

The drug treatment court movement

Dawn Moore reflects on the structure of Drug Treatment Courts in North America and assesses their achievements.

The first recognised Drug Court started in the State of Florida in the late 1980s (Belenko, 1999).

Since then jurisdictions across the globe have embraced the idea that criminal courts can function on a therapeutic model. This model organises legal and therapeutic practices around the goal of curing drug addiction and thereby curtailing criminal activity. As part of the broader 'problem solving court' movement, Drug Treatment Courts (DTCs) work on the assumption that if a court can address what it sees as the root causes of crime, then there is more likely to be a positive effect on crime and recidivism rates.

Speaking in the most general terms, while both the American and Canadian drug court movements take the same goal of crime reduction through judicially supervised treatment initiatives, there are notable differences in their approaches. The names themselves are instructive. In the United States these courts are referenced as 'Drug Courts'; in Canada, the word 'Treatment' is inserted into the title. This reflects the core difference between the two jurisdictions. The war on drugs is far more entrenched in American law and order politics than in Canada. In the American case, omitting the word 'treatment' from the title of these courts serves as a reminder of the solid iron fist encased in the velvet glove. This is not to suggest that Canada is not entrenched in its own war on drugs, nor that this initiative is liberated from law and order politics. On the contrary, Canadians appear to be partial to the frontier justice mentality of our American cousins. The difference is that in Canada,

even in the current height of 'get tough' politics, the rehabilitative ethic is still held dear.

These ideological differences in drug (treatment) courts translate into practical differences. American courts tend to be more punitive, more formal, give fewer chances and longer sentences. Canadian courts are markedly less formal and give people repeat chances to try to get clean. Both jurisdictions have varying, but not particularly spectacular, success rates.

In Canada, while each of the six federally funded courts in operation has its own particular practices, there is a general model that most DTCs follow. Judicial supervision, intensive provision of social services and a rigorous treatment plan are all part of this equation.

In the Canadian DTCs, individuals seeking entrance to the programme are first screened by the DTC Crown. (All of the legal and therapeutic personnel in the courts hold more or less fixed positions.) Individuals should meet a number of criteria including: facing a custodial sentence if convicted of the current offence; a considerable criminal history that does not involve violent, sexual or trafficking charges; a relatively lengthy addiction to an opiate, cocaine, crack or methamphetamine. Treatment court clients must also show a motivation to quit using and be in adequate shape mentally, emotionally and physically to undergo a period of intensive treatment.

An individual deemed admissible by the Crown will undergo an initial screening by a member of the DTC treatment team to determine if the individual and the programme are a

good fit. The individual must also make a successful first appearance before the presiding DTC judge, during which he/she is asked about his/her reasons for applying to DTC, what supports he/she has in the community and why he/she is now prepared to change her life.

Individuals in many courts must then enter a guilty plea in order to be enrolled in the programme, as well as sign a waiver acknowledging that enrollment in DTC suspends certain legal protections (especially around search and seizure, through having to agree to a randomised drug test regime). Sentencing is delayed until the programme has been completed, which can take up to two years. Graduating individuals, having demonstrated a period of clean time, generally receive a sentence of probation along with the firearms ban now more or less generic for criminal sentencing in Canada.

The programme itself has two major components: therapy and judicial supervision. Each DTC has a treatment centre which court participants are expected to attend on a regular basis (daily to start). The treatment centre is meant to be a 'one stop shop' in which individuals not only receive individual and group counselling but also get assistance with housing, social assistance, medical care and any other needs.

Individuals in DTC must also appear in court once or twice a week to report in to the judge. These court appearances are collective affairs, which all DTC participants are expected to attend in order to learn from each other. Participants who are doing well in the programme may be put on the 'early leave list', which means they are able to leave court after they have gone before the judge. Everyone else must sit through the entire court session.

When an individual comes before a judge the judge routinely asks him how he/she is doing, whether or not he/she has any drug use to report or any 'high risk situations'. The individual's statement to the judge is followed by a report delivered by a liaison for the treatment team. These reports detail the individual's progress in treatment and are also the opportunity for the treatment

team to raise concerns about an individual's behaviour or progress in the DTC programme. Individuals who are doing well in the programme (defined as attending the treatment centre, abstaining or decreasing drug use and following the rules of the programme around housing, association and geographic restrictions) are rewarded by the court through praise and tokens like gift cards for a free coffee.

Individuals lying to the court, not engaging in treatment or failing to abide by court directives can be sanctioned either to community service hours or a period of incarceration. Sanctions and rewards are generally determined in the 'pre-court' meeting, which involves the judge, lawyers and therapists involved in the court discussing and making non-binding decisions on each case due before the court each day. Court participants are notably absent from this aspect of DTC.

Treatment courts are pitched as the ultimate rehabilitative solution to some people's crime problems. DTCs offer a Cadillac model of social service delivery that allows individuals to queue jump for housing, health care and social services, offering them immediate and intensive support in hopes of facilitating the settling of their lives. Treatment courts also recognise the criminalising forces of incarceration and hope to circumvent them by keeping individuals in the community.

While DTCs clearly have positive attributes, especially in comparison with the mainstream, traditional justice system, they are not without their detractors. A number of concerns are raised about treatment courts from a variety of perspectives. First, DTCs have dubious effectiveness rates. Of course, in considering this point the question of defining effectiveness ought to be kept close at hand. DTCs are effective, to a certain extent, at doing all the things mentioned above. Their impact on recidivism rates, drug use rates and even their ability to retain participants, however, are grounds for skepticism. Very few people graduate from DTC. Instead the vast majority of participants either drop

out or are expelled. The drop out rate for women is especially high, topping 90 per cent in some courts.

The reasons for failing to complete DTC are varied and in many ways predictable. Some people are convicted of new offences, cannot stop using or are seen as lacking motivation, as evidenced by their failure to participate in treatment programmes. The reasons others drop out (especially women) are less obvious. The high attrition rate of women in the court forms the basis of my current ethnographic research on DTCs. The project is designed to chronicle the gendered aspects of the court as well as to study how court participants manage themselves as they go through the court process.

One way that people, especially women, manage the aspects of the court that are particularly incongruent or impenetrable for them is to exit the programme. Often women will leave within the first few weeks of enrolling. Features which participants find difficult vary from court to court and appear to include: the lack of gender sensitive programming; the public nature of the therapeutic process in the courts; the participation of therapeutic care providers in juridical roles (as when a therapist recommends to a judge that a participant spend some time in custody); the intensity of the programme; the increased presence of social workers and Children's Aid workers in someone's life; the disconnect between judges and other court personnel; and the lived reality of the court clients and the blurred boundaries between all court actors in DTCs which can leave a participant feeling as though she has no advocate.

Concerns about DTCs also arise out of the legal variations offered by the courts. The fact that guilty pleas must be entered in order to gain admittance to the court is a concern. Likewise the coming together of defence, prosecution, judiciary and therapists to achieve one united goal of curing those in conflict with the law also serves as a compromise of the principles and protections inherent to each of these roles. DTC advocates would certainly argue that such compromises are not only

necessary but desired features of the court as they work to abandon the adversarial model in favour of constituting a therapeutic milieu. In my own research I suggest that this arrangement also undermines due process, as well as the ability of the therapist to act in the best interest of her client.

Finally, there is a broader ideological concern about DTCs. DTC rests on the assumption that drug use causes crime. Anyone of us who has worked in the justice system is likely aware that drug use is only one among many factors implicated in criminality. Treatment courts are clearly aware of this point. The lurking question then is why wait until an individual has been hyper-criminalised to provide him with extensive social services? Perhaps the reasons why DTCs have questionable success rates is that they are, in effect, closing the barn door after the horse has run (Moore, 2007).

Still, the courts, likely because they seek a balance between iron fist and velvet glove, are markedly palatable to governments, whether they are tough on crime or more liberalised. In either case DTCs fit squarely into the rehabilitative ethos that is as staunchly Canadian as maple syrup and hockey. While the rehabilitative ethic may seem counterintuitive to a tough on crime government, elsewhere (Moore, 2007; Moore and Donohuw, 2008) I have argued that rehabilitation has been repackaged in such a way that it is now a complement, not antithesis, to harsher strategies. Because the political will to support these programmes appears to be so strong, it is hard to imagine that DTCs will do anything but expand. ■

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References

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