

SIGNS THAT YOU MIGHT NOT BE A DRUG COURT . . .

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Advisory*

***Points of view and opinions expressed in this presentation are solely those of the speaker, and do not necessarily represent the positions or policies of NADCP, NDCI, BJA, CSAT, NIDA, NIJ, any other federal acronym, or any polite or tactful person . . .**

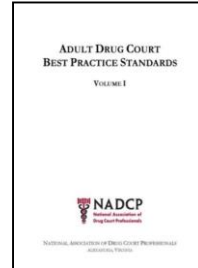
WARNING

The following content is controversial and might be disturbing for some audiences

Viewer discretion advised!

Defining Documents

- Define what an excellent drug court is (the “ceiling”)
- Rooted in evidence of effectiveness
- If you’re out of compliance, then you need training & technical assistance (TTA)



- Define what a drug court is (the “floor”)
- Not necessarily the only effective model
- If you’re out of compliance, then you are not a drug court

Drug Courts are Courts

- Not simply diversion, deflection, decriminalization, medicalization, deinstitutionalization, restorative justice
- Negotiated sentence or disposition
- Public forum and public record
- Ongoing judicial contact “is essential”
- Due process (not arbitrary or capricious)
- Right of appeal
- Procedural justice / procedural fairness
- Courtroom as theatre (vicarious learning)
- Symbolic value of the black robe



The Constitution Applies

- Procedural due process is relaxed but not abrogated (fair hearing commensurate with imperiled interests)
- Substantive due process is unaffected
 - Judges have discretion but it is not unbridled
 - Rational basis test (at least)
 - Particularized inquiry
 - Reviewable record (articulated rationale)
- Cannot require future or contingent rights to be waived irrevocably
- Equal protection applies (suspect classes)



Treatment and Accountability



*Treat sick behavior, punish bad behavior, & reward good behavior
— **and never confuse them!** —*

- Gradually escalating sanctions or treatment adjustments for “distal” infractions including substance use
- Substantial sanctions, to include jail, for willful or “proximal” infractions
- Phase specificity -- continuous re-evaluation
- Jail as “detox”
- High density of low-magnitude rewards (4:1)



Treatment

- **Matched to assessed treatment needs (NOT the other way around)**
- **Continuum of services including intensive outpatient, residential, sober living, and MAT**
- **Quality control over services and providers including certification & credentials**
- **Specialized training for criminal justice populations and drug courts**
- **Accurate and timely information-sharing**
- **Phase structure for complementary services (stabilization, intensive treatment, transition)**
- **Centralized role of clinical case management**



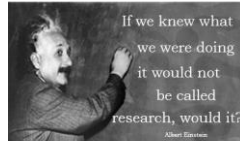
Multidisciplinary Team

- **Judge, prosecutor, defense counsel, treatment, probation, law enforcement, . . .**
- **Defense counsel and prosecutor have their own Key Component (#2)**
- **Defense counsel waivers are generally revocable at-will unless already relied upon**
- **Ongoing communication, information exchange, & shared decision-making**
- **Involvement in coordinated responses to participant compliance**
- **Team meetings and status hearings**



Self-Learning & Correcting

- **Two Key Components (20%) are dedicated to ongoing program evaluation and continuing professional education**
- **Innovative, not sclerotic**
- **Annual continuing education**
- **Establish effectiveness and engage in continuous quality improvement (CQI)**
- **Measuring performance and outcomes is a substantive element of the program**



Science is the only self-correcting human institution, but it also is a process that progresses only by showing itself to be wrong.

— Alan Sondheim —

Questionable “Drug Courts”

- **Managed by community panel, treatment agency, probation, police, schools, prosecutor**
- **Participant compliance reviewed individually or outside of courtroom**
- **Jail sanctions imposed for substance use prior to clinical stabilization**
- **Jail used as detox, treatment, or housing**
- **Jail off the table for proximal infractions**
- **No defense attorney or prosecutor on team**
- **Participants must waive defense advocacy**
- **Infrequent team meetings or presence**
- **No hearing for jail or revocation**

Some Examples

Questionable “Drug Courts”

continued . . .

- Blanket prohibitions against evidence-based interventions (e.g., MAT)
- Requirements not reasonably related to participant's current offense, rehabilitation needs, or public safety threat
- No current and reliable data on adherence to best practices, including access and outcomes for suspect classes

MORE
EXAMPLES . . .

Quadrant Model

	High Risk	Low Risk
High Need	Can't change and won't change	Can't change
Low Need	Won't change	Can change and will change

Quadrant Model

	High Risk	Low Risk
High Need	Require TTA & accountability	Require TTA
Low Need	Require accountability	Require time & encouragement