method in dealing with the substance abuse offenders, other courts have utilized other programs such as the H.O.P.E. (Hawaii Opportunity Probation with Enforcement) program, which has been known to be successful and slightly more economical. Drug courts are working, and it is important to take immediate action to resolve this country's jail overcrowding. Using drug courts will lower the recidivism rate of substance abuse offenders and assist with maintaining the sobriety of the substance abuse offender.

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INTRODUCTION

For several decades, the United States was fighting a destructive but silent enemy which was affecting every man, woman and child. On July 17, 1971, President Richard Nixon stood before the United States Congress and declared a “War on Drugs” (Vulliamy, 2011). During this period, the United States has won a few battles; however, the “War on Drugs” appears to be a timeless war and all the resources that Federal, State and local governments have expended appear to be ineffective. During the fight to combat drug addiction, incarceration, and subsequent death, an unconventional initiative needed to evolve. A platform would need to be developed to aid in the recovery of the addicted offender and provide demanding support which is looked for to maintain sobriety among addicts. Several treatment programs, such as Alcoholic Anonymous, Narcotics Anonymous and other in-patient type rehabilitation facilities designed for substance abuse offenders, were being tasked to their limits. Any platform that is created must ensure that it is effective enough to facilitate the jail overcrowding and keep the penal institutions from overfilling.

In 1989, criminal justice professionals in Miami-Dade County established the first “drug court” concept (King & Pasquarella, 2009). The drug court is a concept where a person who is arrested for a drug or alcohol related offense has the option of taking the path through the justice system and risk possible incarceration, or the offender can opt for participation in drug court. The drug court concept provides the offender, or participant, with a full complement of professionals who can facilitate support in the offender’s future. The drug court consists of judges, prosecutors, defense attorneys, social workers, probation officers, and law enforcement personnel (Huddleston &

Marlowe, 2011). The offender will be held to an extreme regimen that calls for treatment, meetings with social professionals, and random home visits from probation and law enforcement officers. One advantage of participating in the drug court is that upon completion of the intricate curriculum or graduation, the offender has the opportunity to regain control over his or her life. Since the establishment of the first drug court in Miami-Dade County, the concept has developed into a full-fledge epidemic. The National Drug Court Institute (NDCI) declared that there are 2,459 active drug courts operating in the United States as of December 31, 2009 (Huddleston & Marlowe, 2011).

Drug courts may possibly reduce the recidivism rate of incarceration, reduce the chemical dependence of the substance abuse offender, and aid in the coaching and acceptance of proper pro-social life skills of the offender. If government and private resources are to be implemented in a way that keeps the offender from entering into the penal system, the individual can become a productive member of society. In Texas, Levin (2010) indicated that "Prison costs taxpayers \$49.40 per inmate per day, or \$18,031 per year" (para. 8), and the total impact of substance abuse in 2007 for the state of Texas was \$33.4 billion, which includes corrections, social services, health care and lost productivity (Dallas Area, 2010). The state of Texas and the rest of the nation are not currently prepared to take on this enormous capital liability. Drug courts are making an impact; in fact, the cost to maintain a drug court participant in the Washington D.C. area costs \$1,800.00 to \$4,400.00 a year (National Association of Drug Court Professionals, 2003). This is a considerable savings to the resources of federal, state, and local governments. The criminal justice system benefits from utilizing

the “drug court concept” as an alternative to incarceration. The benefits include a reduction in the recidivism rate, as well as increased sobriety of the substance abuse offender. The criminal justice system should refer to the “drug court concept” as an alternative to traditional probation to reduce the recidivism rate of offenders and lower the costs for prosecuting the repeat offender.

POSITION

Utilizing the drug court concept has the potential of lowering the recidivism rate of substance abuse offenders. Recidivism occurs for many reasons. At the present time, when a person is arrested for a felony drug or alcohol related offense in this country, the defendant is processed through the penal system, bonded out, and expedited through the judicial system, frequently returning as if moving through a revolving door. National Association of Drug Court Professionals (2003) stated that when the substance abuse offender is exposed to the drug court concept, the offender often is exposed to treatment facilities, law enforcement, and courts that are attempting to change the life style of the offender. Even though the substance abuse offender is admitted into a drug court program, the fact that he/she is in an alternative type of probation, the offender will still be held liable and accountable for any actions or mishaps and will endure any consequences by receiving sanctions from the court (National Association of Drug Court Professionals, 2003).

In 2007, the Texas economy drug and alcohol abuse cost \$33.4 billion in corrections, social services, health care, and lost productivity (Levin, 2011). Research indicated that substance abuse offenders who have been introduced into the drug court concept and have taken the steps required to complete the program on average have a

10% to 20% reduction in recidivism and approximately 8% to 26% reduction of re-arrest or reconviction (Marlowe, 2010). Based on these figures, the economic benefits to the community, the victims of the crimes and the substance abuse offenders are enormous. After two years, drug court participants in 25 California drug courts were able to reduce the rate of recidivism by 41% (Carey & Mackin, 2009). Adhering to the drug court concept and maintaining this type of success rate would benefit the economic improvement and the populace of California, which is currently an economically stressed state, where the average cost to incarcerate an inmate is over \$47,000 per year (Gilroy, Summers, Ranazzo, & Kenny, 2011). Carey, Finigan, & Pukstas, 2008; Lowenekamp, Holsinger, & Latessa (2005) and Shaffer (2006) stated that the best courts are maintaining an acceptable recidivism rate; however, the best drug courts in the nation hover around 45% (as cited in Huddleston & Marlowe, 2011).

Owning up to the self-inflicted troubles, accepting the fact that the substance abuse offender is just that, a substance abuse offender, and allowing the drug court concept to intervene has the potential of giving the offender a life of sobriety. Often times, the substance abuse offender only knows addiction. Substance abuse offenders know how to get a gram of methamphetamine or a bottle of whisky, but they are totally sightless to the fact that they are addicts. Becoming a participant in a drug court program will give addicts the tools that they need. The drug court concept will divert the substance abuse offender to community and government based treatment centers that cater to the individual needs of each offender. Levin (2007) stated that "Community-based treatment is less costly and more humane than prison" (para. 6).

Outpatient drug treatment in Texas costs an average of \$1,640 per episode (Levin, 2007). Several options are given to the participant while under the supervision of the drug court. The participant can opt to attend an outpatient substance abuse treatment facility, which will teach real life skills so that the offender can return to their home and family at a higher level of independence. Often, drug courts will instruct the drug court participant to attend a court ordered facility such as a Substance Abuse Felony Punishment (SAFP) center. This program is a Texas based program designed for those participants who are currently on probation and are awarded an opportunity to seek treatment in a prison setting. The SAFP program is an alternative to a revocation of the participant's probation and is in lieu of fulfilling standard prison time. The SAFP program consists of three phases, which include orientation, treatment and reentry, and relapse prevention (Redding, 2010). The program has the potential of lasting up to 30 months, which include the prison phase, transitional treatment center, outpatient treatment, and the supportive outpatient process (Redding, 2010).

There are dozens of options regarding treatment for the substance abuse offenders. Drug courts that employ treatment facilities that are "highly structured, are clearly specified in a manual or workbook, apply behavioral or cognitive-behavioral interventions, and take participants' communities of origin into account" (Marlowe, 2010, p. 5) and are more likely to succeed. As stated by Heck (2008) and Kirchner and Goodman (2007), one such treatment is the Moral Reconciliation Therapy (MRT) (as cited in Marlowe, 2010).

In the New Mexico drug courts, data was taken regarding the re-arrest of participants after successfully completing the drug court process. When the drug court

process included the MRT, there was a 10% re-arrest compared to a 15.7% re-arrest of those persons who did not seek treatment (Whitehead, 2003). SAFP also uses the MRT treatment program and they have found that the recidivism rate for offenders who complete the program is 22.26% compared to 35.68% for those offenders who do not seek the MRT treatment (Redding, 2010). Although treatment facilities vary amongst drug courts in this country, the bottom line is that the participant cannot do it alone. Without the structure of the drug court and the demands of the program, the substance abuse offender has the potential and likelihood of failing.

COUNTER POSITION

Since the inauguration of the drug court concept in Miami-Dade County, Florida in 1989, there has been extensive research completed indicating that the “drug court” concept is not just another trend. As stated by Kleiman, Tran, Fishbein, Magula, Allen, and Lacy’s work, critics against the drug court concept are saying that one-third of substance abuse participants who are participating in the drug court program do not have significant drug use issues (as cited in DeMatteo, Marlowe, & Festinger, 2006). In other words, the drug court is choosing low risk participants. Based on this information, the drug court has the option of hand-picking the participants who are going to be accepted into the program. The courts often select the participant who in all likelihood will be successful in completing the treatment and requirements of the drug court. As stated in the 2011 Drug Policy Alliance, “Although many individuals will benefit from drug courts each year, many others will ultimately be worse off than if they had received health services outside the criminal justice system, had been left alone, or even conventionally sentenced” (p. 9). With these options, drug courts can choose who they

want and make their statistics appear promising and successful. States like California are passing legislation that alters the punishments levied to first time offenders. Fratello (2006) stated, "Proposition 36 is a new breed of court-supervised treatment that emphasizes public health interventions over criminal justice sanctions. It takes seriously the principle that drug addiction is a medical condition" (p. 7). By passing such legislation, this allows the first time offender to receive probation, whereas prior to the new legislation, the first time offender would be looking at some type of confinement.

The 2006 Drug Policy Alliance stated that "the number of people incarcerated in state prisons for drug possession fell dramatically by 32 percent – after Proposition 36 was approved, from 19,736 to 13,457 (December 31, 2000 to June 30, 2005)" (Fratello, 2006, p. 1). Critics are finding out that participants who receive sanctions administered by the drug court for missing a team meeting, failing a urine analysis, or not reporting to the court or probation officer would end up serving more time locked up in jail than if they had refused the opportunity to participate in the drug court Program (Dooley-Sammuli & Walsh, 2011). The 2011 Drug Policy Alliance believes that the drug court participants tend to receive more jail time due to sanctions that are given by the drug court for missing meetings, treatment or failing urine tests, than if the participant had plea-bargained with the prosecutor for a lesser charge or for conventional probation (Drug Policy Alliance, 2011).

For several decades, drug courts have been criticized, accused of not working with participants, and blamed for picking the participant who is most likely to succeed. With over two decades of studies, there is valid indication that the treatment that drug courts provide the participant and the rigorous schedule that they have to adhere to has

shown that the higher risk addicted participants tend to do better than low risk addicts (as cited in Marlowe, 2010). Evidence showed that the drug court does work and does reduce the addictive habits that the participants maintained while the participants were arrested and that the drug court concept in the United States does attempt to pick the high-risk addicts (Marlowe, 2010). A study that was performed in Maryland indicated that the “low-risk” substance abuse offenders who were entered into some type of treatment program were 22% less likely to recidivate after a year than those substance abuse offenders who went into a correctional institution (Dallas Area, 2010).

Originally drug courts were believed to be a money saving program; however, drug courts have been pulling public dollars away from areas such as Probation, Treatment Services, Prevention and Research (Walsh, 2011a). Other programs have been brought to the table such as HOPE (Hawaii Opportunity Probation with Enforcement), which tends to provide a more one-on-one relationship between the Judge and the participant (Walsh, 2011a). The HOPE program eliminates the intensive manpower and adult service resources that are applied to each participant’s success rate. The HOPE program tends to admit offenders who have violent backgrounds in different stages of addiction, most of whom which the drug court does not admit into the program (Hawken, 2007). Although drug courts tend to be the most popular form of assistance to the substance abuse offender at this time, professionals are finding cheaper and more efficient ways to treat those offenders in all levels of the judicial system. Drug courts tend to run about \$4,300.00 per person (King & Pasquarella, 2009), whereas the HOPE project, for example, runs approximately \$2,500.00 per person, which places considerably less stress on the resources during this struggling

economic time in the United States (Hawken, 2007). Walsh (2011b) stated, “Studies show that drug treatment in the community can produce \$20 in benefits for every dollar spent, compared to just \$2 in benefits for drug courts and \$7 for treatment in prison” (para. 5).

Drug courts have grown over the years and have been successful due to the popularity of the overall concept; however, this concept has plagued America’s judicial system. There may be cheaper ways to treat the substance abuse offenders, but the drug court concept utilizes judges, probation officers, law enforcement, social workers, and health care professionals to “hand carry” a drug court participant through the program with positive results. Several cost effective studies have been performed on the drug court concept over its 20-year existence. The Urban Institute established that drug courts had an estimated average of \$2.21 in immediate savings to the criminal justice system for every dollar invested; this is a 221% return on the investment (as cited in Huddleston & Marlowe, 2011). A six year New York study regarding costs comparisons between the drug court concepts and placing a substance abuse offender in the penal system indicated that costs were quite a bit lower for drug courts; in fact, the numbers were \$9,952 for drug court participants versus \$73,661 for persons placed in a penal institution (Zarkin, Dunlap, Belenko, & Dynia, 2008). Tremmel’s work found that “Due to effective alternatives to incarceration including Drug courts, New York has closed two of its prisons and left several half empty” (as cited in Huddleston & Marlowe, 2011, p. 17).

CONCLUSION

Drug courts in the United States are working, and the substance abuse offender has been given an opportunity to take on a rigid program that is designed to cater to each offender individually. The drug court concept gives the substance abuser an opportunity to regain sobriety and return to society as an active working member of the family and work force. Using the drug court concept has not only given sobriety back to the participant but has kept the substance abuse offender out of the penal institution which has saved economic resources. Huddleston and Marlowe (2011) stated that “These savings reflected direct and measurable costs-offset to the criminal justice system from reduced re-arrests, law enforcement contacts, court hearings and the use of jail or prison beds” (p. 10).

In fact, the state of New York had enough confidence in the drug court concept that it implemented a drug court program in every county of the state, which has saved approximately \$254 million dollars in prison costs and has deferred 18,000 drug offenders into the drug court system in three years (Huddleston, 2009). This is a remarkable savings to the New York area; imagine not having to house 18,000 drug offenders in a prison setting. In 2008, approximately 44 states saw that the drug court phenomenon was an active and effective concept; the total economic assistance of \$208,000,000 was allocated for maintaining drug courts in the United States (Huddleston, 2009).

The judicial system professionals are making an effort to maintain sobriety and lower the recidivism rate amongst the substance abuse offenders. The success rate, or graduation average, in the United States is 57% (Huddleston & Marlowe, 2011). In fact,

the National Drug Court Institute (NDCI) stated that 75% of the substance abuse participants who graduate from drug court “do not see another pair of handcuffs” (Huddleston & Marlowe, 2011, p. 18). National Association of Drug Court Professionals (2003) found that drug courts work, and make “good business sense” (p. 32) because it allows law enforcement to make better use of their resources which, in turn, poses a positive impact on local, state, and federal budgets. Several researchers from seven different academies have come to the conclusion that drug courts not only reduce crime but have saved the community a wealth of money (Huddleston, 2011). By adhering to the concept of drug courts and jumping on board with the other 2,459 (Huddleston & Marlowe, 2011) courts that have joined the fight, law enforcement, penal institutions, and the overall judicial system would achieve remarkable results in the future of substance abuse offenders.

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