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Mission

The NADCP seeks to reduce substance abuse, crime and recidivism by promoting and advocating for the establishment and funding of Drug Courts and providing for the collection and dissemination of information, technical assistance and mutual support to association members

National Association
Drug Court Professionals

NADCP

EXECUTIVE COMMITTEE

President:
Judge Jeffrey Tauber
Oakland-Piedmont-Emeryville Municipal Court
Oakland, Calif.

Vice President:
Claire McCaskill
Jackson County Prosecutor
Kansas City, Mo.

Secretary:
Judge Jamey Weitzman
District Court of Maryland
Baltimore, Md.

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Las Vegas, Nev.

Timothy Murray
Director, Metro Dade Office of Substance Abuse Control
Miami, Fla.

National Association Drug Court Professionals

NADCP

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Alexandria, VA 22314

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NADCP President:
Judge Jeffrey Tauber
Oakland, California

The National Association of Drug Court Professionals (NADCP) was organized by Drug Court Professionals from the 25 existing Drug Courts across the nation. Judges, Prosecutors, Defense Attorneys, Treatment Providers, Educators and other Community Leaders came together under the auspices of Community Anti-Drug Coalitions of America (CADCA), with which it is affiliated, to create the new organization.

The logo of the National Association of Drug Court Professionals appropriately combines the gavel of the judicial system with the caduceus of the medical profession. It symbolizes the merging of rehabilitation and criminal justice communities into a single organization. The intent of the NADCP is to reflect the common interests and goals of each community, bringing together the special abilities and expertise of each partner.

NADCP 'S PURPOSE

- To reduce substance abuse, crime and recidivism;
- To promote and advocate for the establishment and funding of effective Drug Courts in the United States;
- To provide technical assistance and mutual aid to association members;
- To stimulate development of other judicially supervised treatment programs, in cases where appropriate;
- To collect, provide and disseminate information related to the purposes of the organization.

The Importance of Drug Court Systems

Drug Courts are providing the focus and leadership for community-wide anti-drug systems that bring together criminal justice, treatment, education and other community partners in the fight against drug abuse and criminality.

MEMBERSHIP APPLICATION

Membership is open to all persons and entities interested in the development of effective Drug Courts in the United States

Join Today!

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Organization ____________________

Address ____________________

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NADCP NEWS

The Official Newsletter of the
National Association of Drug Court Professionals

Volume 1, Number 1 September, 1994

Crime Bill Signed

Drug Court Professionals Invited to Washington, Share Historic Moment

by Michael Judge, Esq.
Public Defender, Los Angeles

On September 13, 1994, a delegation of twenty members of the National Association of Drug Court Professionals attended the official signing of the Omnibus Crime Bill, in Washington, D.C.

NADCP members were invited to the White House in recognition of the significant role they played in drafting the Drug Court section of the Crime Bill and lobbying for the Bill's passage with key members of Congress.

Shortly after the conclusion of the ceremonies at the White House the NADCP delegation met privately with Dr. Lee Brown, the Director of the Office of National Drug Control Policy. The meeting served to solidify the important link between practitioner and policy maker. The members made a commitment to Dr. Brown to support the Administration's efforts to develope drug courts throughout the country.

During their three day stay in Washington, the NADCP delegates engaged in a number of productive meetings with selected representatives of the National Institute of Justice, the Bureau of Justice Assistance, The American Bar Association and the

Continued, page 3

Conference Set

First Annual National Association of Drug Court Professionals Educational Conference to be held in Las Vegas January 8-11, 1995

by Jack Lehman, Judge
Las Vegas, Nevada

Exciting Las Vegas will be the location of the first annual NADCP educational conference on January 8-11, 1995. The Golden Nugget will be the host hotel for this conference.

The fact that the Crime Bill was signed by President Clinton on September 13, 1994, assures that there will be an important conference providing information on accessing federal and other funding, as well as other Drug Court related topics.

Both Attorney General Janet Reno and the Office of National Drug Control Policy Director Lee Brown have tentatively agreed to speak at the Conference.

The hotel is located across the street from the Clark County Courthouse, where Drug Court sessions will be taking place every afternoon on January 9, 10 and 11. Hence, those people wishing to sit in on an actual Drug Court will have the opportunity to do so. By the time of the conference, the Clark County Drug Court will have been in operation 27 months. As of this writing, this program has 400 par-

Continued, page 3

BEYOND CONVICTIONS

PROSECUTORS AS COMMUNITY LEADERS IN THE WAR ON DRUGS

An overview of prosecutor-led programs in education, prevention, treatment, and enforcement

prepared by

American Prosecutors Research Institute
National Drug Prosecution Center
the nonprofit research, public education
and technical assistance affiliate of the
National District Attorneys Association

This document was prepared under Cooperative Agreement Number 91-DD-CX-0036 from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position of the U.S. Department of Justice.

DRUG TREATMENT ALTERNATIVE TO PRISON (DTAP)

CHARLES J. HYNES
KINGS COUNTY DISTRICT ATTORNEY
BROOKLYN, NEW YORK

BACKGROUND

Brooklyn, one of the five boroughs of New York City, has a population of 2.4 million people and is a community besieged by burgeoning drug use, increasing street violence, disarray in community institutions and the deterioration of infrastructure and community organization. It is one of the most violent localities in the state of New York. In 1991, there were 821 homicides; 129 children were shot and 47 died; and over 70–80 percent of reported crimes were drug-related.[151] In 1992, there were 675 homicides; 99 children were shot and 30 died.

Drugs are a serious problem for the entire city of New York. The most recent data of the Drug Use Forecasting System indicates that over 70 percent of arrestees in New York City tested positive for drug use.[152]

Over the last ten years criminal justice spending in New York City and New York State has grown tremendously. In 1982, New York City employed 28,000 police officers compared to 35,000 in 1992. Presently, New York City employs 1,500 assistant district attorneys, and the Brooklyn District Attorney's office alone employs 600 assistant district attorneys, up from 300 in 1982. New York City jails have 22,000 cells in 1992, an increase of 15,000 cells since 1982.[153]

New York State has more than doubled its prison cells from 30,000 in 1982 to over 60,000 in 1992. Nearly one-third, or 18,000, of the state prisoners in 1992 were convicted of drug offenses. The state corrections system presently costs taxpayers over $1 billion per year. Despite the tremendous infusion of resources into the criminal justice system, the best efforts of criminal justice professionals, and even reductions in resident population, Charles J. Hynes, the Kings County District Attorney, acknowledges that crime and drugs continue to plague Brooklyn.[154]

Based on the experience of the last decade, District Attorney Hynes strongly believes that more police, prosecutors, judges, and prisons are not the only answer to Brooklyn's crime and drug problems. He is determined to make an impact by implementing cost-effective solutions that join drug prevention, education, and treatment with traditional criminal justice efforts to prevent crime, by breaking the recurring cycle of addiction and criminal behavior. Hynes has initiated a comprehensive strategy that includes community prosecution (see program brief on page 34), education on drugs and bias (see program brief on page 149), and treatment for the serious, nonviolent, addicted offender.

The focus of this case study is one approach in Hynes's arsenal, the Drug Treatment Alternative to Prison program (DTAP). DTAP is a tough, comprehensive, new program aimed at treating drug-addicted offenders and abating their criminal activity. Hynes believes that incarcerating a nonviolent, addicted drug offender with little or no treatment is not an effective use of precious criminal justice resources. Since incarceration alone does not address addiction, the offender continues a life of drugs and crime upon his or her release. This case study is based upon reports released every six months from the district attorney's office on the progress of DTAP as well as interviews with Hynes and his staff.

The underlying premise of DTAP is that nonviolent, addicted drug offenders "...return to society in a better position to resist return to drug use and crime after treatment than if they had spent a more expensive and comparable period of time incarcerated."[155] DTAP seeks to reduce significantly the number of crimes committed in Brooklyn through a meaningful intervention in the lives of addicted offenders, which would result in these offenders living a clean life, free from drugs and crime. DTAP program planners designed the program to address factors commonly attributed to treatment failure such as difficulty in retaining clients in treatment or a lack of vocational training and employment after treatment.

PROGRAM DESIGN AND SCOPE

DTAP began operation in October 1990 as a pilot program to provide nonviolent felony drug offenders with an opportunity to overcome their addiction and become contributing members of society. DTAP targets defendants arrested for Class B felony "buy and bust" drug offenses who have been previously convicted of a nonviolent felony. If convicted of a second drug felony, the defendant would face a mandatory prison sentence of at least eighteen months to three years according to New York's sentencing laws. Defendants are given the option to defer prosecution and enter a residential drug treatment program for a period of fifteen to twenty months. Those who complete treatment will have the charges dismissed; those who abscond will be apprehended by the district attorney's warrant enforcement team and returned to court for prosecution on the original charges. Looming mandatory sentences and the certainty of prosecution on the original charges due to the existence of the warrant enforcement team provide the legal coercion to keep offenders in treatment.

In light of overcrowded correctional facilities and scarce resources, DTAP works to divert those offenders who definitely face prison time. In New York City, "Class B felonies" are strong cases involving a drug sale to an undercover police officer. If convicted of a second felony, defendants face mandatory prison sentences under New York's state drug laws and sentencing guidelines.

Arraignment is the first and only time defendants are given the opportunity to participate in DTAP. If they reject this offer at arraignment, they cannot enter the program later. If interested, a defendant signs waivers, such as the right to a speedy trial. Since defendants agree to participate in DTAP before grand jury indictment, a prosecutor in the Narcotics Bureau screens the cases identified as eligible at arraignment to reject any with negative lab reports or evidentiary flaws. Defendants are then screened by treatment providers, and by the supervisory staff of the New York City Department of Probation and the New York State Division of Parole, if the defendant is under their supervision. Probationers referred to DTAP must also have participation approved by the sentencing judge. In addition, DTAP's warrant enforcement team conducts a residence check to determine suitability for the program. If the team concludes that the defendant would be difficult to locate in the event he or she leaves treatment, the case is rejected. Finally, the presiding judge of the court designated for narcotics cases in New York must approve the prosecutor's recommendation to defer prosecution.

Defendants who pass the intensive screening process enter long–term residential treatment. DTAP utilizes a therapeutic community model, where residents progress through stages, acquiring more responsibility and personal freedom in each new stage. All residents participate in group, individual, and family therapy, work detail, and education and job training classes. The program relies heavily on the use of program graduates as peer counselors, administrators and role models. As defendants prepare to re–enter the community, they develop employment and housing plans and learn how to budget money which must be saved before re–entry into the community.

The district attorney's office formed a Business Advisory Council through the Chamber of Commerce which assists defendants who complete treatment in finding employment and housing. There is also a vocational counselor at the treatment facility who knows the qualifications of each offender. If families and communities are part of a defendant's addiction problem, the treatment programs use their Family Association Networks to relocate the individual in different neighborhoods, with new "family" support members, before he or she leaves the program.

Over half of the Class B felony "buy and bust" drug cases that come to the attention of Brooklyn prosecutors are not eligible for DTAP because they have fewer or more than one prior felony conviction or their prior conviction is for a violent felony. Of the 640 defendants deemed eligible for the program since its inception, 236 have chosen it and were accepted into the program. As of October 15, 1992, 404 individuals deemed eligible for DTAP had either rejected the program or had been rejected after screening. Fifty–two percent or 212 of those rejected had entered a felony plea and received prison sentences. Thirty–six percent or 147 had entered a felony plea or were indicted for a felony. DTAP program planners maintain that... "The large number of felony pleas entered (88 percent) and the sentence time imposed on defendants who reject or are rejected by DTAP confirms that the program is targeting defendants facing substantial prison time."[156]

Program Implementation

In studying DTAP, it is apparent that much attention and many resources were dedicated to planning before the program was operational. This has contributed positively to the overall functioning of the program which involves so many diverse organizations, both public and private.

As soon as Hynes won his election, he hired a deputy district attorney to develop and implement DTAP. The first task was to build commitment to the program internally, within the office. There was some resistance initially on the part of attorneys who did not think treatment was the prosecutor's responsibility. Hynes attempted to overcome the resistance through meetings with executive staff to establish the tone and direction of the office.

The next step was to build commitment externally. Hynes had the advantage of being a newly elected district attorney; he had power, discretion before indictment, and credibility regarding alternatives to incarceration. DTAP addresses two community concerns: offender accountability and public safety. While DTAP diverts criminal offenders to treatment, offenders are held accountable to the prosecution. Should they abscond, the district attorney's warrant enforcement team is dispatched immediately to locate and return the absconder to justice and a certain prison sentence. News of the absconder's capture and punishment is then relayed informally to other participants in the program, thus keeping the program credible in the eyes of the defendants. Public safety is protected by the close scrutiny of DTAP defendants and through the initial screening process which excludes individuals with any history of violence.

Several interagency meetings or planning sessions were essential to overcome the initial distrust of all the players. The objectives of external agencies were identified to develop ways in which the program would meet those objectives. Agencies and organizations involved included: Legal Aid (defense attorneys), Probation and Parole, and the Department of Correction. In addition, DTAP staff from the district attorney's office met with individual judges.

As a result of those meetings, written agreements were drawn among participating agencies. Agreements included such stipulations as: the district attorney's office would not interfere with the provision of treatment; should a defendant get into trouble while in treatment, the treatment provider would contact the defense attorney (the interagency team determined that the defendant has a better rapport with the defense attorney than with a probation officer); and should a defendant leave treatment, the treatment provider would contact the district attorney's office immediately. Through these meetings, procedural issues were resolved as they surfaced, including medical, employment, and housing issues. Crucial to the negotiation process was an experienced deputy district attorney who interacted well with the other agencies' representatives. At the end of the planning process, a DTAP liaison was established in each agency.

One unanticipated problem was the extent of the medical problems of these offenders. Most are in poor physical and psychiatric condition, which is exacerbated by their drug use and poor health care. Medical problems often delay defendants' acceptance into the program as screeners request medical records and new tests. DTAP planners are working to resolve these and other issues in medical care with Legal Aid, treatment providers, the detained defendants, the Department of Correction, and the hospital that provides medical services to detained defendants.

Securing the support of the business community was another of Hynes's priorities. To facilitate cooperation from the business community, District Attorney Hynes introduced the deputy district attorney responsible for DTAP to influential members of the business community, including the head of the Chamber of Commerce and several senior vice presidents of major corporations in Brooklyn. To educate and convince the business leaders of the merits of the program, the district attorney's office brought them to the treatment facilities to see firsthand the program in operation.

As a result of these efforts, a Business Advisory Council was formed to help successful DTAP graduates obtain employment and housing. The district attorney and his staff report that involving the business community was not difficult since Brooklyn is in the midst of rebuilding itself, and 30,000 new jobs are projected to be created over the next several years.

RESOURCES

District Attorney Hynes was able to acquire funding from several sources. The State Division of Substance Abuse Services (DSAS) initially provided funding for 100 treatment slots for eighteen months at a cost of $1.8 million and designated slots in existing programs for DTAP. The Deputy Mayor for Criminal Justice provided an additional $100,000 to fund the warrant enforcement team. The Robert Wood Johnson Foundation, a private group provided additional funding for a program process evaluation.

EFFECT OF THE PROGRAM

DTAP is being evaluated in two phases. The first phase has been completed and contains descriptions of the design, development, and implementation of the project, profiles of the defendants, the treatment processes, and an analysis of retention patterns (length of stay in treatment) of the first 100 defendants.

The second phase will examine the impact of treatment on criminal activity, drug and alcohol abuse, and other measures of social adjustment. The DTAP defendants will be compared to offenders of similar backgrounds and characteristics who were incarcerated. The four central research questions are:

- Are program participants more likely to succeed in the community than similar offenders who are incarcerated?

- What is the role of legal coercion as a predictor of retention, and what are the essential elements of coercion (e.g., clarity, assurance of consequences)?

- Does DTAP divert prison–bound offenders to drug treatment? (Does DTAP adhere to its eligibility criteria of only those offenders facing a definite prison sentence?)

- Is DTAP "cost effective," and what are the estimated dollar savings of diverting offenders from prison to residential treatment?[157]

All treatment programs experience problems with retaining clients; yet, the longer their stay in treatment, the greater the decrease in drug use, criminal activity, and unemployment.[158] Research also indicates that retention rates are higher for those participating in compulsory treatment and that the highest drop out rates occur in the first two to three months.[159]

In an effort to increase retention, half of all defendants selected for the program spent their initial forty–five days in a city Department of Correction (DOC) treatment program within the jail system at Rikers Island before entering the treatment facilities contracted by DTAP. The DOC treatment program introduces defendants to the concept of a therapeutic community. The other half of eligible participants entered DTAP's treatment providers directly from court. The purpose for the creation of the two groups was to determine if there was any effect on the dropout rates of those sent to the DOC programs as compared to those sent directly to the residential facilities. The question to be answered was whether initial exposure to a therapeutic community in a correctional setting where there is no opportunity for escape improves retention rates. After twenty months, no statistical difference in retention rates occurred between the two groups. DTAP staff decided to take advantage of the DOC programs by placing potential DTAP participants who were being delayed in entering DTAP, due to requests for extensive medical histories during the screening process, into the DOC programs. By participating in the DOC program, they are spending their pretrial detention time being introduced to treatment.[160]

The district attorney's office has released reports every six months on the functioning of DTAP to date. These reports contain detailed descriptions of the program, statistics on retention rates and rejections, cost savings, and case histories. The following are some of the highlights from the reports of the program:

- DTAP had a 72 percent retention rate.[161]

- Sixty-four of the sixty-eight defendants (94 percent) who have absconded, were expelled, or discharged from the program have been returned to court for prosecution. Fifty-three have entered pleas, and all but two have been sentenced to prison and no pleas have been entered for eleven cases.[162]

- DTAP had ten graduates at the end of its second year.[163]

- DTAP staff "have calculated, based on a 75 percent retention rate, that for every 100 defendants who enter the program, the cost savings annually is $1,540,415 a year for DTAP vs. incarceration. Thus, if these 159 defendants continue at a 72 percent retention rate, the annual cost savings for DTAP vs. incarceration will be approximately $2.4 million."[164]

The governor has designated DTAP as a model for other district attorneys in New York. In response to the governor's request, the State Division of Substance Abuse Services has provided 300 new residential treatment beds, and the New York State Division of Criminal Justice Services has allocated $700,000 in federal funding for FY 1992-3 to support Brooklyn's DTAP and to replicate the program in three other district attorneys' offices in New York City. The Kings County District Attorney's Office provides to other prosecutors copies of forms and protocols, including defendant waivers and participation agreements and contracts between the district attorney's office and the treatment providers.[165]

CONCLUSION

The district attorney used his unique position and power as an elected official and political leader charged with public safety to galvanize both the public and private sectors to unite and make the program work. In designating a key staff person in his office to be responsible for coordinating and guiding the effort, Hynes demonstrated his commitment to the program and ensured that essential, detailed planning took place. Efforts were made to build commitment to the program internally, within the office, as well as externally, among the various outside agencies. By carefully assessing and addressing other agencies' objectives, Hynes and his staff were able to construct an unusually cooperative coalition. Recognizing that interagency communication is of paramount importance, the deputy district attorney initiated a dialogue and maintains a network of DTAP liaisons from each organization. Mandatory sentencing laws and the warrant enforcement team are also key components to this strategy. They provide the "stick" to compel offenders to enter and stay in treatment and maintain the credibility of the program. Finally, all players are dedicated to evaluation, in order to assess program strengths and weaknesses, treatment methods, and overall effectiveness, and to determine cost savings. Efforts for the future will focus on expanding DTAP's treatment capacity.

For more information, contact:

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DO DRUGS. DO TIME.[167]

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY
PHOENIX, ARIZONA

"DO DRUGS. DO TIME." is a slogan created by the public relations component of the Maricopa County Demand Reduction Program, a comprehensive, interagency effort to reduce drug use in the county. In February 1988, federal, state, and local law enforcement agencies met in Phoenix, Arizona, to discuss strategies to tackle the Maricopa County drug problem. Meeting participants agreed that any drug control effort had to have the full cooperation of all law enforcement agencies. If only one or two police agencies implemented a strategy, the problem would just move to another section of the county. They also agreed that casual users, who may otherwise be law-abiding citizens, contribute significantly to the demand for drugs. The challenge was to develop creative strategies that would not overburden a criminal justice system already strained in an environment of escalating drug cases and limited resources.

In March 1989, County Attorney Richard M. Romley and twenty-five other law enforcement executives established the Maricopa County Demand Reduction Program. A coordinating committee of agency executives was formed to make policy decisions and oversee program activities. Subcommittees were formed to implement regional task forces, to assess civil and criminal statutes and other issues relating to demand reduction and user accountability, to launch a media campaign, and to coordinate drug education efforts.[168] While each component of the demand reduction program supports the efforts of the others, this program brief focuses on the user accountability component of the strategy.

The user accountability component of the demand reduction program was implemented by law enforcement agencies and the county attorney's office. Uniformed patrol officers make most of the arrests; the Maricopa County Demand Reduction Task Force, consisting of officers provided by twenty-four police agencies, make the additional arrests in highly publicized sweeps. These high-profile operations reinforce the message of the media campaign that casual users will be held accountable for their use. The prosecutor supports the effort through the Adult Deferred Prosecution Program (ADPP). A report from the National Institute of Justice notes:

> The county prosecutor's participation and willingness to impose suitably structured sanctions on arrested users was considered vital for initiating and maintaining the county's user accountability program. Otherwise, probable cause for arrest would have been undermined and police officers would have lost the motivation to make arrests that were merely going to be dismissed by the prosecutor.[169]

The Maricopa County Attorney's Office developed ADPP which is a prefiling diversion program. The program is intended to hold casual users accountable for their use and reduce the county attorney's office's caseload by diverting nonviolent, drug offenders from prosecution to treatment.

Every arrested person is booked on a felony charge (all drug possession offenses are felonies in Arizona) and then spends at least some time in jail. Requiring casual users to spend time in jail, even a relatively short time, sends a message that drug use or possession is a grave offense. After an arrest, the police report is sent directly to the county attorney's office where it is screened to determine if the offender is eligible for the diversion program or whether a criminal complaint must be filed. In order to be eligible for the program, the offender must be 18 years or older and *not* have:

- a referral for any other felony charges;
- any other felony charges presently pending;
- transient status;
- a prior felony conviction;
- felony probation or parole status; or
- prior participation in a felony diversion program.[170]

In addition, the drug possessed must have been intended for personal use. Prosecution is suspended for those who qualify and accept entry into the program.

A participating defendant is required to pay the sheriff a "jail fee" to cover the cost of the jail stay and is released from jail on his or her own recognizance. A letter from the county attorney is then sent to the defendant, which outlines the conditions of the diversion program. If a defendant chooses to participate, he or she must contact the treatment program and schedule an appointment. If a defendant chooses prosecution, the county attorney's office files a criminal complaint. If a defendant fails to respond to the letter, a warrant is issued for his or her arrest.

In order to avoid criminal charges and to participate in the program, the defendant must file a "statement of facts" admitting to the offense, participate in treatment and drug testing, pay all fees, and abide by any other conditions set forth by the treatment program. Those who are ineligible or fail to comply with the program are prosecuted by the county attorney's office under normal procedures.

The county attorney's office contracts with the Treatment Assessment Screening Center (TASC[171]), a nonprofit organization, for counseling and treatment services. TASC assesses the defendant's treatment needs; assigns him or her to appropriate treatment programs; monitors progress; and notifies the county attorney's office whether a participant has fulfilled program requirements. The length of the program varies depending on an individual's need; the length could be as little as three months or as much as two years.

Offenders are financially responsible for their treatment, which can cost them over $2,500. The county attorney's office also collects a Drug Enforcement Fund fee, to provide additional funding for law enforcement efforts. A waiver of fees or sliding fee scales are available for indigent offenders to ensure the participation of all who are eligible for the program. If a participant successfully completes the program, the case is dismissed.

In developing the ADPP program, the staff of the Maricopa County Attorney's Office had to address several legal issues. As a result of their research, they identified three primary issues. The first involved "a conflict of interest that arises if a county attorney directly contacts arrestees to explain the conditions of the diversion program while the arrestees are represented by defense counsel."[172] This was eventually resolved by implementing "the filing of a motion with the court, with a copy sent to the arrestee, asking that the preliminary hearing be vacated in order to permit the arrestee to enter the diversion program. This motion not only informs the arrestee of the status of the case, but also causes the defense counsel's appointment to expire,"[173] thus allowing for direct contact with the participant.

A second issue arose with compelling a defendant to pay fees and treatment costs as a condition for participating in the diversion program. Under Arizona law, this requirement could be interpreted as extortion. "The issue was resolved by the wording and statute references in the letters sent to arrestees who are eligible for diversion."[174]

The third legal issue involved the county attorney using the police report to make a "reasoned determination" that a conviction was likely for cases being diverted. In response, the county attorney established a diversion unit within the office and case decisions are documented carefully. The diversion unit is also responsible for checking an arrestee's record for prior felony convictions, outstanding warrants, or pending felony proceedings in order to determine eligibility for the diversion program.[175]

The Maricopa County Demand Reduction Program's media component directly supports the user accountability component. "DO DRUGS. DO TIME." is an anti-drug campaign that utilizes the media to inform casual users that it is no longer acceptable to use marijuana, cocaine, or other drugs occasionally and that a police task force is targeting all casual drug users, no matter what position they hold in society. (See pages 219 - 236 for sample Maricopa County ADPP and TASC forms.[176]) The goal of this segment of the demand reduction program is to turn casual users away from drugs and change public attitudes about casual use. The program uses public service announcements, print advertisements, and other forms of media coverage to convey this tough message to the public. The campaign was launched in a unique, cooperative effort among professional advertising consultants who donated their time, a local community group, and public relations personnel from law enforcement agencies. Some claim that the slogan, "DO DRUGS. DO TIME." is misleading, because the program diverts offenders from the criminal justice system to treatment; however, members of the program staff define "time" as time spent in treatment, as well as in jail.

Researchers from the University of Arizona conducted a program evaluation of the Maricopa County Demand Reduction Program with funding from the U.S. Department of Justice, National Institute of Justice. In the first two years of the program, an estimated $39,300 was collected in jail fees and $850,400 was collected for the Arizona Drug Enforcement Fund. The study also found that of 7,012 cases between March 1989 and February 1991, 81.8 percent were prosecutable, and of those cases, 72.6 percent were eligible for diversion. It concluded that the program "widened the net" of cases, by retaining those cases in the criminal justice system which would not have been retained, except through the diversion program. This is consistent with the zero tolerance policy; however, it also increased the volume of cases for the county attorney's office, because deferred offenders who did not complete the program had to be prosecuted under normal procedures. The evaluation also indicated a delay in recidivism of those participants who entered TASC and completed the program, compared to eligible defendants who did not enter the program. The researchers caution that their analysis could not determine if the treatment itself contributed to the delay in returning to crime, or the participant's willingness to participate in the program in the first place was a predictor of success.[177]

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DADE COUNTY DRUG COURT[178]

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With the infusion of crack cocaine into Miami's drug culture, Dade County's crime problems increased dramatically during the 1980's. The problem of substance abuse threatened to overwhelm the system and placed a serious strain on the county's resources. In 1988, over 120,000 offenders were booked into the Dade County jail; 60 percent were recividists and 80 percent of those booked on felony charges were under the influence of a drug other than alcohol at the time of arrest.

Based on the recommendations of the former Chief Assistant State Attorney Katherine Fernandez Rundle[180] and the grand jury, the former State Attorney Janet Reno first approached the chief judge with the idea of a specialized drug court to provide drug treatment and other services to addicted offenders who were being merely cycled through the criminal justice system. Upon gaining the support of the chief judge for the concept of the program, efforts were made to develop it. In November 1988, the associate chief judge was assigned to coordinate a joint effort of the Eleventh Judicial Circuit Court and the Metro Dade County Government to develop a countywide attack on the substance abuse problem. Several agencies of the court and the county including the state attorney[181] worked together to develop a comprehensive plan and published it in *Strategies for Action: Combating Drug & Alcohol Abuse in Dade County*. The Dade County Drug Court was implemented in June 1989 as an important part of this strategy.

The Dade County Drug Court is a cooperative effort between the state attorney, the public defender, the court, clerk's office, county corrections, human resources, the Office of Substance Abuse Control, and Miami–Dade Community College. While some drug courts are designed to improve the efficiency of processing drug cases, the Dade County Drug Court focuses primarily on treating the offender and breaking the cycle of addiction and crime.

Initially, only first– or second–time offenders arrested for possession or purchase of cocaine (felonies in the state of Florida) were eligible to participate in the drug court. Eligibility was later expanded to include offenders who had up to five prior felony arrests for the possession or purchase of cocaine and up to two prior felony arrests for nonviolent offenses. Defendants who are denied participation in the program include those arrested for the sale of drugs, those who have a history of violence or serious felonies, or those on probation or parole at the time of arrest. Pretrial services identifies potential participants at booking in the county jail. At first appearance, the defendant is brought into the drug court and receives an explanation of the diversion program and his or her rights. Upon a defendant's agreement to participate, he or she is released to the custody of pretrial services and taken by bus to the treatment center to enroll in the program. Unless a request for residential treatment is made, most participants are sent to outpatient treatment.

Defendants begin participating in the program while the state attorney's office verifies a defendant's eligibility by reviewing arrest facts, lab reports, and criminal history records. If the arrest represents a triable case, the state attorney's office files charges formally within twenty-one days and offers the option of pretrial diversion at arraignment. Upon acceptance, the defendant waives his or her rights to a speedy trial. The length of treatment is one year although many participants take longer than a year to complete the program. Upon successful completion of the program, the offender's case is *nolle prossed*.

If an assistant state attorney's objection to a defendant's entry into the program is overruled, a form is sent to the chief assistant state attorney for signature. This form documents the state's objection to the defendant's entry into the drug court and its refusal to grant a *nolle prosse* after the defendant completes the program. Copies of this form are filed with the court and sent to the defense attorney. When the defendant graduates, the assistant state attorney reminds the judge of the document filed with the court. The assistant state attorney will not announce a *nolle prosse* of the case under these circumstances.

The diversion program is divided into three phases. In Phase I, a defendant is assigned to one of three options: two weeks of daily urinalysis and outpatient treatment; three to four weeks of residential treatment in a private program; or two weeks in the county jail's treatment program. Acupuncture, available on a *voluntary* basis, augments therapy by reducing withdrawal symptoms, relieving tension, and decreasing an individual's cravings for drugs and alcohol. The average time spent in this phase is thirty days. When a defendant has several clean urine samples in a row, the treatment counselor moves the defendant on to Phase II. Treatment counselors oversee the progression of offenders through the three treatment phases, although the judge has ultimate authority.

Defendants are required to appear before the judge regularly to report on their progress. The judge reviews treatment reports including the results of daily drug tests and attendance records as part of his review. A treatment staff member is assigned to provide liaison services with the court and report on the progress of participants.

In Phase II, a defendant attends outpatient treatment three times a week with a urinalysis test at each visit. The treatment involves individual and group counseling such as Alcoholics Anonymous and Narcotics Anonymous. Acupuncture is also available in this phase on a voluntary basis. In Phase III, a defendant attends a treatment center located on the Miami Dade Community College campus. Participants attend group therapy sessions twice a week and GED courses and receive vocational testing, training, and job placement services. Attempts are made to help participants attain full-time employment or enrollment in a full-time educational program.

When an individual completes the program and demonstrates that he or she can be responsible and remain drug free, the treatment staff recommends the participant for graduation upon concurrence of the court. Before leaving the program, the defendant must pay all program fees which are calculated on a sliding fee scale. The state attorney's office will enter a *nolle prosse* in the case, and a motion may be filed to expunge the arrest record. The expungement document is not signed until one year after graduation during which time the graduate must not be rearrested; however, in some cases it may be signed before the end of one year if a participant needs it for employment or immigration status.

The philosophy of the drug court is that addiction is a disease and relapses are part of the recovery process. The role of the judge, a unique feature of the Dade County Drug Court, reflects this notion. The judge becomes a "father figure" or senior treatment counselor to the defendants. Defendants and treatment liaisons are required to appear before the judge every thirty days to ninety days depending on the participant's progress and the phase he or she is in. As previously mentioned, the judge reviews an individual's urine results, attendance records, and reports prepared by treatment counselors. If individuals are doing well, the judge praises them in front of their peers, not only to help the individual, but to encourage others in the program.

When defendants fail to demonstrate motivation or commitment to the program, by missing treatment sessions and urine testing or testing dirty, they will be called before the judge more often; their pretrial release (PTR) may be revoked; and they may be detained in jail "treatment" cells set aside for the drug court. Upon their release from jail, the judge can either return them to the outpatient treatment program, place them in residential treatment, or transfer them out of drug court for traditional prosecution. If a defendant is rearrested for additional offenses while in the program, the state attorney's office has the discretion as to whether or not the individual is retained in the program. When a defendant fails to appear in court an *alias capias* is issued along with a revocation of PTR.

The drug court program costs $1.2 million annually, about $500 - $700 per person per year. The program is funded by the county, an increase in traffic court fines, and a sliding scale fee schedule for defendants. Since Dade County Drug Court's inception in 1989, 4,500 addicts have participated in the program; 65 percent completed the program but required more than a year; 40 percent completed it in a year, have remained drug free, and have not been rearrested.[182]

In her former role as chief assistant state attorney, Rundle worked closely with former state attorney Reno in the development and initiation of the drug court. As the present state attorney, she continues to support the program strongly. Criminal justice practitioners and other professionals from across the country have contacted or visited the Dade County Drug Court to determine if it could be replicated in their jurisdictions.

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BROWARD COUNTY DRUG COURT[183]

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The Broward County Drug Court was developed in an effort to provide a meaningful intervention into the lives of first-time drug offenders and to break the cycle of crime and addiction. Before drug court, the typical cycle of a drug offender in Broward County started with arrest and probation. Soon the offender violated probation through a subsequent arrest or dirty urine; probation was revoked; and the offender was sent to prison. The offender would be released from prison shortly thereafter, to continue a self-destructive life of crime, with little or no treatment for his or her addiction.

The administrative judge of the criminal division convened a committee composed of representatives of the judiciary, court administrator's office, state attorney's office, public defender's office, the Criminal Defense Attorneys' Association, the Broward County Commission, the department of corrections, probation, the sheriff's office, pretrial services, the Bondsman Association, and the Broward Addiction Rehabilitation Center. Members of the committee agreed that the majority of the cases reaching the system involved first-time drug offenders; thus, the committee decided to focus its efforts on these offenders.[184]

The Broward County Drug Court is designed to provide treatment and intervention for addicted offenders, particularly indigent offenders, upon their initial contact with the criminal justice system. The drug court, established in June 1991, was modeled partially after the Dade County Drug Court in Miami; however, the two programs differ somewhat in operation. The Dade County Drug Court is imposed as a condition of pretrial release. If the offender completes the program and remains drug free, the charges are *nolle prossed* at the end of one year. The Broward County State Attorney's Office wanted more supervision as part of its drug court, so offenders participate in the program as a condition of probation. Broward County does have a pretrial release program for offenses relating to marijuana and some prescription drugs, but offenses involving crack cocaine and cocaine are reserved for the drug court, because these drugs are very addictive and highly correlated with criminal activity.

One judge is currently in charge of the Broward County Drug Court, with 40 percent of his time devoted to the program. Drug court sessions are held each morning, before the judge's regular felony court session in the afternoon.

The drug court program is offered to first-time drug offenders arrested for possession or purchase of cocaine. Their participation in the program is strictly voluntary and continues for a period of one year. The following is a timeline for the drug court:

- Day 1 — Arrest
  A drug court staff member works in the jail to identify those who may be qualified for the program and explains its conditions to them. Pretrial release conducts a preliminary records check. The offender is given the choice of entering the drug court program on probation or of being charged in regular felony court. At the initial court appearance or magistrate hearing, the judge explains the conditions of the program, and defendants indicate their willingness to enter the program voluntarily. Defendants who agreed to participate begin treatment services immediately.

- Day 10 — Filing
  The preliminary records check has been verified by the state attorney's office to confirm the offender's eligibility for the drug court. The state attorney's office makes the final determination of eligibility to the program. Prosecutors file the criminal information for qualified individuals which results in accelerated plea agreements.

- Day 21 — Arraignment
  The defendant has sixty-six days from the time of arrest or forty-five days from arraignment to decide whether to enter the drug court officially. A defendant can participate in the program during this time period, even if he or she is not enrolled formally in the program. If a defendant does not formally enroll in the program within sixty-six days of the arrest, he or she is no longer eligible.

If offenders opt for the drug court, they plead guilty or no contest to the charge(s) and are notified of the date to appear before the drug court judge. If defendants do not appear at the appointed time, bench warrants may be issued at the court's discretion; individuals can be arrested; and probation may be revoked. (See page 237 for a sample

drug status form used by the drug court.) Defendants who successfully complete the program are entitled to have their arrest record sealed. The state's attorney's office has experienced pressure to erase the record completely but has resisted this pressure so far.

Each defendant, along with his or her social worker and drug treatment counselor, is required to appear before the judge every thirty days to deliver a progress report. The defendant fills out a questionnaire indicating participation in one or more of six treatment programs and the number of days the defendant remained clean or sober. The defendant presents this information to the judge, which is then verified by the attending social worker and drug treatment counselor. If the defendant remains clean, the judge requires everyone in the courtroom to applaud the individual.

The judge is very sympathetic to the plight of substance abusers and acts as a mentor or counselor to the defendants. He expects relapses as part of the treatment process. Because of his outlook, a philosophical conflict arises at times between the judge and the prosecutor over when probation should be revoked.

The treatment is conducted in an outpatient center and focuses on building self-esteem. Group sessions are held during the day and in the evening, which allows those with day jobs to maintain them. Offenders are drug tested regularly. Acupuncture is available on a strictly voluntary basis for use in reducing cravings and withdrawal symptoms during detoxification. In addition, job training and GED education is offered through a collaborative effort with the local community college.

There were roughly 400 participants in the program as of December 1992, with 688 awaiting entry. Many of those awaiting entry are receiving treatment but have not formally pled. The first-year class "graduation" was held in August 1992 for forty-one participants. A second class graduated in November. There were many compelling success stories, along with some failures. One assistant state attorney involved in the program perceives the likelihood of "success" to depend on an individual's level of motivation upon entry into the program. His belief, that addiction cannot be treated unless the individual desires recovery, is echoed by counselors throughout the drug treatment community. As of November 20, 1992, sixty-seven warrants had been issued; fifty-four for failure to attend treatment. There have been six probation revocations since the inception of the program.[185]

The state attorney's office was involved from the initial formulation of the drug court and strongly supports the program. There are pressures to broaden the definition of a defendant's program eligibility, but the state attorney's office has resisted these pressures for the most part, until more program experience is gained with the current group of offenders. The state attorney's office did agree to amend the eligibly criteria by adding that in order for an offender to be eligible for the drug court, he or she cannot have a felony drug arrest within the last ten years. If an arrest occurred more than ten years ago, the defendant may still be eligible for the program. Also, defendants with additional charges such as tampering with evidence (i.e., swallowing the crack rock) may still be eligible. The state attorney's office continues to serve on an oversight committee with other criminal justice agencies and the treatment community. The committee meets monthly to resolve any problems in program operation. Broward County and the sheriff's department provide funding for the program.

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Program Guidelines and Application Information