

PROBLEM-SOLVING COURTS: FIGHTING CRIME BY TREATING THE OFFENDER

BY PAUL A. HASKINS

Courts designed to stop crime by treating substance use disorders and other serious problems underlying criminal conduct are known as problem-solving courts (PSCs). Implicit in that designation is broad recognition among justice stakeholders that traditional criminal courts, rooted in adversarial prosecution and punishment, were not working for certain classes of offenders, their victims, or society at large.

What began as a creative justice-delivery alternative, born of necessity in the late 1980s and 1990s when the crack cocaine epidemic¹ was overwhelming court dockets and filling prisons with unreformed drug offenders, is now a fixture of the American criminal justice system. Adult treatment drug courts alone account for over 1,600 of the more than 3,100 PSCs in the United States. Initially isolated, specialized dockets for managing high volumes of drug cases, drug courts today represent a national movement fortified by extensive research on what works and an active, collaborative practitioner community.

For NIJ, working to define, refine, and assist PSCs has been a research priority for a quarter of a century, since it sponsored an evaluation of the nation's inaugural PSC, the Miami-Dade County Felony Drug Court, in 1993. What began as a narcotics docket evolved, with the aid of NIJ research, into a proliferation of drug-court program ideas emanating from courts and researchers. Comparative scientific research identified the best of those ideas, leading to PSC models, said Linda Truitt, the NIJ senior social scientist who coordinates the Institute's drugs and crime research portfolio.

Now new urgency is infusing the drug court movement, as the nationwide opioid crisis exacts an unprecedented toll and the rates of drug overdose deaths increase for all age groups (see the related article "Identifying New Illicit Drugs and Sounding the Alarm in Real Time" on page 16).² A presidential commission in November 2017



called for a comprehensive federal assault on opioids, with millions of dollars in new funding committed to enhancing the drug treatment and rehabilitative services of adult drug courts and other PSCs.³ The commission also called on all 93 federal judicial jurisdictions to establish federal drug courts, noting that as of 2015 only 27 federal district courts were operating as drug courts.

At the opioid commission's urging, new federal dollars are also flowing to veterans treatment courts, a prominent PSC category on a steep growth trajectory over the past decade. The Department of Veterans Affairs reports that more than 550 court dockets are now dedicated to former and active-duty service members who are facing criminal charges, some of whom have life-threatening substance use disorders.⁴

The PSC model, like research on the courts' development and impact, is dynamic at its core. The model, while theoretically grounded, must be sufficiently flexible to accommodate varying needs across jurisdictions as well as shifts in populations, drug use, resources, and other factors. Thus, a fundamental duality has characterized the evolution of the nation's drug courts, said Truitt. Communities balance grassroots development of drug courts tailored to a unique set of local needs against a commitment to a known and sustainable program model.

"These two dynamics are not at odds in successful problem-solving courts where monitoring and assessment are routine," Truitt said. Over time and across jurisdictions, a general set of practices evolves, creating a new program model. NIJ is charged with objectively examining new models, strengthening their components through applied research, and working with other federal agencies and research partners to develop and recommend best practices.⁵

Research amassed and analyzed through NIJ research grants and other sources suggests that drug courts are generally beneficial in terms of reducing recidivism and drug relapse. As NIJ's quasi-experimental Multisite Adult Drug Court Evaluation (MADCE) concluded, "Drug courts produce significant

reductions in drug relapse . . . [and] criminal behavior."⁶

Research has also established, however, that the ultimate question — the extent to which any given drug court is beneficial on balance — has a complex answer that depends on a number of factors, including that court's targeted offender population; the quality, type, and cost of treatment; and cost-benefit measures that take into account multiple categories of spending and savings that inform success or failure.

A priority for agencies that fund and assist drug courts is ongoing evaluation of the courts' cost-efficiency. Agencies look at this cost-efficiency in terms of outcomes for addicted offenders, benefits for the criminal justice system, return on tax dollars expended, and preservation of fundamental justice values — such as defendants' due process rights — in nontraditional court settings where the degree of discretion accorded to judges is exceptional. Federally supported training of court staff, in turn, focuses largely on ensuring that court standards and practices reflect the latest and best research in the field. Carolyn Hardin, chief of research and training for the National Association of Drug Court Professionals (NADCP), a leading provider of PSC training, said NADCP court trainers work continually to turn knowledge into practice. "Research has identified which elements of drug courts produce the best results," she said. "Our priority is to train drug courts and other treatment courts on following research-based best practices to improve outcomes like recidivism and save money. We call that 'fidelity to the model.'"

Genesis of the PSC Philosophy

At its inception, the PSC concept was as simple as it was revolutionary. Problem-solving courts incorporated philosophical elements of community-focused policing, emphasizing treatment over punishment. As New York's Center for Court Innovation, a leader in PSC development, has noted:

Problem-solving justice traces its roots to community and problem-oriented policing, which

encourages officers to identify patterns of crime, address the underlying conditions that fuel crime, and actively engage the community. Today, thousands of problem-solving courts are testing new approaches to difficult cases where social, human, and legal problems intersect.⁷

An inclusive approach, summoning all stakeholders to the table and engaging all of them in the outcomes, has been central to PSC effectiveness. An Office of Justice Programs brochure on drug courts identified elements of a typical drug court team:⁸

Although drug courts vary in target populations and resources, programs are generally managed by a multidisciplinary team including judges, prosecutors, defense attorneys, community corrections, social workers, and treatment service professionals.

Cautionary notes were sounded by NIJ, however, soon after the First National Drug Court Conference in December 1993, where a multitude of divergent early PSC approaches surfaced, suggesting a need for universal norms. An NIJ paper stated, in reference to that conference:⁹

The character of innovation and collaboration between justice and treatment systems was revealed to be broader and deeper than perhaps the simple outline of the original drug court model would have suggested. The diversity and variation in approaches also underscored the critical need for defining the boundaries of what a drug court is and what a drug court is not — in other words, for defining some parameters and basic standards for drug courts.

To rein in the early proliferation of drug court approaches, participants at the first drug court conference adopted a list of 10 elements vital to the success of a drug court.¹⁰ That early objective-setting exercise foreshadowed the 10 key components of drug courts, issued by the federal Drug Courts Program Office in 1997.¹¹ The key components would serve as parameters for drug court practices, models, and evaluation.

In 1994, Congress broadly committed federal money to expanding state and local drug courts through the Violent Crime Control and Law Enforcement Act. The statute made development of PSC operating norms imperative. The July 1995 “National Institute of Justice Update” from then-NIJ Director Jeremy Travis favorably observed, “The need to establish appropriate drug court standards is particularly important to help ensure that Federal funds are spent on implementing a clearly defined concept.”

Best Practices and Models Emerge

Today’s drug courts are guided by best-practice research substantially driven by NIJ, which managed two seminal adult drug court studies:

- A quasi-experimental, longitudinal examination of an adult drug court in Multnomah County (Portland, Oregon), resulting in the 2007 report *The Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs* (Multnomah Study).
- The Multisite Adult Drug Court Evaluation (MADCE), a quasi-experimental evaluation of probationers in 23 adult drug courts and six comparison jurisdictions in eight states.

The Multnomah Study broke ground by establishing that, over a period of at least five years per defendant, drug courts were more economical than traditional criminal court processes. The study looked at 6,500 drug court cases and 4,600 cases processed outside the drug court model, finding that the cost per offender in drug courts was \$1,392 less than the cost per offender through the conventional route.¹² Factors contributing to that economy included saved prison days.

It should be noted that, as quasi-experimental research designs, both the Multnomah Study and MADCE faced inherent limitations on the strength of their findings. Unlike a randomized controlled trial (RCT) — which measures and compares experimental effects on randomly selected treatment groups and control groups in order to precisely gauge an experimental treatment’s impact — quasi-experimental designs typically lack the benefit of

random selection of subjects, introducing a risk of biased results, a phenomenon known as selection bias.

For a retrospective study such as Multnomah (looking back 10 years), however, an RCT is not feasible. The investigators in the wide-scope MADCE study noted that their quasi-experimental design offered advantages in that instance, including more generalizable results from multiple sites across the country, and the fact that the large pooled sample and data collection allowed them “to open the ‘black box’ of effective drug court practices far beyond most prior studies.”¹³ Moreover, equivalent interview and records information obtained for drug court and comparison probationers were used to match research subjects for statistical controls on individual, court, and jurisdiction factors.

Where RCTs are feasible and a better fit, however, they offer clear advantages over quasi-experimental studies at risk of selection bias.

“Before we can judge a drug court program to be effective, we first must understand the importance of selection,” explained NIJ Director David B. Muhlhausen. “It can be astoundingly difficult to distinguish between what is working and what is not, and nowhere is this predicament truer than when the criminal justice system tries to change human behavior.”

For example, individuals volunteering entry into a drug court program may be more motivated than individuals not seeking the benefits of the program, Muhlhausen said. In other cases, judges may carefully select defendants for drug court participation based on characteristics that they believe will most likely yield beneficial results, he said.

“Such motivational factors and other similar factors are often invisible to those assessing effectiveness,” said Muhlhausen. “Failure to account for these factors can produce a spurious association between drug court participation and recidivism and substance abuse outcomes.”

Muhlhausen added that the limited number of RCTs that did not suffer from high attrition fail to offer clear evidence that drug courts reduce recidivism. He underscored the need to use RCTs to rigorously evaluate drug court programs in the United States to gauge their effectiveness.

MADCE gathered data from 1,157 drug court participants and 627 comparison probationers in 29 U.S. jurisdictions over five years, with a final report issued in 2011. MADCE researchers¹⁴ found that drug court participants reported less drug use than comparable offenders (56% vs. 76%) and were less likely to test positive for drug use (29% vs. 46%). Participants reported less criminal activity after entering drug court (40% vs. 53%), with fewer rearrests (52% vs. 62%) than comparable offenders. Moreover, although treatment investment costs were higher for drug court participants, they experienced less recidivism than comparable offenders, and drug courts saved an average of \$5,680 to \$6,208 per offender overall.¹⁵

In sum, savings associated with avoided victim costs and criminal justice system costs were greater with drug courts than conventional criminal dockets due to fewer crimes, rearrests, and incarcerations (see exhibit 1).

MADCE data revealed certain limits of drug court effectiveness, pointing to a better return on investment for more serious offenders with drug disorders, as well as the importance of performing appropriate cost-benefit analyses in continuing assessments of drug courts. A MADCE researcher, writing on drug court impact as measured by a detailed bottom-up, cost-benefit analysis method, concluded:¹⁶

Drug courts prevent many petty crimes and a few serious crimes. In fact, the CBA [cost-benefit analysis] results showed that those few serious crimes drive much of the drug court effect; if we remove those outliers, the benefits of drug courts barely exceed the cost. This finding suggests that although drug courts may reduce recidivism among many types of offenders, drug courts that target serious criminal offenders with a high need

Exhibit 1. Net Benefits by Category for Drug Court Participants and Comparison Probationers			
Category	Drug Court Participants	Comparison Probationers	Net Benefit
Social Productivity	\$20,355	\$18,361	\$1,994
Criminal Justice System	-\$4,869	-\$5,863	\$994
Crime and Victimization*	-\$6,665	-\$18,231	\$11,566
Service Use*	-\$15,326	-\$7,191	-\$8,135
Financial Support Use	-\$4,579	-\$3,744	-\$835
Total	-\$11,206	-\$16,886	\$5,680

*Difference is statistically significant ($p < 0.01$).

Source: John Roman, "Cost-Benefit Analysis of Criminal Justice Reforms," *NIJ Journal* 272, September 2013, 36.

for substance abuse treatment will produce the most effective interventions and a maximum return on investment.

Today, the critical MADCE insight that drug courts are better off targeting certain offender types is a point of emphasis for federally contracted drug court trainers and a best practice for drug courts generally. Hardin of the NADCP said:

Fifteen to twenty years ago we knew drug courts should serve offenders with substance use disorders, and we trained courts on identifying and serving this population. Well, now the research is very clear. Drug courts are most effective when serving high-risk, high-need offenders. Today, we train jurisdictions on what that means. We say, "Okay, if you're going to be doing drug court, your target population has to be based on the research. This means offenders who are assessed to be both at high risk of reoffending and in high need of services. So what does that look like in your community?"

The steady refinement of a drug court model anchored in research-based principles can only take drug courts as far as local policy and resource choices permit, NIJ's Truitt cautioned. Thus, while the model

is informed by research establishing what drug courts do best — targeting high-risk, high-need, drug-using offenders to efficiently curb recidivism and relapse — not all drug courts do so.

"If the target population is relatively high in risk and need," Truitt said, "then the program should yield differences in relapse, recidivism, and other outcomes that translate into lower criminal justice costs and other public costs. That return on investment will not be achieved unless the program is fully implemented, the most burdensome population is targeted, and local resources are compatible with targeted offender risk, need, and responsivity considerations."

In 2012, key information from NIJ-supported research was gathered and translated into practice terms under a joint Adult Drug Court Research to Practice Initiative (R2P) with the Bureau of Justice Assistance (BJA). The R2P program — a collaboration of those Department of Justice branches working with research and practice experts — identified seven program design features for adult drug courts:¹⁷

1. *Screening and assessment:* Legal and behavior screening, and assessment of risk, needs, and responsivity.

2. *Target population:* The specific offender subgroup(s) the program is designed to serve.
3. *Procedural and distributive justice:* Fair process and equitable outcomes, and the perception of them, through graduated sanctions and incentives, full information regarding compliance, and meaningful responses to participants.
4. *Judicial interaction:* Decisions based on frequent and respectful interactions with defendants and a clear understanding of program resources.
5. *Monitoring:* Community-based surveillance and supervision to manage compliance, including drug testing.
6. *Treatment and other services:* Alcohol and other drug treatment in addition to employment and other rehabilitative services.
7. *Relapse prevention, aftercare, and community integration:* Identifying triggers and supports to prevent relapse.

Since the inception of drug courts, the literature in the field has stressed the importance of continual monitoring (by court management) and evaluation (by objective outside entities).¹⁸ The perceived need for vigilance reflects the importance of both keeping a close watch on public spending and striking an appropriate balance between defendants' legal rights and drug court judges' discretionary authority. (See sidebar, "Due Process and the Role of Judges.")

A Research Road Map for Veterans Treatment Courts

As part of the federal response to the nation's opioid emergency, funding in the treatment court field has surged. The president's fiscal year 2018 opioid budget provided \$75 million for adult treatment drug courts, up from \$43 million in fiscal year 2017, and \$20 million for veterans treatment courts, up from \$7 million in 2017. Both are funded under the Adult Drug Court Discretionary Grant Program. A primary conduit of federal financial support for various types of problem-solving courts is BJA, which in turn funds many of NIJ's PSC research projects.

Like drug court practitioners who were empowered by the findings of the drug court multisite study a few years ago, veterans treatment court professionals await research now in development that is designed to illuminate best practices in that venue. The first phase is NIJ's Multisite Evaluation of Veterans Treatment Courts, which gathers information about process and participant outcomes from eight veterans courts. The study is funded by BJA and coordinated with the Department of Veterans Affairs and the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services.

Sean Clark, the national coordinator of the Veterans Justice Outreach program at the Department of Veterans Affairs, regards the NIJ evaluation as a vital

Due Process and the Role of Judges

A recurring theme in drug court research, including the Multnomah County and Multisite Adult Drug Court Evaluation studies, has been the critical role of the judge. Drug court procedures are designed to enable judges and participants to interact in a cooperative, largely nonadversarial setting that encourages positive treatment outcomes. As one scholar surveying relevant research observed:¹

These courts get good results in large part because participants have positive perceptions about them. Faith in the court makes people more likely to follow treatment plans and stay away from trouble in the future. In interviews, specialty court participants report feeling that they have a voice

in the treatment process and are treated with dignity and respect. . . . Offenders who take part in specialty court programs frequently rate interactions with judges as one of the more important and positive aspects of their experience.

It has long been recognized, however, that the procedural freedom enabling a drug court judge to act as an ally of the defendant in a nonadversarial setting comes at some risk of judicial inconsistency or impairment of defendants' rights. A report prepared by an American University team, based on findings from a national focus group of problem-solving court (PSC) administrators and judges, observed:²

Another challenge from the traditional court perspective was the practice [in PSCs] of suspending the adversarial process and having defendants "give up their rights to the traditional process in order for the court to help them." The adversarial process was described in this group not as contentious, but rather as the taking of differing positions to ensure that the situation of the defendant was understood more fully. The participants agreed that the adversarial process could have a detrimental [effect], where the sides could become overly contentious and in turn slow or prevent the resolution of a case. In spite of this concern, the participants acknowledged that the original principle behind the adversarial process was still a good one and should not be lightly put aside.

With that inherent institutional tension in mind, a pillar of the drug court model is preservation of core due process principles. The seven program design features developed by NIJ and the Bureau of Justice Assistance state that with respect to procedural and distributive justice, "The basic concerns are fair process and equitable outcomes."³

Notes

1. Kelly Frailing, "The Achievements of Specialty Courts in the United States," Scholars Strategy Network, April 11, 2016; and Rachel Porter, Michael Rempel, and Adam Mansky, *What Makes a Court Problem-Solving? Universal Performance Indicators for Problem-Solving Courts*, submitted to the State Justice Institute (New York: Center for Court Innovation, February 2010), 22. "One focus group participant put it this way: 'Judges interact with the accused or interact with participants and the players in the system in an entirely different way of talking to people. That is a very, very real distinction When you walk in, you start to go, Oh my god. The judge is actually looking the client in the eyes and talking to them like he's a person. In traditional courts, judges try hard not to do that [because] they are trying to maintain their objectivity.'"

2. American University, "Challenges and Solutions to Implementing Problem-Solving Courts from the Traditional Court Management Perspective," Bureau of Justice Assistance National Training and Technical Assistance Project, April 2008.

3. Bureau of Justice Assistance and National Institute of Justice, "Seven Program Design Features: Adult Drug Court Principles, Research, and Practice," Research to Practice fact sheet, January 2012, 8, NCJ 248701, <https://www.ncjrs.gov/pdffiles1/nij/248701.pdf>.

step for defining the future of veterans treatment courts. Currently, he said, veterans court trainers are “extrapolating from what works in [adult] treatment courts that are not veteran-specific. Building that body of research and that knowledge base about veterans treatment courts in particular is the key first step to be able to say, ‘This is what needs to happen next.’”

According to Truitt, who manages the project, the study’s assessment of implementation and intermediate outcomes of diverse veterans treatment courts explores target populations and key issues (e.g., violent offending and mental and physical health), adherence to problem-solving principles, and service access and delivery. Looking ahead, NIJ is developing plans for an impact and cost evaluation of veterans treatment courts using RCTs and other rigorous research designs, she said. That next phase of research will examine unique program elements, such as veteran peer-to-peer mentoring and use of remote technologies to leverage treatment and supervision.

Clark at the Department of Veterans Affairs said one critical research need the veterans multisite study is expected to address is for screening tools to better identify those veterans who would benefit most from placement in a veterans treatment court.

Conclusion

Problem-solving courts have evolved from a novel outlier to a ubiquitous feature of the American justice landscape, with more than 3,000 drug courts and other PSCs nationwide.

“Moving forward, more scientifically rigorous RCTs are needed to confirm whether drugs courts are, in fact, as effective as the quasi-experimental evaluations indicate,” cautions NIJ’s Muhlhausen.

NIJ research will continue to objectively examine new models, strengthen new components by applying research-based principles, and collaborate with federal and other research partners on recommendations for practice.

About the Author

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Notes

1. “The Treatment Court Movement,” National Association of Drug Court Professionals; and Lauren Kirschner, “Remembering the Drug Court Revolution,” *Pacific Standard*, April 24, 2014.
2. Centers for Disease Control and Prevention, *Drug Overdose Deaths in the United States, 1999–2017*, National Center for Health Statistics Data Brief 329, November 2018, <https://www.cdc.gov/nchs/data/databriefs/db329-h.pdf>.
3. *The President’s Commission on Combating Drug Addiction and the Opioid Crisis*, Final report, November 2017, 16, https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf.
4. Barbara Goldberg, “Opioid abuse crisis takes heavy toll on U.S. Veterans,” *Reuters*, November 10, 2017.
5. Other PSC categories that have benefited from NIJ research are mental health courts, adult reentry courts, and tribal courts.
6. Shelli B. Rossman, John K. Roman, Janine M. Zweig, Michael Rempel, and Christine H. Lindquist, “The Multi-Site Adult Drug Court Evaluation: Executive Summary,” Final report to NIJ, December 2011, 5, award number 2003-DC-BX-1001, NCJ 237108, <https://www.ncjrs.gov/pdffiles1/nij/grants/237108.pdf>.
7. “Problem-Solving Justice,” Center for Court Innovation.
8. U.S. Department of Justice, Office of Justice Programs (NIJ, BJA, OJJDP), “Drug Courts,” May 2018, <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>.
9. “Justice and Treatment Innovation: The Drug Court Movement. A Working Paper of the First National Drug Court Conference, December 1993,” Final report to NIJ, award number OJP-94-076M, October 1994, 36, NCJ 149260, <https://www.ncjrs.gov/pdffiles1/Digitization/149260NCJRS.pdf>.
10. Bureau of Justice Assistance and National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components*, Drug Courts Resource Series, 1997 (reprinted 2004), NCJ 205621, <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>. The key components are (1) Drug courts integrate alcohol and other drug treatment services with justice system case processing; (2) Using a nonadversarial

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 program effectiveness.

11. Rachel Porter, Michael Rempel, and Adam Mansky, *What Makes a Court Problem-Solving? Universal Performance Indicators for Problem-Solving Courts*, submitted to the State Justice Institute (New York: Center for Court Innovation, February 2010), 9.
12. Michael W. Finnegan, Shannon Carey, and Anton Cox, "Impact of a Mature Drug Court Over 10 Years: Recidivism and Costs," Executive Summary, Final report to U.S. Department of Justice, award number 2005M073, IV, July 2007, NCJ 219225, <https://www.ncjrs.gov/pdffiles1/nij/grants/219225.pdf>.
13. Rossman, Roman, Zweig, Rempel, and Lindquist, "The Multi-Site Adult Drug Court Evaluation: Executive Summary."
14. Research for the Multisite Adult Drug Court Evaluation was performed by the Urban Institute, the Center for Court Innovation, and the Research Triangle Institute.
15. Rossman, Roman, Zweig, Rempel, and Lindquist, "The Multi-Site Adult Drug Court Evaluation: Executive Summary."
16. John Roman, "Cost-Benefit Analysis of Criminal Justice Reforms," *NIJ Journal* 272, September 2013, 36, <https://www.nij.gov/journals/272/pages/cost-benefit.aspx>.
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18. American University, "Challenges and Solutions to Implementing Problem-Solving Courts from the Traditional Court Management Perspective," Bureau of Justice Assistance National Training and Technical Assistance Project, June 2008, 8, award number 2005-DD-BX-K053, https://www.bja.gov/Publications/AU_ProbSolvCourts.pdf.

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