

# Drug Treatment Courts

a Literature Review

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The criminalization of drug use has resulted in the incarceration of individuals with addictions in institutions that are not designed to accommodate their needs. Recently, it was estimated that 80% of federal penitentiary inmates had substance use problems directly related to their criminal behavior (Grant, Kunic, MacPherson, McKeown, & Hansen, 2004). In many cases, incarceration is a superficial solution to crime that relieves society of the responsibility of seriously engaging with and addressing its problems while abandoning the offender to a world in which they are exposed to violence, new criminal associations and dependency on social controls. The conditions within prisons can themselves prevent rehabilitation through social disengagement, alienation and stigma, leading to institutionalization characterized by infantilization and habituation to pre-determined, institutional life (Maidment, 2006). This failure to address the underlying social problems of the criminalized population instigates a revolving door in which the lack of support in prison prevents these individuals from addressing the underlying issues that brought them into the institution in the first place, and which may inevitably keep them coming back. Addiction is closely associated to the socioeconomic trajectory of unemployment, homelessness, violence, family discord, and mental and physical health issues which the traditional criminal justice ignores, offering few options for treatment or after-care services, increasing rates of recidivism and feeding into the cycle of incarceration (Maidment, 2006).

Drug Treatment Courts (DTCs) are a judicial response that are founded on the belief that drug dependency is not just a criminal justice problem but an overriding public health and societal concern. While the traditional justice system struggles in its efforts to confront addiction, and prison can provide an avenue for further entrenchment into drugs and crime, DTCs acknowledge that addiction is not just a predisposition to criminality but a disease in itself. DTCs

seek to close the revolving door of incarceration and transform the traditional adversarial approach into a therapeutic and rehabilitative environment through a combination of treatment and court monitoring, connecting participants with local services to enhance their long-term social stability. Although sometimes cited as such, DTCs are not an alternative to the current system, as they operate within the criminal justice system through extensive judicial contact, intensive supervision through court-monitoring, abstinence from all intoxicants through testing and the use of positive reinforcement and sanctions to motivate offenders to successfully complete treatment. If an individual does not comply or participate in all aspects of the program, consequences range from an official reprimand or bail revocation to termination in the program and consequential custodial or community supervision sentences. By emphasizing accountability and encouraging participants to accept responsibility for their actions, DTCs can support offenders to address their addictions, providing them with opportunities for growth and change.

There has been a significant amount of international research conducted analyzing the effectiveness of DTCs. Researchers generally agree on the overall effectiveness of DTCs in comparison to traditional practices yet conflict over what the best practices entail. A number of key themes arose upon review of academic sources on DTCs; the variations exhibited in treatment programs and aftercare models, the importance of the role of the judge and the acknowledgement of the needs of women and minorities were repeatedly pronounced throughout the studies. The objective of this review is to investigate the contributing factors that must be accounted for in determining the success and efficacy of DTCs. A model that is created with the specific interests of the community, emphasizing the role of the judge and court-monitoring, while addressing the specialized needs of women and minorities may be regarded as the best practice in DTCs.

To begin, it is necessary to define what “success” entails in terms of DTCs, as this notion has been highly contested amongst researchers. Due to their longer history and significantly greater number of courts, studies are overwhelmingly confined to DTCs in the United States. The most commonly cited study on DTCs reveals that the drug treatment group had a statistically significant recidivism rate of 33% in comparison to the control group rate of 44% who were processed through the traditional judicial model (Turner, 2002). Furthermore, studies of DTCs in Ohio indicate that participants who graduated from DTCs were less likely to be rearrested than those in the comparison groups during the follow-up period (Listwan, Latessa, & Shaffer, 2001). However, this dependence on recidivism and graduation rates as an accurate reflection of success is controversial.

The Congressional General Accounting Office (2002) has criticized the majority of drug court evaluation studies for using weak research designs and failing to follow participants for an acceptable period of time following their graduation or termination from the program. In addition, program retention and completion rates for Canadian drug treatment programs remains very low. This highlights the limitation in looking at graduation as the only standard of drug treatment court success, particularly given that these statistics ignore the significant progress of participants who do not officially graduate from drug treatment programs. The authors of the Toronto Drug Treatment Court evaluation (2007) concluded that participation in the program for any duration of time is generally more positive in regards to recidivism and drug-intake than the criminal justice system alone, where a treatment agenda is not a priority. Therefore due to the disparity in conclusive research regarding recidivism and graduation rates, for the purposes of this review, success is viewed as a relative concept in terms of positive results obtained in comparison to the traditional system.

## **The Importance of Court Monitoring**

A common theme that arose throughout the literature was the significance of the judge's role in the operation of the drug treatment court. Specific to drug courts, the judge legally retains prerogative over the final disposition of each case and uses their statutory power to achieve greater outcomes than those seen in the sentencing goals of retribution and deterrence; judges actively participate in a constructive, positive effort to assist the offender's behavioural transition. Berman (2003) suggests in this sense, the judge adopts a social service role as a supplement to their traditional role of adjudicator and enforcer of legal norms through court-monitoring. The majority of experts retain the position that the effectiveness of drug courts highly depends on the involvement of the judge, who monitors and enforces offender drug treatment progress through a series of mandated court appearances, ordering rewards or sanctions accordingly. The literature purports that offenders with addictions histories rarely meet their obligations unless they are closely monitored and face immediate and consistent consequences for noncompliance in treatment (Latessa, Listwan & Shaffer, 2002; Berman, 2003; Roesch & Slinger, 2010). In addition, testimonies from participants in programs often cite the judge as a key motivator in their treatment. In contrast, DeMatteo et al. (2003) remain critical of drug courts and suggest that frequent judicial status hearings unnecessarily divert scarce resources from the provision of "real" treatment. Furthermore, the writers suggest that intensive court-monitoring may interfere with the therapeutic process, as participants may be hesitant to confide in their counselors due to the fear information will be disclosed to the judge and deployed against them.

Researchers further investigate the effectiveness of judicially-imposed sanctions according to their method of delivery. While the majority of drug courts follow a graduated

schedule of sanctions and incentives, characterized by the magnitude of the sanction or reward increasing progressively in response to successive infractions or accomplishments, behavioural research suggests that an alternate model could prove more beneficial (DeMatteo, Festinger and Marlowe, 2003). This source argues that the slow graduation of sanctions may lead participants to become habituated to the process of being sanctioned, thus making it increasingly difficult to suppress their negative behaviors in the future and creating disenchantment. This suggestion coincides with the indication that drug offenders have been characterized as living in the moment, and can have difficulty working towards longer-term goals (DeMatteo, Festinger & Marlowe, 2003). Another view expresses that some offenders with extensive history and heightened experience in the criminal justice system may not perceive the threat of jail as an effective sanction as it may be easier to take the jail time and drop out of drug court (Gliksman et. al, 2010). In addition, while flexibility in determining rewards and sanctions was identified as a positive aspect of the drug court, the accompanying lack of consistency could also pose potential for difficulties (Woods & Woolfe, 2004). Although experts express conflicting views, the role of the judge, including their therapeutic approach, as well as their judicial responsibility of imposing sanctions and implementing rewards, is consistently highlighted as a key feature in DTCs. This places considerable importance on both the personality of the judge and on their ability to create of an effective court-monitoring and supervision system.

### **Treatment and Aftercare**

While the restorative and therapeutic purposes of DTCs are universal and applicable to all courts on a global scale, there is significant variation exhibited in terms of treatment methods and aftercare availability amongst individual courts. While some researchers recommend the development of uniform program delivery standards for DTCs operating in Canada, other experts

contest this idea. DTCs purposefully lack a definitive model guiding their operation and this variability has been attributed to the uniqueness of localized resources, differential access to funding, and particular initiatives guiding conception (Wolff & Pogorzelski, 2005). According to this perspective, in the best interest of the individual within a broader societal context, it is recommended that drug courts be designed based on a needs assessment of the particular community, factoring in population demographics and the prevalent problem drug(s). Furthermore, treatment should be individualized based on a needs and risk assessment of the individual, with treatment options formulated accordingly (Latessa, Listwan & Shaffer, 2002).

Despite the prominence of problematic drug use among offenders, the research literature suggests that there is far from unanimous agreement as to what constitutes effective treatment for individuals with addictions. The treatment methods employed by drug-treatment courts vary immensely and range from cognitive and behaviorally-based programs to 12-Step and therapeutic community program models utilizing residential, intensive outpatient as well as other social services and programs. Although researchers support a variety of methods, there is a general consensus indicating that traditional drug and alcohol education programs are ineffective when compared to cognitive-behavioral models (Lightfoot, 1999; Taxman, 2001). Many drug court programs predominately administer psycho-educational group treatments, which have proven to have virtually no effect on outcomes among offenders; educational interventions fail to teach participants how to cope with addiction or understand the consequences of behavior and impede the development of pro-social alternatives (Fishbein, 1995). As previously mentioned, researchers commonly suggest cognitive-behavioural therapy as a treatment method characterized by the commitment to change behaviour through removing personal, social and economic factors that lead individuals to engage in criminal acts while building problem-solving

skills (Lipsey, 1990; Antonowicz & Ross, 1994; Irvin, Bowers & Dunn, 1997). Another common suggestion raised in drug court research regarding treatment is the necessity for services to be intensive and structured around individual needs, given that participants often have criminogenic risk factors in addition to addiction. Under this approach, treatment intensity is correlated to the offender's risk level with higher-risk offenders receiving more intense and a longer duration of treatment. Assessment and classification improves drug court operations which promotes public safety and allows agencies to direct appropriate services (Latessa, Listwan & Shaffer, 2002).

While in treatment, participants may become habituated to structured life involving a regular schedule of duties, activities and programs. The gradual transition from treatment to community should be assisted through aftercare in order to avoid abandoning participants and raising feelings of incompetency, alienation and anxiety, which can contribute to an increased risk of relapse. While DTCs make no provision for reduced or moderated drug use as an end goal for treatment and do not formally recognize reductions of use as markers of potentially significant positive change, relapse is anticipated among chronic drug-users. Thus, aftercare services provide offenders with the means to receive further assistance if and when the need arises.

Virtually all researchers stress the importance of continued treatment in order to maintain abstinence and prevent re-offending, and include aftercare as a critical component of DTCs. Relapse prevention support and continuing care programs including case managers and counselors to assist with housing, employment, emotional healing and skill building, combined with peer support groups, can help to maintain treatment gains, ensure smooth transitions and continue to engage and involve individuals after re-entry (Listwan, Latessa, & Shaffer, 2009).

Research on effective aftercare models indicates that offenders' risk and needs should be reassessed, as intensity and duration of treatment needs are not fixed, but dependent on these assessment findings (Altschuler and Armstrong, 1994). Based on available research, it can be concluded that treatment and aftercare options should be developed according to risk and need in order to be responsive to the participants, taking into account their treatment goals, intellectual abilities, cognitive style, learning styles, and targeted at criminogenic factors that are predictive of criminal behaviour.

### **Women and Minorities**

One of the most prominent and significant themes raised in drug treatment court literature is the need to acknowledge the struggles endured by criminalized women and minorities. Incarceration is associated with structures of racism, gender and class therefore alternative measures must be directed at the social relations that support prisons (Davis, 2003). The overwhelming majority of drug treatment court applicants in Canada are unemployed with limited education and approximately one third are homeless (Lengevin, Moser & Weekes, 1999). These individuals represent the most marginalized members of society whose difficulties are not solved by imprisonment; DTCs can provide opportunities to those individuals who are in the most need of treatment, who otherwise may be the least likely to receive it. DTCs must take into account the unique situations and needs of population groups that they serve, and recognize that treatment tracks and service delivery models must be developed according to age, gender, ethnicity, and co-existing conditions. A review of the Toronto Drug Treatment Court evaluation (2007) concludes that unique intervention and service models are needed for women, ethnic minorities and young people. While basic treatment concepts and techniques such as relapse

prevention are relatively universal and may be suitable for all populations, treatment programs are overwhelmingly designed and structured for Caucasian, adult males (Belknap, 2007).

Statistics on the prevalence of drug problems among women estimate that over 60 percent of incarcerated women indicate substance use played a major role in their criminalization (Greenfeld & Snell, 1999; Mumola & Karberg, 2006). Women have unique pathways into crime and addiction characterized by absolute poverty, past trauma and abuse, instability, poor mental health and negative interpersonal relationships; women often turn to drugs as a coping mechanism and become dependent on self-medication to escape the enduring realities of being in this socioeconomically marginalized position. Addictions are closely tied to the commission of criminal activities, with crime being a means to obtain drugs, or drugs acting as a catalyst for crimes committed while under the influence (Maidment, 2006). These different pathways into drug use and criminal behavior emphasize the unique treatment needs of women while literature suggests that traditional treatment programs have generally been gender-biased towards the treatment needs of men, with women offenders having historically been ignored (Belknap, 2007; ChesneyLind, 2000).

Experts agree that DTCs are a positive step in addressing the needs of women compared to traditional models. The community-based, intermediate sanctions can take into account the circumstances that typically characterize the lives of incarcerated women including primary care-taking responsibility for children, the commission of nonviolent offenses, drug use, and a history of surviving domestic violence (Latessa, Listwan & Shaffer, 2002). However, researchers are conflicted over the value of current strategies in regards to women's success. The Toronto Drug Treatment Court evaluation (2007) recognizes lower rates of female applications and attributes this to the demanding structure of the program and the need to create a more supportive

environment for women. Enhanced group therapy, increased feelings of security and the emphasis on self-coping skills are among the few strategies proposed to address women's needs. In contrast, Hubbard and Matthews (2008) propose that drug treatment strategies rely on a relational model which recognizes the importance of a therapeutic alliance, and which provides avenues for increased social support. The writers go on to indicate that in incorporating these features, the drug treatment court model itself is designed with the interests of women in mind.

### **Conclusion**

In conclusion, criminality does not always lie with individual choice but is a reflection of social structures and situations (Winick, 2003). The traditional criminal justice system fails to control drug use as a result of its inability to address the root causes of crime. This creates a vicious cycle of institutional dependency and a revolving door of justice, while relieving society of the responsibility of seriously engaging with its problems. Drug addiction is a social problem and health concern and must be treated that way. The realization of the institutional and systemic failure of the prison system including its ignorance of addiction as a disease has catalyzed the use of DTCs. Based on the principles of therapeutic and restorative justice, DTCs abandon the traditional adversarial court model in favor of a rehabilitative approach to justice. They do so by using judicial authority, increased collaboration with social service professionals and the community itself to seek practical outcomes; reduced recidivism, increased sobriety, and healthier communities (Mirchandani, 2008).

A significant amount of research has been conducted on the various practices of DTCs, assessing the effectiveness of these courts as a resource to rehabilitate drug offenders, a tool for reducing recidivism and an instrument to conserve criminal justice resources. Upon analysis of academic sources, three major themes were repeated in literature revealing possible best

practices in DTCs. Firstly, intensive, frequent judicial supervision is an effective method to enhance compliance, including participation and completion of treatment. Moreover, judicially-administered rewards and sanctions can encourage self-discipline among offenders as they confront and overcome the underlying issues that contributed to their criminal behaviour (McShane & Krause, 1993). Secondly, treatment strategies should be based on models that have demonstrated effectiveness and be individualized based on a risk and needs assessment. Studies demonstrate that cognitive behavioural programs are the most effective, however further research is required to target the operative components of drug courts and to identify the optimum treatment intensity best-suited to the various types of offenders. Furthermore, recovering from addiction is a journey that continues far past the involvement in drug court treatment programs, making aftercare a critical component to support increased social stability and decreased drug use. Lastly, the prison functions ideologically as a warehouse for society's marginalized members. DTCs offer a positive step in the direction of addressing the structural inequalities and disadvantages society creates for these individuals. It is necessary for DTCs to address the unique needs and pathways in and out of treatment including lack of housing, education, employment, family support and child care for single parents. DTCs must focus attention on the social context and collective responsibility in addressing the underlying sources of crime, acknowledging that social change is needed to achieve individual change.

Currently, there are only six federally funded DTCs in Canada, with unfunded heterogeneous models developing across the country. Given the success of DTCs relative to all other forms of social control a nation-wide expansion is required in order to replace traditional criminal justice models as a mechanism to guide the criminalized population suffering from addiction. DTCs are the leading contender as a potentially effective intervention for a large

population of individuals who may otherwise face a disenfranchised future. DTCs should therefore be recognized as an integral part of the Canadian justice system with permanent funding, expanded jurisdictions and increased availability.

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