

**A JUDICIAL PRIMER ON DRUG COURTS  
AND COURT-ORDERED DRUG REHABILITATION PROGRAMS**

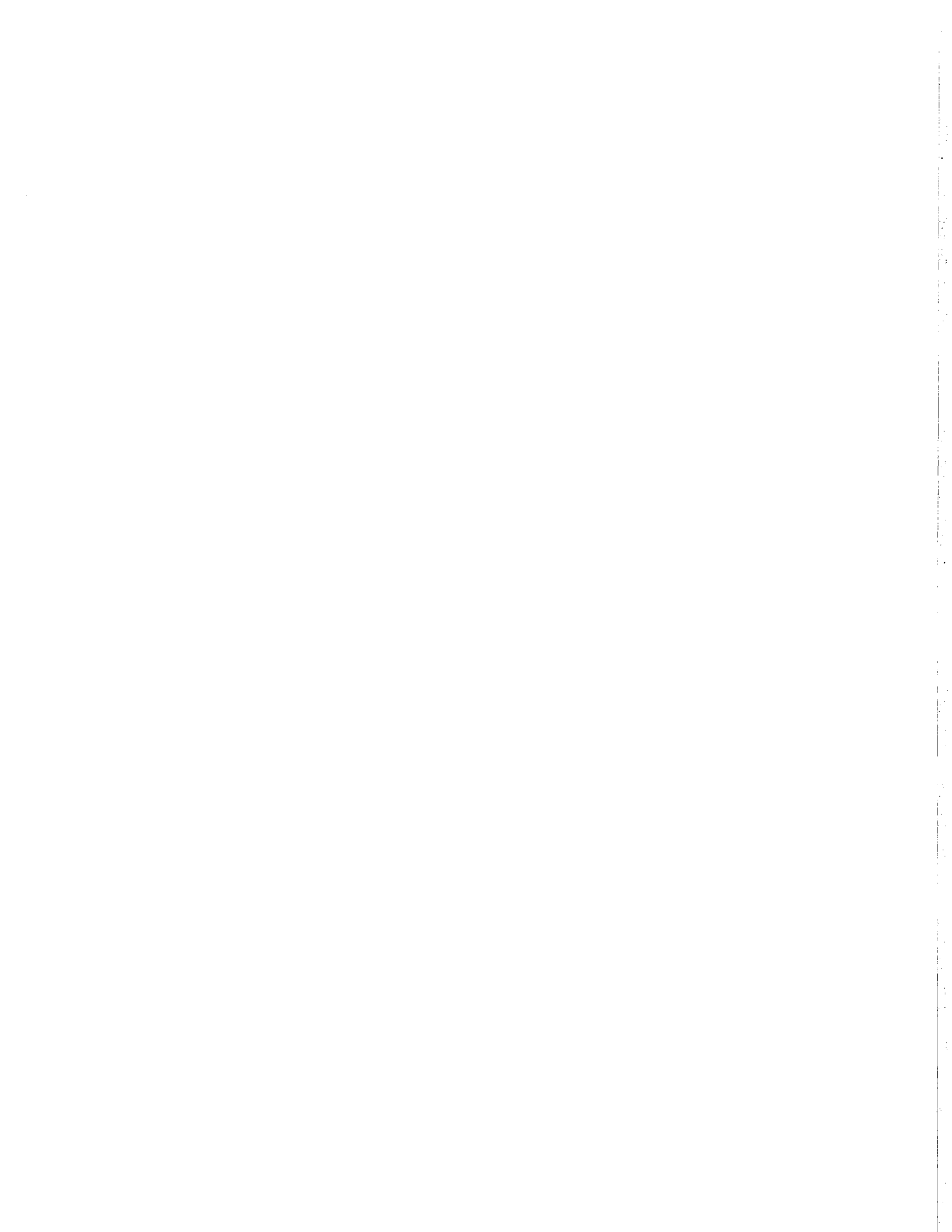
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## INTRODUCTION

The development of Drug Courts is part of a trend toward criminal justice programs that respond directly to and are involved directly with their communities (programs such as community policing, pioneered by then Houston Police Chief Lee Brown).

Drug courts mark a turning back of the judicial clock to a time when judges ran their own calendars and were responsible for their court's operations, defendants had to deal with a single judge and court staff, and cases moved slowly and purposefully through the judicial system.

Instead of relying on sentencing guidelines, mandatory minimum sentences, and negotiated pleas to streamline and speed up the sentencing process, the Drug Court Judge relies on his or her ability to communicate effectively with and engage the persons before the court. That does not mean that one must be a charismatic leader to be a Drug Court Judge. Clearly better communicators will be more effective, but a structurally sound Drug Court System will enable those who are willing to learn and adapt, to become effective Drug Court Judges.

There is nothing new or magical about how a Drug Court works. A single Drug Court Judge and dedicated program staff, applying a common sense approach to behavior modification, handle all Drug Rehabilitation cases from start to finish. Court procedures are adapted to reflect the realities of the offender's substance abuse. And coordinated programs are created where all participants (not just the offender) are held accountable for their performance.

However, a Drug Court is of critical importance to those jurisdictions with substantial numbers of serious drug offenders. An effectively implemented and well-designed Drug Court will not only result in the increase in successful program completions but in substantial reductions in both the rate of criminal recidivism and the total number of days offenders spend in custody. Even where no Drug Court exists (or is needed), the application of the principles of successful court-ordered drug rehabilitation described here, will achieve significantly better sentencing and supervisory outcomes.

Not every judge is an appropriate candidate to (nor wishes to) preside over a Drug Court. Ideally, a drug court judge should be a strong leader, with enthusiasm for the court's mission, an ability to think systemically, a talent for motivating others, and a willingness to be a hands-on participant in the process.

For those who accept the challenge, the Drug Court offers judges the opportunity to help drug-using offenders change their lives for the better (as well as reduce their criminality). While it requires a willingness to work outside the confines of the traditional judicial role, a Drug Court represents one of the most challenging and exciting innovations in the Criminal Justice System in a long time.

## I. THE IMPORTANCE OF JUDICIAL LEADERSHIP

*A Drug Court provides direction and focus through the leadership of a single judge. Such focused leadership insures consistency in judicial decision making and program implementation, coordination and accountability of participating agencies and staff, and cost-effectiveness through direct calendaring and efficient case management.*

Judges are in a unique position to exert effective leadership in the promotion of coordinated drug control and treatment efforts, both within the criminal justice system and their local communities. Judges have the political influence, the ties to government agencies, the moral authority, the perceived fairness and impartiality, and the expertise and focus necessary to bring leadership to coordinated anti-drug efforts.

Traditionally, judges have played the passive role of objective, impartial referee, only reluctantly stepping beyond the boundaries of their own courtroom. However, where the fair and effective administration of justice is threatened (as in this case by an exploding drug problem), the court has the responsibility to come forward and become a leader and active participant in the organization, design and implementation of coordinated criminal justice and community-wide drug control efforts.

### **The Judge as Administrator of Justice**

Taking an active leadership role may take some getting used to. As judges, many of us tend to regard any judicial activity outside the courtroom with suspicion. The truth is, however, that we can only be as effective in our courtrooms as the systems we build outside that courtroom will allow. By accepting responsibility for the administration of justice, you will be setting the offender up for success, rather than failure.

By way of example, in Oakland, California, more than 1/3 of defendants failed to appear for their Diversion eligibility hearing when that hearing was held 6 to 8 weeks after their arraignment and release from custody. It didn't matter how fair, competent or effective the judge was in court (nor, for that matter, how effective the program was), when the defendant failed to appear in court to be placed in the rehabilitation program. *With the advent of the FIRST Diversion Program, the delay between arraignment and diversion eligibility hearing was reduced from six weeks to a single day, facilitating the immediate intervention in the offender's drug usage. Consequently that failure to appear rate dropped from approximately 36% to 3%.*

### **The Judge as Initiator**

Take the initiative. Bring the necessary agencies (and other interested parties) together for a coordinated review of current court procedures and programs. Study how the existing systems work (or fail to do so) and develop a systemic vision of how a Drug Court and Court-Ordered Rehabilitation program would function. Finally, move the project forward by setting timelines, and monitoring the program's development and implementation.

You can expect a considerable amount of resistance to any proposal to change existing systems. Don't be discouraged by the reluctance of some to change. Remember that important innovations don't come easily, but require persistence as well as vision to succeed.

### **Sharing Power**

Judicial leadership involves more than a willingness to lead. (Remember, much of a judge's power and influence is based on the symbolism and moral authority of the office.) It means looking beyond traditional relationships to the forming of innovative partnerships that feature collaboration in decision-making, sharing of resources, and coordination of efforts.

It is crucial that all program staff participate fully in the design and implementation of the program. (Nothing will defeat your purpose faster than a reluctant bureaucracy.) Probation and/or other program staff must share in the ownership of the program and understand that program success is in both their institutional and personal interest. Such staff commitment to program success is one of the most valuable assets a Drug Court program can have.

### **The Judge as Program Advocate**

Don't delay starting your program until you get that grant you are hoping for. You may still be waiting years from now. Accept responsibility for the financial viability of your program. Develop the best program you can with the resources you have now. Adapt existing systems, enlist existing agencies, and convert existing staff to your purposes. Look to federal, state, or private grants for additional funding sources, but don't rely on them (remember grants generally last for just a few years). Over time, with program success, you will be able to attract additional funding and move towards the model program you desire.

Get to know your local government officials and make sure that they know about your program. Be prepared to lobby your County Executive and/or Board of Supervisors for continued financial and political support. Local agencies looking to slash budgets often cut rehabilitation programs first. It will take a concerted and coordinated effort to maintain your program in difficult times.

Programs that can't show immediate and direct results lose out at budget time. Keeping statistical information on your program is essential. If possible, bring in independent professionals to evaluate such key areas as participant successes (graduations), criminal recidivism (new arrests), and incarceration rates (days spent in custody). If you can't find the evaluators in your local universities or research institutes, you and your staff can do it.

Develop good relations with your local print and electronic media. Make sure that they are aware of program successes. Spread the credit around. The more agencies and staff responsible for program success, the more will be around to fight for the program's survival.

## II. SMART PUNISHMENT: A NEW SENTENCING PHILOSOPHY

*The Judge who uses extended incarceration as the only sanction for drug usage is like a carpenter who shows up at a jobsite with only a hammer; he doesn't have the tools to get the job done. The Drug Court Judge carries intensive supervision, counseling, educational services, residential treatment, acupuncture, medical interventions, drug testing, and program incentives, as well as incarceration in his or her tool box.*

The problem with the incarceration of drug-using offenders is not in its use but in our overdependence upon it. Incarceration works for drug-using offenders. It works by providing the offender with the opportunity to detox from drugs. It works as a deterrent, by presenting the offender with the stressful, anxiety producing experience of incarceration. It works by coercing drug-using offenders to enter and complete rehabilitation programs.

The use of extended periods of incarceration, however, does not appear to increase the value of incarceration and may, in fact, be counter-productive to sentencing goals. Because two aspirins relieve your headache, it does not follow that 10 aspirins will do a better job.

Extended incarceration may disrupt whatever stability exists in a drug-user's life (needed for successful drug rehabilitation), initiate him or her into a criminal lifestyle, and reduce the deterrent effect of incarceration, thus limiting the effectiveness of court-ordered rehabilitation.

*Smart Punishment is the imposition of the minimum amount of punishment necessary to achieve the twin sentencing goals of reduced criminality and drug usage. It relies on the use of Progressive Sanctions, the measured application of a spectrum of sanctions, whose intensity increases incrementally with the number and seriousness of program failures. Like a surgeon using a scalpel, progressive sanctions are used surgically to achieve sentencing goals.*

### **Progressive Sanctions**

*If you don't respond forcefully to poor performance, you may be setting the offender up for failure; the message you convey is that failure is neither serious nor important to you, so why should the offender be concerned. There must be immediate and direct consequences for all conduct. Sanctions follow violations and are applied as close to the time of failure as possible. This calls for frequent court hearings to monitor the offender and mete out sanctions.*

A patient and consistent, yet flexible approach to program failure, moves the participant steadily toward sobriety. Less serious violations, such as inadequate participation in a court-ordered program, call for sanctions that start with the intensification of supervision, treatment, and/or a single day's incarceration. Those sanctions increase incrementally (i.e., 1 day, 2 days, 4 days, etc.) with continued violations. At the other end of the spectrum, complete program failure (represented by an offender permanently absenting him or herself from court or treatment program) calls for a substantial period of incarceration (at least one week) to detox the offender, as well as deter the offender from future program failure and/or drug usage.

Note: My experience suggests that it is more appropriate to punish program failure than drug usage. While failure to participate may call for the incarceration of the participant, continued drug usage is more effectively dealt with by increasing supervision, testing and/or treatment requirements (i.e., residential treatment).

### **Diversion and other Incentive Programs**

Drug Rehabilitation is at best a difficult, demanding, and lengthy process. In order to motivate defendants to complete that process it is necessary to offer them substantial positive, as well as negative incentives to do so. Encouragement and appreciation, as well as real incentives (such as those below) should be given to participants for positive behaviors.

A diversion program (statutory or otherwise) provides a powerful motivational tool for drug rehabilitation, offering the defendant the opportunity to work toward a complete dismissal of a felony drug charge. In California for example, Drug Diversion is statutorily mandated for eligible defendants, diverting less serious offenders from the criminal justice system into a supervision and treatment program administered by the county probation department. If the defendant successfully completes the diversion program, criminal charges are dismissed and the offense (including the arrest) is erased for most practical purposes. (See Appendix A)

Hybrid Diversion programs that do not offer a complete dismissal are common (i.e., offering to reduce felony convictions to misdemeanors), but provide less incentive for participants to succeed. Even where a Diversion Program is not available at all, significant incentives can be offered to offenders through the innovative application of probation terms (i.e., offering participants reductions in the length, intensity or cost of probation supervision).

### **Oakland's First Diversion Program: One example of a Smart Punishment Model**

The results of an effective "Smart Punishment" model should be an increase in successful program completions and a decrease in criminal recidivism and days spent in custody.

As an example, in Oakland's FIRST Drug Diversion Program, progressive sanctions and incentives are applied through the utilization of a contingency contract that spells out the positive, as well as the negative consequences of the offenders action. Through such a contingency contract, the offender gains control of his or her rehabilitation and is held directly accountable for his or her conduct. (See Segment V on Contingency Contracting.)

Oakland's FIRST Drug Diversion Program has achieved approximately twice the successful program completions of the previously existing program, while reducing both felony recidivism and the number of days participants spend in custody by approximately one-half. Because Alameda County was able to rent its unused jail space to neighboring counties, beginning in January 1991, Alameda County earned over two million dollars during the initial two-year diversionary period. (See The Importance of Immediate and Intensive Intervention in a Court-Ordered Drug Rehabilitation Program, Jeffrey Tauber, 1993.)



### III. THE JUDGE'S ROLE IN A DRUG COURT

*There is a persistent belief in the judicial community that a drug-using offenders' failures while under court supervision are willful and deliberate and consequently ought to be dealt with severely. Unfortunately, this belief minimizes the compulsive nature of drug abuse and exaggerates the offender's ability to refrain from continued drug usage (as well as the court's ability to coerce abstinence).*

The Drug Court Judge recognizes the limitations of judicial coercion as a drug rehabilitation tool and rejects the notion that program failure is necessarily the result of the wilful defiance of judicial authority (and therefore, punishable as a kind of contempt of court). In its place, Drug Court Judges have adopted a new pragmatic Judicial Intervention Strategy. That strategy relies on the development of an ongoing, working relationship between the judge and the offender and the use of both positive and negative incentives to encourage compliance.

In a Drug Court, communications between judge and offenders become crucial. By increasing the frequency of court hearings, as well as the intensity and length of judge/offender contacts, the Drug Court Judge becomes a powerful motivator for the offender's rehabilitation.

Let the offenders know what you expect of them, how much you appreciate their success and how disappointed you are at their failure. Express your belief that they can (and will) succeed if they work at it. Remind them, above all, that they are in control of their rehabilitation (and their case) as they are in control of their lives.

This is your opportunity to reach the offender. Be less the dignified, detached judicial officer. Show your concern, as well as your toughness. Treat the offender as a person and an individual (i.e., never voir dire offenders as a group). Don't lecture the offender, but engage him or her in conversation (as a rule, for no less than 2 minutes, nor more than 5). Make a connection. Don't let the offender sleepwalk through your court.

#### **The Drug Court as Theater**

A Drug Court Judge performs on the courtroom stage before an audience full of offenders. As appropriate, the judge assumes the role of confessor, task master, cheerleader, and mentor; in turn exhorting, threatening, encouraging and congratulating the participant for his or her progress, or lack thereof.

Use the symbolism and the authority of the office to reach the entire audience. Impress upon them the importance of their case to you, your deep and abiding interest in them, and the very real consequences of success or failure. Direct your remarks to the audience, reinforcing the idea that everyone is in this thing together and can learn from each others successes and failures. Shape your calendar as you would a play, with a beginning, a middle, and an end. You are the storyteller. Through the people who appear before you and their interaction with you, your staff, and the audience, the story (and promise) of your program is told.

Use the court hearing to educate the audience on the potential consequences of the program. *In-custody offenders who have failed in the program should always be seen first before a full audience of offenders.* Those appearing for progress reports should be heard before those who are to be granted diversion, with successes (dismissals should be greeted with applause, congratulations, and a diploma) and failures (short-term remands into custody) prominently displayed. (Uncertainty of outcome after a remand, and its accompanying anxieties, can be a useful motivator for both offender and audience; consider ordering the offender into custody without stating any disposition until later, at a hearing out of the presence of the audience.)

### **Responding to Success and Failure**

You don't have to be an expert in behavior modification to be an effective Drug Court Judge (although some basic knowledge of behavioral theory would be helpful). Rely on your common sense knowledge of what works in motivating people (i.e., as a parent, etc.).

Positive reinforcement is better than negative reinforcement, but both are useful and important in shaping behavior. Drug Court judges around the country regularly hand out diplomas, tee shirts, key chains and other memorabilia to successful program participants. For many offenders, a drug court graduation is the only graduation they have ever attended. Don't be afraid to make a big deal of it. Shake the graduates' hands and thank them for their hard work. Include the audience in the event. Ask the graduates to "turn around and tell the audience how your life has changed." Make it a celebration; lead the audience in applause.

On the other hand, it is important for the audience to see sanctions meted out for program failures. Responding to failure requires a sense of balance. Admonish offenders for their failures, while at the same time, expressing your belief in them and in their ability to succeed. Handle program failures (as well as remands into custody) early in your calendar so all offenders can see the consequences of failure. Remember that a single day's incarceration (or even part of a day) can be an extraordinary motivator for both offender and audience.

### **The Drug Court Environment**

A successful Drug Court depends on the willingness of you and your staff to work as a team. Prosecuting and defense attorneys avoid confrontations in court and work together to sell the program to potential offenders. The defense attorney (literally and figuratively) takes a step back, rarely getting between you and the offender. The prosecuting attorney adopts a conciliatory position. All staff see their job as the facilitation of the offender's rehabilitation.

Seemingly unimportant details of your court environment can have a substantial impact on your program's effectiveness. Small intimate courtrooms, with good acoustics, and clear sightliness will involve offenders and audiences, achieving much better results than the more traditional courtrooms that keep the audience at a distance. If the members of your audience can't hear you, they're not going to pay attention. Make sure everyone can hear, even in the back of the courtroom (or use microphones for both court and offender).

#### IV. DESIGNING A REALITY-BASED DRUG REHABILITATION PROGRAM

Court ordered drug rehabilitation programs suffer from the generally held belief that "nothing works" in the treatment of drug using offenders. Unfortunately, that perception (although untrue) becomes a self-fulfilling prophecy when financially strapped communities inadequately fund court-ordered treatment programs and skeptical judges half-heartedly implement those same programs (often terminating an offender's participation upon the first sign of drug relapse).

*It takes more than increased funding and full judicial support (although extremely important), to create an effective program. Successful court-ordered drug rehabilitation programs are based on an understanding of the physiological, psychological, and behavioral realities of drug abuse and are designed and implemented with those realities in mind.*

Such programs recognize that drug abuse is a serious debilitating disease; that relapse and intermittent progress are a part of most successful drug rehabilitations; that as a drug addiction is not created overnight, it cannot be cured overnight; that a drug user is most vulnerable to successful intervention when he or she is in crisis (i.e., immediately after initial arrest and incarceration); that drug users are in denial and will do everything possible to avoid responsibility, make excuses for program failure, and evade the court and its programs. (Consider how profoundly difficult it is for many judges and lawyers to give up tobacco.)

#### Model Programs that Share Reality-Based Design Principles

Several jurisdictions across the country have developed successful court-ordered drug rehabilitation programs that recognize and work with (rather than against) the realities of drug usage. Although these programs often have substantially different program characteristics reflecting their individual circumstances (i.e., Miami, Fort Lauderdale, and Portland have replaced a Probation Department presence with direct court/treatment program linkages, while Oakland, Phoenix and Kansas City use a court/probation partnership model), what is crucial is that they share the same underlying "reality-based" design principles.

#### Designing Your Own Program

*Communities are generally better served when they develop programs that reflect local financial and political circumstances, while paying attention to "reality-based" design principles. Rather than attempting to replicate another jurisdiction's program, maximize local "ownership" and commitment to your own program by developing systems that reflect the strengths and resources (as well as the needs) of your local jurisdiction.*

Look to existing Drug Court models for ideas, but remember that all existing programs reflect their own circumstances (and compromises), and may not be easily or profitably adopted by your jurisdiction. Be open to features and options existing programs may have not thought of. Remember, that all Drug Court models are relatively new and continue to evolve and adapt.

## Features of a Reality-Based Drug Rehabilitation Program:

### 1. Immediate and Upfront Intervention

**Reality:** *A drug addict is most vulnerable to successful intervention when he or she is in crisis (i.e., immediately after initial arrest and incarceration).*

**Principle:** Intervention should be immediate and front-loaded.

Even the best designed court-ordered drug rehabilitation program will be less than effective when intervention is delayed. Recognizing this, the Miami program transports the defendant by van directly from court to the treatment program to begin treatment. In Oakland, where the offenders are typically placed in the program within two days of their release from custody, data shows that younger offenders so placed have twice the success (measured in recidivism rates and program completions) as those who are not.

For the same reason, supervision and treatment should be front-loaded; to engage the participant early and often, giving the program and treatment the opportunity to take root. In Miami, offender contact with the program is required five times a week for the first three weeks, while in Oakland, an average of three contacts per week is required over the first ten weeks.

### 2. Coordinated, Comprehensive Supervision

**Reality:** *If there are gaps in program supervision, the drug-using offender will find and exploit them.*

**Principle:** Supervision must be comprehensive and well-coordinated to insure offender accountability.

Few offenders enter the court's programs with rehabilitation on their minds. They are in denial, and are there mostly to beat the system and avoid incarceration. The challenge is to keep them in the program until sobriety, and attitudinal changes can occur. This may be difficult to accomplish, since the drug-using offender is often an expert at avoiding responsibility, making excuses for his or her failures, and evading the court and its programs.

The drug offender must be held accountable for his or her conduct, if rehabilitation is to be successful. Such offender accountability depends on strong connections between participating agencies, vigilant court monitoring procedures, and a coordinated hands-on approach to supervision and treatment. A court-ordered program must build a chain-link fence around the drug-using offender whose links consist of frequent supervision contacts and drug testing, direct access to full information on the drug offender's progress, immediate responses to program failures, and frequent progress report hearings before a single Drug Court judge and permanent staff. (Oakland allows a maximum of ninety days, Miami no more than sixty days between progress report hearings.)

### 3. Long-Term Treatment and Aftercare

**Reality:** *A drug addict is not created overnight, and therefore cannot be cured overnight.*

**Principle:** The drug-using offender needs intensive long term treatment and aftercare.

Drug addiction is a serious, debilitating disease that demands intensive long-term treatment (Miami and Oakland participants average approximately one year to graduation). An initial treatment assessment is the first step in determining the appropriateness of a treatment plan. That assessment may take place at the time the offender enters the program or after placement in the program (when program performance itself is used as an assessment tool).

Treatment preferably begins in a medically supervised jail drug detoxification unit. For most, however, a community-based non-residential treatment program is the initial treatment experience. More costly residential treatment spaces are generally reserved for those who have not responded well to non-residential treatment.

Participating treatment programs should be selected and periodically evaluated for effectiveness. Depending on the availability and effectiveness of existing treatment programs (and financial feasibility), treatment programs can be created to specifically work with the drug-using offender. In Miami, a treatment program that was specially designed to provide acupuncture treatment (as well as more traditional treatment modalities) has shown excellent results when used in conjunction with a well-designed court-ordered rehabilitation program.

Without adequate aftercare, an offender's sobriety may be short-lived when he or she faces the same problems that contributed to their drug usage in the first place. Aftercare should include ongoing drug treatment and counseling, as well as educational opportunities, job training and placement, and health and housing assistance.

### 4. Progressive Sanctions and Incentives Program

**Reality:** *Relapse and Intermittent Progress are part of most successful drug rehabilitation.*

**Principle:** The Court must apply a patient, flexible approach to monitoring compliance.

In most cases, progress toward rehabilitation will be slow starting and fitful, with sobriety only taking hold over a period of months. This requires patience and a consistent, yet flexible, hands-on approach to the monitoring of the offender's progress toward sobriety.

Progressive sanctions and incentives are appropriately applied in response to program failure and success, and should be applied incrementally to move the participant steadily toward sobriety. (See Segment II, Smart Punishment: A New Sentencing Philosophy).

## V. STRUCTURAL ACCOUNTABILITY: THE CREATION OF STRUCTURES THAT PROMOTE COORDINATION

Government agencies tend to see their interests narrowly, be distrustful of other agencies, resentful of outside pressures, and jealous of their prerogatives. For a court-ordered drug rehabilitation program to be effective, participating agencies must be able to look beyond those narrow interests, i.e., distributing information freely, collaborating in decision-making, sharing resources, and coordinating their efforts.

While strong leadership and individual commitment may initially create a climate conducive to coordination, over time programs unravel and agencies tend to revert to accustomed ways (when personnel change or energies flag). It is crucial, therefore, to develop permanent structures that will insure continued program coordination, stability, and effectiveness over time.

### **Structural Accountability: Where Structure is Accountable for Program Coordination**

It is axiomatic that offender accountability (holding the individual offender accountable for his or her actions) is the cornerstone of successful drug treatment. It is equally true that structural accountability is the key to a successful court-ordered drug treatment program.

*The goal of structural accountability is to reshape programs and redefine relationships in such a way that program structure itself will promote coordination and effectiveness over the life of the program.*

*Structural accountability exists when participating agencies share program responsibilities and are accountable to each other for program effectiveness. It is a circular system, with each part of the system (supervisory staff, public defender, district attorney, treatment provider, court staff and judge) directly linked to, dependent upon, and responsible to the others.*

### **Characteristics of a Structurally Accountable Program**

All government programs require the effective operation of government agencies. But because the task involved in the rehabilitation of drug-using offenders is an extraordinarily difficult one, a higher degree of competence, coordination, and accountability is required of program personnel. Building structurally accountable features into the operation of your program will help insure its continued effectiveness.

#### 1. A Unified Drug Court

A single Drug Court Judge and dedicated court staff (handling all Drug Rehabilitation cases from start to finish) is the focus for program design, implementation and monitoring.

#### 2. Shared Funding:

Joint responsibility as to funding decisions (and planning) for the program promotes an integration of function and sense of responsibility for the total program.

3. Inter-Agency Planning

Full interagency and personnel participation in the design and implementation of the program promotes agency and personal commitment to, and ownership of, the program.

4. Program Procedures and Guidelines:

The setting of clear procedures and guidelines, describing program requirements and consequences informs all participants (including offenders) as to what is expected of them.

5. Setting a Mission and Goals

Court and staff develop and agree on program goals that they can work towards and measure their progress against.

6. Periodic Review

Interagency review of the program permits continuous evaluation of program and agency effectiveness, troubleshooting for problems and the maintenance of inter-agency relationships.

7. Hands-on Vertical Participation

The offender is seen by the same agency personnel throughout the process promoting personal responsibility and commitment to the offender's progress.

8. Developing Partnership

Participating agencies look beyond traditional relationships, redefining their roles, and sharing in decision-making formerly reserved to a single agency.

9. Data Collection

The collection of pertinent data is essential in determining whether the goals of the program are being met, and in planning for new ones.

10. Full Access to Program Information

Complete access to information on the work of participating agencies allows them to better understand each other's role and work together more effectively.

11. Direct Linkages

Developing mechanisms for the face-to-face meeting of all participants (including offenders) promotes the monitoring of the offender's progress and the work product of staff.

12. Personnel Incentives

Providing incentives for the effective performance of work done and rewards for the special contributions of individuals, promotes staff commitment, innovation and productivity.

## **Contingency Contracting: An Example of Structural Accountability**

*A contingency contract is developed cooperatively by the drug court judge, the supervision and treatment staff, and other participating agencies. It sets out the standards of and consequences for offender conduct during the program. Both positive and negative behaviors are rewarded or penalized according to the number of rehabilitative tasks completed.*

In Oakland's First Diversion Program, the number of points achieved under the contract reflect the number of rehabilitative tasks completed. Over the life of the program, that point total translates into rewards (where diversion may be reduced from 24 months to as little as 6 months, and the diversion fee reduced from \$220 to as little as \$20) or sanctions (where the court increases the intensity of supervision, treatment and/or remands the offender).

All participants are responsible for the creation of the contingency contract, and accountable to each other for its effective operation. In designing a contingency contract, participants share the responsibility of establishing treatment and supervision requirements (traditionally the province of the supervision and treatment staff). Similarly, by creating a contingency contract that sets out the consequences of the offender's conduct, participants share in the making of sentencing decisions (formerly the court's sole responsibility).

The contingency contract is the structural cornerstone of the program, providing ground rules that reduce confusion and confrontation over program implementation while promoting long term program stability and effectiveness (even with personnel changes). The contract makes the offender accountable for his or her behavior. Importantly, the court, supervision and other participating agencies have also committed themselves to the terms of the contingency contract, making themselves accountable to the offender and to each other for the contract's promised consequences. (See **Appendix B for contingency contracts and progress report exemplars.**)

### **Empowerment**

In a structurally accountable program, the flip side of accountability is empowerment. The program spells out the consequences of compliance and non-compliance at its very beginning, motivating offenders to take control of their own rehabilitation (this also allows the court to be more realistic in its demands and expectations, as offenders make their own decisions about levels of participation and their resulting consequences). In effect, the offender is given the opportunity to become a participant rather than a self-described victim of the program.

Similarly, by making staff accountable for the program, they become responsible for program success. This change may involve a major shift in how staff see their job and themselves (hallmarks of agency culture). For some, the change will be seen as threatening their job security and/or identity and be met with resistance. Eventually, many more will see it as an opportunity to fulfill the professional goals they embraced at the beginning of their careers. Finally when staff see themselves as partners in the program, morale and productivity will improve, as staff efforts are recognized and their initiative and creativity encouraged.



## CONCLUSION

Interest in Drug Courts is sweeping the nation. In particular, Attorney General Janet Reno's championing of Drug Courts has drawn our attention to the idea that we can do better than warehouse drug-using offenders in the nation's jails and prisons. (As Dade County, Florida State's Prosecutor, she helped pioneer Miami's innovative Drug Court.)

Many now see an opportunity to develop new and innovative programs that treat drug-using offenders in their communities with minimal incarceration, criminal recidivism and cost. However, with that opportunity comes this challenge: If we don't carefully and intelligently design and implement these programs, we may fulfill the prophecy of the naysayers "that nothing works for drug-using offenders".

We need qualified and dedicated Drug Court judges, coordinated agencies and programs, and unified drug courts structured upon reality-based design principles. There is a window of opportunity (perhaps only a brief one), to meet that challenge and prove that drug courts and court-ordered drug rehabilitation programs can work. This article is an attempt to provide judges with information to help meet that challenge.

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\*Judge Tauber was the initiator of Oakland's FIRST (Fast, Intensive, Report, Supervision and Treatment) Drug Diversion Program, a collaborative effort of the Oakland Municipal Court and the Alameda County Probation Department. The FIRST Diversion Program was presented with the 1992 Public Employees' Roundtable Award for "Outstanding County-Run Public Service Program in the Nation."

A two-year report and analysis of the FIRST Program, "The Importance of Immediate and Intensive Intervention in a Court-Ordered Drug Rehabilitation Program", can be obtained by writing to Judge Jeffrey Tauber, Oakland-Piedmont-Emeryville Municipal Court, 661 Washington Street, Oakland, CA 94607 or calling (510) 268-7638).

APPENDICES

Penal

**CHAPTER 2.5  
SPECIAL PROCEEDINGS IN  
NARCOTICS AND DRUG ABUSE  
CASES**

Chapter applicability. §1000.

Notification—Action by probation department—Inadmissible information. §1000.1.

Diversion of proceedings—Time limits. §1000.2.

Resumption of criminal proceedings. §1000.3.

Record of diverted cases. §1000.5.

**§1000. Chapter Applicability.**

(a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or Section 11370.1 of the Health and Safety Code if the amount possessed is one-half gram or less of a substance containing cocaine base, one gram or less of a substance containing cocaine, one gram or less of a substance containing heroin, one gram or less of a substance containing methamphetamine, one-eighth gram or less of a crystalline substance containing phencyclidine, one milliliter or less of a liquid substance containing phencyclidine, one-half gram or less of plant material containing phencyclidine, or one hand-rolled cigarette treated with phencyclidine, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the district attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged divertible offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has been diverted pursuant to this chapter within five years prior to the alleged commission of the charged divertible offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged divertible offense.

(b) The district attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) are applicable to the defendant. Upon the agreement of the district attorney, law enforcement, the public defender, the presiding judge of the criminal division of the municipal court or a judge designated by the presiding judge [1], this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the diversion hearing at the arraignment. If the defendant is found ineligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. [2]

(c) All referrals to diversion granted by the court pursuant to this chapter on or after January 1, 1995, shall be made only to diversion programs which have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to diversion programs which provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision. Prior to January 1, 1995, all referrals to diversion granted by the court shall, to the maximum extent possible, be made to diversion programs which have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to diversion programs which provide services at no cost to the participant and have been deemed by the court to be credible and effective.

(d) Successful completion of diversion for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.5. Leg.H. 1972 ch. 1255, effective December 15, 1972, 1975 ch. 1267, 1983 ch. 1314, 1987 ch. 1367, effective September 29, 1987, 1988 ch. 1086, 1990 ch. 53, effective April 20, 1990, 1991 ch. 469, 1992 ch. 1118.

§1000. 1992 Deletes. [1], and the probation department of each county [2] Nothing in this subdivision shall be construed to affect the obligation of a probation department to conduct an investigation and make a report to the court, pursuant to subdivision (b) of Section 1000.1 and Section 1000.2.

**Cross-References**

"Felony" defined. Penal Code §17.

Effect of successful completion of diversion. Penal Code §1000.5.

Revocation of probation. Penal Code §1203.2.

Revocation of parole. Penal Code §§3060-3064.

Ref.: Cal. Crim. Def. Prac., Ch. 51, "Diversion and Dismissal in Interest of Justice."