DRUG COURT aka DRUG DIVERSION

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

SENTENCING & CORRECTIONS
ISSUES FOR THE 21ST CENTURY

MAY 2000

PAPERS FROM THE EXECUTIVE SESSIONS ON SENTENCING AND CORRECTIONS
No. 6

The Rebirth of Rehabilitation: Promise and Perils of Drug Courts

by Richard S. Gebelein

The proliferation of drug courts in the past several years has been extraordinary, as is the broad support they have won. Early evaluation results are not definitive but are promising, and many judges, lawyers, treatment providers, former offenders, and others believe drug courts are achieving many of their aims. All these favorable developments do not necessarily mean that drug courts will in the long term become core components of the criminal justice system. There are different kinds of drug courts with different kinds of caseloads. Not all will be successful. And, as with boot camps, there is the danger that uncritical enthusiasm may not withstand the effects of unfavorable evaluations.

Delaware's experience is described here to illustrate the development and evolution of drug courts. The discussion is framed by an exploration of the possibilities drug courts offer for improving public safety and the pitfalls they may face. It is set in the context of the shift away from indeterminate sentencing, which occurred about the same time strong, empirically based evidence of the link between drugs and crime and the efficacy of treatment was coming to light. Rehabilitation, all but abandoned as a sentencing goal, was revived for drug-involved offenders through the institution of drug courts. They were created in some cases to relieve dockets overcrowded by the rising number of drug cases in the late 1980s and to reduce prison overcrowding. Most notably, they offered a treatment-based alternative that also mandated judicially supervised sanctions. For drug-involved offenders, drug courts replaced what was lost when indeterminate sentencing was eclipsed as a means to rehabilitation.

■ ■ ■

Shifting sentencing policies

The rise of the drug court "movement" is best understood in the context of the changing goals of sentencing policy in the United States in the past half century. Several traditional core justifications or purposes for sanctions have been recognized:[1]

- Retribution or punishment, sometimes called just deserts—the idea that the offender should receive the punishment deserved for the crime committed.

DIRECTORS' MESSAGE

It is by now a commonplace that the number of people under criminal justice supervision in this country has reached a record high. As a result, the sentencing policies driving that number, and the field of corrections, where the consequences are felt, have acquired an unprecedented salience. It is a salience defined more by issues of magnitude, complexity, and expense than by any consensus about future directions.

Are sentencing policies, as implemented through correctional programs and practices, achieving their intended purposes? As expressed in the movement to eliminate indeterminate sentencing and limit judicial discretion, on the one hand, and to radically restructure our retributive system of justice, on the other, the purposes seem contradictory, rooted in conflicting values. The lack of consensus on where sentencing and corrections should be headed is thus no surprise.

Because sentencing and corrections policies have such major consequences—for the allocation of government resources and, more fundamentally and profoundly, for the quality of justice in this country and the safety of its citizens—the National Institute of Justice and the Corrections Program Office (CPO) of the Office of Justice Programs felt it opportune to explore them in depth. Through a series of Executive Sessions on Sentencing and Corrections, begun in 1998 and continuing through the year 2000,

CONTINUED . . .

DIRECTORS' MESSAGE

CONTINUED . . .

practitioners and scholars foremost in their field, representing a broad cross-section of points of view, were brought together to find out if there is a better way to think about the purposes, functions, and interdependence of sentencing and corrections policies.

We are fortunate in having secured the assistance of Michael Tonry, Sonosky Professor of Law and Public Policy at the University of Minnesota Law School, and Director, Institute of Criminology, University of Cambridge, as project director.

One product of the sessions is this series of papers, commissioned by NIJ and the CPO as the basis for the discussions. Drawing on the research and experience of the session participants, the papers are intended to distill their judgments about the strengths and weaknesses of current practices and about the most promising ideas for future developments.

The sessions were modeled on the executive sessions on policing held in the 1980s and 1990s under the sponsorship of NIJ and Harvard's Kennedy School of Government. Those sessions played a role in conceptualizing community policing and spreading it. Whether the current sessions and the papers based on them will be instrumental in developing a new paradigm for sentencing and corrections, or even whether they will generate broad-based support for a particular model or strategy for change, remains to be seen. It is our hope that in the current environment of openness to new ideas, the session papers will provoke comment, promote further discussion and, taken together, will constitute a basic resource document on sentencing and corrections policy issues that will prove useful to State and local policymakers.

Julie E. Samuels
Acting Director
National Institute of Justice
U.S. Department of Justice

Larry Meachum
Director
Corrections Program Office
U.S. Department of Justice

- Deterrence—the notion that fear of punishment will deter people from crime. It can be specific (geared to the offender) or general (geared to a type of offending).
- Incapacitation—placing the offender in custody so that he or she cannot commit additional crimes.
- Rehabilitation—the idea that offenders should be reformed so they will not commit crimes again.
- Restoration—the use of criminal justice processes to rebuild the relationships among the victim, community, and offender that were disrupted by the crime and to repair the harm done. Restoration encompasses rehabilitation through the accountability it requires of offenders.

The rise of rehabilitation . . .

During the past 50 years, correctional philosophy in the United States has swung widely toward and then away from rehabilitation as the dominant rationale for sentencing. In the early 1950s, rehabilitation was widely accepted as the primary goal.[2]

The dominance of rehabilitation led to the creation of numerous programs that addressed offenders' needs. Many were based on a medical model designed to diagnose the deficiencies that led to the crime and then offer treatment to overcome them. Others aimed at skills development (through job training and education, for example). The dominance of rehabilitation also explains the support for indeterminate sentencing, in which judicial decisions are tailored to individual offenders and release is determined by a parole board or commission.

. . . And its demise

By the mid-1970s, the effectiveness of rehabilitative programs (and consequently the rationale for indeterminate sentencing) began to be questioned and, by the 1980s, they were widely considered a failure. Crime and recidivism were increasing despite major rehabilitative efforts in most correctional systems. All the reasons for the collapse cannot be presented, but a few may serve as a cautionary tale.

First, correctional systems tried to rehabilitate offenders without knowing why people commit specific crimes. That lack of knowledge persists to a large extent today. Second, the exuberance of the 1950s gave way to questioning and self-doubt as the Vietnam War, racial issues, and economic slowdowns demonstrated that serious social problems were not amenable to easy solutions. Some faulted indeterminate sentencing for resulting in disparate sentences for similar offenses. Unbridled discretion was seen to defeat fairness in sentencing. The number of incoming prisoners overwhelmed the financial ability or commitment of most jurisdictions to provide quality programs.

As the 1980s gave way to the 1990s, rehabilitation faded as a principal sentencing goal. The change was expressed statutorily and in academic and other professional literature. Punishment (retribution) and incapacitation became dominant. Delaware was among the many States in which rehabilitation had been statutorily identified as the primary sentencing aim. In 1984 that changed, as incapacitation became the primary goal and rehabilitation the last.

In many other States the story was similar. Parole boards were abolished. Mandatory minimum sentences multiplied. Truth-in-sentencing laws proliferated. The "three strikes" analogy seemed best to characterize the philosophy of policymakers and the public. It did not appear that rehabilitation was alive or respected anywhere. But that perception was wrong. Particularly for drug-involved offenders, the groundwork was being laid for reviving rehabilitation.[3] One of the chief ways was by a growing understanding of the drug-crime link and the effectiveness of drug treatment.

The drug-crime link and the efficacy of treatment

Drug cases began to escalate dramatically in the 1980s. Petty drug offenders were recycling through the justice system at an alarming rate. Delaware's situation was typical. Overwhelmed with drug cases, the State's courts sought ways to manage case flow and solve the "revolving door" problem. Courts everywhere also sought sentencing alternatives for addicted offenders.

The situation brought to the fore questions about the link of substance abuse to crime. About this time, research was shedding better light on the issue. A study conducted in 1987 revealed that a large proportion of arrestees in several major urban areas tested positive for illegal substances.[4] When the Delaware drug court was in the design stage, a study of the State's prisoners revealed that 80 percent needed substance abuse treatment.[5] Researchers were also finding that when addicted offenders used drugs, they were among the most active perpetrators of other crimes.[6]

At the same time, it was becoming established that if treatment reduced drug use by criminally involved addicts, it would also reduce their tendency to commit crime.[7] Research was also proving that compelled treatment was as effective as voluntary treatment.[8] Delaware would find, and other research would confirm, that in-prison treatment based on the therapeutic community (TC) model dramatically affects drug use and recidivism.[9]

The "movement" and why it grew

All these factors converged to create a climate conducive to the growth of drug courts. When the National Association of Drug Court Professionals (NADCP) was established in 1994, the drug court judges who founded it numbered fewer than 15. Only 5 years later, the NADCP's annual training meeting drew 3,000 participants. About 10 years after Miami created what was arguably the first drug court, there were drug courts in almost every State and the District of Columbia. The expansion to more than 400 by the end of 1999 is evidence of the movement's popularity.[10]

The movement gained wide acceptance for many of the reasons rehabilitation did in the 1950s. It offered hope of solving a grave problem. It is innovative, leveraging the court's power to compel drug-involved offenders to use a method that works—treatment. Its advantage over "plain old" rehabilitation is the focus on one problem (addiction) that is causally related to crime committed by one group of offenders (addicts). Treatment is reinforced with a healthy dose of specific deterrence as a motivation to achieve a specific result—abstinence. Federal legislation provided an added impetus, as the 1994 Crime Act provided funding to establish or expand drug courts.

Key characteristics

The nature, structure, and jurisdiction of drug courts vary widely. Given the many variations, it became important to achieve consensus on what is a "true" drug court. The NADCP and the U.S. Department of Justice identified the following key elements:[11]

- Integration of substance abuse treatment with justice system case processing.
- Use of a nonadversarial approach, in which prosecution and defense promote public safety while protecting the right of the accused to due process.
- Early identification and prompt placement of eligible participants.
- Access to a continuum of treatment, rehabilitation, and related services.
- Frequent testing for alcohol and illicit drugs.
- A coordinated strategy among judge, prosecution, defense, and treatment providers to govern offender compliance.
- Ongoing judicial interaction with each participant.
- Monitoring and evaluation to measure achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education to promote effective planning, implementation, and operation.
- Partnerships with public agencies and community-based organizations to generate local support and enhance drug court effectiveness.

Most drug courts attempt to integrate these components. One reason is that Federal funding is contingent on a plan that incorporates them all.

Process and structure

In general, the offender enters the program through a plea, conditional plea, contract with the court, or similar mechanism. The offender is assigned to a treatment program and told when to report to court. Court appearances can be as frequent as several times a week or can be once a month or less often. Urinalysis is frequent and usually on a random basis. Urinalysis positives or missed treatments or court appointments result in immediate sanctions. In Delaware's diversionary court, requirements include 4 months of total abstinence in addition to holding a steady job, successfully completing treatment, earning a general equivalency diploma if applicable, participating in 12-step meetings, developing a support network, and maintaining a stable residence.

The first drug courts dealt primarily with minor drug offenses, with offenders placed on a diversionary or quasi-diversionary track. Newer designs include postadjudicative drug courts (those in which the offender is sentenced to drug court after conviction), juvenile drug courts, and family drug courts. In the model most commonly used today, the population of substance-abusing offenders is wider and more varied than that of the first drug courts. Drug courts funded by the 1994 Crime Act may process only nonviolent offenders, but many drug courts that are wholly State funded or locally funded accept some violent offenders.

The Delaware drug courts

Delaware's drug courts in many respects typify drug courts in general. They began with an effort to solve the problem of drugs and crime. The State's Drug Involved Offender Coordination Committee, organized in 1991 to weigh proposed solutions, discovered flaws in the State's approach to offender substance abuse. Many court orders referring defendants to treatment were ignored by corrections officials. Related problems came to light. Offenders were more likely than non-court-referred participants to be discharged from treatment programs. Jail- or prison-based treatment was limited; there was no coordination between treatment in jail and the community; and treatment was inefficiently delivered and inadequate in relation to the need.[12]

A treatment continuum did not exist. To create one, the Treatment Access Committee (TAC) was established and charged with ensuring that substance-abusing offenders did not "fall through the cracks."

The diversion model

Delaware's potential treatment population was so large that only two groups could be targeted. Younger offenders, who are less criminally involved and who can possibly be diverted from a life of crime, were selected as one group.

The diversion track calls for a modest "investment" of 6 months to a year in drug court, with outpatient treatment and frequent urine tests. These offenders are not under sentence, so they are not supervised by probation. This saves resources, which can be used to supervise more serious offenders. However, offenders on this track are *more* accountable than those on regular probation. If the offender cannot stay drug free or otherwise fails, diversion is terminated, a trial is held, and, if it results in conviction, the usual sentence is probation with compelled treatment. If all conditions are met, the offender graduates and the charge is dismissed.

The probation revocation model

Offenders in jail or prison because of violating probation were another group identified as needing substantial investment of treatment resources.[13] TAC felt that a drug court model could work with them, although outpatient treatment *without* probation supervision was unlikely to work with many. This group of more serious offenders consists largely of people convicted of 6 to 10 felonies and addicted for 12 to 20 years.

The probation revocation model is for offenders charged with a new crime. The prosecutor offers to resolve the new offense and the probation violation simultaneously, through a plea and an "addiction sentence"[14] that always includes drug court-supervised treatment. If the defendant accepts the offer, he or she is immediately sentenced on both counts. If the defendant is sentenced to jail or prison, he or she enters a treatment program in the correctional facility. Successful completion means the remaining prison time is suspended and replaced with supervision and treatment in the community. The addiction sentence allows the court to require this treatment continuum through the in-prison "Key" program, followed by work release and continued treatment in the "Crest" program and aftercare in the community.[15] In effect, the model provides for indeterminate sentencing—tailored to the offender, with the goal of rehabilitation—in a truth-in-sentencing State.[16]

All addiction sentences require frequent court appearances, and the assignment of a Treatment Alternatives to Street Crime (TASC) case manager,[17] to ensure continuum of treatment in the transition from jail to halfway house to community. Failure in this track usually results in a prison sentence with an order to participate in a long-term therapeutic community while incarcerated, followed again by treatment in the community, with reentry monitored by the drug court.

Preliminary results

Scientifically based evaluations of Delaware's drug courts are not completed, but initial studies are encouraging.[18] The figures on numbers of diversion track graduates are a rough estimate: By the end of 1999, charges were dismissed for 2,670 people—about half of those who entered the program. Case studies demonstrate that the lives of people once considered total criminal justice failures have been saved. The widespread belief among judges, prosecutors, defense attorneys, and others that the Delaware drug courts are working and turning lives around cannot easily be discounted.

Treatment providers indicated 18 months into the program that their drug court clients are more likely to complete treatment than are their other clients, and that they stay in treatment longer.[19] Preliminary evaluation results suggest that Delaware drug court graduates reoffend less often than other sentenced offenders and, when they do, their crimes are on average far less serious.[20] Studies of drug courts in other jurisdictions offer similarly encouraging findings.[21] The past 3 years' experience in Delaware indicates that offenders adjudicated through the probation

revocation track spend less time in prison than do other offenders sentenced for similar crimes.[22] This is because drug court offenders can earn early release by completing treatment.

■ ■ ■

The promise of drug courts

Drug courts will not solve the drug problem or eliminate crime in Delaware or anywhere else. But *if* they offer a comprehensive treatment continuum, solid case management, and meaningful immediate sanctions, they can have a major effect on public safety. They are a powerful tool for addressing the criminal behavior of people who commit disproportionately large numbers of crimes.

Simple math suggests their crime-reduction potential. An individual who has an out-of-control addiction commits about 63 crimes a year.[23] Assuming this could be reduced to 10 for someone who is in or has completed treatment, and multiplying it by the 200 offenders in Delaware's probation revocation track who comply with all requirements, a single drug court may prevent more than 10,000 crimes each year.

Even offenders who do not succeed in drug court appear to be less criminally active than they were previously. This may be due to the benefits of treatment or the supervision, sanctions, intensive surveillance, and specific deterrence of the drug court.

The results of drug courts are partially tallied outside the criminal justice column, beyond reduced recidivism and drug use. For example, in the Delaware revocation track's first 2 years, 11 drug-free babies were born to former crack-addicted women who had been brought before the court. Drug court graduates become gainfully employed, tax-paying members of the community, at least for a time. Drug courts save lives—a function that appeals to all political philosophies and goes far to refute the notion that "nothing works."

■ ■ ■

The perils of drug courts

The drug court movement is currently riding a wave of success. Initial evaluations are favorable. New courts are being established everywhere. The movement is supported by both major political parties and the news media. Even more important, it has captured the imagination of the public. Ironically, success is perhaps the biggest peril drug courts face.

Success

Success with a narrowly defined offender population does not translate into a universal solution to drug crime.

As the results of more sophisticated evaluations become available, preliminary success rates will not be sustained. As less tractable groups participate, rates of compliance and graduation will decline and recidivism will rise. Support may fade as success appears to diminish. The movement cannot afford to claim too much and so must define success realistically.

Client and treatment differences

Differences in treatment options and in groups that participate will affect outcomes. Some drug courts, such as Delaware's probation revocation track, include a full spectrum of treatment options. Others, such as Delaware's diversion track, rely primarily on outpatient treatment, drug education, and urine tests. Success is likely to vary with the treatment available.

In Delaware's probation revocation track, the participants are far more involved with drugs and other crime than those on the diversion track, who are younger, are less severely addicted, and have less extensive criminal histories. Different success rates can be expected from the different populations.

In identifying target populations, drug courts need to be sensitive to class and race bias, real or apparent. Unless care is taken, diversion courts may tend disproportionately to work with white and middle-class substance abusers. In Delaware, the client demographics of the diversion and probation revocation tracks were at first virtual opposites. Participants in the latter were disproportionately minority group members from disadvantaged backgrounds; those in the former were more likely to be white and middle class. Delaware has aggressively addressed this imbalance.

Differences in populations and treatments can lead to the same problems that came to light in research on boot camps. Initially, boot camps were highly popular (perhaps for all the wrong reasons). They proliferated quickly, and claims of success abounded. However, evaluations generally revealed that boot camps do little to reduce recidivism. As a result, funding eroded, fewer resources were allocated, and support all but evaporated. The same fate could befall drug courts if evaluations of individual courts that offer incomplete treatment or no real treatment at all reveal low success rates.

Availability of resources

Generally, as the type and number of offenders treated increases, appropriate treatment becomes less available. For serious, violent offenders, weekly or twice-weekly outpatient treatment is not viable. They need more supervision and structure, but many localities cannot offer this.

As the number of clients grows, the tendency is to make do with the same amount of resources as offered for fewer clients. The usual result is deterioration of treatment quality as programs are shortened and more people are crowded into each group. This can only decrease effectiveness.

Structural impediments

The structure of health care provision in this country may threaten program success. The premise of managed care, increasingly the norm, is that the least treatment required should be provided. This is at odds with research on substance abuse treatment, which has shown that the longer a person remains in treatment, the more successful treatment will be. Furthermore, managed care assumes the patient will aggressively pursue the treatment he or she deems necessary. Because most drug court clients initially prefer not to be treated, they are likely to welcome a ruling by the health care provider or the managed care insurer that treatment is not needed. Finally, drug court clients frequently encounter delays in obtaining treatment funding or must cobble together bits and pieces of various programs because the "exhaustion" rules of health care plans limit treatment.

The judge is an integral part of the drug court structure. Many judges are already experiencing burnout, a situation not uncommon among treatment professionals. When a drug court judge steps down, it is not always possible to find a sufficiently motivated replacement. Without a highly motivated judge, the drug court approach simply does not work well.

Unrealistic expectations

Americans want quick, decisive solutions. This is evident in the very terminology used for this national propensity: We wage a "War on Drugs." Yet as General Barry McCaffrey, head of the Office of National Drug Control Policy, has noted, the problem cannot be solved this way. War requires concentrated maximum force at a critical point. For the drug problem, there is no silver bullet, nor is there a single program, model, or method that will eliminate either addiction or crime.

Because drug courts are effective in helping address one correlate of crime, they may also serve as a model to help address others. Research may reveal whether this expectation is realistic by demonstrating why drug courts work and whether similar principles are likely to work for groups other than drug-involved offenders. Delaware's proposed reentry court for nonaddicted offenders is an example of the extension of the model.

Judges tend to deal more often with failure than success. Many drug court judges, enthusiastic about their perceived successes, may yield to the temptation to claim they have the key to winning the war on drugs and criminal behavior. That claim will surely fail to be sustained. Instances of failure of the drug court method will become more widely reported. The movement's claims will be tested against results. If the claims of judges and others are unreasonably optimistic and not based in reality, backlash is inevitable.

■ ■ ■

The future

The drug court movement focused initially on adult drug offenders who had histories of nonviolent offenses. Depending on the site, the movement now encompasses offenders convicted of several felonies, many of whom have criminal histories that qualify them for habitual offender status. The movement also extends to specialty courts dedicated to juvenile offending, domestic violence, and family issues and has fostered establishment of treatment courts for DUI cases.

There are other areas where the drug court approach may be useful. An example is "therapeutic jurisprudence," a new, problem-solving orientation adopted by some judges, courts, and court systems.[24] Participants in the drug court movement believe that success is due in large part to direct judicial involvement with offenders, provided on a regular basis. It is likely that judges who have been successful with the approach will want to apply it to other areas.

In expanding the drug court model to clients other than drug users, care must be taken until more is known about why the process works and with what types of offenders it might be effective. That means first designing pilot programs, implementing them, and evaluating them. Drug courts hold great promise as a tool to prevent crime in the long term. For that to become reality, every effort must be taken to avoid the many perils that could make the movement just another failed criminal justice fad.

Notes

1. Silverman, Ira J., and Manuel Vega, *Corrections: A Comprehensive View,* St. Paul, MN: West Publishing Company, 1996.

2. In the 1950s, the American Correctional Association called for using individualized treatment to the greatest extent possible to rehabilitate the offender. American Correctional Association, *Manual of Correctional Standards,* College Park, MD: American Correctional Association, Committee for the Revision of the 1954 Manual, 1959.

3. Rehabilitation was also being revived as a sentencing goal through restorative and community justice, new approaches to sentencing.

4. National Institute of Justice, *Attorney General Announces NIJ Drug Use Forecasting System,* Research in Action, Washington, DC: U.S. Department of Justice, National Institute of Justice, 1988, NCJ 109957.

5. Delaware Sentencing Accountability Commission, *Coordinated Approach to Managing the Drug Involved Offender,* Wilmington, DE: Delaware Sentencing Accountability Commission, Treatment Access Committee, 1994.

6. See, for example, Wish, E.D., and B.D. Johnson, "Impact of Substance Abuse on Criminal Careers," in *Criminal Careers and "Career Criminals,"* vol. II, ed. Alfred Blumstein et al., Washington, DC: National Academy Press, 1986: 52–88.

7. One study revealed that, on average, offenders ordered to treatment had committed more than 63 predatory criminal acts in the year before sentencing; once in treatment, there was a decrease to an average of 6 per year. See Hubbard, Robert L., et al., "Criminal Justice Client in Drug Abuse Treatment," in *Compulsory Treatment of Drug Abuse: Research and Clinical*

Practice (NIDA Research Monograph 86), ed. C.G. Leukefeld and F.M. Tims, Washington, DC: U.S. Department of Health and Human Services, National Institute on Drug Abuse, 1988: 66. With funding from the 1994 Crime Act, several States created substance abuse treatment programs in correctional facilities. Evaluations of these Residential Substance Abuse Treatment programs, sponsored by the Justice Department's Corrections Program Office and the National Institute of Justice, are now under way.

8. See Farabee, D., M. Prendergast, and M.D. Anglin, "Effectiveness of Coerced Treatment of Drug-Abusing Offenders," *Federal Probation* 62 (1) (June 1998): 3–10.

9. For a history of Delaware's experience with the Key and Crest TC programs, and evaluation results, see Martin, Steven S., Clifford A. Butzin, Christine A. Saum, and James A. Inciardi, "Three-Year Outcomes of Therapeutic Community Treatment for Drug-Involved Offenders in Delaware: From Prison to Work Release to Aftercare," *Prison Journal* 79 (3) (September 1999): 294–320.

10. According to the Drug Courts Program Office of the U.S. Department of Justice, there were 425 drug courts at the end of 1999.

11. National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components,* Washington, DC: U.S. Department of Justice, Drug Courts Program Office, 1997, NCJ 165478.

12. Drug Involved Offender Coordination Committee, *Effective Management of Drug Involved Offenders—A Report to Governor Michael Castle,* Wilmington, DE: Drug Involved Offender Coordination Committee, 1992.

13. About 70 percent of offenders in Delaware who violated probation, compared with 50 percent of all prisoners in the State, were found to need residential treatment *(Coordinated Approach to Managing the Drug Involved Offender).*

14. An "addiction sentence" is one conditioned on treatment results.

15. Delaware's Key-Crest is a three-stage treatment program for drug-involved offenders. Based on the TC model, it offers a self-contained, 24-hour-a-day, structured treatment environment in a setting apart from the rest of the prison population. The "Key," the primary stage, consists of prison-based treatment for men in a 12-month, intensive program. In the "Crest" transitional stage, a work-release program for women as well as men, offenders enter 6 months of treatment and job training. In the aftercare stage, released inmates, receive outpatient counseling and the opportunity to return to the transitional therapeutic setting.

16. The legality of this process has not been challenged in Delaware, and its effect on Federal funding that is contingent on offenders serving 85 percent of their sentence in prison is unclear.

17. The Treatment Alternatives to Street Crime (TASC) program offers diversion from prison for drug-involved offenders who do not pose a serious risk to the community. Offenders are assessed and referred to community treatment services as an alternative or supplement to justice system sanctions and procedures. For a description, see Inciardi, James A., and D.C. McBride, "Reviewing the 'TASC' (Treatment Alternatives to Street Crime) Experience," *Journal of Crime and Justice* 15 (1) (1992): 45–62; and Inciardi, James A., D.C. McBride, and J.E. Rivers, *Drug Control and the Courts,* Drugs, Health, and Social Policy Series, vol. 3, Thousand Oaks, CA: Sage Publications, 1996: 35–60. In Delaware, the TASC case manager who works with the drug court is based in the Department of Health and Social Services.

18. Statistical Analysis Center and Anova Associates, *The Delaware Drug Court: A Baseline Evaluation,* Wilmington, DE: Delaware Statistical Analysis Center and Anova Associates, 1998; Statistical Analysis Center, *Evaluation of the Juvenile Drug Court Diversion Program,* Wilmington, DE: Delaware Statistical Analysis Center, 1998; and Reed, Emily, *Drug Court Diversion Program Annual Report,* Wilmington, DE: SODAT-Delaware, Inc., 1995.

19. Delaware Sentencing Accountability Commission, *SENTAC Annual Report,* Wilmington, DE: Delaware Sentencing Accountability Commission, 1997.

20. Statistical Analysis Center and Anova Associates, *The Delaware Drug Court: A Baseline Evaluation.*

Richard S. Gebelein is a judge in the Superior Court of Delaware. He founded Delaware's statewide Drug Court, where he serves as a judge, responsible for postadjudicated offenders.

This study was supported by cooperative agreement 97–MUMU–K006 between the National Institute of Justice and the University of Minnesota.

Findings and conclusions of the research reported here are those of the authors and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

This and other NIJ publications can be found at and downloaded from the NIJ Web site (http://www.ojp.usdoj.gov/nij).

NCJ 181412

21. Belenko, Steven, "Research on Drug Courts: A Critical Review," *National Drug Court Institute Review* 1 (1) (Summer 1998): 1–42; and Harrell, Adele, "Understanding the Impact of Drug Courts," unpublished draft report, Washington, DC: The Urban Institute, 1999.

22. Delaware Statistical Analysis Center, *Addiction Sentences,* draft report, Wilmington, DE: Delaware Statistical Analysis Center, 1999.

23. Hubbard et al., "Criminal Justice Client in Drug Abuse Treatment."

24. It is beginning to attract attention in academic circles. See, for example, Rottman, David, and Pamela Casey, "Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts," *National Institute of Justice Journal* 240 (July 1999): 12–19.

THE EXECUTIVE SESSIONS ON SENTENCING AND CORRECTIONS

Convened the following distinguished panel of leaders in the fields:

Neal Bryant
Senator
Oregon State Senate

Harold Clarke
Director
Department of Correctional Services
State of Nevada

Cheryl Crawford
Deputy Director, Office of
Development and Communications
National Institute of Justice
U.S. Department of Justice

Barbara Damchik-Dykes
Project Coordinator
Executive Sessions on Sentencing
and Corrections

Walter Dickey
Evjue-Bascom Professor of Law
University of Wisconsin

Ronald Earle
District Attorney
Austin, Texas

Tony Fabelo
Director
Texas Criminal Justice Policy Council

Richard S. Gebelein
Superior Court Judge
Wilmington, Delaware

John Gorczyk
Commissioner
Department of Corrections
State of Vermont

Kathleen Hawk Sawyer
Director
Federal Bureau of Prisons
U.S. Department of Justice

Sally T. Hillsman
Deputy Director
National Institute of Justice
U.S. Department of Justice

Martin Horn
Secretary
Department of Corrections
Commonwealth of Pennsylvania

Susan M. Hunter
Chief, Prisons Division
National Institute of Corrections
U.S. Department of Justice

Leena Kurki
Research Associate
Law School
University of Minnesota
Project Associate
Executive Sessions on Sentencing
and Corrections

John J. Larivee
Chief Executive Officer
Community Resources for Justice

Joe Lehman
Secretary
Department of Corrections
State of Washington

Dennis Maloney
Director
Deschutes County (Oregon)
Department of Community Justice

Larry Meachum
Director
Corrections Program Office
Office of Justice Programs
U.S. Department of Justice

Mark H. Moore
Guggenheim Professor of Criminal
Justice Policy and Management
John F. Kennedy School of Government
Harvard University

Norval Morris
Emeritus Professor of Law and
Criminology
University of Chicago

Joan Petersilia
Professor of Criminology,
Law and Society
School of Social Ecology
University of California, Irvine

Kay Pranis
Restorative Justice Planner
Department of Corrections
State of Minnesota

Michael Quinlan
Former Director
Federal Bureau of Prisons
U.S. Department of Justice

Chase Riveland
Principal
Riveland Associates

Thomas W. Ross
Superior Court Judge,
18th Judicial District
Chair, North Carolina Sentencing
and Policy Advisory Commission

Dora Schriro
Director
Department of Corrections
State of Missouri

Michael Smith
Professor of Law
University of Wisconsin

Morris Thigpen
Director
National Institute of Corrections
U.S. Department of Justice

Michael Tonry
Director
Institute of Criminology
University of Cambridge
Sonosky Professor of
Law and Public Policy
University of Minnesota
Project Director
Executive Sessions on Sentencing
and Corrections

Jeremy Travis
Senior Fellow
The Urban Institute
Former Director
National Institute of Justice
U.S. Department of Justice

Reginald A. Wilkinson
Director
Department of Rehabilitation
and Correction
State of Ohio

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

Washington, DC 20531

Official Business
Penalty for Private Use $300

PRESORTED STANDARD
POSTAGE & FEES PAID
DOJ/NIJ
Permit No. G–91

State of Delaware Drug Diversion Program
New Castle County Court of Common Pleas
Petition, Waiver and Agreement

Defendant/Participant: _____
Address: _____
Phone: _____ DOB: _____ Case No. _____

1. I freely and voluntarily request entry into the Court of Common Pleas Diversion Program. Participation in this program requires the waiver of my constitutional trial and appeal rights as set forth in the guilty plea form. If I successfully complete this program and fulfill all terms and conditions of this Agreement, the charge(s) listed below will be dismissed. I will not be convicted and sentenced today when I plead guilty. Instead, during the time that I am meeting my obligations in the CCP Drug Diversion Program, entry of a guilty conviction to the criminal charges will be deferred.
2. I voluntarily agree to submit to and complete a diagnostic evaluation and treatment program. My treatment provider may recommend *outpatient* or *residential* treatment. I authorize release of all treatment information to the Court, DOJ, Probation and Parole, and my attorney. The Attorney General will not use such information in any subsequent proceeding.
3. If I do not comply with this Agreement's conditions or do not successfully complete this program, a termination hearing will be scheduled. The result could be: (1) modification of my treatment program, (2) revocation of my pre-trial release, **OR** (3) termination from the program.

OFFENSE	PENALTY	CLASSIFICATION

4. If I do not successfully complete the CCP Drug Program, then I will be convicted of the charge(s) above to which I am pleading guilty to today.
5. If I am entering the Drug Diversion Program on a felony charge, I do hereby waive my right to have such charge presented to the Grand Jury for indictment.
6. I understand other consequences of conviction include:
    a. If the charge against me is a felony, loss of certain civil rights, including the right to vote, serve on a jury or ever again possess a deadly weapon;
    b. If the charge is possession of an illegal drug or illegal possession of an otherwise legal drug, loss of the right to possess a deadly weapon for five years;
    c. If not a U.S. citizen and convicted of a crime, I am subject to deportation and exclusion from the United States.
7. While participating in the Drug Diversion Program, I agree:
    a. To not violate any law (federal, state or local) and to immediately contact the treatment counselor if arrested;
    b. To attend school or work regularly at a lawful occupation or be otherwise engaged productively as approved by the Court;
    c. To continue to reside at the address supplied to the Court and treatment provider and to immediately notify both of any change in address or phone numbers;
    d. To report to the program to which I am referred, as required, cooperate fully, and abide by all of the program's conditions including consultation with a mental health professional, and to follow recommendations for mental health treatment;
    e. To appear in Court when I am scheduled to appear or when I am summoned. If I do not appear, the Court will issue a bench warrant for my arrest. Failure to appear in Court may result in my termination from the CCP Drug Diversion Program;

f. To not use drugs or alcohol while I am participating in the CCP Drug Diversion Program, except drugs which are used properly as prescribed to me. I must provide proof of prescriptions to my treatment providers;

g. To prove that I am not using drugs or alcohol by providing random, monitored, urine screens on at least a weekly basis. Failure to provide weekly clean screens may result in my termination from the CCP Drug Diversion Program.

8. It is my responsibility to pay $200.00 for the CCP Drug Diversion Program. I may be responsible for additional charges depending on my treatment needs.
9. Forfeiture: Pursuant to 16 Del. C. §4784, I agree to forfeit the following seized assets:
   1. USC: _____ 2. Vehicle: _____ 3. Property: _____
10. Special conditions: I will not be eligible to graduate without completing these special conditions:

_____

_____

I have read this Agreement and understand my obligations and the rights I am surrendering. I am knowingly and voluntarily entering into this Agreement.

Date: _____

Participant: (sign) _____ (print) _____

Participant's Attorney: (sign) _____ (print) _____

Deputy Attorney General: (sign) _____ (print) _____

I understand that my alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 ("HIPPA"), 45 C.F.R. Pts. 160 & 164. I understand that my health information specified above will be disclosed pursuant to this authorization, and that the recipient of the information may redisclose the information and it may no longer be protected by the HIPAA privacy law. The Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, noted above, however, will continue to protect the confidentiality of information that identifies me as a patient in an alcohol or other drug program from redisclosure. I also understand that I may revoke this consent in writing at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically 90 days after discharge from Drug Diversion.