

# NATIONAL DRUG COURT INSTITUTE



## DRUG COURT PRACTITIONER FACT SHEET

Judge Jeffrey Tauber, Director

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### The Critical Need for Jail as a Sanction in the Drug Court Model

#### *The Critical Importance of Jail as a Treatment Tool*

The use of sanctions in drug court, including the use of jail time, is instrumental in the change in behavior among drug court participants. Sanctions are most effective in reducing drug use and criminal behavior, when they are immediate, of increasing severity, and predictable (Anglin, et al., 1998; Apospori & Alpert, 1993; Brennan & Mednick, 1994; Byrne, et al., 1992; Marlowe, 1999).

In the evaluation of the D.C. drug court program, sponsored by the National Institute of Justice, **"defendants on the sanctions docket [where penalties of up to 7 days in jail could be imposed] were more than three times as likely to be found drug free when tested than those on the control docket"** (emphasis added) Harrell, 1998). Sanctions program participants were significantly less likely than the standard docket sample to be arrested in the year following sentencing". Further, the sanctions docket saved the program approximately \$2 for every \$1 in program costs, due to the significantly fewer number of arrests for participants in the sanctions docket (Harrell, 2000).

Interestingly, program participants in the sanctions track "said [that] agreeing in advance to the sanctions and the rules for applying penalties gave them a feeling of control." (Harrell, 2000). Further, in a survey conducted by American University Drug Court Clearinghouse and Technical Assistance Project in 1997, 82% of drug court participants reported that the possibility of sanctions being imposed for non-compliance with the program requirements was a very important distinction between drug court and prior treatment programs.

Drug testing is also critical to drug court programs in identifying when a participant has relapsed and allowing the drug court to respond to the relapse immediately, both with intensified treatment and services, as well as sanctions. (Marlowe, 1999).

#### *Coerced Treatment as a Recognized Therapeutic Strategy*

Drug treatment courts use the leverage of the criminal justice system to improve treatment outcomes. This idea of coerced treatment is not new; the use of civil commitment has been

accepted for the treatment of mental illness dating back to British common law. In the 1960's the civil law was first used to coerce addicts into treatment under the presumption that most addicts are not motivated to seek treatment on their own, and that it is necessary to coerce them into treatment (Inciardi, 1996.) Further expanding the role of civil commitment, the Supreme Court found in *Robinson v. California* (1962) that the state has a right to develop programs involving coerced treatment and that non-compliance could be dealt with using involuntary confinement, including the use of penal sanctions.

As a result of the 1962 Supreme Court decision, numerous programs developed using coercion and the leverage of the criminal justice system in treating drug addicts. The first of these programs, the California Civil Addict Program (CAP) started in 1962. Research found that participants in the CAP were less likely to use drugs and commit crimes than comparison groups even ten years after participation in the program (Anglin, 1988).

In 1997, a dozen drug court practitioners and experts from the drug court and related fields, developed (over a period of eighteen months) *Defining Drug Courts: The Key Components*, establishing practitioner guidelines recognized and accepted by the drug court field, and adapted in the rules of court in California, Florida and other states. Key Component Number 6 establishes that sanctions are not used to punish participants, or as an end in themselves, but as part of a therapeutic strategy to move participants toward a sober lifestyle through a motivational system of escalating sanctions. These graduated sanctions are ultimately supported by the treat (and imposition where necessary) of short periods of escalating jail time (generally 1 to 7 days), and are critical to the credibility of the "graduated sanctions" model.

#### *Retention Rates for Drug Court are Higher than for Traditional Treatment Programs*

The research literature overwhelmingly indicates that retention and completion of treatment programs have a tremendous affect in reducing drug use and criminal behavior (Belenko, 1998; Hubbard, et al., 1989; Nemes, et al.; 1998,

"The use of sanctions in drug court, including the use of jail time, is instrumental in the change in behavior among drug court participants."

Simpson, et al., 1997; Taxman, 1999). Drug courts, where sanctions and incentives play an essential role, are far more successful in retaining participants in treatment for longer periods of time than traditional treatment.

"Retention rates for drug courts (which by definition imply retention in drug treatment) are much greater than the retention rates typically observed for criminal justice offenders specifically, and treatment clients in general... **[I]t is estimated that about 60% of those who enter drug courts are still in treatment (primarily outpatient drug-free) after one year... In contrast, [a] recent national evaluation of treatment outcomes found that half of those admitted to outpatient drug-free programs stayed less than three months"** (emphasis added) (Belenko, 1998).

Dr. Steven Belenko of Columbia University, the National Center on Addiction and Substance Abuse (CASA), in a revision of his 1998 seminal study of drug courts, reviewed 48 drug court evaluations, and concluded that "drug courts, compared to other treatment programs, provide more

comprehensive supervision and monitoring, increase rates of retention in treatment, as well as reduce drug use and criminal behavior while participants are in the drug court program" (Belenko, 1999).

"[T]hree factors appear to separate the successful [treatment] programs from the unsuccessful [treatment] programs. First, successful [treatment] programs employ a therapeutic emphasis on assisting the offender change his/her behavior. Second, successful [treatment] programs are longer in duration, with multiple levels of care, which gives the offender ample time to change his/her behavior. **Finally, successful [treatment] programs use the leverage of the criminal justice system to retain the client in treatment and improve outcomes"** (emphasis added) (Taxman, 1999).

Drug treatment courts include these three critical factors and have even been identified, along with other coercive treatment programs, by the U.S. Department of Health and Human Services as one of four successful drug and crime [treatment] prevention programs.

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## Resources/Contacts:

- **National Drug Court Institute**  
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- **Drug Courts Program Office**  
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