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The Future of Drug Courts

How States are Mainstreaming the Drug Court Model

Written by

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Introduction: Experiments No Longer

If history could be encapsulated in headlines, the early years of the drug court movement might be summed up as follows:

1989:

“Dade County Experiments with Court Program for Drug Offenders”

1997:

“Drug Courts Proliferate As Jurisdictions Try to Duplicate Florida’s Success”

These two imaginary headlines tell as concisely as possible the story of the drug court model. Drug courts, which offered state courts a new way to handle drug-addicted defendants, proliferated rapidly after the first court opened in Miami: from one court in 1989, to 300 courts in 1997, to 1,042 drug courts (and 429 more in the planning stages) by 2003.¹ But the numbers do not tell the whole story. The headline today would not be: “Drug Courts Continue to Proliferate.” Rather, the headline would reflect the fact that drug courts are now entering a new phase. It might go something like this:

2004:

“Drug Courts – Once a Novelty – Now Becoming Business as Usual
in Many States”

The phrase “business as usual,” of course, connotes bureaucracy and a lack of innovation – precisely the sort of things that drug court practitioners have long labored against. But the reality is that any new idea – in any area of social policy – that has proven as popular as drug courts eventually confronts such a phase: either it gets absorbed in some way by the existing system or it gets discarded as a passing fad.

Take juvenile courts. The first juvenile court was created in Cook County, Illinois, in 1899; a quarter of a century later, juvenile courts had spread across the country.

Today, with a few notable exceptions, the principle that young people should be treated differently than adults by the criminal justice system still holds.

And yet juvenile courts are the exception to the rule. The social policy literature is littered with isolated successes: an exemplary inner-city school with high test scores or a cost-effective nurse visitation program that lowers infant mortality rates. Unfortunately, these programs appear to work in spite of systems in which they are located, not because of them. Most fail to navigate the transition from small to large, from successful experiment to system reform.

So why did juvenile courts become so widely adopted while so many other small-scale experiments fade away? The reality is that “going to scale” with an innovative idea or practice in any field is difficult. In writing about the challenges of moving innovations from a small scale to a larger scale, Lisbeth Schorr, an expert on social policy innovations, has noted that there is the tendency for policymakers to “discover one isolated success after another, only to abandon it, dilute it, or dismember it before it can reach more than a few.”² To Schorr, successful institutionalization takes far more than just copying an innovative practice – what she calls the “McDonald’s Model” to connote the simplistic belief that a successful program can be plunked down anywhere. According to Schorr, going to scale requires mastering a series of difficult political and operational challenges – everything from identifying the “active ingredients” of innovation to working to approximate the spirit of creativity and personal commitment that animated the program in its early days.

While institutionalization is hard for any bureaucracy, it’s particularly hard for state courts, most of which have highly decentralized decision-making. Many judges are elected, and thus not directly answerable to court administrators. Even appointees, however, are independent and typically serve long terms, making it difficult to change institutional behavior. And there are, of course, other actors within the court system, such as prosecutors, defense attorneys and clerks – who hold different professional values and answer to their own institutional hierarchies. Short of major legislative change, getting a new idea implemented throughout a state court system is exceedingly difficult.

There is another reality for state courts, however: Drug courts will not survive for long unless they are institutionalized. Federal funding for drug courts will not last forever. And those states fortunate enough to receive federal grants must deal with the reality that grants usually terminate after a few years, and states will have to cover costs to keep drug courts running. Already some states are faced with a difficult choice: Kentucky, for example, was forced to commit \$15 million (in the midst of a \$700 million budget deficit) for the state’s existing drug courts or watch them disappear.³

It seems fair to say that the decisions made by states today could be the difference between success or failure — whether drug courts are seen as a noble but unsustainable experiment or an enduring part of the criminal justice system’s response to the problems of drug addiction and crime.

Focusing on a New Phase in Drug Court Development

Much has been written about the first phase of the drug court movement, in which entrepreneurial judges and others, inspired by the Miami model, brought the first drug courts to their disparate states, and the second phase, in which states, boosted by federal dollars, encouraged the proliferation of drug courts.⁴ But little has been written about the third, newly emerging institutionalization phase, which is characterized by the creation of new systems, policies and funding to support the absorption of drug courts into the mainstream of judicial operations.⁵

Describing this “institutionalization” phase, and seeing how states are meeting its challenges, is the purpose of this paper. What does the term institutionalization mean? Drug court practitioners around the country have different responses to the term. Brooklyn Treatment Court Judge Jo Ann Ferdinand views institutionalization in terms of legitimacy, turning drug courts from “cute little things” into an “accepted part of the court system.” Mike Loeffler, an assistant district attorney in Bristow, Oklahoma, sees it as a matter of scale: making drug court available across the state to all drug addicts picked up on non-violent charges. To Maria Nemec, who oversees treatment staff at the Greater Cleveland Drug Court, institutionalization means “a guaranteed stream of money.”

Combining all these notions, one might define institutionalization this way: the process by which individual drug courts evolve from separate experimental entities to a statewide network that is stable, far-reaching, reliably funded and closely monitored.

For some, the notion of institutionalization doesn’t stop there. For these practitioners and policymakers, institutionalization means re-orienting entire court and treatment systems according to drug court principles. In their view, drug courts will be institutionalized only when their key elements – intensive judicial monitoring, referrals to treatment, graduated sanctions and rewards – become a part of every state court’s approach to drug addiction. “I’d like to see less emphasis on drug courts per se, and more emphasis placed on making treatment a mainstream enterprise by developing partnerships between courts and state agencies that oversee treatment,” said Dan Becker, Utah’s state court administrator. Speaking at the same roundtable discussion, Adele Harrell of the Urban Institute agreed, saying, “I share the vision of making this a way of doing business across the justice system, and maybe even fading drug courts out of existence as their tenets become embedded in practice.”⁶

Clearly, the term institutionalization is a broad umbrella, one large enough to incorporate multiple definitions. One of this article’s findings, in fact, is that there are many viable ways to go to scale with drug courts. This reality makes studying drug court institutionalization a challenge.

During the institutionalization phase, drug court practitioners and policymakers are no longer grappling simply with the logistics of developing new specialized dockets, but tackling a host of new responsibilities, among them: creating statewide offices and commissions to oversee drug courts; developing best practices to guide drug court operations; lobbying for steady funding from state sources; creating and implementing statewide management information systems; and developing collaborative relationships among agencies at the highest levels of state government.

In carrying out these tasks, state leaders face a difficult challenge, for the values of statewide institutionalization, which often require uniformity and top-down management, rest uneasily with the founding values of drug courts, which celebrate grass-roots innovation, flexibility and local control. Drug courts have always been an alternative to the mainstream judicial system: what happens when they lose that status? Will they survive the transition? Will they lose some of the qualities that made them attractive in the first place?

This paper, in an effort to analyze developments on a national scale, focuses on four states – Louisiana, Missouri, New York and Ohio – all of which have made significant strides toward drug court institutionalization. These states were chosen because of their diversity in geography, politics, resources and approaches to institutionalization. For example, three states gave their electoral college votes to Republican George Bush in 2000 (Louisiana, Missouri and Ohio) and one gave its votes to Democrat Al Gore (New York). Some states, like New York, have abundant treatment resources and others, especially in rural districts, have limited resources. And in some states, the court system has taken the lead, while in others leadership is shared among more than one branch of government. To ensure a complete sampling of the national scene, however, the paper also draws select examples from drug court developments in other states, dozens of mainstream and academic articles about drug courts and over 100 interviews the authors conducted with judges, drug court staff, prosecutors, defense attorneys, treatment providers and government policy makers from around the country.

Drawing on this information, this paper attempts to describe how states are institutionalizing drug courts. It has two goals. The first is to describe common challenges states are facing in this institutionalization phase; the second is to discuss and analyze the various strategies states are employing to meet those challenges.

Section One: The Early Years of Drug Courts

The history of drug courts has been widely reported. It's easy to understand why the drug court story – in particular, the explosive growth of the movement from a lone experiment to a widely promulgated model in the course of a single decade – has been so frequently repeated. For many, the explosive proliferation is a sign that the model works, as if to say, “Drug courts must be doing something right, otherwise why would so many jurisdictions have embraced them?” But beyond that, the story is retold so often simply because it's a good story; it has the same dramatic rags-to-riches qualities that made Horatio Alger stories so compelling.

Because the story is so familiar (at least to the audience of drug court practitioners and policymakers to whom this paper is primarily directed) this essay will not tell it again – at least not in the usual way. The fact that drug courts have proliferated so quickly is not, in and of itself, relevant here. The more important question is *how* the exporting of the drug court idea around the country was successfully carried out. What are the key ingredients that have shaped drug courts as their presence and influence have expanded? How have those key ingredients laid the groundwork for the current phase of drug court development?

While it is difficult to study a phenomenon as large and complex as drug courts with scientific rigor, it is possible to identify some of the key factors that distinguished the first two, pre-institutionalization phases of drug court development. Importantly, the factors fueling drug courts' explosive proliferation continue to play a critical role in the institutionalization phase.

This section will take a look at how four factors – leadership, salesmanship, legislation and federal funding – have impacted the development of drug courts in Louisiana, Missouri, New York and Ohio.

Leadership: Mavericks at the Helm

When describing early drug court leaders, the word “mavericks” is often used. The individuals who got drug courts off the ground were dynamic individuals – judges mostly – who were free-thinking, charismatic and well-connected. To anyone in the drug court world, the names are familiar: Judges Herbert Klein and Stanley Goldstein in Miami, Florida; Prosecutor Claire McCaskill in Kansas City, Missouri; Judge John R. Schwartz in Buffalo, New York.; Judge William Hunter in St. Mary Parish, Louisiana; and Judge Jeff Tauber in Oakland, California. Each can take credit for playing a significant part in bringing drug courts to their states. In some cases, by

the sheer force of personality alone, they were able to overcome bureaucratic inertia and skepticism.

The idea that these leaders are mavericks is based, in large part, on their willingness to act independently in experimenting with a new approach to the long-standing problem of drug addiction and crime. Referring to the nation's first drug court and its creator, Judge Herbert Klein, researcher John Goldkamp wrote, "It is easy to overlook how dramatic a departure from prevailing judicial philosophy Miami's drug court represented." He added: "Judge Klein's endorsement of treatment as a court strategy, his advocacy of what was received as – how awkward – rehabilitation, was met with an uncomfortable silence. Many judges believed that rehabilitation had long ago been discredited."⁷

Lessons Learned

There is a second element, as well – the sense that these early advocates were working against the grain and, in some cases, overcoming long odds to create drug courts. This anti-establishment, underdog camaraderie pervaded initial conventions of the National Association of Drug Court Professionals. "[We were] a community," said Oakland Drug Court Judge Jeff Tauber, who helped create the association in 1994. "When [people] came to our conference, they felt they were part of a movement, something larger than themselves . . . People felt so high after that, they'd go home and slay dragons."

Judge John R. Schwartz, the supervising judge of the Rochester City Court, worked outside the system to open New York's first drug court in 1995. The local supervising judge opposed the creation of the court, but Schwartz persevered. Schwartz looked for funding outside government, enlisting the support of local foundations. The United Way paid for a drug court coordinator. The American Bar Association provided technical assistance. Treatment providers agreed to post, on a rotating basis, case managers in the court.

Despite the lone wolf nature of its origins, the Rochester Drug Treatment Court quickly earned the admiration of statewide court system leaders, including Chief Judge Judith S. Kaye, and soon drug courts were opening in Buffalo, Brooklyn and other jurisdictions around New York.

Early Leaders of Drug Courts

Drug courts' early leaders were entrepreneurs: dynamic individuals who were free-thinking, charismatic and well-connected. They each played a significant role in bringing drug courts to their states by working effectively to promote change within existing systems. While visionary, they weren't radicals – they were attempting to reform court practice, not overturn it.

Judge William D. Hunter played a similar role in St. Mary Parish, Louisiana, a largely rural jurisdiction of about 50,000 people. In creating the drug court, Hunter and a group of local colleagues had to overcome traditional, tough-on-crime attitudes that helped give Louisiana the highest rates of incarceration in the nation.⁸ "There are certain law-and-order groups in Louisiana who feel that locking people up and throwing away

the key is the best way to go,” Hunter said. But Louisiana’s early drug court advocates – deftly using salesmanship and legislation – were able to turn Louisiana into a leading drug court state.

There are several lessons that can be drawn from the experience of early drug court leaders like Schwartz and Hunter. Perhaps the most obvious lesson is that leadership matters, and that a single person can, with skill and vision, change something as traditionally resistant to reform as the court system.

The other lessons from the experience of the movement’s early leaders are more subtle. One such lesson is the importance of partnerships. Local drug court leaders have succeeded only where they’ve built constructive partnerships with other key players, including the community. For example, in Louisiana, Hunter made sure to win the support of the St. Mary Parish sheriff and local prosecutors – crucial allies in the fight to avoid a “soft on crime” label.

Partnerships, only on a much larger scale, are important for those who are currently leading the process of institutionalization. State leaders must cultivate support among different branches of government and among the leaders of different agencies. Even community support, in the form of statewide public opinion, needs to be cultivated effectively – especially in light of the numerous statewide referendums in recent years that could directly affect drug court operations.

The task of building partnerships is, of course, more easily accomplished in a small town than across an entire state. In St. Mary Parish, a web of personal relationships was already in place – Hunter and Bernard E. Boudreaux, the then-St. Mary Parish district attorney (and current counsel to Governor Mike Foster Jr.) were good friends; Jimmy Sennette, the assistant district attorney assigned to drug court, and Sheriff David A. Naquin were first cousins. “If we have one outstanding characteristic,” Sennette said, “it’s that we all know each other.”

It also helped that the early leaders were often in positions of authority. Some, like Claire McCaskill, the former elected prosecutor in Jackson County, Missouri, and currently the state auditor, convinced voters to support a quarter-percent sales tax to go towards public safety projects, including Missouri’s first drug court. This gave her an enormous amount of authority over project partners. “Frankly I had the money to give out. If the police didn’t play nice and the treatment people didn’t play nice, I had a great stick: funding for other things that I could hold over their heads,” McCaskill said.

Early drug court leaders also had another thing going for them: consummate communication skills. This could be because, as McCaskill points out, judges and prosecutors, as lawyers, are trained persuaders. In addition, many of them run for election, ensuring that they know how to win supporters. McCaskill feels that prosecutors are the best advocates for drug courts precisely because “they’re politicians – they have the connections, the skills. Most of them have had their upbringing in a courtroom and think on their feet and are articulate.”

A final leadership lesson worth noting is that the early drug court leaders worked effectively to promote change within the existing system. While visionary, they

weren't radicals – they were attempting to reform court practice, not overturn it. Drug courts, after all, are still courts. The strategy of working from within the system proved to be critical in both getting drug courts up and running and paving the way for broader acceptance.

**Salesmanship:
The Art of Selling
Drug Courts**

The idea of “selling” drug court has been with the model from its inception. That’s largely because a drug court depends on the participation of so many partners, including court administrators, treatment providers, prosecutors, defense attorneys, judges, police, probation officers and others. In order to get buy-in from these various groups, advocates of drug courts have had to craft careful arguments demonstrating why the model offers benefits to all institutional partners.

From the early days, advocates have worked on selling the drug court concept on not only a local level, but on state and national levels, too. The National Association of Drug Court Professionals was created in 1994 to advocate for drug courts. In turn, the association encouraged practitioners to form their own state associations to help generate local momentum for drug courts. The Louisiana State Association of Drug Court Professionals, for example, was created in late 1997 to lobby the legislature for more drug court money, to support the development of a management information system and to create statewide best practice standards. The association also began sponsoring a state conference. The first conference, in 1998, was less about substance and more about getting the word out about drug courts, according to organizers. Governor Foster supported the effort by signing a letter of invitation to potential conference participants. For a little-known initiative, the governor’s letter sparked enormous interest. “We had 120 people at the first meeting and they didn’t even know what drug courts were,” said Lars Levy, the administrative director of drug treatment services for St. Mary Parish’s five drug courts.

In addition to creating professional associations, drug court advocates looked to other ways to sell the idea of drug court. An event that speaks eloquently for this purpose, of course, is a drug court graduation. Virtually every drug court invites to graduations not only friends and relatives of graduates, but community leaders, elected officials and members of the press. The stories of jaded observers who have been converted by the drama of a graduation are legion.

Judge Schwartz, for example, invited one of New York’s main skeptics, Deputy Chief Administrative Judge Joseph J. Traficanti Jr., along with New York’s chief judge, Judith S. Kaye, to the Rochester Drug Treatment Court’s first graduation. Kaye, who had already demonstrated a commitment to innovative court management, not only accepted the invitation but agreed to speak. From that point forward, Kaye and Traficanti were both drug court supporters, and attended drug court graduations frequently. In fact, under Kaye’s management, nearly a dozen drug courts opened in New York over the next two years.

In her “State of the Judiciary” address, delivered in March 1998, Kaye explained: “At our last drug court graduation, Judge Traficanti told me that he would either have to stop attending these events or learn how to cry in front of 200 people. I know the

feeling. It is a moving and gratifying experience to attend these graduations and hear long-time substance abusers say ‘I wasn't just arrested, I was saved.’”⁹

Other drug courts have been successful at attracting press coverage of drug court graduations – in some cases, so successful that they can't get local newspapers to cover them any more. For example, the local press in Boone County, Missouri, had covered so many graduations that reporters were beginning to balk at going. “Once the governor came and our daily newspaper did not show up,” said Judge Christine Carpenter. Their response was, “This isn't news, you're just using us for good PR,” Carpenter said.

Another dimension of good salesmanship involves learning how to respond to critics. For example, some critics have said drug courts are soft on criminals – a so-called “Hug the Thug” program.¹⁰ As Judge Hunter put it: “The issue for me in a conservative southern state is: how do we embrace a program that is [seen as] warm and fuzzy? How do I sell that to law enforcement when Louisiana is No. 1 in per capita incarceration in the U.S.?”

A second criticism is almost the opposite of the first: that by imposing tough requirements on defendants, drug courts set up participants for failure and expose them to more jail time than if they had gone through traditional prosecution.

Advocates have responded to these criticisms by articulating a nuanced message about drug courts. As James L. Nolan Jr., a drug court critic himself, writes in his book *Reinventing Justice: The American Drug Court Movement*, the message is: “Drug courts are tough and therapeutic at the same time.”¹¹ Drug court judges, for example, often point out that participants are subject to more intensive supervision than they would be if they were supervised by probation. On the other hand, they also stress that drug courts provide a helping hand to addicted offenders who have hit rock bottom.

The Art of Salesmanship

Drug court practitioners have shown skill at building support for the model. The strategies they have used include:

- **Creating state professional associations and holding annual conferences;**
- **Inviting key policymakers to attend drug court graduations; and**
- **Attracting favorable press coverage.**

Finally, drug court practitioners have crafted a nuanced message – that drug courts are tough and therapeutic at the same time – that appeals to a broad political spectrum.

The drug court message – saving jail space for violent offenders; turning offenders into productive citizens; reducing recidivism; and strengthening supervision of participants in drug treatment – has played well in both liberal and conservative states. Drug courts have made use of research – however provisional – to strengthen this sales pitch and respond to the concerns of critics.¹² John Creuzot, a state district judge in Dallas, Texas, for example, said a favorable recidivism study of his court as well as a cost-benefit analysis that showed how every dollar spent on treatment

produced a \$9.43 savings helped him garner the support of Texas Governor Rick Perry and other state leaders.¹³

Mastering the ins and outs of state politics has been critical in helping to spread the drug court model. McCaskill, the former Jackson County, Missouri prosecutor, saw a natural advantage in having judges, prosecutors and police take a lead role in developing drug courts. “Frankly, it’s important that the prosecutors and police be in the forefront because it’s easy to pigeonhole drug court in the social service sector.” To McCaskill, this type of hardnosed political calculus is critical if drug courts are to successfully go to scale. The lesson for the long-term, McCaskill said, is that “the drug court movement needs to become more of a political player.”

**Legislation:
The Role of
Statutes in Drug
Court Growth**

The role legislation plays in relation to drug courts varies from state to state. In some states, there is little or no legislation pertaining to drug courts. In New York, for example, the court system, which is leading the effort to institutionalize drug courts, has not sought enabling legislation; court system leaders argue that it is both unnecessary and potentially restrictive. In Deputy Chief Administrative Judge Joseph Traficanti’s words, it would be “an invasion of the executive and legislative branches into the judicial branch of government.” Ohio has also avoided enabling legislation, fearing it would prove too restrictive, according to Melissa Knopp, program manager of specialized dockets for the Supreme Court.

In many states, however, legislation has been an integral part of the proliferation of drug courts. Mike Loeffler, an assistant district attorney in Bristow, Oklahoma, said counties could have technically created drug courts without legislation, but he added, “I think it makes it more politically palatable if an enabling statute exists, especially for prosecutors.”

Similarly, Judge Hunter and then-St. Mary Parish D.A. Boudreaux in Louisiana pursued legislation more for political than legal reasons. Basically, they believed that a law authorizing the creation of drug courts was the best tool to get the attention of the Louisiana legal community. A law was not technically required – St. Mary Parish launched its court without one – but Hunter saw Louisiana House Bill 2412 as a tool in the public relations campaign to legitimize drug courts. The law made it clear that court-supervised drug treatment was an officially sanctioned option for every parish in the state. The legislation made participation contingent on a plea of guilty, allowed the court to “impose any conditions reasonably related to the complete rehabilitation of the defendant” and allowed for convictions to be set aside and prosecutions to be dismissed upon successful completion.

The only point of controversy in negotiations over the wording of the bill was the right to determine eligibility. “Everybody wanted to decide who got in,” Hunter said. The law gives the district attorney the right to refer defendants to the program but reserved for the judge “the final determination of eligibility.”

The language in the law was opaque enough, however, that a turf battle between a handful of judges and New Orleans District Attorney Harry Connick Sr. continued for several years. The judges insisted that they didn’t need a referral from the prose-

cutor to accept a client into the program. But Connick sued, feeling that by providing intensive supervision of defendants, drug court judges were usurping the executive-branch authority of the probation department.¹⁴ The issue made its way to the state Supreme Court, which ruled that “a defendant may only be considered for the program upon the recommendation of the district attorney.”¹⁵ This ruling gave prosecutors strong control over drug court operations, ensuring that programs could no longer admit clients without a prosecutor’s consent. Hunter called the lawsuit merely a “bump in the road” in the growth of drug courts in Louisiana.

In Missouri, drug court supporters pursued legislation to create a Drug Court Commission, composed of agency heads from courts, corrections, public safety and public health to oversee drug court development at the state level. The legislation also had practical implications, allowing for “a bigger budget and staff” for the commission, said Ann Wilson, the alcohol and drug abuse coordinator with the Office of State Courts Administrator. “The point of the legislation was to create state funding and create new positions, like drug court administrators,” Wilson said.

Laws Creating Alternatives to Incarceration

Legislation, of course, does not have to directly mention drug courts to be helpful to their development. While Ohio doesn’t have any laws on the books prescribing how drug courts should operate, the legislature has adopted some laws that have supported the work of drug courts. The most significant law is probably the sentencing revision legislation known popularly as Senate Bill 2. The bill, adopted in 1996, rewrote the felony sentencing laws in Ohio and established a presumption that lesser felony offenders (those in the 4th and 5th degrees, except for 4th degree drug offenses) should not go to prison but rather remain in the community under probation. The bill does not require substance-abuse treatment as a condition of probation, but it does urge judges to provide offenders with substance-abuse treatment or some other appropriate intervention before sending them to jail for a violation.

Although the law was originally drafted by the Ohio Criminal Sentencing Commission in 1993 – and thus did not have drug courts in mind – it has served to encourage some judges who might otherwise have been reluctant to endorse the drug court concept. “Senate Bill 2 came about more with an eye toward dealing with crowded prisons in a logical enough way to make sure we have enough space for the worst guys,” said David Diroll, director of the sentencing commission. An important key to the law’s success is that the state made an investment in the mid-1990s in treatment and other services. “It works because the resources are there,” Diroll said.

Another important law for Ohio drug courts is Statute 2951.041, known as “Intervention in Lieu of Conviction.” The law began its life in slightly different form in the late 1970s, but it was rarely used, Diroll said. The original law said a judge could sentence any low-level offender, including repeat offenders, to residential substance-abuse treatment so long as the offender entered the treatment immediately and was not on a waiting list. It made no provision for other forms of treatment, and it also required the judge to send the offender to prison if he or she violated.

“It was a pretty inflexible statute,” Diroll said. “It seemed to ratchet you from diversion to prison without steps in between.” The sentencing commission proposed changes to the law, which were adopted by the legislature and went into effect in 2000. This time, the sub-committee that worked on the revision had drug courts in mind. In fact, one of its members was Judge Deidre Hair, the state’s first drug court judge.

The new law defined intervention broadly to include abstinence from the use of illegal drugs and alcohol, regular testing and “any other treatment terms and conditions similar to community control sanctions that are ordered by the court.”

“A lot of judges have told us that that [the legislation] gave them permission to do drug court,” said Fritz Rauschenberg, a program administrator at Ohio Department of Alcohol and Drug Addiction Services and former research chief at the Ohio Criminal Sentencing Commission. In fact, some drug courts have based much of their program on the language in the statute.

Laws that Require Jurisdictions to Create Drug Courts

Perhaps the most aggressive use of legislation are laws that actually require jurisdictions to create drug courts. One of the most explicit examples is Texas House Bill 1287, adopted in 2001, which mandated the creation of drug courts by September 1, 2002 in counties with populations of more than 550,000. The legislation also requires drug courts to follow the key components, a program framework promulgated by the Department of Justice.

Texas has seven counties with more than 550,000 residents, and four of them already had or were planning drug courts. As for the remaining three, none had drug courts in place by the statutory deadline. The law threatened to withhold funds for community supervision and corrections departments from non-compliant counties but the executive branch has yet to carry out the threat. (The counties have been non-compliant largely because they lack sufficient funds to pay for treatment, according to the Texas-based Criminal Justice Policy Council.)¹⁶

Judge John Creuzot, who presides over drug court in Dallas, thinks the law “is great for drug court.” He draws a parallel between the coercion that takes place in a drug court and the coercive effect of legislation. “Can you force a drug addict to treat-

Legislation: A Tool Used to Advance Drug Courts

In some states, legislation has played an important role in advancing drug courts.

Louisiana’s House Bill 2412 made court-supervised drug treatment an officially sanctioned option for every parish in the state, helping to legitimize drug courts. Texas House Bill 1287, adopted in 2001, mandated the creation of drug courts in large urban counties.

Legislation does not have to mention drug courts directly to advance their growth; in Ohio, judges have cited two statutes that encourage the use of treatment as an alternative to incarceration as important legal justifications for drug courts.

ment? The answer is yes. If you force them to do it, will it work? Well, again, the answer is yes. I don't see why that paradigm isn't good here, too," Creuzot said. "I've seen judges in other states assigned to drug court and they come in angry and resentful ... and then after a few months they're wondering why they weren't doing it all along, and I think it's the same thing that can happen to communities [that are ordered by legislation to create a drug court]."

Referendums can also impact drug court, as has been the case with Proposition 36 in California. In November 2000, 61 percent of voters approved the measure, which diverted first- and second-time drug offenders into treatment and added \$120 million annually for treatment programs statewide.

Proposition 36 has had a mixed impact on drug courts. While drug court advocates actively lobbied against it, the initiative has not turned out to be as bad for drug courts as expected. On the one hand, it greatly restricts judicial discretion, limiting the use of jail as a sanction (which reduces the leverage judges have to compel offenders to seek treatment) and forcing judges to impose a final sentence after only two drug relapses (less leeway than is often provided in drug court). On the other hand, drug court advocates have helped create implementation standards that closely mimic drug court protocols. In areas such as promoting early intervention and creating links between courts and treatment agencies, "the drug court model is being used by the vast majority of courts to implement Proposition 36," said Judge Stephen Manley, the supervising judge of the Santa Clara County Superior Court and a member of a court system-led work group on Proposition 36. In addition, the courts have created a mechanism for Proposition 36 failures to go directly into drug court.

The issue for drug court advocates is whether or not to support Proposition 36-style ballot initiatives in other states. In Ohio, drug court supporters played a key role in turning aside an initiative patterned after Proposition 36, arguing that it would have a destructive impact on drug courts. But this was a costly position, especially in a tough fiscal climate, since it meant foregoing additional funding for drug treatment – specifically \$38 million annually for the next seven years.

**Federal Support:
Money and
Guidance**

The most obvious fuel for drug court growth has been the federal government, which since 1996 has provided millions of dollars a year in planning, operating and enhancement grants, along with training and technical assistance, to over a thousand drug courts. Most of the money – up to \$50 million a year, in recent years – has come from the Department of Justice, but other agencies, like the federal Center for Substance Abuse Treatment, have also pumped money into operations and research.

Hundreds of drug courts have relied – and many continue to rely – on federal dollars. In New York, court administrators used the federal grant-making process not only to promote the creation of drug courts but to control the process. Jonathan Lippman, the court system's chief administrative judge, required all prospective drug courts to submit grant applications through his office. "We used the grant process to control growth," said Michael Magnani, an administrator in Lippman's office.

Even more importantly, perhaps, the federal grants came with rules and requirements that enforced a level of uniformity and quality control on the new courts. According to Magnani, “By having all grants come through our office, we could hold each court to the grant requirements and, in that way, establish controls and standards. [Through] the feds [we] enforced the 10 key components, the team building, etcetera.”

Ten Key Components

The 10 key components may, in fact, be the most enduring legacy of federal involvement in the drug court movement. Written by a committee of practitioners assembled by the National Association of Drug Court Professionals in 1996, with funding from the Department of Justice, the 10 key components received the federal government’s official stamp of approval when they were published by the Department of Justice as “Defining Drug Courts: The Key Components” in January 1997. The components clearly articulate such principles as prompt placement of clients into treatment, reduced adversarialism and the use of frequent testing to monitor compliance.

Interestingly, the authors of the components acknowledge “that local resources, political, and operational issues will not permit every local adult drug court to adopt all aspects of the guidelines.” In fact, they say that the components are intended only to be “inspirational” and not a “certification or regulatory checklist.”

The Department of Justice never actually required programs to adhere to the com-

ponents, although it did begin to require grant recipients to discuss the key components in their applications. Practitioners over time began to treat the components as requirements, and a number of states actually codified the 10 key components into law. In Texas, for example, a “drug court program” is statutorily defined as a program that follows the 10 key components.

In many respects, the 10 key components helped unify the drug court movement by creating a set of universal principles. It allowed practitioners in one state to converse with colleagues across the country without having to first explain to each other what they meant by the term “drug court.” It has also allowed states to ensure a level of consistency without being overly restrictive. In Missouri, for example,

Department of Justice: A Key Partner

Since 1996, the U.S. Department of Justice has been drug courts’ single biggest patron, providing several hundred million dollars in planning, operating and enhancement grants, along with money for training and technical assistance, to get drug courts up and running. Importantly, by encouraging grantees to follow a core set of program guidelines – articulated in a document known as the “Key Components” – the federal government has helped unify the drug court movement and forge a common identity for the model. Another legacy of the federal government’s involvement is the congressionally mandated requirement that grant recipients not accept violent offenders. As the institutionalization of drug courts progress, however, some practitioners are asking if the 10 key components should be modified, or even if new recommendations should be developed in light of close to 10 years of drug court practice and research.

“each county is free to set their own rules, within the constraints of [the] 10 key components,” said Steve Narrow, coordinator of the Jackson City Drug Court.

But as the movement has matured, practitioners have had to grapple with the reality that some courts simply don't have the resources to adhere to all the components. In addition, as research into drug courts expands, evaluators are asking which of the original components are truly essential, raising the possibility that some of the components may be found to have little or no impact on rates of abstinence or recidivism.

All this means that as the institutionalization of drug courts progresses, many administrators are wondering how to apply the 10 key components to circumstances in their states. Should the components be required? Should they be non-binding guidelines? Should they be modified in some way – and if so, how? Or should new guidelines be developed?

Another legacy is Congress's requirement – part of the 1996 Crime Bill – that grant recipients not accept violent offenders. Some drug court practitioners think the future of drug courts rests in accepting a broader array of participants, including those with a history of more serious crimes. One reason for this is that the serious offender is more likely to be prison-bound, and thus the jurisdiction is more likely to realize substantial savings by sending him into treatment. In addition, the judge has a larger hammer (the threat of a long prison term) to motivate compliance. But in many jurisdictions there is a deep-seated reluctance to move in that direction. Part of that reluctance can presumably be traced to the congressionally mandated ban on working with violent offenders.

Conclusion

Drug courts seem to have come along at the perfect time. When the drug court concept was born, criminal justice and drug treatment systems had, in their own individual ways, begun to rethink conventional practice. Treatment programs were having difficulty increasing retention rates while the criminal justice system was struggling to address the intertwined problems of drug addiction and crime. The drug court model brought these two systems together, allowing each one to capitalize on the other's strengths. The results – greater program retention and lower rates of recidivism – have led to court and treatment systems coming back for more. In a span of 15 years, more than a thousand drug courts have opened around the country, and practitioners in many states are now on the brink of something that would have seemed preposterous in 1989: full-scale institutionalization.

Section Two: Going to Scale

By 1999, New York had about 30 drug courts. In a state with 62 counties and 19 million people, that meant that drug courts were available only in a limited number of jurisdictions to a relatively small number of defendants. This situation led Chief Judge Judith S. Kaye to appoint a special commission to answer, among other things, the following questions: If judicially monitored drug treatment offered an effective approach to working with drug-addicted defendants, should the court system ensure its availability in every corner of the state? On the other hand, if such an approach had not proven effective, shouldn't it be scrapped and other approaches explored?

The New York State Commission on Drugs and the Courts, chaired by Robert B. Fiske Jr., assembled a group of judges, prosecutors, defense attorneys, researchers and experts in areas like treatment and probation to study the impact of drug cases on the court system. The resulting report, "Confronting the Cycle of Addiction and Recidivism," which was released in June 2000, strongly endorsed drug courts and the broader concept of judicially ordered and monitored drug treatment for non-violent addicted offenders.¹⁷

At that time, drug courts in New York had a one-year retention rate of over 60 percent and a one-year re-arrest rate of less than 15 percent – "far below the one-year recidivism rates of drug offenders on probation and drug offenders released from prison, which are generally about 34 to 35 percent," the report found. The report also noted that it cost between \$29,000 and \$47,000 a year to incarcerate an individual compared to an average cost of \$18,400 per year for residential drug treatment and \$5,100 for an outpatient program.

Up until that point, however, there had been little organized effort to expand the availability of drug courts and other court-based treatment programs, the commission said. Efforts to date had been "ad hoc" and "patchwork." It was the commission's feeling that "if this type of treatment is to have a true impact, it must be expanded considerably, and in some coordinated way." The commission then called upon the statewide Office of Court Administration to "take a leadership role in significantly expanding the availability of drug treatment, with the goal of making treatment available to the entire universe of eligible addicted, non-violent offenders in every jurisdiction."

On June 22, 2000, Kaye formally adopted the commission's recommendations, an announcement that resulted in widespread media coverage, including an article on the front page of the *New York Times*. In her State of the Judiciary Address in January 2001, Kaye announced a three-year plan to expand drug courts to all 62 counties in the state. The agenda was perceived, both inside and outside the court system, to be highly ambitious, calling as it did for at least once criminal drug court and one family drug court in all 62 jurisdictions.

"To have drug courts embraced by our chief judge . . . let me know that the initial desire to set up a drug court was not in vain," said Judge Robert Russell, founder of the Buffalo Drug Treatment Court (the state's second drug court), who sat on the Fiske Commission. If there was anything that could be remotely construed as criticism, it was expressed politely by practitioners at drug courts already in existence who were concerned that the court system's assertive embrace of drug courts might impose an unwelcome bureaucracy on what they felt needed to be a flexible operation.

"In the first year, we were cautious," said Jeff Smith, the coordinator for 12 small, pre-existing drug courts in eight upstate counties. "We weren't sure what the state wanted. Are you suggesting you're going to take a grass-roots effort and turn it into a bureaucracy?"

An Operational Challenge

The commission recommended that the court system appoint a "representative who is vested with the authority (and the necessary staff and resources)" to coordinate the expansion of drug courts. In October 2000, Chief Administrative Judge Jonathan Lippman appointed Judge Joseph J. Traficanti, who by the end of 2003, helped establish 108 drug courts across the state.

The appointment of Traficanti reflected the recognition that launching drug courts on such a wide scale was a significant operational challenge. Traficanti – a Republican and former prosecutor – would not only have to navigate a system that included layers of village, town, county and district courts, but also sell the idea to communities that, left to their own devices, might have little or no interest in the drug court concept. Traficanti, who six years earlier had looked askance at Judge Schwartz's efforts to found the Rochester Treatment Court, noted that the statewide coordinator needed "to be someone who has a sense of New York State's legal culture and who understands court operations as opposed to someone who might know a thing or two in theory but not how things work on the inside."

Traficanti, a judge since 1982, clearly had the knowledge of an insider. As deputy chief administrative judge for courts outside New York City, Traficanti had responsibility for the operations of courts in 57 counties. That fact gave him the leverage he needed to carry out Kaye's mandate.

Different Models

New York's effort is but one example of drug court institutionalization. Like Chief Judge Kaye, leaders in a number of other states are eyeing ways to integrate drug courts into their court and drug treatment systems. In states such as Missouri,

Louisiana, Ohio, Utah, Wyoming, California and Virginia, a new set of actors has emerged to manage and oversee drug courts. These actors include administrators like Judge Traficanti in New York, who created the Office of Court Drug Treatment Programs specifically to oversee the implementation of drug courts in every county in the state. They also include new boards like Missouri's Drug Court Commission, which pools funds from various state agencies and issues grants to drug courts.

Drug court institutionalization is, of course, a massive and complicated task. That basic truth makes it not only difficult to carry out, but difficult to describe. States are approaching the task in their own way, with different goals, different resources, different political considerations and different legal and regulatory landscapes.

While each state's approach to drug courts is unique, it's possible to identify three basic models that states are using to pursue institutionalization. These are:

Judicial Branch Model Both New York and Louisiana's statewide institutionalization efforts are led by the judicial branch. In New York the court system dedicates close to \$12 million annually for drug courts through the Office of Court Drug Treatment Programs. While the court system's leadership has never been questioned in New York, in Louisiana this question was settled by the legislature. In July 2001, the legislature transferred authority over drug courts from the state's treatment agency to

the Supreme Court, which administers \$13 million dollars in annual funding.

State Overview

Louisiana

In Louisiana, responsibility for drug courts shifted from the state's treatment agency to the judiciary in July 2001. The state legislature approved the move and at the same time appropriated \$13 million annually to fund drug courts. To administer the money, the Supreme Court created a Drug Court Office.

Drug Court Office staff have traveled throughout the state, meeting with drug court practitioners and treatment professionals. The office released drug court program standards in the summer of 2003 and is also working on a statewide management information system and voluntary certification program for drug court professionals. As of 2003, there were 38 adult and juvenile drug courts across the state.

Meanwhile, the Louisiana Association of Drug Court Professionals, created in 1997 to lobby the legislature for funding and to build support for drug courts, remains one of the most active state associations in the country.

Executive Branch Model From the early days, the judicial branch has been an enthusiastic supporter of drug courts in Ohio. However, drug courts' primary funder has been an executive branch agency – the state's drug and alcohol treatment agency. (Wyoming has taken a similar approach.)¹⁸ Currently, the Ohio Department of Alcohol and Drug Addiction Services distributes \$2.5 million in grants towards treatment services to 19 drug courts and works to create linkages between the criminal justice and drug treatment systems.

Collaborative Model Missouri has taken a collaborative approach to drug courts. (Utah is another exam-

ple.)¹⁹ Rather than filter drug court money through any single agency, Missouri created the Drug Court Commission, which brings together leaders of the court system and three executive branch agencies (Mental Health, Corrections and Public Safety) to coordinate and jointly fund drug courts across the state using a single statewide budget.

New Tools, New Challenges

State leaders have made considerable progress in their efforts to institutionalize drug courts. And yet, considerable challenges lie ahead. Those challenges can be broken down into five key areas:

Centralizing Authority As states have assumed more financial responsibility for drug courts, they have also begun to take on more policymaking authority in areas such as setting and enforcing best practices, creating statewide management information systems and targeting new populations for drug courts. While some amount of centralized authority seems necessary for drug courts to thrive, questions remain about the dynamic between a “top-down” versus “bubble-up” approach. Which functions should be centralized and which should be left at the local level? How are states balancing the need for quality control and uniformity with the desire to encourage local flexibility? And which state agency or branch of government should lead the drug court effort?

Building Support To advance institutionalization, who needs to be on board? Which individuals and agencies need to be cultivated? In New York, state court administra-

State Overview

Ohio

In Ohio, the state’s treatment agency, the Department of Alcohol and Drug Addiction Services, has been a key player in the development of drug courts. In addition to being an early drug court supporter, along with the Supreme Court, the Department subsidizes treatment services for 19 of Ohio’s 55 drug courts and funds other courts through county boards that dispense discretionary funds.

State influence over drug courts is necessarily limited by the state’s “home rule” tradition: elected judges and county boards have considerable authority over how local drug courts are run on a day-to-day basis. Nonetheless, both the Department of Alcohol and Drug Addiction Services and the Supreme Court have worked aggressively to spread the drug court model, hosting statewide conferences and providing technical assistance to local jurisdictions that request it.

State officials and drug court advocates were also given an opportunity to galvanize support for drug courts and educate the public about how they work during the debate over Issue I, a November 2002 ballot initiative that called for suspending criminal proceedings and providing treatment for first- and second-time drug offenders. Fearing that the initiative would reduce the discretion of judges and take away jail as a potential sanction, drug court advocates helped mobilize opposition in a successful effort to defeat the proposal. While the campaign helped solidify drug courts’ place in the state, the defeat of Issue I was also costly: Had it passed, the initiative would have greatly increased funding for treatment services throughout the state.

State Overview

Missouri

In 2001, Missouri Supreme Court Judge William Price created with legislative approval a multi-agency Drug Court Commission to oversee drug courts statewide. The commission, composed of representatives of key state agencies (Mental Health, Corrections, Courts, Public Safety), was established as a means of setting a consistent statewide drug court policy.

The commission's first act was to pull together, into a single fund, multiple drug court funding streams (over \$3 million in federal, state and local grants) and establish a formal application process for drug courts seeking support. As of 2003, Missouri had 35 drug courts in operation, with 13 more in planning stages, and a total of 2,201 drug court graduates. The challenge going forward for the commission is to use the grant-making process to drive policy and enforce best practices.

tors, in order to establish a drug court in every county, need to cultivate the support of judges, prosecutors and defense attorneys at the local level. In Missouri, the challenge has been different – to create alliances among the leaders of the various executive branch agencies who participate in the Drug Court Commission, persuading them to share resources in the name of drug court institutionalization. In each state, drug court advocates have learned to reach beyond the boundaries of a single agency or branch of government in an effort to obtain needed resources and support for institutionalization.

Establishing Best Practices The question of best practices has been with drug courts since the begin-

ning. The challenge for state leaders is identifying a set of best practices that work in all environments – in big cities and rural counties, in communities with numerous treatment resources and those with limited capacity. Another challenge is updating best practices as new research adds to an understanding about how and in what circumstances drug courts work. And even if a universal set of best practices is identified, the question arises: How should they be disseminated?

Creating Infrastructure For many administrators, building strong drug courts means building statewide infrastructure – management information systems, research benchmarks and staffing protocols – for all drug courts. What kinds of tools need to be developed and implemented to sustain drug courts over the long haul? Drug court leaders in the states profiled have identified a number of key investments that can be made to advance institutionalization.

Increasing Capacity For drug courts to reach their full potential, they need to reach as many potentially eligible clients as possible. But how is this best achieved? In jurisdictions like Hennepin County, Minnesota, Dade County, Florida, and Brooklyn, New York, drug court leaders have identified a number of different models for reaching a larger population. Some have accepted more serious offenders into drug court, thereby greatly expanding the drug court universe. Others are experimenting with exporting drug court principles to conventional courtrooms in an effort to make judi-

cially-supervised drug treatment the new “business as usual” within the courts. A third strategy has been to apply the drug court approach to different non-drug-related cases. Each strategy has its own set of trade-offs, advantages and disadvantages.

What follows is a look at how states are answering these various challenges.

Centralizing Authority

Drug courts bring together in partnership different branches of government and numerous outside partners. As such, it isn’t always obvious in any given state who is – or should be – overseeing the process of institutionalization. Further, since drug courts’ success has long been attributed largely to leadership at the local level, many drug court practitioners are wary of rules or regulations that are not home-grown. This can put leaders at the state level in a bind as they try to define their role and scope of responsibilities. Which functions should be carried out by a statewide overseer of drug courts and which should be left to individual courts? To what extent is uniformity among drug courts needed or desirable? In one way or another, each

state is grappling with these issues.

New York

In New York, the statewide drug court leader has been obvious: the court system. This is the case for a number of reasons. First and foremost, the court system is “unified,” meaning that many administrative functions are consolidated, rather than handled on a county-by-county basis, as is the case in non-unified systems like Ohio’s and Missouri’s. This means that court administrators at the state level have a degree of power over judicial assignments and responsibilities and can decide how money is spent across the system. They also have the authority to require courts to adopt certain policies and procedures.

Another crucial factor has been Chief Judge Judith S. Kaye’s strong interest in drug courts and other “problem-solving courts.” Since the beginning of her tenure as chief judge in 1993, Kaye has made the development of drug courts, domestic violence courts, community courts

State Overview

New York

In January 2001, New York Chief Judge Judith S. Kaye announced ambitious plans to launch drug courts in each of the state’s 62 counties. To implement the plan, Kaye created the Office of Court Drug Treatment Programs and appointed Deputy Chief Administrative Judge Joseph J. Traficanti Jr. as the office’s first director.

By the end of 2003, 108 drug courts were in operation across the state, including 78 criminal drug courts, 24 family drug courts and six juvenile drug courts. An additional 77 drug court teams plan on opening drug courts in 2004. According to the Office of Court Drug Treatment Programs, over 19,000 individuals have participated in drug court programs throughout the state.

The Office of Court Drug Treatment Programs has also created a management information system for use by drug courts throughout the state, commissioned research to identify characteristics of drug courts that promote program success, piloted a screening and assessment tool to identify and assess all potential drug court clients, and created new civil service positions that allow drug courts to hire drug court staff like case managers and resource coordinators.

and other innovative courts a hallmark of her administration. And her authority to launch these new courts is strengthened by the fact that she is appointed by the governor for a term of 14 years, in contrast to other states where judges must run for reelection more frequently (every six years in Louisiana) or where the position of chief judge is rotated among the judges on the state’s highest court, as is the case in Missouri (where a judge’s tenure as chief is limited to only two years).

Another factor making it easier for the court system to serve as lead agency in New York is the fact that finding funds for treatment in New York is easier than it is in many other states. New York is a relatively treatment-rich state – Medicaid managed-care plans are required by statute to pay for court-ordered treatment, while the state reimburses treatment providers for uninsured clients who can’t pay their bills. Because of this, the court system has been able to focus its resources not on paying for treatment but on hiring new court staff, developing new technology and training judges and others in the drug court approach.

The question of how the court system has used its authority is an interesting one. While administrators have declined to issue binding rules about how drug courts should be structured, and have rejected the necessity of legislation to guide their implementation, they have nonetheless taken aggressive steps in support of drug courts. For example, administrators authorized drug courts to hire resource coordinators to serve as a bridge between the courts and off-site treatment programs despite a system-wide hiring freeze. The state court system has also organized a series of trainings for drug court players and non-drug court judges, conducted a statewide evaluation of drug court outcomes and is putting together a set of best practice manuals as a resource for drug courts. Finally, the court system has created a universal management information system for all courts to use to track program outcomes. (See below for a more detailed description of these efforts.)

Thus it seems that New York has walked the line between top-down governance

and local control by making certain tools, such as a universal management information system and trainings, available to all drug courts, but then leaving individual courts to determine their structure (e.g., pre- or post-plea, length of phases, types of sanctions and rewards, etc.) and how they will run on a day-to-day basis.

Ohio

In Ohio, the Department of Alcohol and Drug Addiction Services has been drug courts’ primary funder. This has been due largely to the

Centralizing Authority

Over the last few years, policymakers in Ohio, New York, Louisiana and Missouri have begun centralizing control over drug courts at the state level. The actions they’ve taken include:

- **Creating statewide offices, commissions and departments, such as Missouri’s Drug Court Commission, New York’s Office of Court Drug Treatment Programs and Louisiana’s Drug Court Office, to oversee drug courts.**
- **Obtaining more funding to support drug courts and using the grant process to set and enforce minimum standards.**

Department's cabinet-level status and the leadership of the Department's director, Luceille Fleming, who headed the agency from its creation in 1989 through her retirement in mid-2003. Fleming made drug courts – and, more generally, linkages between the criminal justice and drug-treatment systems – a priority. The Department of Alcohol and Drug Addiction Services currently subsidizes treatment services for 19 of Ohio's 55 drug courts and funds additional courts through county boards that dispense discretionary funds.

The Supreme Court's role in drug courts is necessarily limited because the court system is not unified and each county has significant latitude in organizing and administering its courts. And yet, the court system, led by Chief Justice Thomas J. Moyer, has also played a role in advancing drug courts. For example, in 1993, the Supreme Court co-sponsored with the Department of Alcohol and Drug Addiction Services a statewide conference on drug courts with about 80 participants. Also, since 1992, the Supreme Court has had staff assigned to support the development of drug courts and, more recently, other problem-solving courts, like domestic violence courts and mental health courts.

Over time, the Supreme Court and the Department of Alcohol and Drug Addiction Services have developed a comfortable working relationship. Officials at both agencies emphasize that there is a strong partnership between the two agencies, which work together regularly to plan conferences and provide technical assistance to local jurisdictions. They also agree that the state's treatment agency is the appropriate locus of authority when it comes to the treatment side of drug courts, and the Supreme Court asks drug courts to use drug treatment counselors certified by the Department of Alcohol and Drug Addiction Services.

This shared authority over drug courts does, at times, present difficulties since local justice and treatment systems do not always see eye to eye. For example, in Fairfield County, Judge Steve O. Williams has refused to use an Addictions Services-certified treatment program and has instead raised money to hire his own counselors for his juvenile drug court. As a result, his court does not receive Department of Alcohol and Drug Addiction Services funding for drug court treatment services. Not surprisingly, Williams feels that the Supreme Court should be more involved in funding drug courts. "The plain fact is that drug courts are courts," Williams said.

Missouri

In Missouri, Supreme Court Judge William Price Jr. in 2001 created – with legislative approval – a multi-agency Drug Court Commission to oversee drug courts around the state.

Prior to the commission, Missouri's drug courts were funded through a patchwork of local, state and federal funds. Individual drug courts were free to pursue federal grants, and many received supplemental funding from local authorities. In addition, the state provided \$1.6 million in annual funding to various counties for drug courts through the Department of Corrections, albeit without any specific instructions about how the money was to be used.

For Price, the problem was that no single agency had authority to oversee drug courts effectively. “We had a great program but no control over who gets funding and what they do,” he said. While the Department of Corrections had helped get a number of drug courts up and running, they were doing little to track where the money was being spent or what results the new courts were achieving, Price said. Also, by law, the Department of Corrections could establish only adult drug courts – meaning that state dollars could not go to family drug courts.

Price’s solution was to seek legislative approval for the Drug Court Commission, composed of representatives of key state agencies that would administer – in a single general fund – a pool of money related to drug courts. “The idea was to have an umbrella organization that will gather data about how drug courts are being funded and [promote] drug court best practices,” Price said. The Department of Corrections was reluctant to relinquish control of funding, however, resulting in a “knock down, drag out battle” in the legislature, Price said. Ultimately, through legislation – and after a change in administration that resulted in the appointment of a new director of corrections, Gary Kempker, a supporter of drug courts and an active member of the commission – the Department of Corrections money was added to the commission’s pot.

In addition to receiving the \$1.6 million that had previously been allocated to Corrections, the newly created commission also received \$1.1 million in Byrne grant funding from the Department of Public Safety. This was accomplished even though “it’s very difficult to pry money away from a law enforcement grant,” according to David Brown of the Department of Public Safety and a commission member. The willingness of the Department of Public Safety to re-allocate the dollars was a sign of the commission’s ability to win collaborative support. When added to \$375,000 in court funding for family drug courts, the new funding brought the commission’s total annual budget to \$3.1 million.

That still did not mean that the commission was able to identify – let alone control – all the funding that goes into drug courts. For example, the Department of Mental Health estimates that it spends \$3 million annually on treatment for drug court clients, but can’t track the amount because it does not code for drug court in its billing procedures. Michael Couty, director of the Department of Mental Health and a commission member, plans to start tracking this information. The hope is to “get a sense of the actual demand for services,” which can be used as a baseline to determine additional funding needs, Couty said.

With most, if not all, of state drug court funding under its control, the commission’s next move was to create a data collection process to evaluate individual drug court performance. The goal was to use data to help make funding recommendations under an annual grant-making process. Beginning in 2003, the commission mandated that a formal application be completed by drug courts seeking state funding. For individual drug courts, the change was noticeable. “What’s unique [about the new application],” said Steve Narrow of the Cape Girardeau Drug Court, “is that

it's very much about outcomes – [such as] how many people got sober and stayed sober, how quickly you get [individuals] engaged in treatment.”

In its first year, the commission received over \$6 million in requests for funding, twice as much as it had available in its budget. Faced with excess demand, the commission took a fairly conservative approach – to continue awarding grants to drug courts that had received funding in previous years. “We decided the thing to do this year, until we get smarter about how to allocate money, was to hold people harmless on state funding,” Price said

The challenge for the commission going forward will be to create and enforce a set of standards for all drug courts to follow. That conversation has already begun, said commission member David Brown: “Our initial agenda was ‘we’ve got a pot of money, let’s divvy it up.’ Now the discussion is ‘how are we going to hold people accountable for results?’” Still, the commission is committed to allowing a good deal of local flexibility. “We started out with the idea that local judges and prosecutors could run the program any way they wanted to. It would surprise me if [we changed that],” Price said.

Louisiana

In Louisiana, the question of “who’s in charge?” was answered by the state legislature in 2001.

Twenty-nine drug courts were up and running in the state by 2000, and several more were in the planning stages. Up until that point, the Office of Addictive Disorders, an executive-branch agency, was the primary backer of drug courts. The Office of Addictive Disorders was providing about \$1.5 million a year to fund a number of the courts, and Louisiana was attracting both planning and implementation grants from the U.S. Department of Justice. The Office of Addictive Disorders had also contracted with programmers at a local university to develop a management information system, but, unhappy with the product, it abandoned the effort, leaving Louisiana’s drug courts without a way to collect information on a statewide level.

Concern over the lack of a statewide management information system was just one of several factors that eventually propelled some judges to seek a change in leadership. Another concern was that some courts were calling themselves drug courts – and obtaining drug-court funding – while failing to provide adequate treatment services or rigorous judicial monitoring. But perhaps the biggest concern was financial. Although the Office for Addictive Disorders had funded drug courts since their inception, the other major source of funding – federal grants – was starting to dry up. In addition, the Office for Addictive Disorders had to reapply to the legislature every year for continued funding, leaving the courts vulnerable to potential belt-tightening and political maneuvering.

Drug court advocates, including Bernard E. Boudreaux, former St. Mary Parish district attorney and counsel to Governor Mike Foster Jr., felt that the Supreme Court, as a separate branch of government free from the Legislature’s line-item over

sight, could provide more secure funding. When asked in 2001 by judges in New Orleans to take over the drug court budget, Supreme Court Justice Catherine D. “Kitty” Kimball, who chairs the court system’s Budgetary Control Board, assented.

Kimball said she was convinced drug courts helped reduce recidivism and were therefore good for the long-term health of the state and the court system. When “the Criminal Court in New Orleans came to us and said their federal funding is drying up,” Kimball said she felt that the Supreme Court had no other choice but to step up to the plate. “As it turned out, courts were having the same problem all over the state. I said, ‘If we’re going to do it in one court, let’s do it for the whole state.’”

Officials from both the Office for Addictive Disorders and the Supreme Court met with the legislature and House Appropriations and Senate Finance Committee chairs to discuss the transition of control over drug courts from the Office for Addictive Disorders to the Supreme Court. The Supreme Court officially took over in July 2001. At the same time, legislators allocated \$13 million for drug courts, including \$8 million from the state budget and \$5 million from the state’s welfare block grant.

Although the transfer understandably caused some tense moments between the Office for Addictive Disorders and the Supreme Court, it was supported by most key players across the state. Members of the drug court community, like Lars Levy, the administrative director of drug treatment services for St. Mary Parish’s five drug courts, welcomed the move because they felt the Supreme Court budget was more secure and the Supreme Court would have more authority over judges to enforce standards. Even Jake Hadley, who in 1997 was the first director of the Office of Addictive Disorders to take an interest in funding drug courts, now agrees that the move was the right one, saying that “a judge or a D.A. is going to react differently if the Supreme Court says, ‘let’s do something’” than if the Office of Addictive Disorders makes the suggestion.

The current head of the Office for Addictive Disorders, Michael Duffy, indicated that it is his agency’s primary mission to maintain the integrity of treatment. “It’s a precarious position,” Duffy stated. “The problem is that this arrangement could place the judiciary in the position of having to make clinical decisions rather than legal decisions based upon clinical experience and sound clinical opinion. My only concern is that when you blur the line between clinical and judiciary, the clinical component does not suffer.”

After assuming responsibility for drug courts, the Supreme Court created a new department, the Drug Court Office, which oversees the Supreme Court’s \$13 million drug court budget. Cary Heck, who was hired to serve as the director of the office, has worked to increase the courts’ capacity to oversee treatment, hiring Sandi Record, the former director of treatment for the Office of Addictive Disorders, to travel around the state and confer with courts about their treatment practices. Record said her goal is to strengthen courts’ links to treatment. “I think there needs to be oversight of treatment,” Record said. “Treatment needs to be happening, and I’m not sure that’s always the emphasis with the courts.”

Building Support

If drug courts are to survive the transition from a series of isolated experiments to an institutionalized feature of a state's criminal justice and drug-treatment systems, they need to maintain and even expand the support – financial, logistical, political – that they've so carefully cultivated over the years. The question becomes, of course, whose support is needed? And the answer depends on the individual state's approach to institutionalization.

New York

In New York, Judge Kaye's plan to create at least one criminal and one family drug court in all 62 counties has required the cultivation of support on the local level. One of Deputy Chief Judge Joseph J. Traficanti Jr.'s first actions as director of Court Drug Treatment Programs was to convene a meeting of administrative judges who oversee the state's 12 judicial districts. The support of the administrative judges was crucial if drug courts were to be absorbed fully by the system, said Traficanti, since the administrative judges retained ultimate responsibility for day-to-day operations. "I didn't know how it would be received, but, to a person, they committed themselves to me," Traficanti said. "I was calling in some chits I'd earned over the years. That personal commitment by the administrative judges was important, because ultimately, around the state, the commitment isn't to me, it's to the administrative judges, to whom everyone in each district looks for guidance and leadership."

Traficanti also reached out to other state officials to foster cross-agency collaboration. His office has worked closely with officials from the Office of Alcoholism and Substance Abuse Services, which funds and certifies treatment providers; the Department of Children and Family Services, which oversees agencies working with parents in Family Court; and the New York State Association of Directors of Probation, since many counties rely on probation officers as drug court caseworkers.

Traficanti said the early outreach consisted largely of assuring the various agencies that the court system did not want to step on anyone's toes nor was it seeking to "compete" in any way.

The Office of Alcoholism and Substance Abuse Services, for one, has welcomed the expansion of drug courts because the courts are channeling more people into treatment and improving rates of retention, said Howard Schwartz, the office's director of criminal justice services. Today court officials and Alcoholism and Substance Abuse officials meet regularly to resolve conflicts that

Building Support

State policymakers have fostered the financial, logistical and political support necessary to institutionalize drug courts. They have done this by:

- **Crisscrossing the state to convince reluctant judges and clerks to start drug courts;**
- **Bringing together high-level executives from state agencies (courts, corrections, police, public health, social services) to send a signal to local jurisdictions that drug courts are a priority; and**
- **Campaigning against ballot initiatives, such as Ohio's Issue 1, that could dramatically affect drug courts operations.**

arise in particular jurisdictions. “We try to resolve the problem, then we go to the jurisdiction as a unified body to address it,” Schwartz said.

Within his office, Traficanti created a team of three project managers, assigning each one a different region of the state. The three project managers spent a good deal of time traveling around their regions trying to set the planning process in motion for drug courts at the county level. That process often began with a meeting of court staff and potential project partners. “Sometimes it takes two or three trips to get people to the point where they start planning,” said Kathi Chaplin, project manager for central and western portions of the state. Chaplin provided attendees with an outline that included examples of actions that New York’s existing drug courts had taken to get their programs up and running. She also helped them apply for federal planning grants and signed them up for team trainings coordinated by Traficanti’s office and the Center for Court Innovation, which serves as the state court system’s independent research and development arm. It usually takes from eight to 12 months after a drug court team is assembled for a new court to open, Chaplin said.

Traficanti and his staff say that, for the most part, judges and community partners, including district attorneys and the defense bar, have been eager to participate. The key, however, is a willingness on the court system’s part to be flexible. “Each community in New York State is like a fingerprint and has different needs,” Traficanti said. As such, “We let each drug court be self-developed. We let the whole thing come from the bottom,” said Mizzi Diamond, Traficanti’s executive assistant. As a selling point, the court system has offered each drug court not only assistance in planning and training, but money to hire a resource coordinator, pay for drug testing and buy computers and software.

In the end, “Working with the judges has been easier than I thought,” Traficanti said. “There have only been two who refused to do it, and I’ll get to them eventually.” The support of judges who are not in drug court is also important because it is these judges who are often tapped to back-up regular drug court judges when they are sick or on vacation. Some drug courts also depend on those judges for referrals. In Rochester, for instance, the number of clients has been limited by other judges’ resistance to send their cases to drug court. “Some judges still believe probation is better,” said Rochester’s supervising judge, John Schwartz. “They still have the discretion to keep the case. That is the flaw in the system, a big flaw.”

Court clerks are sometimes the least interested in drug court, said Chaplin, a clerk herself for 25 years. “Clerks hate this – their initial attitude, with some exceptions, is ‘You know what? Having to do more with less is getting old.’” Chaplin says it helps that, because of her years of experience as a clerk, she can “talk their language... I can show them how it can be done and how it can make their lives easier. I tell them how this will become the most rewarding part of their career. In 25 years, I never felt really good about what I did until I did drug courts.”

Ohio

Drug court leaders around the country have found that growing more drug courts in their states gets harder as time goes on since the only counties without drug courts are usually ones that have steadfastly refused to create them.

In Ohio, this phenomenon is exacerbated by the state's home-rule tradition: elected judges in each county have considerable authority over how their courts are run on a day-to-day basis.

In such a setting, the drug court sales pitch has required persistence. For instance, drug court leaders, like Luceille Fleming, long targeted Franklin County, home of Columbus, the state's capital, but to no avail. "We trained and trained and trained folks from Franklin County. We've invited them to the [annual Ohio Association of Drug Court Professionals] conference and offered scholarships, and brought judges and teams to Franklin County to share their experience with drug court," says Joani Moore, coordinator of drug courts for the Department of Alcohol and Drug Addiction Services.

One reason Franklin County was less interested in drug courts was because, unlike many other Ohio counties, it wasn't facing a shortage of jail space. "It's a wealthy county. It's one of the few in the state that has never been under a federal court order that would restrict the housing of sentenced inmates," Moore says. Because of this, it has been under less pressure to innovate.

In addition, the judicial philosophy in Franklin County has been "against specialized dockets," said Melissa Knopp, program manager of specialized dockets for the Supreme Court. It wasn't until 2003 that the 16 judges on the Court of Common Pleas finally agreed to start a drug court. This was largely due largely to the work of a new judge, Jennifer Brunner, who was elected to the bench in 2000 and worked on the initiative for a year with a task force that grew to over 60 criminal justice and treatment representatives. Brunner worked with people outside the court who demonstrated strong support for a drug court. The initiative was also aided by Evelyn Lundberg-Stratton, a former Franklin County judge who sits on the Ohio Supreme Court, started taking an interest in specialized dockets and urged her former peers in Franklin County to start one.

Brunner said it took her many months to develop several models and submit them to a large focus group and then to the 15 other judges for their sign-off on the plan. "I was allowed to pursue this specialty docket, as long as it would not cost the court any money – I had to find outside funds for the effort, which came from the Ohio Department of Alcohol and Drug Addiction Services through our local drug and mental health treatment funding board," Brunner said. She agreed to add drug court to her own caseload. "We carry more cases per judge than any other county in this state. In fact, our county has looked to the legislature to give us two new judges. I had difficulty convincing my colleagues that drug courts will actually reduce case-loads. They agreed to a pilot program of 50 participants. When one judge criticized the effort, saying that what the court needed was a judge whose docket was solely drug court cases, I told the judge that he was asking for a bulldozer to solve our

county's drug-related crime problem, but that we couldn't afford a bulldozer. I told the judge all I was asking for was a little ice pick like Tim Robbins in the movie *Shawshank Redemption*. The judges thereafter agreed to start a pilot program.”

Brunner believes that as more new judges join the bench, especially since the drug court is now under way, resistance to problem-solving courts in Franklin County will wane, and drug courts will be accepted as part of the court's landscape. “There's a new generation of judges getting elected to the bench, judges who see a role for restorative or therapeutic justice and the unique contribution the judiciary can make in this way to the well being of the community. When I go out into the community, people ask me, ‘What are you going to do besides show up to work and go home?’ When I talk about SAMI (substance abuse, mental illness) courts in the community, ordinary people nod their heads. They get it,” Brunner said.

In Ohio, drug court advocates also grappled with a referendum that could have dramatically affected the way drug courts operate. “Issue 1” would have amended the state constitution to require courts to suspend criminal proceedings and provide treatment for any offender charged with or convicted of illegal possession or use of a controlled substance who asks for treatment.²⁰

The campaign in favor of the referendum was supported by the three billionaires – financier George Soros, University of Phoenix founder John Sperling and Ohio insurance executive Peter B. Lewis – who had bankrolled successful campaigns to adopt similar referendums in California and Arizona. As the campaigns for and against Issue 1 built momentum from June to November, the debate became increasingly bitter and divisive. Among the opponents, led by Ohio First Lady Hope Taft and Toledo Mayor Jack Ford, were drug court practitioners and a long list of law enforcement, judicial and criminal justice organizations, as well as coalitions of treatment providers, businesses, labor and dozens of newspapers who editorialized against it.

The main concerns animating opponents were that the amendment would reduce the discretion of judges and take away jail as a potential sanction. Some also thought that amending the state constitution was not the best way to reform sentencing laws. Drug court practitioners were particularly vocal in opposing the amendment, predicting a dire future for drug courts if judges were forced to accept all comers and lost the ability to threaten recalcitrant participants with prison. “It was dangerous and detrimental to [the] whole fabric of what we built,” Fleming said.

In the end, Issue 1 was resoundingly defeated, 67 percent to 33 percent. The referendum lost in all 88 Ohio counties. The reason voters voted “no” is not clear – many, including opponents of the measure, feel voters were not reacting to the measure's policy implications but to ballot language that referred to the amendment's \$247 million cost.

The successful campaign against Issue 1 gave drug court practitioners the chance to galvanize support for drug courts and educate the public about how they work. Drug court advocates like Fleming and Judge John Durkin, president of the Ohio Association of Drug Court Professionals, lobbied heavily against the measure, writing

opinion pieces in local newspapers and participating in radio debates. “Issue 1 didn’t create momentum for drug courts – we already had that,” Durkin said. “What we accomplished was to educate local leaders, commissioners and senators that drug courts save lives and money.” Fleming noted that since the defeat of Issue 1, “Fifteen more drug courts have opened. Many more people understand it now.”

On the other hand, the fight to oppose Issue 1 was not without its costs for drug courts. For one thing, Issue 1 would have greatly increased the amount of money available for treatment. Michael Stringer, the chief of justice services for the Department of Alcohol and Drug Addiction Services until mid-2003, said that if the proponents of Issue 1 had been willing to collaborate with drug court advocates, the outcome might have been different. “But [Issue 1 proponents] just couldn’t accept the idea of coercion,” Stringer said.

Missouri

In Missouri, like New York, drug courts have benefitted from a strong push from court leadership. During Judge William Price’s two-year term as the state’s chief judge, he moved drug courts to the top of the agenda and organized a judicial conference on addiction in 1996. “We invited judges from around the state. We only had about 45 out of 305, but the facilitators were impressed with the turnout,” said Ann Wilson, a Drug Court Commission staff member who serves as the alcohol and drug abuse coordinator with the Office of State Courts Administrator. “The conference was a preliminary to talking about drug court because there was such adamant opposition to having judges care about substance abuse. I’ve seen a 180 degree turnaround in our judges’ attitudes since then.”

In addition to offering training, Price created a task force on drug courts. Its 48 members included judges, prosecutors, defense attorneys and representatives from probation and parole, drug treatment, job training and educational programs. The task force helped draft legislation that established state funding for drug courts and created new positions, like drug court administrators, to support drug court functions.

The legislation also created the Drug Court Commission, which consists of four judges and the heads of the departments of Social Services, Mental Health, Public Safety and Corrections. The commission helps to ensure open communication between all the agencies that have a role to play in drug court development. David Brown of the Department of Public Safety, who lobbied his boss for an appointment to the commission, said that the level of cooperation has been unusual. “Everyone here is a true believer,” said Brown.

Judge Lawrence Mooney, a commission member who sits on Missouri’s Court of Appeals, noted that the “degree of support” among state policymakers for drug courts was very high, noting that “we had a [drug court] conference a few years ago and the governor showed up.” He also believed that Price’s leadership on the commission “helps give [drug courts] credibility within the judiciary.” In Missouri, then, support from high-level executives sent a strong and consistent signal to local jurisdictions that drug courts were a priority for the state.

Establishing Best Practices

Almost from the very start, the drug court movement has relied on research to inform practice – to identify what works and what doesn't. As states grapple with the challenges of institutionalization, many have sought to articulate a set of best practices for drug courts culled from both experience and research. Disseminating best practices is viewed as a way to ensure a minimum level of quality throughout a state's varied drug courts.

States are attempting to promote best practices in various ways. Some enforce best practices as a condition of receiving grant funding. Others have promoted a set of voluntary practice guidelines for drug courts to follow. And some are using trainings and certification programs to educate practitioners about best practices.

Louisiana

In Louisiana, the first entity to actively pursue the establishment of best practices was the Louisiana Association of Drug Court Professionals, created in 1997. The association formed a best practices committee, which, after several years, produced a document modeled closely after the 10 key components but with Louisiana-specific detail.

The best practices specified eligibility criteria, testing requirements and minimum treatment standards for drug courts. They were, of course, non-binding, since they were issued by the Louisiana Association of Drug Court Professionals (although developed in cooperation with the state court system and Office for Addictive Disorders), which has no official authority over the state's drug courts.

Nonetheless, board members of the association were hopeful that the Supreme Court would use the best practices as a basis for establishing statewide standards. Cary Heck, who was hired to administer the Supreme Court's \$13 million drug court budget, initially declared that the best practices set the bar too high, and that not all drug courts around the state had the resources to meet the guidelines. "I had to allow for rural courts and small courts," Heck said. "We have courts that serve three parish regions and the judge commutes and serves in different parishes each week. They can't be held to the same standards as [a larger, better funded] court, which has its own inpatient facility. It wouldn't be fair."

It was Heck who suggested that the association call its guidelines "best practices" while Heck's office promulgated "minimum standards." "I said, 'You guys keep working on best practices, and I'll work on minimum standards, and maybe one day, they'll meet.'"

Heck also thought it was counterproductive to establish standards that were too rigid. "Being a small government kind of guy, I love that drug courts are locally initiated pro-

Promoting Best Practices

States are attempting to promulgate best practices in a number of ways. Some, like Louisiana, require drug courts to follow a set of minimum standards as a condition of receiving grant funding. Others, like New York, have invested in research to build knowledge about drug courts. And a number of states have used training and certification programs to promote knowledge about best practices among practitioners.

grams with their own character,” Heck said. His goal was to establish a basic level of uniformity among Louisiana’s drug courts without forcing local drug courts out of business.

Louisiana Supreme Court Justice Catherine Kimball said the standards are loose enough to support the diversity many feel has been a strength of the drug court movement. “Communities in Louisiana are so different that they have to have freedom to set up programs that work in those communities,” Kimball said. “To me, institutionalization doesn’t mean making identical the way each court operates. Institutionalization is about the larger concept. On a conceptual level, all the courts are the same, but in the details they can be different.”

Still, Heck’s statewide drug court program standards – released in the summer of 2003 – ended up looking like the state association’s best practice guidelines. In some areas, they even exceeded them: For example, Heck’s standards specifically outline the membership of drug court teams, while the guidelines do not. Like the guidelines, the standards also require testing at least twice a week during the first two phases of drug court and spell out minimum treatment standards for each phase – for example, “treatment should consist of a minimum of six hours of therapeutic contact per week for adults [down from nine hours in the guidelines] and three hours for juveniles” during Phase I. Additionally, Phase I should “last at least two months.” Heck’s standards also spell out a new monitoring regime for drug courts, requiring them to file monthly reports and submit to bi-annual field reviews.

To enforce the minimum standards, Heck requires all courts receiving drug court funds to sign an annual contract. “We hold the purse strings, and if they agree to these standards and sign off on them, and they don’t comply – I’m not expecting that at all – then we would have a reason to modify behavior through that money,” Heck said. He also hired Sandi Record, who formerly worked on drug courts for the state’s treatment agency, to conduct bi-annual reviews of each drug court.

Minimum standards are not the only way the Supreme Court intends to promote best practices. Heck is working with two colleges to develop a voluntary certification program for drug court professionals “that will cover everything from ethics to case management.” The program would promote best practices and a baseline of knowledge about drug courts throughout the state, Heck said.

New York

New York has taken a different approach. The court system does not plan on setting specific drug court standards, although it is working to create a best practices manual for adult drug courts. The guide is intended to serve as a “kind of constitution, some kind of structure or skeleton” that expresses “core values,” according to Judge Joseph Traficanti. But the manual will only be advisory, underscoring drug court principles without binding practitioners to a pre-determined plan of action.

Traficanti, working with the Center for Court Innovation, has convened a committee to create the best practice guide. Supported by a grant from the U.S. Department of Justice, the guide is expected to address three main areas: planning a court, treat-

ment issues, and post-discharge services. Tom Kubiniec, a prosecutor in Erie County who sits on the best practice committee, said the committee is trying to identify “the ingredients of a successful drug court, and those ingredients should be adhered to as best as possible.”

The Center for Court Innovation is also working on a separate but similar guide for family treatment courts. Both guides will be “tools for setting acceptable standards to guide drug courts,” said Valerie Raine, director of drug treatment programs at the Center for Court Innovation. “In my opinion, we should steer away as far as we can from absolute rules and standards.”

In fact, when court administrators in New York issued an over-arching policy regarding one aspect of drug courts, the response was resoundingly negative. In that instance, top administrators issued a rule that every drug court contract needed blanket language about ex parte communication that would have the effect of allowing drug courts to hold case conferences without a defense attorney present. When defense attorneys balked, however, administrators rescinded the mandate and created a sub-committee to review the issue. On the recommendation of the sub-committee, court administrators now plan to advise drug courts to address ex parte communication on an as-needed basis, obtaining client’s specific consent for specific instances of ex parte communication when necessary, rather than use a blanket consent.

And yet while New York does not plan to enforce rigid standards, it has nonetheless invested in research through the Center for Court Innovation and its 10-member research team. Research conducted by the Center, for example, played an important role in the development of the Brooklyn Treatment Court, one of New York’s first drug courts. A full-time researcher used data to inform policy, leading the judge and court staff, in one example, to send heroin addicts to residential treatment as soon as they entered the court. “The rationale was, ‘Why wait if we know there’s a high probability they’ll end up in residential treatment down the road?’” said Michael Rempel, director of research at the Center. In another example, the researcher established that there was a high rate of no-shows in the first 30 days after admission to the treatment court; in response, the court developed pre-placement groups to keep clients more engaged with the court while they were waiting for admission to a substance abuse program.

In addition to helping shape practice at individual drug courts, research has also helped build knowledge about drug courts across the state. In November 2003, the court system and the Center for Court Innovation jointly released a study that demonstrated consistent and meaningful reductions in recidivism across a large number of drug courts.²¹ Among other things, the study identified participant characteristics and programmatic features that increased the likelihood of successful drug court outcomes. It underscored, for example, the importance of immediacy and early engagement. It showed a high relapse rate among participants, thus reaffirming the importance of giving offenders multiple chances. The study also pointed out populations that may require new approaches. Addicted offenders who were not charged with a drug offense, for example, did not do as well as those facing a drug charge.

New York has also sponsored more than a dozen trainings throughout the state, lasting anywhere from one to five days. Planning teams of eight to 10 people (generally including judges, attorneys, court staff, probation officers and treatment providers) are invited to participate. These training sessions give participants the opportunity to learn about drug courts, get acquainted with one another and come to rough agreements about program elements – important factors given that so many drug court components (e.g., a non-adversarial approach, partnerships between drug courts and other agencies and a coordinated strategy) are collaborative in nature.

Most practitioners seem to actively embrace the team approach, and many insist it is crucial. “I’ve had phone calls from other defenders, and I tell them, ‘Unless you’re part of the planning process, you shouldn’t support drug courts,’” said Ed Nowak, a public defender in Monroe County. In addition, researchers often make an appearance at these trainings, providing participants with the latest research-based knowledge about best practices.

Interestingly, New York has also provided drug court training for non-drug court judges. In May 2003, 20 New York City criminal and family court judges attended a day-long training on drug courts at New York’s Judicial Institute. Topics included a discussion of how judges in non-drug court parts could employ drug court best practices in conventional courtrooms.

Ohio

Ohio uses the grant process to enforce standards. The effect is limited, however, since the Ohio Department of Alcohol and Drug Addiction Services provides direct grants to only 19 of the state’s 55 courts. Grant recipients are required to use department-certified treatment providers, who are in turn compelled to follow the department’s protocols outlining appropriate levels of care. “If someone is assessed to be in need of short-term out-patient counseling, the treatment agency can’t put him in a residential program because the court thinks he’s dangerous,” said Joani Moore, the department’s drug court coordinator.

The department’s grants also cannot be used for defendants facing driving-under-the-influence charges. “In this state we have very stiff DUI laws. There’s a mandatory three days in jail for first offense. The second gets 10 to 90 days. If we allowed drug courts to include DUI offenders jurisdictions would do nothing but work with [them], and we wouldn’t be serving [other] criminal offenders,” Moore said. In addition, DUI impacts the county jail population while the department’s goal is to reduce the statewide prison population. “We want to work with criminal offenders who would otherwise burden the state jail population – that’s why the legislature gives us money,” Moore said.

Grant recipients are also prohibited from accepting the severely mentally ill. “These are not mental health courts,” Moore said. “If you’re [severely] mentally ill, these aren’t the places for you. The mentally ill don’t get much from [the drug court program], and they hurt the program a lot. If they’re too fragile to incarcerate, it makes the other drug court participants frustrated because the court’s not consistent.”

Creating Infrastructure

What kinds of tools need to be developed and implemented to sustain the statewide institutionalization of drug court principles? In New York, for example, the court system has created new civil service positions for drug court staff. Although this may seem hardly noteworthy, it has had the effect of allowing non-traditional, drug court-related staff to become a regular court presence.

Another investment states interested in drug court development are making is in the creation of management information systems. These computerized systems, which are crucial for evaluating drug court performance, require a great deal of statewide coordination. To work well, all drug courts within a state must use the same terms, input the same information and measure the same outcomes – a considerable implementation challenge, considering that many drug courts prefer to use their own home-grown information systems and assessment tools.

Here is a closer look at a few infrastructure-building initiatives:

Staffing and purchasing

In addition to creating new civil service positions to reflect the responsibilities of drug court case managers and resource coordinators, the New York State Unified Court System has sought to achieve economies of scale when it comes to purchasing and negotiating with statewide partners. Judge John Schwartz of the Rochester Treatment Court recalled “practically stealing urine cups” to make drug court happen. Those days are long gone. Court administrators are now more sophisticated about drug court’s unique needs. “We’re used to ordering pens and paper. Now we’re asking ‘What drug tests do you order?’ Some courts will have a heavy cocaine problem and they’ll want one kind of test, and others will have a different problem and need a different kind of test,” said Diane Lundin, law clerk to the 9th district administrative judge.

Management information systems

A statewide management information system can make it easier for state leaders to collect standardized data about court outcomes, but building the system itself is no easy task.

As early as November 1997, an Office of Addictive Disorders-led working group on drug courts identified the development of a computerized system for collecting drug court statistics as a key priority for Louisiana. Accordingly, the office signed a contract with a local university to develop the system. After several years of trying, however, the agency abandoned the original effort. But in January of 2004, nearly seven years after the first contract was signed, the Supreme Court successfully launched a statewide system that established a uniform data collection system for every drug court in the state.

Although some of the obstacles Louisiana has encountered in developing a management information system are technical, others relate to the difficulty of getting each drug court to agree on uniform terminology. “[Courts] couldn’t agree on definitions. They couldn’t even establish what admission meant,” said Cary Heck,

Louisiana's drug court coordinator. In the end, Heck decided what terms to use. "I just told them that I was going to make the decisions. If they really want to be institutionalized and sustain their courts I need to be able to say an apple is an apple."

Louisiana is hardly the exception when it comes to technology development. One consequence of the home-rule structure in Ohio is that there are over 300 different computer systems in use, according to Melissa Knopp, program manager of specialized dockets for the Supreme Court of Ohio. Still, the Ohio Supreme Court is asking all courts within the state to develop new management information systems according to pre-determined statewide standards. Because of home rule, jurisdictions will have the authority to contract with different companies to develop the new management information system, but the goal is that, in the end, they will all be able to communicate with each other more easily than the current hodge-podge of systems, Knopp said.

In New York, state officials have spent the last six years working on a computer program, known as the Universal Treatment Application, to capture all the information about a drug court case. The Universal Treatment Application, which was piloted in the Brooklyn Treatment Court, facilitates case management as well as data collection. Treatment providers and probation departments access the database via a secure "intranet" connection; this allows them to update client records (including information about attendance and drug tests) easily, without having to fax progress reports or exchange phone calls with court staff. The right to review files is restricted and access to the database is password protected. It took several years to work out kinks, but by the end of 2003, the technology was being used by drug courts throughout the state.

Creating Infrastructure

What investments in infrastructure are states making to sustain statewide institutionalization? Here are some examples:

- **Creating new civil service positions for drug court staff – such as case managers and resource coordinators – that allow non-traditional, drug court-related staff to become a regular court presence;**
- **Building statewide management information systems that make it easier to collect data about court outcomes and improve ongoing operations through research; and**
- **Improving screening and assessment tools to ensure that the right people are getting into drug court.**

By requiring all drug courts to use the treatment application, court officials in New York hope to enforce uniformity in both practice and data collection. For instance, the application includes the psycho-social interview used to screen clients for treatment eligibility. That means drug courts around the state are asking the same questions of clients and using the same diagnostic tools to determine whether a client is drug addicted and what treatment modality is most appropriate.

Research

States have also invested in research into drug court effectiveness.

Research into drug courts has two potential benefits – positive results can bolster support for the model, while research findings can also be used to improve operations.

Building a management information system is a critical first step towards obtaining high-quality research about drug courts because it can ensure that consistent information about outcomes is being collected across the state.

But in order for the information system to be effective, researchers need to play a role in its development. In addition, states need help interpreting the raw data provided by local jurisdictions. Some states, like Ohio, have asked local universities to produce statewide evaluations. Other states, like Louisiana and New York, have worked to create an in-house research capacity that allows state agencies to produce their own research reports.

One recent report issued jointly by the New York state court system and the Center for Court Innovation examined six drug courts in New York and found an average 29 percent reduction in re-arrests for participants over a three-year period when compared to a matched set of offenders not in drug court. Even after leaving drug court, benefits persisted: one-year post-program recidivism rates dropped 32 percent.²²

Well executed research can not only help build a case for drug courts (the report was covered widely by local and national press), but can also be used to help identify characteristics of drug courts that promote program success. For example, a consensus has emerged among researchers nationally that enrolling offenders into treatment quickly, imposing sanctions and rewards swiftly and appropriately, bringing high-risk offenders back before the judge regularly and ensuring that drug court participants feel they are being treated respectfully by the judge and are being listened to in the courtroom are critical to successful drug court implementation.

Screening and assessment tools

Another significant investment states can make is in improving screening and assessment tools to ensure that all offenders who are drug addicted are identified and evaluated for drug court eligibility.

New York is piloting a universal screening process to identify and assess all potential drug court clients in a county. Currently, in most drug courts around the state only non-violent defendants charged with a drug crime are screened for eligibility. The universal screening process would expand the pool of potential participants by identifying all non-violent defendants who are drug-addicted – whether they are charged with a drug-related crime or not. Implementing this process, however, requires a major investment. Staff with assessment skills need to be hired or borrowed from a partner agency. Courthouse intake needs to be restructured. The daunting size of the task has led the court system to pursue this goal slowly.

The first step has been to create a pilot screening project in Brooklyn. “We are attempting to screen every single person arrested and charged by the district attorney,” said Justin Barry, the New York City drug court coordinator. The court system began the Brooklyn pilot in January 2003. As part of the procedure, the court system

has created three treatment courts for the borough. Each court is designed to capture a different offender population: the Brooklyn Treatment Court works mainly with felony offenders; another court deals only with misdemeanants; and a third works with participants in the D.A.-run Drug Treatment Alternative-to-Prison program, as well as with offenders between the ages of 16 and 18.

The screening process works like this: All defendants are screened prior to arraignment by a clerk who determines if a defendant is drug-court eligible (based mainly on the severity of the charge and history of violence). The judge handling the arraignment then places the case on the calendar of one of Brooklyn's three treatment courts for the next business day. When the defendant appears the next day, a case manager administers a complete psycho-social assessment, which is recorded in the Universal Treatment Application. Clients deemed appropriate for treatment are offered admission to the court.

Jim Imperatrice, the chief clerk of Brooklyn Supreme Court, said the new system is less prone to error than past practice. "Screening of potential clients used to happen at arraignment in criminal court, which is open seven days a week, two to three shifts a day," Imperatrice said. "With all the different shifts, different judges, D.A.s, and court staff, people would fall through the cracks. The new system is a lot simpler. Everything goes before a single clerk and then gets reviewed by the arraigning judge."

Increasing Capacity

Expanding the reach of drug courts is one of the key goals of many within the drug court movement. Marilyn Roberts, the former head of the U.S. Department of Justice's drug court office, often said that one of her goals was not to open more drug courts, but to get more participants into drug court.²³

One of the powerful arguments advanced by proponents of Issue 1 in Ohio was the idea that drug courts served only a fraction of the population. "[They] said, 'We don't serve enough people.' That's a good criticism," said Judge Steve Williams, a juvenile court judge. This critique has been echoed by drug policy scholars like Marc Kleiman of UCLA, who has written that drug courts are too expensive and too reliant on a flawed treatment system to implement on a widespread basis.²⁴

What strategies are available to states that want to increase drug court capacity? One is to loosen the restrictions on the types of cases that are eligible for drug courts. This, of course, can be politically difficult. "The feds say no to violent offenders," said Michael Stringer, the former chief of justice services for the Ohio Department of Alcohol and Drug Addiction Services, "and we also said we won't take violent offenders in the courts we fund, but that is starting to change... Where courts have said they were comfortable, we've shifted to say that they can deal with the offenders that your court and your judge is comfortable with in your community."

Stringer said two groups should be the focus on any expansion in drug court eligibility: those who would otherwise be headed to prison and those who are coming out of prison. Accordingly, the Ohio Department of Alcohol and Drug Addiction Services has approached the governor's office with the idea of creating legislation that would mandate treatment for 5th-degree felons. The department is also trying to build

Increasing Capacity

Expanding the reach of drug courts is one of the key goals of many within the drug court movement. States and local jurisdictions have experimented with at least three different capacity-building strategies, including creating a drug court large enough to take all drug offenders, encouraging all judges to adopt select drug court principles or applying principles of problem-solving courts to different kinds of case. Each strategy has its own pluses and minuses that need to be reviewed carefully by state leaders as they attempt to take drug courts, or a drug court approach, to scale.

more bridges between drug courts and in-prison treatment programs. “We’re working on a pilot where the court after repeated failures will use the in-prison treatment program for 90 days and then the offender will come out under judicial release,” Stringer said. “That’s the kind of continuum we’re trying to put in place right now.”

There are, undoubtedly, numerous ways to expand capacity. What follows is a look at two interesting approaches taken by courts in Minnesota and Florida that offer lessons for others.

Hennepin County, Minnesota

In Hennepin County, Minnesota, all drug offenders in the county are admitted into drug court, regardless of their arrest history. “We are already at scale,” said Chief Judge Kevin Burke, who created the drug court in 1997.

Today, according to coordinator Dennis Miller, the Hennepin County Drug Court has over 4,000 participants at any one time – about a third of the county’s total criminal court caseload. Because of its large size, the drug court has a number of dedicated staff – three judges, seven prosecutors, seven defense attorneys, over 20 probation officers, six “chemical health assessors,” job training specialists and an adult educator. The court also has relationships with 20 community-based treatment providers. All told, the drug court costs \$2 million more than “business as usual,” paid largely through local tax dollars.

The “take all comers” approach of the Hennepin County Drug Court has had some interesting programmatic implications. For example, because the drug court takes all drug offenders, there is no “opt out” option to the traditional court system. Defendants are given their full trial rights, meaning that drug court judges conduct close to 35 trials a year. Hundreds of pre-trial hearings over issues like search and seizure are also conducted. As a result, close to 20 percent of all drug court cases are dismissed or result in acquittals. An additional 10 percent of cases – generally involving high-risk offenders with multiple priors – are sent to prison right away.

All told, the percentage of drug offenders in Hennepin County going into treatment has steadily increased from 45 percent in the first year of the drug court to 74 percent in 2002.

The drug court has also become a major player in shaping the treatment marketplace in Hennepin County. “There’s not a lot of mystery to treatment any more,” said Miller. “We know a lot more about what effective treatment should look like.” Miller said he looks for treatment programs that “treat the whole person” and offer a

rich set of ancillary services. Accordingly, the bulk of the court's caseload goes to the six (out of 20) treatment programs in the county with a similar treatment philosophy.

Dade County, Florida

Dade County, Florida – the birthplace of drug courts – has taken a very different approach to the issue of increasing drug court capacity. Court administrators have long been frustrated by their inability to reach agreement with prosecutors and the public defender's office over a post-plea program. As a result, Miami's drug court, while large (around 1,500 cases annually), is a pre-plea drug court largely limited to low-level offenses.

More out of desperation than design, Drug Court Administrator Robert Koch decided to hitch the drug court approach to an existing probation sentencing option as a means of getting around the restriction on post-plea cases. The idea was to add judicial monitoring to probation sentences and require offenders to come back to court regularly to report on their progress in treatment. Dade County Chief Judge Joseph P. Farina signed off on the plan – provided that judges supported it. “He told me, ‘if you get five judges to agree to this, we'll go ahead,’” recalled Koch.

Much to his surprise, all 19 judges agreed to the proposal. “In every [new program], there are moments when things happen that blow you away,” Koch said. “We had a skeptical judge say, ‘I've been a judge for 20 years, and this is the greatest thing I've ever heard of.’ Her support brought on board another five or six people.” As a result, the chief judge issued an administrative order authorizing each felony division judge to make use of a “Judicial Monitoring Program” in partnership with probation.

Together, Koch and Farina designed a set of protocols for judicial monitoring and a sanctions-and-rewards scheme for judges to follow. They also educated judges about drug court. “A lot of judges didn't know anything about drug courts,” Koch said. “We had to teach them about relapse and substance abuse itself.” The minimum period of supervision in the Judicial Monitoring Program is 18 months, though early termination is possible as a reward for program compliance. Probation officers are responsible for enrolling program participants into treatment and conducting drug tests, while judges are free to set their own monitoring schedules.

Not surprisingly, implementation varies widely. As of July 2003, there were 473 offenders enrolled in the Judicial Monitoring Program, but one judge has 108 active cases, another 85 and a few had only four or five cases. Judges also differ in terms of the types of sanctions and rewards they impose and the frequency of court appearances, though court administrators believe they have successfully introduced the idea of intermediate sanctioning and have increased judicial tolerance for drug relapses.

In addition, the Judicial Monitoring Program does not include all of the 10 key components of drug courts. Most notably, there is no “team” approach – prosecutors and public defenders still spar with one another in an adversarial environment. With three prosecutors and three public defenders assigned to each of the county's 19 courts, it was impossible, according to Koch, to get “everyone to embrace a non-

adversarial process.” Court administrators are trying to educate prosecutors and defense attorneys about the drug court approach, but the work of winning hearts and minds is slow.

Lessons from Dade and Hennepin Counties

The Dade County approach suggests that creating more “drug courts” per se is not the only strategy available to state leaders attempting to increase the court’s capacity to link addicted offenders to judicially supervised treatment. As Koch put it, the key question is “do we need to create more drug courts, or does the concept of drug court need to become an inherent way of dealing with these types of cases in every criminal division?”

The Dade County model also suggests that modest changes in courtroom structure might result in courts getting most (if not all) of the way towards the drug court ideal. “Instead of trying to change the jurisprudential process,” Koch said, “we just embraced the additional use of treatment and judicial monitoring in a typical courtroom model.”

The contrasts between Hennepin County and Dade County are also instructive. Hennepin County essentially carved a drug court bureau out of a much larger court system: only three out of a total of 57 judges are involved in drug court at any one time. This approach appears to have two major benefits: according to Dennis Miller, it greatly reduces court costs through economies of scale, and it allows for judicial specialization. Its main drawback appears to be the potential for marginalization: while drug court has resulted in “tremendous relief for the [overall] system,” according to Miller, it has not come close to receiving a proportionate share of court resources. At the same time, the court has had trouble gaining the support of other system players, like police and prosecutors, to broaden its scope to include cases like shoplifting and welfare fraud that may be driven by addiction.

Alternatively, Dade County’s model only requires modest changes to current court procedures, and does not require advocates on either side to abandon adversarial practice. Because of this, it has taken place without a great deal of controversy or additional resources. The drawback, however, is its widely divergent implementation and essentially voluntary nature for judges – Koch believes that only about 10 percent of eligible cases are being referred for enhanced judicial monitoring.

A final strategy for states seeking to reach new clients involves taking the drug court approach and applying it to different kinds of cases. In New York, for example, Judge Kaye has launched a number of “community courts” (neighborhood-based courts that use community resources to respond to low-level offending and other local problems in creative ways), as well as a pilot mental health court, domestic violence courts and family treatment courts throughout the state. All these efforts point in a similar direction, toward a court system in which the principles of strict judicial supervision, collaboration with non-court partners and new measures of success (such as higher rates of sobriety, increased victim safety and lower rates of recidivism) become commonplace.

Nor is New York alone in these efforts. In Louisiana, for example, a judge in St. Mary Parish has created his own “mini-drug court” for persistent drunken-driving offenders. In Richland County, Ohio, there are not only regular drug courts, but also a separate court for drunken drivers and the state’s first re-entry drug court, which provides parolees with strict judicial supervision. And in Missouri, judges and prosecutors are creating drug court-like experiments dealing with problems such as driver’s license revocations and child support. “Our judges are much more amenable to sending people into treatment,” said Ann Wilson, a staff member on the Missouri Drug Court Commission. “Even judges that don’t have drug court are assessing [offenders] and [requiring] them to come back to court frequently.”²⁵

These three capacity building strategies – creating a drug court large enough to take all drug offenders (Hennepin County), encouraging all judges to adopt select drug court principles (Dade County) or applying problem-solving court principles to different kinds of cases (New York) – are options for state leaders to consider as they attempt to take drug courts, or a drug court approach, to scale.

Conclusion

Institutionalizing an innovation is a monumental task. For a program to be brought successfully to scale, many things must be done right: authority to implement the desired changes must be obtained, support at all levels of government must be cultivated, best practices established and infrastructure built. And through it all, an innovation risks being co-opted by the bureaucracy, having its key ingredients distorted or eliminated in the name of efficiency, cost savings or uniformity.

The good news is that many state leaders seem to understand this. They have worked to create an environment receptive to institutionalization, whether by using the bully pulpit to promote drug courts, providing training and technical assistance to local jurisdictions, designing user-friendly computer systems or creating new civil service positions within the bureaucracy. Although many challenges lie ahead, there seems to be no shortage of good ideas and enthusiasm around the country to get the job done.

Findings: Lessons of Institutionalization

After just a few short years, drug courts are poised to achieve a dramatic transformation, moving from a set of marginal experiments to an accepted part of the courts' response to the problem of drug addiction and crime.

It's no longer possible to argue that drug courts' "continued popularity is a testament to . . . the irrational commitment of a handful of true believers."²⁶ Today, among the first rank of drug court advocates are governors, state chief judges, legislative leaders and heads of state agencies. In fact, as scholar John Goldkamp notes, the debate about drug courts has changed. "No longer are state supreme court justices arguing about whether drug courts are appropriate," writes Goldkamp. "Instead . . . the chiefs now debate how [drug courts] should be integrated into the overall judicial function."²⁷

The questions ahead for state leaders is not whether to support drug courts, but how to create drug court systems that are cost-effective, sustainable and reach all potentially eligible offenders. Toward that end, this final section seeks to answer the question: What lessons can be drawn from the experience of states that are currently attempting to "go to scale" with drug courts?

Leadership matters

The single most important finding of this paper is the importance of leadership in advancing drug court institutionalization. In each state – and at each stage of their development – drug courts have relied on the energy, enthusiasm and creativity of a small group of leaders. In the early, pre-institutionalization stages, drug courts were propelled by entrepreneurial leaders – judges, district attorneys and treatment advocates – willing to experiment with a new approach to the problem of drug addiction and crime. With the help of powerful patrons in the federal government, these local leaders were able to spread drug courts far and wide.

While the accomplishments of early drug court practitioners are legion, in some respects their most important success was in attracting the support of a new group of leaders – including state chief judges, the heads of executive branch agencies and elected officials – positioned to take drug courts to the next level. Without the support of these statewide leaders, drug courts would probably not have progressed very far beyond the demonstration phase. In creating statewide offices and commissions to guide drug court operations, developing collaborative relationships between agen-

cies at the highest level of state governments and assuming financial responsibility over drug courts, these state leaders have fueled the movement of drug courts towards institutionalization.

Equally important has been the willingness of top state leaders to champion drug courts. These leaders have sent signals throughout their states that drug courts are a priority. The importance of the “bully pulpit” cannot be overestimated, particularly within bureaucracies like courts, which are traditionally slow to change.

An encouraging corollary of the lesson that “leadership matters” is the idea that leadership can come from a variety of places among the judicial, executive and legislative branches. In New York, the leadership of the chief judge was the decisive factor; in Ohio, leadership from the state’s treatment agency was important; in Louisiana, the legislature played a key role; and a collaborative approach carried the day in Missouri.

A variety of tools can advance drug court institutionalization

There is no magic wand that state leaders can wave to go to scale with drug courts. Even an individual drug court can’t open without the support of a variety of players from different agencies. Building a statewide drug court system is even more difficult.

The good news for state leaders, however, is that they have a range of tools at their disposal to guide drug court growth. These include:

Building Infrastructure The states profiled in this paper have focused on creating resources – best practice standards, management information systems, screening and assessment tools, research capacity – that everyone across the state can share. In addition, the infrastructure itself can encourage new thinking; for example, a management information system that solicits information about treatment modalities and sobriety communicates to its users that this kind of data – and not just conventional data about case processing – is important.

Providing Training and Technical Assistance States have also provided training, technical assistance and money to local jurisdictions to encourage them to start their own drug courts and to offer support and guidance.

Providing Funding In the way that the federal government has used grants to ensure adherence to key drug court principles, state governments are using the grant-making process to encourage conformity with statewide policies.

Using Legislation Many state legislatures have created new resources, such as a line-item in the budget for drug courts; new tools, such as statutory authority to send offenders to treatment in lieu of incarceration; and new statewide bodies to oversee drug court development and operations.

Creating New Titles/Positions By establishing new positions, such as a drug court resource coordinator, state governments can begin to change long-established ways of doing business.

Setting Benchmarks By promoting new benchmarks of success, administrators can begin to change thinking about the role of courts. For instance, by using new measures – the number of offenders referred to drug treatment, compliance and re-arrest rates – rather than simply conventional measures, like tallying how many cases are processed and how quickly, court leaders begin to nurture attitudes that support drug court institutionalization.

Rallying the Troops Through speeches, interviews and press coverage, state leaders like chief judges and governors can have a significant impact on the attitudes of staff and the public, sending a message that institutionalization is doable and worth the effort.

At the end of the day, the key task for state leaders is creating an environment in which drug courts can flourish. This means providing a set of incentives for local jurisdictions, through training, new money and encouragement from above, to adopt a new approach.

Successful institutionalization means mastering state politics

Much of this paper has focused on internal system issues faced by state leaders in their efforts to institutionalize drug courts – everything from designing management information systems to creating new positions within the bureaucracy.

However, institutionalization also presents a host of thorny political issues. Among those is determining which state agency is responsible for drug courts (a contentious issue in Louisiana, where the state’s drug agency and judiciary competed for control), promoting drug courts in the face of alternative drug policy approaches (as Ohio’s drug court advocates did in the face of Issue 1) and convincing state legislatures to continue funding drug courts in the midst of a fiscal downturn.

Fortunately for drug courts, the message of tightly monitored treatment for addicted offenders continues to be appealing, popular with both sides of the political spectrum. The ability of drug courts to recruit a diverse group of allies is particularly important in tough fiscal times. This fact was recently demonstrated by the Philadelphia Treatment Court. After being cut out of the Pennsylvania state budget, funding for the drug court was restored when the district attorney and the local drug court judge successfully lobbied the legislature to reverse its decision.²⁸

As drug courts have grown, so too has the demand for accountability

Along with increasing state control over drug courts has come added pressure to show results. For Louisiana Drug Court Coordinator Cary Heck – who oversees an annual \$13 million appropriation for drug courts from the state legislature – his top

priority is “developing a system for fiscal responsibility” that would allow him to collect and report information about drug court effectiveness to the legislature.

Heck, upon starting his job, revived what had become a moribund effort to build a management information system in Louisiana, using his authority to resolve questions about which data to collect and how it should be reported. He is not alone in this regard. In fact, much of the impetus behind the creation of Missouri’s Drug Court Commission was the desire to have greater control over “who gets funding and what they do,” as Missouri Supreme Court Judge and Commission Chair William Price put it.

The lesson for drug courts is clear: to survive over time, they will have to collect reliable, standardized information about drug court impacts. Although implementing technology projects is notoriously difficult, one advantage of building a management information system is that it can help collect and analyze data more efficiently and produce useful recommendations to improve drug court outcomes.

Full institutionalization may mean going beyond the 10 key components

The 10 key components have helped guide drug courts ever since 1996, when the federal government required all grant recipients to address the key components in their applications.

As drug courts have matured, however, it has become clear that there are several good reasons for practitioners to revisit the key components in light of more than a decade of drug court practice and scholarship. For one thing, new research can help tighten an understanding of what works and what doesn’t in the drug court setting. Take the issue of “ongoing judicial interaction,” which is Key Component 7: University of Pennsylvania scholar Doug Marlowe has written that regular contact with a judge, as opposed to a social worker, is more effective for high-risk offenders (e.g., low-functioning, long-term addicts with long rap sheets) than low-risk offenders.²⁹ For drug courts, the implication of Marlowe’s research is that it may make sense to use the scarce resource of judicial attention where it can make the biggest difference.

There is another compelling reason for drug court practitioners to revisit the 10 key components: As a practical matter, they may need tweaking in the run-up to institutionalization. For example, many drug courts – particularly those in rural areas – are unable to adopt all of the key components, either because of funding shortfalls or a lack of access to treatment providers. Perhaps more critically, questions remain about whether certain components of drug courts, such as reduced adversarialism, are essential to the model. In Dade County, Drug Court Coordinator Robert Koch created a drug court sentencing option for each of the county’s 19 judges. While the program reproduced many of the elements of drug court, court proceedings are still carried out in an adversarial setting. To Koch, retaining the adversarial system made it far easier to spread the model – at little apparent cost to program effectiveness. Other drug court practitioners, however, may disagree: after all, the “team” approach has typically been a defining feature of drug courts.

While many practitioners worry that drug courts will be “watered down” as they become institutionalized, the reality is that the movement has as much, if not more, to fear from excessive fidelity to the model. States going down the road towards institutionalization will have to decide which drug court components are essential to the model and which are not. In addition, they may need to explore whether new components should be added to the list. The challenge comes in balancing the desire for flexibility, and ease of implementation, with the need to protect the integrity of an innovative practice.

Conclusion

Drug courts have experienced an enviable evolution. Rarely has an idea caught on so quickly, especially an idea that touches on so many fields. Drug courts have required the good will and enthusiasm of all branches of governments and of professionals in the fields of medicine, social science, law and law enforcement. They have survived tough criticism, tight budgets and statewide referendums. By all accounts it looks as if drug courts are here to stay. States large and small have embraced them as an effective and appropriate way to deal with drug-abusing offenders.

But where drug courts will be in 10 years is hard to say. Will drug courts be recognizable by today’s standards? Will they exist as separate courts or will they be available as an alternative approach to any judge who wishes to employ it? Will they be available across entire states to everyone who might be eligible? These are the questions that the process of institutionalization, now under way in a number of states, is attempting to answer.

Endnotes

Endnotes

¹See <http://www.american.edu/justice/publications/2003factsheet.pdf>, 6 April 2004, for a state-by-state breakdown of drug courts in planning and in operation. The 1997 figure was obtained from “Cutting Crime: Drug Courts in Action,” Drug Strategies, 1997, <http://www.drugstrategies.org/acrobat/CuttingCrime97.pdf>, 6 April 2004.

²See Lisbeth Schorr, *Common Purpose: Strengthening Families and Neighborhoods to Re-Build America*, Anchor Books, p. 4.

³“The feds did not expect the states to take this expense on without the drug courts proving themselves first,” said Connie Payne, a state court official. “Unfortunately, just as we’re proving successful, the state is in the middle of a financial crisis.” John Cheeves, “Drug Courts Are Facing a Crunch: State Is Strapped But Grants Are Ending,” *Lexington Herald-Leader*, Nov. 24, 2003.

⁴A rich literature exists on drug courts. The National Criminal Justice Reference Service lists over 180 articles on the topic, http://www.ncjrs.org/drug_courts/publications.html, 6 April 2004. For a good discussion of drug courts’ origins, see W. C. Terry (ed.), *The Early Drug Courts: Case Studies in Judicial Innovation*, Sage Publications, March 1999. Also see John Goldkamp, *Justice and Treatment Innovation: The Drug Court Movement*, National Institute of Justice, Sept. 1995. Most of the literature on drug courts consists of evaluations of individual courts or descriptions of basic drug court principles.

⁵Only a few pieces address drug court institutionalization issues, though the number is increasing of late. Those include Tashiro, et. al. “Institutionalizing Drug Courts: A Focus Group Meeting Report,” Bureau of Justice Assistance, 2000, <http://www.ncjrs.org/html/bja/idc/>, 6 April 2004; Tauber and Huddleston, “Development and Implementation of Drug Court Systems,” National Drug Court Institute, May 1999, <http://www.ndci.org/admin/docs/develop.doc>, 6 April 2004; Pamela Casey and David B. Rottman, “Expanding the Problem-Solving Approach: Developing a Coordinated, System-Wide Reponse for the Court System,” National Center for State Courts, Aug. 25, 2003; and Fox and Berman, “Going to Scale: A Conversation About the Future of Drug Courts,” *Court Review*, Fall 2002, <http://www.courtinnovation.org/pdf/goingtoscale.pdf>, 6 April 2004. Also, in October 2003, the National Association of Drug Court Professionals, the Congress of State Drug Courts and the National Program for Therapeutic Courts at William & Mary Law School co-sponsored a conference on “The Nationwide Implementation of

the Drug Court Model,” with the goal of “develop[ing] a strategic plan for nationwide implementation.”

⁶ Becker and Harrell are both quoted in Fox and Berman, “Going to Scale,” *supra* 5, p. 11.

⁷ John Goldkamp, “The Impact of Drug Courts,” *Criminology and Public Policy*, Vol. 2, No. 2, 2003, p. 197-206.

⁸ See Table 6.24, Sourcebook of Criminal Justice Statistics 2001, p. 495. With 800 prisoners per 100,000 residents under jurisdiction of state and federal correctional authorities on Dec. 31, 2001, Louisiana had the highest rate of incarceration of all 50 states. The national average was 470.

⁹ Judith S. Kaye, “State of the Judiciary,” March 23, 1998.

¹⁰ “An Oklahoma City police officer for 20 years, Judge [Charles] Hill said he didn’t want the Oklahoma County drug court when it was first assigned to him. Some of his former law enforcement colleagues dubbed it the ‘Hug the Thug’ program.” Ed Godfrey, “Drug Court Scores Hit: Addiction Treated as Cause of Crime,” *Daily Oklahoman*, July 5, 1999.

¹¹ James Nolan, *Reinventing Justice: The American Drug Court Movement*, Princeton University Press, 2001.

¹² For years, advocates have been dogged by concerns about the methodological quality of drug court research – though this debate has largely been confined to a small group of researchers and critics. For example, reports issued by the General Accounting Office questioned whether methodological shortcomings made it impossible to conclude anything about drug court effectiveness. Over the past two years, however, the research literature has been advanced by several major studies of the Portland and Las Vegas drug courts, the Pensacola and Kansas City drug courts, Ohio State drug courts, New York State drug courts, and a random assignment study of the Baltimore City Drug Court. These studies highlight a number of positive findings: for example, New York drug courts reduced the new conviction rate by 29 percent over a three-year period (an unusually long evaluation period).

¹³ Thomas B. Fomby and Vasudha Rangaprasad, “DIVERT Court of Dallas County: Cost Benefit Analysis,” Department of Economics, Southern Methodist University, Aug. 31, 2002, p. 2.

¹⁴ Harry Connick, “Connick Objects to How Drug Courts Operate,” *The Times-Picayune*, Aug. 20, 1999, p. B6.

¹⁵ Susan Finch, “High court rules in Connick’s favor; DAs hold the keys to probation programs,” *The Times-Picayune*, Oct. 18, 2000, p. 2.

¹⁶ According to a Criminal Justice Police Council study: “To fully fund drug courts to meet the requirements of H.B. 1287 would require \$1.5 million in additional funding.” See Alma I. Martinez and Michael Eisenberg, “Initial Process and Outcome Evaluation of Drug Courts in Texas,” Criminal Justice Policy Council, Jan. 2003.

¹⁷ “Confronting the Cycle of Addiction and Recidivism: A Report to Chief Judge Judith S. Kaye by the New York State Commission on Drugs and the Courts,” June

2000, <http://www.nycourts.gov/reports/addictionrecidivism.shtml#116>, 8 April 2004.

¹⁸ The Wyoming Health Department, for example, issued a comprehensive blueprint for building drug courts and improving treatment services throughout the state. The Health Department's recommendations, which were substantially adopted by the Wyoming legislature and funded with \$50 million in tobacco settlement money, call for the creation of a statewide adult and juvenile drug-court system, investment in outpatient and residential treatment programs, incentives for establishing drug-free workplaces, and utilizing community coalitions to coordinating local efforts. See Wyoming Department of Health, Substance Abuse Division, "Reclaiming Wyoming: A Comprehensive Blueprint for Prevention, Early Intervention, and Treatment of Substance Abuse," Nov. 11, 2001.

¹⁹ Drug court funding in Utah is distributed through a committee composed of representatives of the court and the state's human services agency. By statute, 13 cents of every dollar allocated is distributed to general court operations and 87 cents to fund treatment programs.

²⁰ Only first- and second-time offenders would have been eligible. Offenders who have been convicted of a violent felony within the last five years would have been ineligible, as would defendants currently facing a charge involving violence, drug trafficking or drunken driving.

²¹ Michael Rempel, et. al. "The New York State Adult Drug Court Evaluation: Policies, Participants and Impacts," http://www.courtinnovation.org/pdf/drug_court_eval.pdf, 8 April 2004.

²² Michael Rempel, et al.

²³ See Fox and Berman, "Going to Scale."

²⁴ Marc Kleiman, "Controlling Drug Use and Crime Among Drug-Involved Offenders: Testing, Sanctions and Treatment," p. 6., <http://www.sppsr.ucla.edu/faculty/kleiman/harvard.PDF>, 8 April 2004.

²⁵ This strategy was given a big boost in 2001 by a joint resolution by the Conference of Chief Judges and Conference of State Court Administrators, which called for "the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice."

²⁶ Morris B. Hoffman, quoted in Douglas Marlowe, et. al., "A Sober Assessment of Drug Courts," *Federal Sentencing Reporter*, Vol. 16, No. 1, 10/03.

²⁷ Goldkamp, "The Impact of Drug Courts."

²⁸ Jacqueline Soteropoulos, "Restored funding saves drug program: Drug Treatment Court and others will benefit from changes to the Pa. budget deal," *Philadelphia Inquirer*, Jan. 3, 2004.

²⁹ D. B. Marlowe et al., "The Judge is a Key Component of Drug Court," *National Drug Court Institute Review* (forthcoming).

Notes

Center for Court Innovation

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders and strengthen communities.

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