

# Chapter 2

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## GETTING STARTED

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I.	[§2.1] INTRODUCTION . . . . .	21
II.	[§2.2] THE DRUG COURT TEAMS . . . . .	21
	A. [§2.3] STEERING COMMITTEE . . . . .	21
	B. [§2.4] DRUG COURT TEAM . . . . .	23
	C. [§2.5] EXTENDED DRUG COURT TEAM . . . . .	24
III.	[§2.6] DEFINING THE PROBLEM . . . . .	24
IV.	[§2.7] ESTABLISHING A MISSION . . . . .	26
V.	[§2.8] MEASURABLE GOALS AND OBJECTIVES . . . . .	28
	A. [§2.9] PROGRAM GOALS . . . . .	29
	B. [§2.10] OBJECTIVES . . . . .	29
	C. [§2.11] MISSION STATEMENT . . . . .	29
VI.	[§2.12] GATHERING RESOURCES . . . . .	30
VII.	[§2.13] DETERMINING ELIGIBILITY CRITERIA . . . . .	31
VIII.	[§2.14] SELECTING THE DRUG COURT MODEL . . . . .	33
	A. [§2.15] PRE-PLEA DIVERSION . . . . .	33
	B. [§2.16] DIVERSION WITH STIPULATION OF FACTS . . . . .	33
	C. [§2.17] POST-PLEA, PREADJUDICATION . . . . .	34
	D. [§2.18] POSTADJUDICATION, PROBATION . . . . .	34
	E. [§2.19] PROBATION REVOCATION . . . . .	34
	F. [§2.20] MIXED MODEL . . . . .	34
IX.	[§2.21] GRADUATION AND TERMINATION CRITERIA . . . . .	35
X.	[§2.22] PHASE STRUCTURE . . . . .	37
XI.	[§2.23] APPLYING PROGRAM CRITERIA . . . . .	39
XII.	[§2.24] EVALUATION . . . . .	41
XIII.	[§2.25] CONCLUSION . . . . .	42

## I. [§2.1] INTRODUCTION

Starting a drug court is a major challenge, though one that is eminently satisfying and creative. The critical issues include bringing the appropriate individuals and agencies into the planning process as early as possible and charting a clear course toward attaining the intended goals of the program. The most effective and longstanding steps that have been undertaken by the drug courts have been to take the time and effort to plan their procedures carefully in advance, to continuously monitor their operations to ensure that they were meeting their goals, and to identify and resolve any impending barriers or threats.

This chapter is intended to provide guidance on how to begin the planning and implementation process for a new drug court program. Judges who are considering starting a drug court are faced with numerous challenges and questions. Although these challenges may seem daunting and perhaps insurmountable at times, literally hundreds, if not thousands, of drug court judges have successfully negotiated the process. There is no need to “reinvent the wheel.” The collective wisdom and experience of those judges and their drug court teams are available at national, regional, and state drug court conferences, as well as through training workshops and technical assistance projects provided by organizations, such as the National Drug Court Institute (NDCI). The drug court field follows what is euphemistically referred to as the C.A.S.E. method, which stands for *copy and steal everything*. Sample forms and manuals are available from hundreds of drug courts, which can serve as models upon which to develop the unique policies and procedures of any new program.

*The key to a successful drug court is planning.*

The pages that follow will help a new drug court judge, or a judge who is considering becoming a drug court judge, prepare for the steps that will need to be taken and the issues that will need to be resolved. These include forming the drug court team and advisory committees, clarifying the program’s mission and objectives, identifying the target population for the program, specifying graduation and termination criteria, developing a phase structure, gathering community resources, and evaluating the program’s operations. Considering these issues in advance will greatly streamline the development process and reduce hindrances to the founding of the program and to the making of meaningful contributions to its future participants and its community.

## II. [§2.2] THE DRUG COURT TEAMS

### A. [§2.3] Steering Committee

Drug courts represent a new way of doing business for the courts, and therefore, require the explicit buy-in and support of political and community leaders. It is essential to bring all of the appropriate stakeholders to the table to participate in the formative

negotiations for a drug court program. Leaving critical individuals out of the development process can sow the seeds of failure before the program has even started.

Knowing who to include in the formative process will depend upon a number of factors, many of which relate to the intended scope and authority of the drug court and to the governance structure within each state. If the intent is to situate a drug court within a limited-jurisdiction court, such as a misdemeanor district court or magisterial court, then it might be sufficient to invite local department directors operating within that court system. For example, it might be sufficient to include the county district attorney, the lead public defender for the county, the lead county agency for substance abuse services, and the local director of probation. On the other hand, if the goal is to have the drug court serve felony cases within a general-jurisdiction state court, it might be necessary to include the attorney general, the state public defender, the state probation department, and the single state agency (SSA) for substance abuse services. It is worth the time and energy to think carefully about who should be consulted during the development process.

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*Steering committee members:*

- *Are community leaders and stakeholders*
  - *Should be authorized to enter into MOUs*
- 

The appropriate individuals should be invited to form a steering committee for the drug court program. The members of the steering committee should have the ultimate authority to enter into memoranda of understanding (MOUs) or memoranda of agreement (MOAs), in order to define the authority of the drug court and the roles and responsibilities of the respective parties. Of course, many of these professionals may not have the time to attend regular meetings or participate in all of the day-to-day planning discussions for the program. If this is the case, they can delegate to subordinates within their agencies the authority to attend the meetings and to report back to their superiors what was discussed and if there are any proposals currently on the table. Ultimately, the decision whether to sign on to such proposals will reside with the appropriate agency directors and political officials.

There will inevitably be disagreement on various issues that are based upon legitimate philosophical, legal, or political grounds. Such disagreements should not be glossed over or ignored because they are apt to rear their heads later after substantial effort and expense has already gone into developing the program, and bring the project to a screeching halt.

At times, it may seem acceptable or necessary to move forward without the explicit buy-in of a particular stakeholder agency. Such a decision should be approached with considerable caution. Researchers have clearly shown that drug courts have significantly better outcomes relating to reductions in recidivism and cost offsets when all of the relevant agencies are actively engaged in the operations of the program. For example, when representatives of the defense bar and of the prosecution, treatment providers, or law enforcement do not regularly attend staffings and status hearings, outcomes are less

favorable and more costly over the long run.<sup>1</sup> No agency is expendable, and all must operate in a coordinated fashion using a collaborative team approach.

If important partners are reluctant to engage collaboratively in the negotiation process, it is sometimes useful to bring in community constituents who have a stake in the process, such as local business leaders, members of the press, and members of the recovery community. Although these public stakeholders might not be regular voting members on the steering committee, they can attend meetings that are open to the public to weigh in on the importance of the program and the effects of drug-related crime in their community. This can serve to reduce grandstanding and turf battles among political leaders and lead to a more productive contribution to the founding of the program. Similarly, obtaining letters of support for the general concept of a drug court program—without necessarily endorsing any particular programmatic model—from such state officials as the mayor, governor, or supreme court justices can go a long way toward enhancing collaboration and productive activity at the county or city level.

Once the drug court program has been established, it is often important to have the steering committee continue to meet on a quarterly or semiannual basis to review how the program is performing and to address any needed changes to its policies and procedures. For example, the steering committee might review data on the program’s monthly census, and make decisions about how to reduce barriers to enrollment or to obtain funding for additional slots to satisfy unmet needs in the community. Allowing the drug court to fall “out of sight/out of mind” for political leaders can lead to a gradual loss of political will and support for the program, which can seriously erode its effectiveness and viability over time.

## B. [§2.4] Drug Court Team

The drug court team is the group of professionals who are primarily responsible for overseeing the day-to-day operations of the program and administering the treatment and supervisory interventions. The judge is the leader of the drug court team, and other members will commonly include a deputy or assistant prosecutor, an assistant public defender, a probation officer(s), a treatment provider(s), a case manager(s), a law enforcement officer(s), and a program coordinator. If multiple professionals within an agency will be working with drug court participants, it may be useful to appoint one or two individuals from within that agency to represent several parties during staffings or status hearings because it might be difficult, for example, to schedule numerous treatment providers or defense attorneys to attend staff meetings on a weekly basis. It might be preferable to have one public defender or one treatment case manager attend the staffings and report back to their respective agencies about the issues that were discussed and the

### *Drug Court Team Members*

- *Judge*
- *Attorneys*
- *Probation*
- *Treatment*
- *Case managers*
- *Law enforcement*
- *Program coordination*

## [§2.5]

decisions that were reached. The decision whether to appoint such a representative(s), and whom to appoint, should rest with each agency, and should be explicitly agreed to in writing by all concerned parties. Similarly, if a substantial number of participants are expected to be represented by private defense counsel, then it may be useful to appoint a representative from the private defense bar to attend staffings and status hearings. Defense counsel should be encouraged to participate in the staffing of their clients' cases.

It is essential to keep in mind that each discipline on the drug court team has its own ethical obligations, and represents diverse professional philosophies and interests. Each team member must understand and respect the boundaries and responsibilities of other team members. The NDCI provides a core competency guide (available from [the National Drug Court Resource Center](#)) for drug court teams that outlines the respective roles and responsibilities of each drug court team member.

### C. [§2.5] Extended Drug Court Team

A drug court might wish to consider having an extended team, which includes individuals who are involved in the day-to-day operations of the program, but who are not able to participate in regular staffings or court hearings. For example, some large drug courts might have one treatment coordinator who speaks on behalf of dozens of front-line counselors. In these larger programs, all of the counselors who are providing direct services to drug court participants might be included in the extended team. The extended team might meet on a bimonthly or quarterly basis to discuss concerns and observations by front-line staff, and to provide feedback to the core team about how the program is progressing and what changes might be indicated.

*Extended team members  
may include:*

- *Frontline staff from all partner agencies*
- *Business community, media, nongovernmental organizations and evaluator*

It is also a good idea to invite interested members of the public, media, and business community to attend some of the extended team meetings (perhaps once or twice per year) in order to get their input and to educate them about what the drug court is doing and what contributions it is making to their community. Research demonstrates that drug courts have far better outcomes when they maintain ongoing partnerships with other community organizations, and when they communicate regularly and effectively with those partners about how the program is performing in terms of its successes and barriers.<sup>2</sup>

## III. [§2.6] DEFINING THE PROBLEM

Every jurisdiction needs a drug court, but not all communities may recognize this fact. Moreover, the scope of the need will vary according to a number of factors,

including the size of the arrestee population, the nature of the drug problem in that geographic region, and local community values and sentiments. The judge should depend on the steering committee, drug court team, and local community representatives to gather the necessary data to press the argument in favor of establishing a drug court. Among the data that should be collected are arrest and disposition figures and drug-use trends in the community. Prosecutors and law enforcement officials often have access to much of the relevant information, including numbers of arrests and convictions for drug-related offenses, lengths of incarceration, recidivism rates, and possibly the results of urine drug tests and blood alcohol contents (BACs) taken at arrests or at booking. Such data can be used to determine the drug trends in the community and identify the criminal activity that is related to alcohol and other drugs.

Probation departments should also have statistics on the number of referrals they make to substance abuse and mental health treatment, successful completion rates for treatment, drug-testing results, drug-related revocations, and technical violations. This information can establish the relative efficacy (or lack of efficacy) of available resources and services and can identify current supervisory interventions. Treatment providers should also have important information on local trends in drug use, including the types of substances that are being abused by their clients; diagnostic information on the degree of compulsive addiction and comorbid mental illness in the population; and the numbers of referrals to treatment coming from the criminal justice system, completion and drop-out rates, and readmission rates to treatment. Additional information may also be available regarding the levels of care existing in the community and any gaps in service availability.

Law enforcement is likely to know whether certain types of drug-related crimes have increased in the community in recent years. For example, the introduction of methamphetamine or crack cocaine to a community might be temporally associated with a concomitant increase in theft, property, or domestic violence offenses. Law enforcement should also have access to other valuable information, such as the average number of days that drug-involved arrestees remain in jail on a pretrial basis and increases in the number of occupied jail beds. Much of this information is routinely recorded and can be tracked to show growth over time.

Once these figures are collected, the judge can lead discussions with the steering committee, drug court team, and community representatives. Does a growth in drug-related crime paint a compelling picture for the need for a drug court? Are there existing programs that have been shown to be less effective? Can a lack of efficacy of certain interventions be quantified? For example, research has demonstrated that high-risk offenders—such as those who have had multiple prior treatment episodes or substantial criminal involvement—often do not perform adequately on standard pretrial supervision or probation.<sup>3</sup> Holding regularly scheduled judicial status hearings and providing intensive supervision in a drug court is more likely to be effective for these high-risk offenders. If the probation department or treatment agencies have data on the level of risk in their populations, this information can be marshaled to demonstrate that certain types of drug-involved offenders require a more intensive level of intervention. This can be used to make a compelling case for the need for a drug court.

For example, in jurisdictions in which pretrial intervention programs have been effective in dealing with first- or second-time drug-related offenders, or where probation has been effective in dealing with certain categories of drug offenders, the drug court may have little need to duplicate services for those subpopulations. The drug court may, however, want to look at the subpopulation that is failing pretrial supervision or probation. If certain offenders have demonstrated a need for tighter supervision, perhaps the drug court can target that subpopulation.

#### *Make the case for a drug court:*

- *Review arrest data for drug-related crimes*
- *Collect data on substance-using probationers*
- *Examine drug-use trends in the community*

Drug courts require considerable dedication and effort. Typically few, if any, team members will be assigned solely to the drug court. Judges, prosecutors, defense attorneys, and probation officers will often have caseloads outside of the drug court. Without convincing data that clearly demonstrates the community's problem with drug-related crime, persuading busy professionals to donate the time and resources needed to develop a drug court program (e.g., administering urine drug testing) will be difficult.

## IV. [§2.7] ESTABLISHING A MISSION

A common definition of a *team* is a group of individuals working together toward a common goal, therefore, the new drug court team must establish its goals and mission as a basis for directing and coordinating its activities. These are the first questions to be answered by the new team: Why does the community need a drug court? Are drug-related crimes increasing? Are nonviolent drug offenders clogging court calendars? As noted above, the judge can facilitate this discussion, asking each team member to share (perhaps anonymously on paper) what he or she sees as the major purpose(s) of the drug court. The team will undoubtedly generate a list of excellent reasons, possibly including a need to reduce crime, reduce substance abuse, reunite families, protect children, reduce homelessness, and increase community safety.

There will often be considerable overlap among various team members' responses, and a consensus can usually be reached by identifying areas of common agreement and by raising additionally important impacts that some team members might not have previously considered. For example, if a team consists of six members (judge, prosecutor, defense counsel, treatment provider, probation officer, and case manager) and each team member has written two potential benefits for implementing a drug court, the initial list might look something like this:

- Reduce crime
- Improve public safety
- Provide better treatment outcomes

- Protect the community
- Reduce recidivism
- Provide drug and alcohol treatment to addicted offenders
- Provide intensive case management
- Provide job training
- Turn tax burdens into tax payers
- Improve lives of the citizens

The team can then use this initial list of ten benefits to create a more refined list of four overarching themes:

- Increase public safety
- Provide better alcohol and drug treatment
- Create tax-paying citizens
- Provide intensive case management

Finally, the judge can lead the team through the process of crafting these components into a clear, concise mission statement. The judge may want to identify and capitalize on the strengths of certain team members who have good writing skills. The judge may assign the initial drafting of the mission statement to one or two of those team members, who then bring the draft product back to the team. Finally, the team can review and revise the initial draft, making the mission a true reflection of the team's goals and the community's intent in establishing a drug court program.

From the sample list of four drug court benefits presented above, a sample mission statement might read as follows:

The mission of the Smith County Drug Court is to enhance the effectiveness and cost-effectiveness of the county criminal justice system by providing intensive case management, treatment, and court supervision for individuals arrested for drug- or alcohol-related offenses. By holding participants accountable for their actions and providing them with access to a diverse range of needed services, participants will be equipped with the necessary tools to lead productive drug-free and crime-free lives.

When constructing a mission statement, the team should not lose sight of the importance of accountability in gauging whether it is meeting these goals. Those agencies or officials that are supporting the drug court through funding or resource reallocation, as well as the community at-large, will expect the drug court to demonstrate whether and how it has accomplished its mission. Therefore, all of the goals should be attainable and measurable. For example, a lofty goal for a drug court might be “to make the world a better place.” But how would the drug court team be able to measure its success at achieving such a goal? On the other hand, “protecting public safety” can be measured through such data as incidents of new

*A mission statement should clarify the goals and values of the court.*

## [§2.8]

arrests while participants are in the program and after they have graduated from the program.

Upon completion of the mission statement, the team should ensure that the following critical elements have been addressed:

**Purpose.** Why the program exists and what it seeks to accomplish.

**Business.** The main methods or activities through which the program will attempt to fulfill its purpose.

**Values.** The principles or beliefs that guide the program's members as they pursue these aims.

## V. [§2.8] MEASURABLE GOALS AND OBJECTIVES

By developing its mission statement, the team has already begun to identify the goals and objectives for the drug court. The judge can lead the team through a process of further clarifying these goals and developing measurable and attainable objectives.

At this point, there is one team member who, if he or she has not already been included in the process, should become a regular participant on the drug court team, or perhaps on the extended team—the evaluator. The evaluator will be responsible for designing the data-collection system for the program and helping the team to evaluate the effectiveness of the drug court. The evaluator will work with the team to identify clear and measurable goals and objectives. Competent evaluators can be identified by contacting departments of psychology, education, public health, social work, criminal justice, or political science at local universities or research institutions. Also, the state, county, or city administrative office of the courts may have identified a cadre of researchers who may be available to perform the drug court evaluation.

In selecting an evaluator, the judge and team should consider a number of factors. Does the evaluator have experience in evaluating drug courts, or more broadly, in evaluating criminal justice-based treatment programs? Is the evaluator willing to be part of a team approach and assist in developing the program's goals and objectives? The evaluator should have considerable experience with collecting and analyzing data and defining variables. Copies of past evaluation reports and published articles should be reviewed by the team for clarity, sophistication, and usefulness. Inquire as to whether the evaluator has been published in peer-reviewed journals. Another excellent resource for selecting an evaluator is NDCI. NDCI staff can provide excellent guidance on what to look for in an evaluator.

The team will need to carefully consider what type of information to gather in the evaluation. Much of the information will be collected from participants throughout their enrollment in the program. Information will also be collected from various other sources, including the court, treatment agencies, and probation. This information must be accurate, accessible, and quantifiable if it is to be of any value. The evaluator can use this information to educate the team about whether the program is working, and more importantly, on what particular components of the program are effective or perhaps deficient.

How to structure a data-collection system, what data elements to collect, and how to conduct an evaluation are beyond the scope of this chapter and benchmark; however, excellent resources are readily available to the drug court judge, team, and evaluator. In 2005, NDCI published a monograph entitled, *Local Drug Court Research: Navigating Performance Measures and Process Evaluations*, which can be downloaded at no cost from the NDCI website at [www.ndci.org](http://www.ndci.org). This publication addresses the fundamentals of drug court evaluation, including the critical questions every drug court team should answer when implementing their drug court program. Remember, every drug court team will be asked to demonstrate whether the drug court is meeting its goals and objectives. No drug court program is a success if that success cannot be demonstrated through clear, convincing evidence. Evaluators should be able to assist the team in identifying a data-collection system, along with ensuring that the team collects the necessary information to permit meaningful evaluation results down the road.

The team should review the mission statement, goals, and objectives to ensure that the following critical issues are met. These are not intended to be exhaustive.

### A. [§2.9] Program Goals

Program goals should do the following:

- Focus on public health, public safety, and personal responsibility
- Improve utilization of community resources
- Be cost effective on the criminal justice system
- Show high rates of treatment retention and completion
- Improve functioning of individuals
- Address access and fairness issues

### B. [§2.10] Objectives

Program objectives should be as follows:

- Clearly stated with realistic end results
- Quantifiable with measurable outcomes
- Responsive to participant, stakeholder, and community needs
- Attainable given program design and available resources

### C. [§2.11] Mission Statement

Address critical program goals in a concise, understandable way that captures the spirit and motivations of the team and its stakeholders.

## VI. [§2.12] GATHERING RESOURCES

A community determines that it needs a drug court because there is a drug-involved population within the criminal justice system that needs additional services, above and beyond what the court, treatment, and supervision programs are currently providing. It is incumbent upon the drug court team to determine what additional resources will be needed to effectively intervene with this population. As previously stated, research has shown that certain high-risk populations require closer supervision by a judge. But what about more intensive case management services, home contacts, drug testing, and evidence-based treatment? Having defined the problem, the judge must now lead the team through a process of gathering the necessary information and resources to craft the solution.

In identifying and building resources for the drug court, the judge will want to turn to the community. Service identification and development for a drug court is too great a job for any one person, or even for one drug court team. The more people who are involved in this process, the more successful the program is likely to be. The judge should ask team members to brainstorm about whom to include in an advisory capacity. Advisors harness the knowledge of the community and bring skills and resources to the drug court. Traditionally, these advisors have included the core drug court team; the extended team (if applicable); members of the faith community; members of the recovery community; representatives from local schools, universities, vocational agencies, and health agencies; the business community; and many others.

*Use the National  
Drug Court Resource Center:  
<http://www.ndcrc.org/>*

The judge may call a meeting and send letters of invitation to each person that the team has identified for this advisory function. At the meeting, the judge and team should describe the problem, review the mission, goals, and objectives of the drug court, and then list the resources that will be needed to tackle the problem. The judge may decide to accomplish a few basic tasks at the initial advisory meeting, such as educating the larger group, dividing into subcommittees to address various tasks, and selecting a time to reconvene.

One tool that drug courts often use in identifying resources is community mapping. An example of a community mapping chart can be found on the National Drug Court Resource Center website. The judge may want to distribute a copy of the community map to all of the advisors, perhaps partially completed by the core team, and then ask the advisory members to identify additional resources. Furthermore, the judge may ask the advisors to brainstorm on other resources that the drug court may need to access, which may not have been identified in the community map or by the core team.

Resource identification is critical. Often, resources may exist in a community but are unknown to the main players in the criminal justice system. The drug court may need to access a variety of resources, including, but not limited to, substance abuse treatment, medical treatment, housing, transportation, educational and vocational training, and

drug testing. Recognizing what resources do not exist is as important as identifying those that do. If, for example, General Educational Development (GED) assistance is not available in a given community, requiring drug court participants to acquire a GED equivalency diploma may be unreasonable. But can the drug court advisory committee create those resources by, for example, purchasing GED tutorial materials for the drug court program? Similarly, if no detoxification facilities are available in a jurisdiction, yet the jurisdiction has a demonstrated need for such facilities, the advisory committee may be able to advocate for the development of such a resource.

By dividing the advisory committee into subcommittees (and designating committee chairs to coordinate the ongoing work and report out), the judge can avoid overwhelming the group with the tremendous task of harnessing community resources, while also enlisting community buy-in and support for the new drug court.

## VII. [§2.13] DETERMINING ELIGIBILITY CRITERIA

Now that the team has defined the problem, established its mission and objectives, and begun gathering resources, it must turn its attention to developing its policies and procedures. First, the team must decide on objective eligibility criteria for the drug court. The team may consider certain offenses to be eligible and others to be prohibited. For example, drug possession offenses might be eligible, whereas violent offenses might be excluded. Similarly, the team may decide that certain offender-level characteristics will make individuals ineligible for participation. For example, individuals who have serious medical conditions might be denied entry to the drug court. The program must have well-defined eligibility criteria to ensure a clear understanding about who can and cannot enter the drug court. If eligibility criteria are left too vague, this can lead to unintentionally disparate treatment for certain groups of citizens, such as racial or ethnic minorities, or can create a perception that the program is unfair in its selection of candidates. This could also lead to due process or equal protection challenges.

*Clear, objective, and specific eligibility criteria are critical.*

Throughout this process, as team leader, the judge should encourage the team to be as inclusive as is reasonably possible, while also respecting each team member's legitimate concerns. Factors to consider in drafting eligibility criteria may include, but are not limited to, the nature of the current offense, past offense history, type of drug, residency, history of violence, and whether treatment resources are reasonably available to serve the offender's needs. There may also be statutory considerations, given that several states have enabling legislation for drug courts that define the limits of entry criteria. Other statutory provisions may also govern the availability of nonincarcerative sentences or diversion opportunities for certain types of offenses. Finally, there may be funding considerations because certain federal grants have restrictions on using resources to treat individuals with records of physical violence or gun possession.<sup>4</sup>

Other important considerations in selecting the target population for a drug court include the level of prognostic risk and criminogenic need presented by the offender.<sup>5</sup> *Prognostic risk* refers to those characteristics of offenders that generally predict poorer outcomes in standard rehabilitation programs. Examples include an early onset of substance abuse or delinquency, prior felony convictions, previously unsuccessful attempts at treatment, a coexisting diagnosis of antisocial personality disorder (APD), and a preponderance of antisocial peers or affiliations (e.g., gang affiliations). Importantly, in this context, the term “risk” does *not* necessarily refer to a risk for violence or dangerousness, but rather to a risk of failing to respond to standard interventions, and thus for continuing to engage in the same level of drug abuse and crime as in the past. *Criminogenic needs* refer to clinical disorders or functional impairments that, if ameliorated, substantially reduce the likelihood of continued engagement in crime. The most common examples include drug or alcohol addiction and serious psychiatric disorders.

Research now shows that drug courts tend to have the most powerful effects for drug offenders who are both high risk and high need, meaning that they have serious substance abuse disorders and also have a history of a poor response to standard treatment and/or antisocial personality traits.<sup>6,7</sup> On the other hand, low-risk and low-needs offenders who do not have these characteristics tend to perform just as well in less intensive programs, such as standard probation or pretrial diversion.<sup>8</sup> These findings suggest that, when possible, drug courts should attempt to target their services to more serious types of drug offenders who can be safely managed in the community. If a drug court focuses on low-severity offenders, it is less likely to achieve meaningful cost savings for its community that would justify the additional expense and effort of the program.

Of course, practical and political realities will dictate whether a drug court can reach a more serious drug offender population. If, for example, the prosecution is unwilling to offer drug court to recidivist offenders, this may be a “rate-limiting factor” that prevents

*Drug courts work best for offenders who are both high risk and high need.*

the program from reaching the more severely addicted offender population, at least in the short term. If the prosecutor cannot be swayed from this position, it might be advisable to begin targeting less severe offenders to get the drug court off

the ground and then to advocate over time for widening the eligibility criteria as experience with the program demonstrates its safety and effectiveness.

The judge must lead the team through these decisions, making every effort to define the criteria in a clear and objective fashion, and establishing concrete methods for team members to reliably assess each person’s suitability for the program. For example, if the team decides to exclude violent offenders, the judge should assign certain team members, such as the prosecutor and defense counsel, to work together to define what constitutes a violent offender and who is responsible for screening each case for a violence history. Once the eligibility criteria and screening procedures are established, they should be clearly specified in the policy and procedure manual and should be disseminated to all interested stakeholders and potential referral sources.

## VIII. [§2.14] SELECTING THE DRUG COURT MODEL

It is essential to determine what legal model a drug court will follow. For example, will it be a diversion program, in which graduates have their charge(s) dismissed or vacated? Or will the program target only probation revocation cases, in which case graduates may have their probationary conditions reduced? Will admission to the program require the judge to formally enter a judgment of guilt and sentence the offender to the program, or will the plea be held in abeyance pending graduation or termination? The basic types of drug court models addressed below.

### A. [§2.15] Pre-Plea Diversion

From 1989 until the mid-1990s, many drug courts were pre-plea. Participants entered the program, perhaps as part of a pretrial intervention, with the understanding that upon successful completion, the charges would be dismissed. In this model, the participant's case is held in abeyance until program completion or termination. Charges are dismissed upon successful completion, but the case continues through the system upon unsuccessful termination. One perceived advantage of a diversionary drug court is faster case processing because preliminary hearings and discovery are typically not necessary. Perceived weaknesses include the case possibly going "cold" if the participant fails drug court several months after admission. For example, witnesses and officers might not still be available to testify. Another perceived weakness is that more seriously addicted offenders might be denied an opportunity for treatment because prosecutors will be less likely to offer diversion to offenders with more serious offense histories, and in some states there are statutory exclusions for certain types of offenders or offenses.

#### *Models include:*

- *Pre-plea diversion*
- *Diversion with stipulated facts*
- *Post-plea, preadjudication*
- *Postadjudication probation*
- *Probation revocation*
- *Mixed models*

### B. [§2.16] Diversion with Stipulation of Facts

This model aims to tackle the perceived proof problems presented by standard diversion. Upon program entry, the participant, with advice of counsel, signs a stipulation of facts, essentially confessing to the events as stated in the police report. This model satisfies prosecutors who fear that cases might go cold while defendants bide their time in the drug court program.

### C. [§2.17] Post-Plea, Preadjudication

This model, sometimes referred to as “Deferred Entry of Judgment,” offers prosecutors the opportunity to put more “teeth” into the diversion program. Participants enter a formal guilty plea, which is then held in abeyance. Upon successful completion, the participant may face a lighter sentence in some jurisdictions, such as a probationary

*There is no clear evidence that one model is superior to another.*

sentence when jail time was a realistic probability. Alternatively, the graduate might have the ability to withdraw the guilty plea and have the charges dismissed. Upon unsuccessful termination, the participant faces regular sentencing. Perceived strengths of this model include

the fact that cases do not go cold, and that more serious offenders may have the opportunity for program participation. Perceived weaknesses include the increased time that may be needed for due process hearings to take place, including preliminary hearings, discovery, and other defense preparations.

### D. [§2.18] Postadjudication, Probation

This model requires participants to plead guilty and receive a sentence of probation, with the term of probation requiring compliance with the drug court. As in other post-plea models, the case will not get old, but the additional time that is needed for court preparation and entries of judgment often delay treatment entry. Prosecutors may more readily recommend serious offenders for this model because a final judgment of guilt has been entered. Upon successful completion, the participant may have his or her probation terminated successfully or reduced, or the “carrot” may simply be a recommendation for probation rather than prison at the final sentencing disposition.

### E. [§2.19] Probation Revocation

This model takes individuals who are already on probation, and who are up for a violation and possible revocation. The violation typically involves drug use, such as positive urine drug tests, detection of contraband, or additional drug charges. Rather than possibly having their probation revoked, the participants are offered drug court. If they successfully complete the drug court, their probation may be terminated successfully or shortened, or they may avoid a jail or prison sentence.

### F. [§2.20] Mixed Model

Some drug courts use multiple models, or have multiple tracks. This gives the judge, prosecution, and defense counsel the option to target several levels of offenders, and therefore, to offer drug court to the largest possible criminal justice population.

Which model is best? There is no one clear answer to this question, but a few findings are known. First, research suggests that outcomes tend to be better when drug courts can apply some degree of coercive leverage over participants to keep them engaged in

treatment.<sup>9,10</sup> If there is little consequence for failing to complete the program, outcomes tend to be poorer. Thus, pre-plea diversion models tend to have less impressive effects because participants who are terminated are essentially put back in the same position, legally speaking, as when they were first arrested.

Second, applying one consistent model, rather than mixing populations in different models, tends to produce better results.<sup>11</sup> It is not entirely clear why this is the case, but presumably it is due to the fact that mixed-model programs might not have developed separate policies and procedures to deal with the diverse needs of a heterogeneous population. Perhaps if mixed-model programs developed separate tracks specifically tailored to the needs of different populations, the results would be better. More research is needed to better understand this issue.

Apart from these two findings, there is no clear evidence regarding whether one model is superior to another. In many respects, comparing outcomes between different drug court models raises the question of whether an evaluator is really comparing “apples to oranges,” because the populations are likely to be so different. For example, a probation-revocation drug court might have relatively poorer outcomes than a diversion drug court simply because it is likely to be treating a more severe offender population to begin with. The most practical advice would be for jurisdictions to develop drug court models that serve the pressing needs of the criminal justice system within their communities.

## IX. [§2.21] GRADUATION AND TERMINATION CRITERIA

Once the eligibility criteria are defined and the drug court model is selected, the team must decide on graduation/commencement and termination criteria. In other words, what does a drug court participant need to accomplish in order to graduate from the program, and what can lead to a participant’s termination from the program?

Many factors may be considered in determining graduation criteria. The most common criteria include a specified duration of “clean” time (i.e., a consecutive interval of sobriety as confirmed by negative urine drug screens). Evidence suggests that ninety days of consecutive sobriety is minimally necessary to predict sustained abstinence, but many programs require four to six months or more of sobriety to increase the confidence that participants will maintain their gains over the long term. In addition, graduation requirements often include payment of victim restitution and court fines or fees (if applicable), successful completion of all treatment requirements, obtaining a job or pursuing an education, and securing a stable residence. With all of these requirements, the team must ensure that

*The most common graduation criterion is “clean time” monitored by urine tests. A minimum of ninety days or as long as six months may be required.*

adequate resources are available and accessible in the community to make obtaining these goals possible. No drug court should set its participants up for failure by making unreasonable demands.

Many drug courts have additional requirements for program completion that relate to other problems commonly confronted by drug offenders. For instance, homelessness, joblessness, financial debt, illiteracy, health problems, and family problems are typical issues confronted by drug court participants. As the team builds program resources, it will also be looking ahead to what the program will require for graduation. For example, if the typical drug court participant in a program lacks a basic education, the team might elect to require a GED equivalency diploma for graduation. The team will need to assess whether each participant needs such and whether he or she is capable of obtaining one during the limited time available for enrollment in the drug court. Then, the team must add that requirement to that participant's case management plan and follow-up with the participant at appropriate intervals in the program, since obtaining a GED equivalency diploma requires multiple steps, including study, test scheduling, and possibly retesting. Again, if the team requires a GED equivalency diploma for graduation, resources for completing it, such as study guides, tutors, and test sites, should be available at no cost or reduced cost to the participants.

When balancing the reasonableness of drug court requirements, the team will need to consider the required length of the program and whether the graduation requirements can be reasonably accomplished during that period of time. Research has indicated that programs with set lengths of roughly twelve to sixteen months tend to have higher

*Termination criteria may include behaviors that threaten public safety or staff welfare; however, termination would be the last sanction for continued substance use.*

success rates than programs of lesser or greater duration, and those of unstated duration.<sup>12,13</sup> It may help the team to map out the time requirements on a calendar to gain a clear visual of what the drug court demands. If drug court participants are required to hold down full-time jobs, attend twelve to sixteen hours of treatment per week, meet with their case managers, provide two or more unscheduled urine

specimens per week, and attend court sessions, this may not be realistically possible. To make matters more complicated, many participants may not have a driver's license, may have child care responsibilities, and may not be able to rely on family support. The best way to balance requirements is to have some responsibilities decrease over time while others increase over time. For example, as participants move through the program, the amount of probation supervision and court appearances might begin to decrease, thus making room in their schedules for new obligations, such as earning a GED equivalency diploma or obtaining a job.

The team must also decide upon termination criteria for the program. Failing to specify the grounds for termination up front can lead to a due process challenge because participants could be facing a loss of liberty without adequate notice. The first issue is whether there are any behaviors that can lead to immediate termination from the drug

court. Behaviors that jeopardize public safety or threaten the welfare of staff members or other participants might be grounds for immediate termination. Examples might include driving while impaired (DWI), dealing drugs to other participants in the program, or threatening staff. By contrast, less serious infractions, such as continued drug use, are typically punished on a graduated or escalating basis, in which the magnitude of the sanction increases over successive infractions. For example, participants might receive steadily increasing sanctions for each drug-positive urine result. Termination would ordinarily be the last sanction on the graduated schedule to be applied when all else has failed.

A number of infractions are in the middle ground between being considered serious violations and routine violations. For example, drug courts may apply higher-magnitude sanctions, which fall short of termination, for participants who falsify a drug test, abscond from the program, or are arrested for a new nonviolent drug-possession offense. Such infractions might elicit higher-magnitude sanctions (such as community service or brief jail detention) during the early phases of the program, but stop short of outright termination. If the team begins by administering higher-magnitude sanctions from the beginning for such infractions, termination can occur more rapidly if those behaviors continue to occur.

*Less serious infractions may trigger graduated sanctions such as community service.*

Importantly, research indicates that outcomes in drug courts tend to be substantially better when participants are given clear advance notice about the types of behaviors that can elicit a sanction, and the types and range of sanctions that may be imposed for various types of infractions.<sup>14</sup> Concrete information about infractions, sanctions, and grounds for termination should be clearly described in a policies and procedures manual, which should be widely distributed to all participants, their attorneys, and other stakeholders of the program.

## X. [§2.22] PHASE STRUCTURE

Drug courts are virtually always structured into phases. The court and treatment program may have identical or different phase structures, but in either case, movement from one phase to another should be dependent upon the completion of objective criteria. Selecting the criteria and developing a system to measure their completion is up to the team. Many drug court teams have a list of specific benchmarks that must be achieved to attain phase advancement. Others may use a scoring system, in which a certain number of points are allotted for the completion of various tasks. Once a participant has accumulated a preset number of points, the participant can move on to the next phase.

There is no one correct sequence or number of phases, and drug courts should develop their own phase structure based upon the clinical needs and prognostic risk in their population. The phase structure should focus on progressive goals for the client as

treatment moves forward. Generally speaking, the first phase often focuses on stabilization and induction into treatment. Phase advancement might require the participant to complete all applicable clinical assessments, regularly attend treatment sessions (say, a ninety percent attendance rate for at least two months), obtain stable living arrangements, and obtain a self-help group sponsor. The second phase might focus more directly on the initiation of abstinence, requiring a minimum number of days of consecutive drug-negative urine samples, and perhaps completion of community service obligations or other probationary requirements. The third phase might focus on the development of prosocial healthy behaviors, such as obtaining employment, working toward a GED equivalency diploma, or attending vocational or parenting classes. Finally, the last phase often focuses on relapse prevention and aftercare preparation. At this juncture, requirements within the drug court have been substantially reduced in terms of attendance at treatment sessions, probation appointments, and court hearings. This allows room for a time commitment to school or work and for attendance in aftercare services such as self-help group meetings and alumni association meetings.

As participants successfully move from one phase to another, the drug court may wish to recognize those successes with a formal ceremony, presentation of a certificate, or at least

*Consequences should be clearly written into court policies and procedures manuals and participant handbooks.*

an explicit acknowledgement from the bench. When a participant graduates from the program, the team should formally recognize that graduation with a ceremony in the courtroom unless the participant objects. Graduation ceremonies in drug courts are as individualized as the courts themselves. At some ceremonies, the arresting officer may attend to witness the

defendant's transformation and close the circle on the original arrest. Local dignitaries, such as the mayor, attorney general, or chief of police, might also attend and deliver speeches and personal congratulations to the graduates, welcoming them back into the community. Some ceremonies are formal with caps and gowns. Others are simply worked into the regular drug court docket, with applause and congratulations from the bench. The judge, with input from the team, should decide on what type of graduation ceremony works best for his or her drug court.

At this point in the drug court planning, the judge may ask the team to begin developing an entry flow chart. The entry flow chart is basically a diagram of what happens from the drug court participant's initial infraction (arrest, probation violation, etc.) through completion of or termination from the drug court program. At each stage in the diagram, every team member should clearly understand his or her role in the process, and the judge should organize the team so that all procedures are recorded in the drug court policies and procedures manual. The drug court needs an institutional memory of the procedures to pass on to new team members. If possible, a copy of every form the court uses during the drug court proceedings should be included in the policies and procedures manual. Also, the judge should encourage each agency represented on the team to sign an MOU or MOA agreeing to the policies and procedures set out in the manual, so that

the team is not in the position of renegotiating policies each time a team member transitions. The policies and procedures manual should be so inclusive that the entire team could change in one day, and a new team could pick up the manual and run the program (assuming, of course, that they have completed the applicable trainings on drug court implementation and best practices).

Finally, once the policies and procedures have been established, the judge should lead the team through the documentation of clear expectations for the participants themselves. Research shows that clear expectations aid in behavior modification. All team members should work together on a contract and participant handbook that outline exactly what the drug court requires of participants, including the benchmarks for phase advancement, graduation, and termination criteria and possible sanctions and rewards. Through this client contract, participants should receive a clear understanding of what benefits and burdens they are undertaking by entering the program. Many drug courts have each participant and his or her attorney sign the agreement before entering the drug court.

*Developing a flow chart mapping participant entry through graduation is helpful.*

## XI. [§2.23] APPLYING PROGRAM CRITERIA

The judge should then lead the team through the process of developing the concrete, day-to-day procedures for applying the program criteria. For example, the team will need to decide how it will educate referral sources, such as attorneys and law enforcement, about the eligibility criteria for the program. It will also need to decide how referrals to the drug court will be received, and who will determine legal eligibility for the program. States may have specific statutes that outline entry criteria. Legal eligibility refers to whether applicants are legally permitted to enter the program; for example, whether they have any disqualifying offenses that are pending or on their record. The individual or agency that determines legal eligibility is essentially the gate keeper for the referral process. Often, this function is assumed by the prosecution.

Similarly, there must be procedures for determining clinical eligibility for the drug court. Typically, offenders must meet diagnostic criteria for drug abuse or dependence, and there must be some evidence that their substance abuse problem is fueling or exacerbating their criminal activity. Often, this determination must be made by a clinician or clinical case manager who may work for the court, probation department, or local treatment program. Once an applicant is found to be eligible for the program, procedures are needed for scheduling an entry hearing and ensuring that the defendant provides a knowing and voluntary waiver of his or her relevant rights and consents to enter the program.

As part of this process, the court will lead a discussion on a variety of related topics, including the number of drug court hearings to be held each month during the various

*Procedures checklist  
should include:*

- *How will referral sources be educated about the program?*
- *What are the legal and clinical program eligibility criteria?*
- *How often must the participant report to court?*
- *Who attends staffings and drug court status hearings?*
- *How often are they held?*
- *What is the type and form of information received by the judge? Who prepares it? With whom is it shared?*
- *Are appropriate waivers in place?*
- *What is the final case disposition for successful and unsuccessful participation?*

phases of the program. The court must decide whether drug court participants will attend status hearings weekly, biweekly, or monthly. Research indicates that biweekly status hearings should generally be held during at least the first phase of the program.<sup>15,16,17</sup> Once participants have begun to initiate abstinence and demonstrate a commitment to treatment, the schedule of court hearings is often decreased over subsequent phases in the program. The team will need to decide on this phase structure in advance.

Drug court status hearings are typically preceded by team meetings, often called *staffings*, during which the team gathers to discuss each participant's progress since the last status hearing. At the staffings, the various team members provide the judge with accurate and timely information about participants' progress in the program, and make recommendations to the judge about incentives, sanctions, or therapeutic consequences that might be imposed. Ultimately, the judge will make the final decision about what consequences to impose, after giving due consideration to the expert advice of all team members. Then, the team might work together to script the court proceedings, including

the order in which participants will be called before the judge. This is done to increase the educational value of the hearings and to enhance the "courtroom as theater" value of the drug court. Careful attention is paid to all aspects of the court hearings to continuously drive home a therapeutic message to the participants about what is expected of them and how they should apply themselves in the program.

One critical issue for the judge to resolve with the team concerning staffings is the manner in which information will be shared with the court. The judge may have only a few hours or days each week to preside over the drug court. If the judge is to see many dozens of drug court participants each week and establish a therapeutic relationship with each participant, the judge must have accurate information that is easy to navigate. Many drug courts have one-page reports for the judge's file, which may include drug test results, compliance issues, treatment progress, information gathered during home contacts, and relevant personal information, such as birthdays.

Finally, the judge must lead a discussion about what happens to participants after graduation or termination. Depending on participants' legal status in the program, successful graduates might have their charges dismissed, receive a reduced sentence, or have their probation terminated early. It is essential that the procedures for entering these dispositions be clearly specified and communicated to the participants and their defense counsel. More thorny issues are presented by terminated cases. Some commentators have taken the position that drug court judges should not sentence participants who are terminated from their programs because they have a heightened familiarity with the case, and thus may not be adequately neutral. Others take the position that drug court judges are most likely to understand the nature of addiction and to impose the most appropriate sentences in such cases. The safest position is to offer the offender the option to be sentenced by the drug court judge or by another neutral magistrate, and to entertain petitions for recusal if they are proffered by either the defense or prosecution. (For additional information, refer to Chapter 8, "Constitutional and Legal Issues in Drug Courts," of this benchbook.)

## XII. [§2.24] EVALUATION

Evaluation is a critical tool for maximizing productivity in drug court. It provides a mechanism to understand what works, what doesn't, and why. It is the greatest management tool available. As an administrative tool, it allows drug court teams to better allocate resources and further sustain their program in the future. Evaluation should not be considered an add-on but an integral part of the planning process. To that end, early evaluator engagement strengthens program design and planning.

It is essential that drug courts engage their stakeholders in the development of the evaluation design. Stakeholders include funders, project managers, team members, line staff, collaborating partners, and persons served or affected by the program. Failure to engage stakeholders increases the probability that findings will be ignored, criticized, or resisted because the evaluation did not address their concerns or values.

Process evaluation and performance measurement are two aspects of drug court research that form the foundation for any national claims of drug court efficiency and efficacy. Drug courts should consider national, state, and local variables that need to be regularly captured to evaluate drug court performance. The NDCI publication entitled *Local Drug Court Research: Navigating Performance Measures and Process Evaluations* provides a set of model research questions with the means for answering them, a list of minimum data-elements that should be collected and maintained, and a sample evaluation plan.

Every drug court team member should understand the essential differences between a *process evaluation*, which evaluates the operations of the program itself, and an *outcome evaluation*, which evaluates the program's impacts on its participants. Process evaluations tell the team what is and isn't working in the day-to-day operations of the drug court. For example, are drug test results available in a timely and reliable manner? How many participants are being screened for the program? How soon after referral are participants

being screened, and if found eligible, entering the program? By contrast, an outcome evaluation measures how effective the program is. For example, what is the graduation rate and recidivism rate for participants? Both process and outcome evaluations should reflect whether the goals and objectives of the drug court (discussed earlier in this chapter) are being met. For either to be reliable, the drug court must collect accurate, accessible data from program inception, track participants and graduates, and use a knowledgeable evaluator.

### XIII. [§2.25] CONCLUSION

**D**rug courts represent a collaborative team approach to judicial, prosecutorial, criminal defense, and clinical decision making. This collaborative orientation must begin at, or before, the inception of the drug court program. Dozens of critical decisions must be negotiated among various parties, clearly resolved, and memorialized in written form. There is no substitute for the team committing itself to engaging in this painstaking, but ultimately satisfying and enlightening, process. The time and effort that it takes to plan the parameters of the program in advance will pay dividends many times over in terms of more efficient and effective operations once the program opens its doors. The more effort that is made to bring all of the relevant stakeholders into the process and to gain buy-in and support from community leaders and constituents, the more effective and enduring the program will be. There is no doubt that the most productive and longstanding drug court programs, nationally, all share in the fact that they worked actively and continuously to enlist partners at multiple levels within their jurisdictions.

And remember that the NDCI can be an important asset to you as you embark on this important journey. Planning and implementation workshops are available to bring your team together in a problem-solving mode to develop your policies and procedures, enhance mutual trust and support among team members, and learn about the most effective and cost-effective best practices for your programs. Research demonstrates that attendance at implementation workshops produces better outcomes and greater satisfaction among team members.<sup>18</sup> Allow this proven training to work for the benefit of you and your drug court team, just as you will work for the benefit of your clients and your community.

*The National Drug  
Court Institute is here to help.*  
[www.ndci.org](http://www.ndci.org)

<sup>1</sup> Carey, Shannon M., Michael W. Finigan, and Kimberly Pukstas. 2008. *Exploring the key components of drug courts: A comparative study of 18 adult drug courts on practices, outcomes and costs*. Portland, OR: NPC Research. Available at [www.npcresearch.com](http://www.npcresearch.com).

<sup>2</sup> Carey, Finigan, and Pukstas. *Exploring the key components of drug courts*.

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