Alternative-to-incarceration programs: an in-depth review of state and federal drug courts

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ALTERNATIVE-TO-INCARCERATION PROGRAMS: AN IN-DEPTH REVIEW OF STATE AND FEDERAL DRUG COURTS

by

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ABSTRACT

The United States’ recent shift toward rehabilitative justice has aided in the creation of alternatives to incarceration; among these alternatives is drug treatment court. This paper studies the similarities and differences between both state and federal drug treatment courts. Using three federal programs and nine state programs – located in three states: Florida, New York, and California – as proxies, rules, regulations, and criteria are examined in order to gauge the comprehensiveness and compatibility of drug treatment courts across the U.S. It is found that drug treatment courts across both the state and federal circuits are similar to one another, with minor nuances between criteria.
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Introduction

The United States has seen a slow, yet progressive shift from a focus on harsh punishment through retributive justice to rehabilitation-oriented justice over the past 50 years (Griset 1991; International Institute of Restorative Practices n.d.; Wenzel, Okimoto, Feather, & Platow 2008). In the past, the focus for many when it came to the punishment of criminals had been making sure that these criminals got their “just desserts” – severe crimes should receive severe punishments; punishment was seen as the only way for one to achieve true “justice” (Bastian, Denson, & Haslam 2013 and Wenzel et al. 2008). In the early 1970s, rehabilitative measures within prison regimes began to make their way into sentencing policies. The idea behind this shift was that prison sentences should alter and deter offenders’ criminal propensities, creating an understanding of prisoner psyches which will impact the ability to predict future criminal behavior. These measures were not popular with the public, and quickly lost their grasp on the criminal justice system (Griset 1991). Due to the initial opposition of rehabilitative measures, retributive justice began contributing to an increase in – as well as lengthening of – prison sentences (determinate sentencing playing a massive role in this), which in effect has substantially increased the size of the incarcerated population (Fattah & Peters 1998 and Hermann 2017). Incarceration rates skyrocketed beginning in 1974, with an average annual increase of 7.1% – an exponential increase from the previous average annual increase of 2.4% for the entire period of 1925-1981 (Bureau of Justice Statistics 1982).

Rehabilitative measures have slowly made their way back into prison and sentencing policies; alternative-to-incarceration programs have become a “mainstream” option for many offenders, allowing them to seek rehabilitation rather than await lengthy prison sentences. While the change toward an acceptance of rehabilitative measures has been a long time coming, its
effects are finally beginning to make an impact on our incarcerated population. In 2020 the United States’ rate of imprisonment was 358 per 100,000, this is the lowest rate the U.S. has seen since 1992 (Department of Justice & Carson 2021). Problem-solving courts have become a popular alternative to incarceration for both misdemeanor and felony charges of varying degrees; these courts include drug treatment court, veteran’s court, mental health court, human trafficking court, family treatment court, and [the relatively new] opioid court (“Problem-Solving Courts” n.d.). The names of each of these problem-solving courts speak for themselves, although these courts are not widely known among U.S. citizens.

Established in 1989, the United States’ first ever [adult] drug treatment court (DTC) was located in Miami-Dade County, Florida. In response to America’s quote-on-quote “seemingly never-ending drug addiction problem” – imposed by the War on Drugs–and mass incarceration filling prisons to the brim, DTCs were created in an effort to respond to these issues in a non-adversarial format (“Drug Treatment Courts” n.d.; Gottfredson et al. 2007; Moore and Elkavich 2010). By placing arrestees in treatment programs which are monitored by the court, this structure is thought to address the underlying drug-related issues behind why many engage in criminal behavior – improving both the health of the offender as well as their ability to reintegrate into society (Brown 2010; Dorf and Sabel 2000; “Drug Treatment Courts” n.d.; Gottfredson et al. 2007; Hora and Stalcup 2007; “What are Drug Courts?” 2020). Established in 1994, the Violent Crime Control and Enforcement Act allocated money to be put toward the implementation and enhancement of DTCs, allowing for a fast-paced expansion of DTCs across the country. There are currently over 3,500 DTCs in the United States (approximately half of these being adult DTCs), with other countries such as Canada and Australia adopting their own

Research regarding state [adult] DTCs is plentiful, often looking at DTC effectiveness, recidivism reduction rates, and/or structure. A recent development has been the creation of federal DTCs. How do these new federal DTCs compare to their state-level predecessors? This study provides an in-depth review of state versus federal DTCs. Multiple comparisons are conducted between: state and federal, the counties within each state, and federal DTCs themselves. One would think that all DTCs within the same state would be formatted in the exact same way, but this is not always the case. Beginning with a brief background regarding the war on drugs and mass incarceration, I will then review court structure, entry requirements, and rules/regulations between the two circuits. The states of New York, Florida, and California will be used as a proxy for state drug courts; these three states are major contributors to the drug court system and are often cited as the base model for surrounding states (American Bar Association 2018 and Mak & Rutledge 2019).

**Literature Review**

**The War on Drugs & Mass Incarceration**

Beginning in the 1960s, drug use became a symbol for both social and political rebellion. Those who were anti-war at the time tended to be associated with “hippies” and marijuana use, while Blacks became associated with heroin and later crack cocaine use as both of these groups were seen as “enemies of the public” it was easy for the Nixon administration in the early 1970s to spin the tale that drug use was rampant and dangerous. John Ehrlichman – one of Nixon’s top aides at the time – stated, “We knew we couldn’t make it illegal to be either against the war or Blacks, but by getting the public to associate the hippies with marijuana and blacks with heroin,
and then criminalizing both heavily, we could disrupt those communities” (“A History” n.d.). In June of 1971, Nixon launched the war on drugs making illegal drugs America’s number one enemy and exponentially increasing the power of the Bureau of Narcotics and Dangerous Drugs (“A History” n.d. and Rodrigues; Flores, Lopez, Pemble-Flood, Riegel and Segura 2018; Labate 2016).

For the next few years, Nixon – as well as his immediate successors – pushed the focus of the war on drugs internationally, pitting America against what politicians described as “murderous drug gangs” overseas. Mexico was hit the hardest by this push, with hundreds of agents from the Drug Enforcement Administration (DEA) working alongside Mexican police forces to destroy the bustling drug market in Mexico at the time. Violence became commonplace during the Mexico drug raids, with hundreds of drug producers and dealers dying by torture and/or gunshot – often by guns provided to the Mexican police force by the American government. The Mexican police force’s involvement in the drug war backfired on America, as the police force began protecting traffickers and commanding cartels, causing a high level of corruption the DEA could do little about. Now that the American government and the DEA were no longer able to control a war on drugs in Mexico, leadership turned back to America itself (Smith 2021).

While the effects of the war on drugs ebbed and flowed in the United States during the following ten years, everything changed when Ronald Reagan became President in 1981. Putting heavy emphasis back on the war on drugs, a “tough-on-crime” attitude swept the nation; zero tolerance policies, lengthy mandatory minimums, and law enforcement’s full attention being set on drug users allowed for incarceration rates to skyrocket (“A History” n.d.; Lynch 2012; Patten 2016). Coinciding with Reagan’s presidency, the 1980s saw various changes in sentencing
guidelines in regard to drug-related crimes through the creation of the United States Sentencing Commission in 1984. Under the Anti-Drug Abuse Act established in 1986 (and a provision in 1988) strict mandatory minimums were enforced; more than anything, this act targeted crack cocaine – a drug often associated with poor Blacks. After the implementation of this act 95% of convicted drug offenders were sentenced to prison, with sentence lengths doubling – and even tripling – throughout the next several years. These changes have created what is known as the “drug policy-to-prison pipeline” (Thompson 2010 and Lynch 2012). In contrast to law enforcement’s reactive response to crimes such as robberies and homicides, drug-related crimes are met with proactive responsiveness; this form of response allows law enforcement to seek out and uncover drug-related crimes at any time, using traffic stops, house raids, and sting operations to increase their ability to bust drug dealers and/or users at a higher rate (Jensen, Gerber, & Mosher 2004; Thompson 2010; Lynch 2012). Courts continue to be flooded with drug defendants, creating what Lynch (2012) calls the “assembly line of justice”.

The original “solution” to the drastic increase of the prison population was simply, to build more prisons. Jensen et al. (2004) said it best with, “if you build it, they must come”; this statement is a testament to the idea that the more prisons we build, the more prisoners there will be. From the mid-to-late 90s, the United States was at a point where at least three prisons were opened each week; by 2000, the number of U.S. prison facilities increased 70% (Jensen et al. 2004 and Lawrence & Travis 2004). Today, incarceration rates in the United States are the highest in the world; while the United States is home to only 5% of the world’s population, it holds nearly 25% of the world’s prison population. Approximately 2.1 million people were behind bars near the end of 2019, amounting to 810 prisoners for every 100,000 persons aged 18 or older; horrifyingly enough, this is the lowest rate of incarceration the United States has seen
since 1995. Since the beginning of the war on drugs our prison population has increased nearly 700%, reaching an all-time high between 2006 and 2008 of nearly 1,000 prisoners per 100,000 persons aged 18 or older (American Civil Liberties Union 2021 and Gramlich 2021). Alas, simply building more prisons is a far cry from a legitimate solution; here we see the emergence of drug courts as a potential solution.

**Drug Court as a Potential Solution**

The concept of drug treatment courts emerged in response to the war on drugs as local courts were overwhelmed with drug-related cases (Lynch 2012 and Mak & Rutledge 2019). With the emergence of drug treatment courts, the justice system began shifting towards a rehabilitation-based view of justice – focusing on the prevention of future harm rather than seeking instant punishment. These courts directly involve judges in the case-management of offenders, engaging in team-oriented and therapeutic-style approaches. While punishment is still a part of drug treatment court structure, it is enforced as a way to promote offenders’ continued treatment; the improvement of offenders’ lives is seen as a way to reduce repeat offenses and in turn reduce recidivism rates (Mak & Rutledge 2019).

Florida was the first state to implement a drug treatment court in response to their high rates of recidivism. Created in 1989 and located in Miami-Dade County, the drug court was deemed successful when a study conducted 4 years into its establishment concluded that drug court participants had significantly less re-arrests as compared to those who did not participate in the drug court. Due to its success and the continued increase in prison populations around the country, the state of Florida decided to implement more drug courts within the state; the state of Florida is now home to 93 operational DTCs. New York and California followed closely behind Florida in the implementation of DTCs as these two states saw some of the largest numbers in
rising prison populations. California implemented its first DTC in 1991, with 203 DTCs currently in operation. New York established its first DTC in 1995, quickly expanding into every county (but one) by 2010; there are now 141 operational DTCs in New York State. There are currently drug treatment courts in all fifty states – more than 3,500 – spanning across more than 50% of counties in the United States; federal drug treatment courts reside across at least 17 districts (Drug Treatment Courts n.d.; M. 2021; Mak & Rutledge 2019; Office of Justice Programs n.d.; Pryor, Barkow, Breyer, Reeves, Bolitho, Wilson-Smoot, & Cohen 2017).

**State Drug Treatment Courts**

All state drug treatment courts follow the 10 Key Components guidelines created by the National Association of Drug Court Professionals (NADCP) (see Table 1). State DTCs are expected to employ a multi-stage (often regarded as “phases”) treatment plan, dividing these phases into periods of stabilization, intensive treatment, and transition; the guidelines created by the NADCP are intended to set base standards for all drug courts to ensure that they have a similar functionality (The National Association of Drug Court Professionals Drug Court Standards Committee 2004).

The DTC process is as follows: 1. ‘Defendant is arrested or indicted on sealed indictment.’ 2. ‘Defendant goes to court, qualifies for drug court, and agrees to participate.’ 3. ‘Defendant is evaluated, the file is reviewed and discussed by the drug court team.’ 4. ‘Defendant accepts plea to felony or misdemeanor charges, and signs Drug Court Contract as part of plea.’ 5. ‘Defendant participates and is monitored throughout the process.’ 6. ‘Defendant either successfully completes drug court or violates drug court agreement and the case returns to the traditional prosecution process’ (Flores et al. 2018). The drug court team consists of a resource coordinator, various treatment providers, the court’s judge, a district attorney, and
public defenders; this team determines a participant’s progress and treatment direction (Flores et al. 2018). The DTC process as well as those involved in the DTC team follow suit for the states of New York, Florida, and California.

While all state DTCs are required to follow the key components stated above, differences in formatting (such as the minimum length of time required to be in the program and the number of court phases) may occur between and within states. Eligibility criteria, rules/regulations, and court structure will be discussed in depth for the states of New York, Florida, and California in order to achieve a state level comparison group of DTCs to contrast with federal DTCs; criteria and structure are subject to change between individual county DTCs as these criteria are based on state recommended guidelines for their DTCs to follow (see Table 2 for recommended eligibility criteria between states).

**New York**

Standard eligibility criteria for New York DTCs include being 18 years of age or older; residing within the county of the drug court one plans to attend; having alcohol/substance dependence; facing a non-violent misdemeanor or felony charge (at the discretion of the county DTC); violating probation through the use of alcohol or controlled substances. Participants are not eligible for drug treatment court if they: have a current diagnosis for a psychiatric disorder (these participants would then be referred to mental health court); used a gun during the offense which occurred; have been charged with the sale of – or possession with intent to sell – controlled substances; have been currently or previously charged with a sexual offense involving children (“Drug Court Handbook” n.d.) (see Table 2).

Aside from eligibility criteria, basic ground rules are established when one joins drug treatment court. Beginning with the essentials, attending court and treatment appointments in a
timely manner – as well as dressing appropriately for them – are simple ways to start off on the right foot. Keeping the DTC team up to date on personal information such as place of residency, phone number, health conditions, current medications, and place of work are crucial. Medications must be monitored by the DTC team and deemed appropriate – opioids are strictly prohibited. Place of residency must be within the parameters of the county the DTC is located in, and confirmation of an established job is necessary as it is a requirement for [future] graduation from treatment court. Urine tests occur frequently; participants must sign a form saying they are willing to do randomized urine tests as needed, whether by the DTC team, treatment providers, or probation officers. Drug and alcohol use is strictly prohibited, this includes over-the-counter medication which contains alcohol as well as prescription drugs not specifically prescribed to a participant. One must be a law-abiding citizen at all times, any additional offenses outside of the one(s) which led a participant to DTC in the first place may result in termination. Honesty and respect towards the DTC team and other participants is expected at all times (“Drug Court Handbook” n.d. & New York State Unified Court System n.d.).

Once a participant is deemed eligible and understanding of court rules and requirements, they begin the orientation phase of treatment court. This initial phase is used to establish individual treatment plans and allow for expected “slip-ups” (that is, initial failed drug tests either due to the difficulty of quitting or while one’s body detoxes). Once a participant begins a consistent streak of days clean, they may begin the official phase one (“Drug Court Handbook” n.d.). Phase one lasts eight weeks at the minimum; the participant must attend DTC every other week and participate in treatment/self-help meetings twice a week at minimum. Attendance of all appointments with one’s probation officer is also expected. When appropriate, educational programs and/or vocational training must be completed in order to obtain a steady job. In order
to advance to phase two, one must have complied with all requirements in phase one; have 30 days or more of clean drug screens; and complete a written assignment stating personal recognition of one’s drug/alcohol dependency. Phase two – lasting 18 weeks minimum – continues the requirements of phase one, alongside documentation of meetings with one’s recovery mentor; frequency of DTC and treatment attendance may vary at the discretion of the DTC team. Advancement to phase three requires 60 days or more of clean drug screens while continuing to follow all requirements set in place. Phase three – also lasting 18 weeks minimum – focuses on a shift in treatment, changing treatment plans as needed with a participant’s progression through the program. Relapse prevention and the development of healthy coping skills becomes a main focus during this phase as well. Advancement to phase four requires 90 days or more of clean drug screens while continuing to follow all requirements. Phase four – the final phase – lasts a minimum of eight weeks; this phase continues the focus on relapse prevention while monitoring one’s ability to complete daily living tasks, services and aid are given to participants in order for them to continue as a successful and sober community member. Once a participant has successfully completed all four phases of DTC, the judge and DTC team shall decide if they are eligible for graduation. Graduation marks the official end to a participant’s time in DTC; in the majority of cases, participants will receive probation time rather than jail time due to their completion of DTC (“Drug Court Handbook” n.d.). We see the words “at minimum” when discussing the length of each phase in DTC, this is due to the fact that throughout the movement between phases many participants violate phase rules/requirements – causing them to start the phase over from the beginning. Violations of DTC rules may lead to sanctions (or “punishments”); these may include increased court appearances, increased meetings with one’s probation officer, house arrest/electronic monitoring devices, short stays in
jail, and essay assignments (“Drug Court Handbook” n.d. & New York State Unified Court System n.d.).

**Florida**

Eligibility criteria for Florida DTCs include being 18 years of age or older; having a substance abuse problem; residing within the county of the drug court one plans to attend; facing a [non-violent] misdemeanor or felony charge (at the discretion of the county DTC); being prison-bound if sentenced; violating probation through the use of alcohol or controlled substances. Participants are not eligible for drug treatment court if they: have a prior history of violent and/or sex crimes; are not first-time offenders (although this may change at the discretion of the county DTC); have a psychiatric diagnosis (therefore referring them to mental health court) (Office of the State Courts Administrator Ed. 2018) (see Table 2).

Like New York, Florida DTCs have basic rules set which a participant must agree to follow. Possession and use of alcohol and/or illegal/unapproved prescription drugs is not allowed, as well as entering a liquor store or an establishment whose primary purpose is to serve or sell alcohol. One may not possess or carry any firearms or other weapons during their time in DTC. Participants must agree to randomized drug testing as necessary, alongside the avoidance of substances which may interfere with urinalysis outcomes (i.e., protein powder, energy drinks, synthetic marijuana, and diet pills). Full-time employment is expected, if a participant does not currently have a job, they are expected to participate in employment searches. Working to achieve one’s GED or high school diploma in replacement of full-time employment is also a possibility. Participants are expected to pay fees associated with DTC (participation fee, case management, and drug screens) and may be subject to paying fees as a part of sanctions (Hernando County Drug Treatment Court 2013).
Once a participant is deemed eligible for DTC, they begin phase one. Phase one lasts anywhere from 8 to 16 weeks minimum depending on the county; its focus is set on an introduction to treatment and the beginning of a life of abstinence. Participants must attend DTC weekly, oftentimes submitting to a urine test; they must also participate in three-to-five therapy and group meetings weekly. Community service hours must be completed at the discretion of the DTC team, alongside full-time employment or academic/vocational training programs as necessary. In order for a participant to advance to phase two they must have 12 negative drug tests (consecutively), have a verified drug/alcohol dependency sponsor, and continue to follow treatment court rules. Phase two lasts 16 to 22 weeks minimum, focusing on the continued review – and updating – of one’s treatment plan as well as developing specific treatment goals. Relapse prevention plans are developed to the individual participant’s needs. DTC attendance transitions to a bi-weekly occurrence, now requiring only two-to-three therapy and group meetings per week. The continuation of community service hours and/or full-time employment/education is expected. Advancement to phase three requires 24 consecutive negative drug tests, the continuation of following treatment court rules, as well as being up-to-date on all payments related to DTC fees. Phase three also lasts 16 to 22 weeks minimum, with an emphasis on self-sufficiency and re-connection with one’s community. Attendance for DTC is minimized to once a month, although one must still attend two-to-three therapy and group meetings per week. As always, the continuation of community service hours and/or full-time employment/education is expected. The demonstration of a drug/alcohol-free lifestyle through the achievement of treatment goals as well as the ability to practice healthy independent living is encouraged and becomes a requirement for the completion of the phase. Participants must have 48 consecutive negative drug tests in order to complete phase three (Wigelsworth 2021a &
Wigelsworth 2021b). Some DTCs in Florida have a final “phase” called Aftercare; this may last up to 26 weeks depending on the needs of the participant. Participants are required to attend two group meetings per month and three therapy sessions per week while developing a plan for life after DTC focusing on relapse prevention. Once a participant’s plan is approved, they are required to attend at least three community service events; upon the completion of these a participant is considered for graduation. All DTC fees must be paid in full and six months with no sanctions or positive drug tests must be completed (consecutively) in order to graduate (Wigelsworth 2021a).

**California**

Eligibility for California DTCs follow a similar pattern to those in New York and Florida. A participant must be 18 years of age or older, have a pronounced substance abuse disorder, and have a violation of probation through the use of alcohol or controlled substances or be facing a [non-violent] misdemeanor or felony charge (at the discretion of the county DTC). Unlike New York and Florida, California DTCs do not always require residency within the same county as the DTC in order for a participant to be eligible. Those with possession charges may be deemed eligible at the discretion of the county court. Participants are not eligible for drug treatment court if they: have a current offense which involves the use of a firearm or a current offense which resulted in ‘serious bodily injury’ of someone else; have successfully completed DTC in the past five years; have a prior conviction of a violent felony within the past eight years; are active members of any organized street gang (San Francisco Collaborative Courts 2016) (see Table 2).

As with New York and Florida, California DTCs have basic ground rules participants are expected to follow. Appearing at court dates, treatment sessions, and probation meetings as necessary and in a timely manner is a main expectation of the court. Agreement to randomized
drug tests during one’s time in DTC is also a main expectation. Participants must keep their
treatment coordinator up-to-date and aware of any prescribed medications along with official
documentation from one’s doctor; the use of any non-prescribed or non-approved medications is
strictly prohibited as well as the use of alcohol. Possession of firearms and/or other weaponry is
prohibited. One must be a law-abiding citizen and remain arrest-free during their time in DTC;
participants may be subject to various fines and fees in relation to DTC (San Francisco
Collaborative Courts 2016).

Once a participant is deemed eligible for DTC, they are allowed to begin phase one. Each phase does not have its own minimum length, instead advancement between phases is
based solely on the completion of all phase rules and requirements; DTC in its entirety is
estimated to last 8 to 24 months. Phase one is similar to the orientation phase as seen in New
York DTCs; immediate elimination of drug and alcohol use may be hard for participants, and
phase one allows for participants to initially reduce their use rather than stop “cold turkey”.
Random drug tests frequently occur during phase one, with minimal sanctioning for positive tests
unless it becomes a heavily repeated behavior. The amount of therapy and treatment sessions a
participant must attend are based on the individual’s needs and are up to the court’s discretion;
three group meetings per week outside of therapy/treatment are required. In order to transition
into phase two, participants must test negative for 30 consecutive days (at minimum);
interestingly, participants are required to test negative only for their ‘primary drug of choice’ - a
stark contrast from New York and Florida DTC phase advancement requirements. Phase two
follows the same court discretion towards therapy and treatment as phase one, with three group
meetings per week outside of these expected to be attended. Participants must begin working
toward obtaining an alcohol/substance use sponsor/mentor, maintaining good standing with their
probation officers, and planning for employment and/or educational programs. 45 consecutive
days of negative drug tests for all substances are required in order to advance to phase three;
participants are also expected to describe their current progress and why they feel they are ready
to advance to the next phase. Phase three decreases the amount of therapy/treatment sessions and
court appearances required but is still left to the discretion of the court; three group meetings per
week outside of these continue to be required. Participants must have obtained a sponsor/mentor
during this phase, continue their employment and/or educational program, and continue having a
good standing with their probation officer. Phase three requires participants to identify those in
their life who are clean and sober, creating an available support system when needed. A
Wellness Recovery Action Plan is created and completed with one’s treatment manager.
Advancement to phase four requires 60 consecutive days of negative drug tests for all
substances, alongside a description of their progress and why they feel their outside support
system is important and how it will strengthen their ability to remain clean. Phase four follows
the same requirements of phase three, with the addition of having a stable source of income and
stable housing. DTC fees must be paid up to date at this time. In order to graduate from DTC,
one must have 90 consecutive days of negative drug tests for all substances and are required to
petition for graduation by answering these four questions: 1. ‘How is your life different now as
compared to when you first started Drug Court? What changed?’ 2. ‘What are some challenges
you will have after Drug Court and how do you plan on dealing with those challenges?’ 3.
‘Explain why you are ready to graduate now and not at a later date.’ 4. ‘What are your
motivations for staying sober and what are your plans after graduation?’ (San Francisco
Collaborative Courts 2016).
Federal Drug Treatment Courts

Federal DTCs are fairly new; the Judicial Conference of the United States (the organization which creates policy guidelines for judicial courts) and the Department of Justice has historically opposed the idea of federal DTCs. The Department of Justice felt that DTCs were inappropriate for the federal circuit, as federal offenders were seen as drastically different from the low-level offenders being helped by state DTCs (Pryor et al. 2017). Luckily, support for these courts has seen an increase in continuous growth over the past 20 years (Sacco 2018).

Federal DTCs suffer from a limited collection of data; while mental health disorders have not been a prominent element of interest for the Federal Bureau of Prisons and the Federal Bureau of Justice Statistics, some data has been collected by both regarding substance abuse rates within federal prisons. The Federal Bureau of Prisons estimates that at least 40% of federal inmates suffer from a diagnosable substance use disorder, while the Federal Bureau of Justice Statistics estimates that 45% of federal inmates have prior histories of substance use and/or dependence. Unfortunately, only 5% of these inmates receive treatment and waiting lists for treatment are long and often not available (Pryor et al. 2017). Prior to 2010 only two federal DTCs were established; a push for an increase in federal programs occurred in 2013 when Attorney General [at the time] Eric Holder’s ‘Smart on Crime Initiative’ was announced. Through this initiative the Department of Justice began heavily endorsing federal DTC programs as a part of its broader national sentencing reform initiative; “In appropriate instances involving non-violent offenses, [federal] prosecutors ought to consider alternatives to incarceration, such as drug courts, specialty courts, or other diversion programs” (Attorney General Eric Holder: Pryor et al. 2017). These courts now reside in 17 districts throughout the United States (Pryor et al. 2017 & U.S. Department of Justice 2006).
Federal DTC programs are heavily based on the structure of state DTCs but are oftentimes more informal than state DTCs. The judge does not typically wear a robe and is often seen collaborating with team members and participants at an informal table setting rather than at the bench. Meetings and court appearances occur anywhere from once a week to twice a month and often focus on not only the participant’s substance use but their everyday lives as well. The improvement of one’s physical health, relationships with others (especially family members), and their work life and/or educational status are focused on just as much as a participant’s substance use disorder. Similar to state DTCs, participants are only eligible to participate in federal DTC if they are “low-level” offenders; violent crimes and sex crimes are not eligible. Federal DTCs are generally composed of three phases; specific time frames are not set for each individual phase, but an expected completion timeline of 12 to 24 months is set for the program in its entirety. These phases are formatted in a similar manner to state DTCs, with each having a specific goal/purpose in mind in order for participants to successfully graduate. Sanctioning is often more lenient than what is seen in state DTCs; violations such as negative drug tests or not appearing for a court/therapy session will not always result in jail time or expulsion from DTC, rather these sanctions are given for serious violations such as committing a new offense or refusal to participate in treatment. Successful completion of federal DTC may result in reduced charges, supervised release, or charges dismissed in their entirety (Pryor et al. 2017).

Methods

We often see the research question of, “do drug treatment courts work?” This study does not seek to ask or answer this question, rather it seeks to ask the question: What are the similarities and differences between and within state and federal drug treatment courts? In order to answer this question, a qualitative content analysis of state and federal adult DTCs is
conducted. In New York, Florida, and California, drug treatment courts in three counties are used as a proxy model for each state’s DTC system in its entirety. The counties used for each state are as follows: Albany, Chautauqua, and Kings counties (New York); Marion, Seminole, and Clay counties (Florida); Napa, San Francisco, and Nevada counties (California). Three federal DTCs are used as well: the Pretrial Opportunity Program (POP) of the Eastern District of New York, the LASER (Law Abiding. Sober. Employed. Responsible) Docket of the District of New Hampshire, and the BRIDGE Program of the District of South Carolina. All DTCs used within this review (state and federal) share certain rules/regulations; these include distributing rewards/sanctions; requiring regular court appearances, drug testing, and drug treatment; requiring participants to enroll in educational programs and/or gain employment; allowing only non-violent offenders to participate in the program; having the program being entirely voluntary (see Tables 3a & 3b). While these DTCs share an extensive amount of rules/regulations, differences are inclined to be prominent in other areas. Due to the implication of these differences, comparisons will be made on the following: the minimum number of negative drug tests required weekly; the number of phases in the program; the minimum time spent in the program; the number of therapy sessions/group meetings one must attend; if sponsors/mentors are required; age requirements; if misdemeanors and/or felonies are allowed; if fees are required to participate in the program; if participants are referred to DTC pre-trial or post-conviction. Relevant documents will be examined, including eligibility, referral, and consent forms, participant handbooks regarding the drug court’s expectations, and contracts. While all of these forms are important to the functionality of the drug court, each individual courts’ handbook will be the most valuable document to this research as many of the forms stated above are often condensed and/or mentioned within these handbooks.
Findings

As stated above, common similarities are found among all DTCs – both state and federal. These similarities constitute the basic elements of the Ten Key Components guideline previously discussed under *State Drug Treatment Courts*, and should be expected; therefore, these similarities are not surprising additions to the findings. It is imperative to note that some information is missing (such as age requirements and number of phases) for certain DTCs used in this sample. Missing information is indicated with N/A in Table 3.

The number of phases required to be completed between DTCs varies anywhere from three to six, with the most common amount(s) being three and four. Clay County of Florida is structured in five phases, while Nevada County of California is structured in six – the largest number of phases between all DTCs reviewed. Phases are often determined by certain goals alongside the expected length of time needed to complete them; both Clay and Nevada Counties have formatted their phases to be more specified as opposed to the more generalized goals of other county/federal DTCs’ phases (allowing for them to have a smaller number of phases). Regardless of the number of phases, the minimum time spent in DTC tends to fall around 12 months; Kings County of New York and San Francisco County of California trend slightly behind at 8-10 months respectively. The most significant finding regarding minimum time spent in DTC is found in Albany County New York, with an average of only 4.5 months of minimum time required. This is a drastic shift from other DTCs and appears to be an outlier. It is important to note that these are only the average *minimum* time spent in DTC, with actual completion rates spanning between 12 and 18 months.

Drug testing occurs throughout all phases within adult DTCs; the majority of DTCs in this study (both federal and state) do not have a specified number of tests required, but they do
note that randomized drug testing is performed often at the discretion of the court. For those DTCs with a stated minimum, the average rate of drug testing stands at a minimum of 2 drug tests per week; this occurs in Chautauqua (New York), Clay (Florida), and Nevada (California) counties. The federal LASER program requires a minimum of only one drug test per week, while Napa County (California) requires anywhere from no drug tests at all to 5 per week. Napa County’s randomized drug testing is set up in a way we do not see in other DTCs; participants are each given a color (red, orange, etc.) and a corresponding number to dial daily. Participants are required to call said number to see if they will be drug tested that day; participants’ colors can be randomly chosen every day or not at all (Napa County Drug Court 2016).

Group meetings are often subject to change while participants advance through DTC phases, with the required number of weekly meetings lessening as one advances. Interestingly, Napa County does the opposite – the more you advance through the program the more group meetings you are required to attend. These are not weekly meetings, rather they are monthly; the idea behind this structure is that participants are pushed harder (the further along they are) to stay within program guidelines in order to show their dedication to their new drug-free lifestyle (Napa County Drug Court 2016). The federal LASER and BRIDGE programs, alongside Chautauqua and San Francisco counties, all require 3 group meetings weekly regardless of phase status. Information regarding weekly group meetings was not available for all other DTCs in this study.

In order for participants to comply with group meetings and clean drug screens, DTCs often require the obtainment of a sponsor/mentor to help guide participants through the program (and potentially long-term). Sponsors/mentors are often persons who have experienced past substance abuse who are now clean (and have been for years); participants within DTC can go to their sponsor/mentor for questions, help, suggestions, and advice they may need throughout the
course of the program, offering participant’s someone who personally understands their struggles and can help their advancement through DTC. Surprisingly, only five DTCs (one federal and four state) explicitly require the obtainment of a sponsor/mentor for their participants.

Age requirements between DTCs vary slightly. As these are all adult DTCs, it is not surprising that the average minimum age to participate is 18. Two DTCs – San Francisco County of California and the federal POP program – split their adult programs into two sections, 18-25 years old (considered “young adult”) and 25+ (considered “adult”). This age separation does not seem to have any impact over other components within these DTCs. Age requirements for both the federal BRIDGE and the LASER programs were not accessible, but it is likely that the minimum age requirement for these is also 18. Chautauqua County of New York stands out as it is the only DTC with a minimum age requirement under 18.

Certain DTCs allow only those with misdemeanor cases to participate, while others accept felony cases as well – or even both. Those which accept misdemeanors only include both Albany and Chautauqua County of New York, while those which accept felonies only include Seminole County of Florida and Nevada County of California. Surprisingly, just as many DTCs accept both misdemeanors and felonies (it is more common to see the acceptance of one or the other); these include: San Francisco County of California, Marion County of Florida, Kings County of New York, and the federal POP program. Data was not available for the BRIDGE and LASER federal programs, or for Clay County of Florida and Napa County of California. Similar to the ability of having the choice to accept misdemeanor versus felony cases, DTCs may also choose between pre-trial or post-conviction participants. The majority of DTCs only allow participants who have already been convicted to join their program; opposing this, San Francisco County of California and Chautauqua County of New York only accept participants who are in
the pre-trial phase. Clay County of Florida and the federal BRIDGE program allow participants in either phase to join their programs. The phase which a participant currently finds themself in often affects the “reward” they receive once graduating from the program (for example, a reduced sentence).

In order to participate in certain DTCs, fees are required. In regard to the DTCs used in this study, New York State and federal DTCs do not require participants to pay any fees during their time in the program. Those that do require fees often set up a one-time payment – the range of these fees varying significantly. Napa County of California requires a small one-time fee of $100, while its counterpart in Nevada County California requires a one-time fee of $650; shockingly, San Francisco County of California has no fees. Clay County of Florida requires a one-time fee of $480, while Seminole County Florida requires a one-time fee of an astounding $1,000. Marion County of Florida also requires fees, although this is the only DTC that expects these fees on a monthly basis ($135 per month) rather than as a one-time payment. The differences in the requirements of fees is the most significant finding among the comparison of these DTCs; ranging anywhere from no fees to $1,000+.

Conclusion

Differences between state and federal DTCs are apparent yet not significant. The most obvious of these differences is that of fees required to participate, the minimum number of drug tests required, and if the program is completed pretrial or post-conviction (see Tables 3a & 3b). Requiring fees to participate in DTC may bar some from being able to as they cannot afford it (for example, Marion and Seminole counties in Florida require $1,000+ in fees). By eliminating fees, DTC can become a more viable option for potential participants; making DTCs more easily accessible [to those who qualify] may eliminate a large portion of the prison population which
currently resides due to drug-related non-violent crimes. The minimum number of drug tests required [weekly] may impact DTC success rates and the average amount of time it takes for one to complete the program. A DTC which requires one test a week versus one which requires up to five has the potential to affect rates of drug use/relapse; consistent drug testing makes it harder for participants to attempt drug use and/or to attempt faking drug test results. Participants who can stay on the “straighten arrow” due to strict drug testing will complete DTC at a faster average pace, are less likely to relapse, and show they have the ability to change and improve both personally and mentally. Whether or not a DTC is required pretrial or post-conviction has the largest implications; the majority of DTCs reviewed in this study offer post-conviction completions, this means that participants are sentenced (after going to trial) to DTC – generally under the implication that unsuccessful completion will result in prison time. Pretrial DTCs are completed – as implied – prior to an offender’s potential trial; this is often used as part of a plea bargain, opting to complete treatment court rather than going to trial for potential prison time. Like post-conviction treatment court, this plea deal often has the implication that unsuccessful completion will result in a trial – and therefore – prison time. The reasoning behind one becoming involved in DTC often impacts a participant’s viewpoint and want to be there; those that see it as their only option to avoid prison time (post-conviction) may take it more seriously than those who risk a trial with the potential of no prison time (pretrial).

While not significant, there were slight differences between the three counties within each state. These counties often experience drastic differences in the number of drug-related arrests made yearly; for example, in New York State (2020), Albany county had approximately 596 drug-related arrests (misdemeanor and felony); Chautauqua county had 416; Kings county had 3,133 (Division of Criminal Justice Services n.d.). Population size, socioeconomic factors,
and police presence may have underlying implications related to the differences in the number of drug-related arrests made per year, as well as county DTC structure. Although the differences between county DTCs are minor, the uniformization of these courts may allow for more accurate statistics regarding DTC success rates and the potential for recidivism and/or relapse in the months/years after graduating from DTC. It is understandable for state court systems to have differences between one another due to policies and legislation but given that they are all expected to follow the Ten Key Components guideline for DTCs, these differences should not have substantial impact on treatment court outcomes.

This research expands the literature on drug treatment courts in a multitude of ways. While the literature regarding state DTCs is relatively plentiful, research and literature regarding federal DTCs is fairly limited. Not only is this research an important contribution to the literature surrounding DTCs, but it also brings insight to the lesser-known federal DTCs, their functionality, prospective importance, and the potential need for the treatment court system to continue its expansion in the federal circuit. A comparison of federal versus state DTCs has not yet been conducted. This study marks the beginning for a potential field of study which has ample room for growth, allowing researchers and policy makers alike to expand their knowledge regarding DTCs in order to better understand their functionality and purpose. Understanding the similarities and/or differences between DTCs – both state and federal – may lead to the uniformization of DTCs across the United States which has potential to impact the national prison population in both size and characteristic makeup. This research aims to impact the general public as well, as the vast majority of the general U.S. population is unaware of problem-solving courts such as drug treatment courts. Drugs continue to be easier to access in the United States than drug treatment; bringing attention to rehabilitative programs which allow offenders a
second chance has potential to spark an initiative within the population to continue the shift
toward rehabilitative justice as well as mental health recognition. As we begin to understand
substance use and dependency as an illness rather than as a choice, we can continue to improve
current programs as well as develop new ones in order to help those in need and reduce our
population impact within the prison system.

Research regarding federal drug courts is still minimal and should be expanded upon; as
only a handful of federal DTCs currently function across the United States, more research
regarding these courts may answer questions regarding if we need them, how many we should
have, and if there are benefits to allowing federal offenders to experience alternative means to
incarceration. Alongside this, research regarding race, ethnicity, and gender among both state
and federal DTC participants is lacking and has potential to be a large contribution to research
regarding DTC success rates. Future research may want to look toward underlying contributing
factors such as these to note the impact they may have on participant success and initial
allowance to join DTC.

This research is limited in that not all information was available regarding each DTC
used; access to documentation from certain DTCs is not easily accessible, and future research
may benefit from directly contacting DTCs in order to obtain information. It should be noted that
using only three states as a proxy to encompass the entire United States may not be the most
comprehensive (although these states were chosen under the impression that they are leaders in
DTC creation and implementation); future research may want to include all fifty states if
possible, in order to have better representation of the state DTC circuit.

This is the first comparison of federal versus state drug treatment courts; while research
regarding state DTCs is fairly common, little is known regarding federal DTCs. Future
expansion of research regarding this topic may bring to light potential disparities which need to be addressed; uniformity of drug court rules, regulations, and structure country-wide may be the key to dissolving the differences we see now, as well as the potential ones spanning areas of interest not covered within this study. Drug treatment courts have grown substantially over the years, becoming one of the most common alternative-to-incarceration practices in the United States. Operating in all 50 states, these courts have led the way for the shift toward rehabilitative justice.
<table>
<thead>
<tr>
<th></th>
<th>1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.</th>
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<tr>
<td></td>
<td>Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights.</td>
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<td></td>
<td>Eligible participants are identified early and promptly placed in the drug court program.</td>
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<td>Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.</td>
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<td>Abstinence is monitored by frequent alcohol and other drug testing.</td>
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<td>A coordinated strategy governs drug court responses to participants’ compliance.</td>
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<td>Ongoing judicial interaction with each drug court participant is essential.</td>
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<td></td>
<td>Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.</td>
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<td>Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.</td>
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<td>Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.</td>
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<td>New York</td>
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References


Nevada County, CA. (n.d.). *Adult Drug Court*. Adult Drug Court | Nevada County, CA. Retrieved February 3, 2022, from https://www.mynevadacounty.com/663/Adult-Drug-Court


