

Drug Treatment Courts:

*An International Response
to Drug Dependent
Offenders*

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DRUG TREATMENT COURTS: AN INTERNATIONAL RESPONSE FOR DRUG DEPENDENT OFFENDERS

A practical approach to Drug Treatment Courts for Policy Makers

This publication has been prepared as a follow-up to “Establishing Drug Treatment Courts: Strategies, Experiences and Preliminary Outcomes,” prepared by the Organization of the American States (OAS) and American University in 2010 to provide an overview of Drug Treatment Court (TDC) activity in countries where these programs were being planned and/or implemented. The 2010 publication provided a snapshot of the planning issues, operational characteristics, and implementation experience of 20+ programs (in addition to those in the U.S.) that had been implemented in 14 countries along with various programmatic and policy issues that were being addressed in varying degrees. The present publication is designed to address in greater depth these major policy and implementation issues that these 20+ Drug Treatment Courts were addressing and programs will need to continue to address as DTCs mature and evolve. These relate to:

- determining who DTCs should serve;
- bringing together the justice system, public health and other sectors to work collaboratively to provide the infrastructure and support these programs require;
- developing sound treatment practices and services that reflect ongoing research findings and are adapted to the various cultures and environments in which DTCs need to operate;
- identifying meaningful performance measures that can track the impact – and benefit – of DTCs for both individual participants and the communities in which they live; and, most important,
- sharing the “lessons learned” by justice system, public health and other leaders involved with DTCs in the course of shifting policy and practice from a primarily punitive to a more therapeutic/treatment oriented response to drug use which is consistent with the findings resulting from both scientific research and practical experience.

The authors contributing to this publication are drawn from multiple disciplines and a range of countries in which the Drug Treatment Court model has been implemented and who share their perspectives and experiences regarding issues relevant to the design and implementation of drug treatment courts. The editors have made every effort to include each chapter as presented by the authors. The views expressed in each chapter do not necessarily represent the views of all contributors, nor of the sponsoring institutions.

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CHAPTER 9

DRUG TREATMENT COURT PROGRAMS: SUSTAINABILITY, TRAINING AND ADVOCACY

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Introduction

This chapter discusses the sustainability of Drug Treatment Courts (DTCs), and what is needed to implement and promote them as stable public policy programs at a national level. We shall illustrate the process by looking at the experience in Chile, emphasizing what we have called stages of public policy creation, and will highlight the need for training and promotion as key to maintaining a sustainable program over time.

The process of implementing DTCs in Chile was lengthy and characterized by various difficulties. Nevertheless, the program is now part of national policy and is intended to be expanded throughout the country, as a program aimed at the rehabilitation of offenders by promoting the use of alternative to custody, and of the therapeutic justice approach based on problem-solving court models.

Chile's DTC program started in 2004 with a pilot program in the city of Valparaíso. This first program came about because of the commitment of all stakeholders--that is, judges, prosecutors, defense attorneys, and technical experts, such as those from Paz Ciudadana Foundation, the National Council for Drug Control (CONACE), and the Ministry of Health (Droppelmann, 2010).

Since then, eighteen DTCs have been created nationwide, and are currently operational. Since 2008, one of these DTCs has been assigned to dealing with young offenders at the Downtown-North Metropolitan Public Prosecutor's Office, in cooperation with the National Service for Minors (SENAME), a government agency in charge of young offenders.

⁶ Paz Ciudadana Foundation is a nonprofit organization in Santiago, Chile, involved in helping improve criminal justice policies in the area of crime prevention, criminal justice and resettlement of offenders.

The current operation of DTCs is made possible through a 2008 financial collaboration agreement between CONACE and the Public Prosecutor's Office, through an annual grant of funds to hire professionals to conduct these programs. Ongoing cooperation among all the organizations engaged in the program is also important. These organizations include the Ministry of Justice, the Public Prosecutor's Office, the Criminal Public Defender's Office, SENAME, CONACE, and other technical agencies.

The DTC implementation process in Chile has been ongoing for seven years, and has provided significant experience that may serve as an example for other Latin American countries.

Stages of creation of a public policy: The specific experience of DTCs in Chile

The DTC formation process in Chile included several stages of policy-making that were not exclusive to this program, but could be applied to any creation of this kind. Ideally, the process should include a visualization of the problem and its introduction into the public agenda; policy design; decision-making; implementation; public policy sustainability, evaluation and monitoring (Bellettini, 2005). We can look at the Chilean experience as a way of guiding the creation of policies such as this one, and identifying the factors that are significant in promoting sustainability over time. Each of these stages is described below.

Visualizing the Problem and putting it onto the Public Agenda

The first part, *visualizing the problem and putting it onto the public agenda*, entails documenting the specific problem to be addressed and describing how the program will address it. It also requires examining the successful options that have been used and internationally- and nationally-to address the problem: in this case, drug use by offenders.

Chile commenced a very significant area of study around the connection between drugs and crime, beginning in the 1990s⁷, encouraged by international research of this type that began earlier (during the 1980's).

Apart from drug use prevalence studies, the first study using the I-ADAM⁸ methodology was carried out in 2005. This study uses a questionnaire and urine tests in order to

⁷ Paz Ciudadana Foundation began this area of study in 1997.

detect drug use by arrestees. The research showed a strong connection between these two variables--that is, using drugs and committing a crime. Although not all drug users commit a crime, the study showed that a high percentage of offenders use drugs: 73.3% of arrestees in the 2005 study had used at least one drug during the period near his or her detention.⁹

In February 2005, Law Number 20.000 came into force, establishing specific new types of drug crimes, such as drug processing and production, sale of precursor chemicals, trafficking in narcotic drugs and psychotropic substances, and other related crimes. This, in turn, generated an intense academic discussion on the offenses, and also forced agencies to gather more specific statistical information on the new crimes.

Documenting these developments provided a framework for then including the problem of offender drug use in the public agenda, a fundamental to creating specific public policy programs for these particular offenders. In order to disseminate awareness about this problem in a better way, it is necessary to work with the media, conduct seminars with international experts, and implement expert committees for discussion and to develop suitable program responses.

Policy Design

Once the problem has been introduced, the creation of a program of this type goes to a second stage, known as *policy design*. At this point, comparative studies are fundamental as they allow for the identification of successful methodologies that have been used to address the problem identified. In the Chilean context, a DTC model program was considered in order to provide drug-using offenders with treatment. This design was an adaptation of the Miami DTC model, but had an objective similar to that of the original program¹⁰, namely, “to reduce criminal recidivism related to drugs by diverting offenders using drugs to rehabilitation” (Droppelmann, 2010).

One of the main concerns was to identify the appropriate legal framework for the program. As we learned from comparative evidence, DTCs generally adopt one of two

⁸ Hurtado, Paula. (2005) *Consumo de Drogas en Detenidos. Aplicación de la Metodología I-ADAM en Chile (Drug Use in Arrestees. Using I-ADAM Methodology in Chile)*. Paz Ciudadana Foundation. Santiago, Chile.

⁹ In 2010 Paz Ciudadana Foundation updated the I-ADAM study in Chile, and concluded that 69.3% of arrestees from South Santiago had used at least one drug when arrested. This was confirmed by urine tests as offenders were detained in the police station (Study/Press).

¹⁰ Drug Treatment Courts started in the 1990s in the United States, following the lead of the first one created in Miami in 1989.

models: a pretrial model, where charges are dismissed by the court once the treatment has been completed, and a post-sentencing model, where participants can receive a lesser conviction once they finish their treatment. In Chile, taking into account the current legal framework, the need to test models in pilot programs, and the time needed for possible legislative modifications, it was decided to use the existing legal framework, through the "Conditional Suspension of the Proceedings" found in Articles 237-240 and 245-246 of the Chilean Law on Criminal Procedure. This legal tool is an alternative to the traditional criminal procedure, by means of diversion. The proceedings are suspended for a period of between one and three years, during which time the offender has to comply with specific conditions, particularly upon being diverted to special programs. First-time offenders and misdemeanor¹¹ defendants can access this alternative through the ordinary criminal justice procedure. Apart from the legal requirements, defendants must also comply with a number of clinical eligibility requirements in order to choose to enter DTC programs, which might include a diagnosis of problematic drug use, or to rule out dual diagnosis of drug dependence and mental health disorders.

To plan for *implementation*, a pilot program aimed at adults began in Valparaíso in 2004. This pilot made it possible to test the model, identify its strengths and weaknesses, and promote knowledge about the program nationwide. This stage of implementation of a pilot program was quite fruitful, as it also made it possible to conduct a suitable follow-up study and solve any problems that occurred during the pilot operational period. After that, pilot programs started to spread rapidly to other cities, and currently, eighteen DTCs are operating in our country.

Although the pilot implementation encountered some problems we will detail later in this chapter, it is necessary to emphasize that the first pilot program helped to establish DTCs and promote them as a stable public policy. In this respect the pilot period has been fundamental to promote the program by spreading the word and carrying out studies in order to assess its operation (Espinoza et al., 2011) or examining the prospects for and cost of expending DTCs (Morales et al., 2012). These can be conducted by the justice or health officials and academia, among others.

In addition to publicizing the program and the results of the pilot project, training is also essential to this process, especially during the program implementation stage. All of the stakeholders must learn about and follow the DTC model in order to testify to its

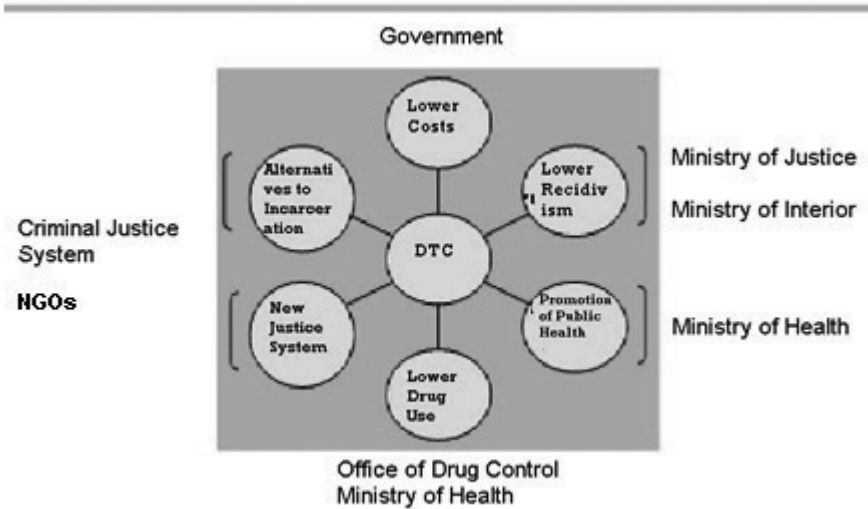
¹¹ For probable custody sentences of not more than three years.

effectiveness¹². Training makes it possible successfully to incorporate DTCs into judicial systems that have a more traditional and coercive approach. It also makes it possible to expand understanding of the benefits of rehabilitation (therapeutic justice) and the measures and sanctions that can be used in the non-custodial system.

Decision-Making

In general terms, the policy design stage is complete, because DTCs are now operating, interdisciplinary working groups have designed procedures manuals, and the needed experience and strategic alliances have been created. However, the design is not enough, and it is necessary to continue working at the policymaking stage. Therefore, the third stage refers to decision-making, primarily through private or public organizations with some influence on the Government. This requires generating evidence about the benefits of the program for the different organizations as a way of creating institutional support. The Chilean example considered the benefits as shown below.

Figure 1: Benefits of DTCs for each agency



Source: Paz Ciudadana Foundation.

¹² Paz Ciudadana Foundation, as a specialized technical organization, carries out training on DTC model.

Once the benefits have been identified, strategic alliances were then created among public and private agencies to make decisions about the program. This organizational support allowed Chile to enter into cooperative agreements, such as the current agreement between CONACE and the Public Prosecutor's Office signed in 2008. This agreement, which provides funds for hiring staff needed to carry out the program, can be renewed each year. There are also agreements and alliances for technical support.

Implementation

The fourth stage of the policymaking process entails the *implementation of the program*, either at a regional or a national level. Chile is just now entering this stage, as it has both the experience of pilot programs and government support to spread the concept nationwide. Implementation must involve all available resources, organizational support, a coordinating body, manuals of appropriate procedures, and technical support for training professionals and stakeholders, and must take into account the need for external evaluation aimed at measuring the impact of the program.

Policy Sustainability, Evaluation and Monitoring

The last stage of the process is *policy sustainability, evaluation and monitoring*, which is premised on recognition that the stability of a program over time is the result of careful monitoring and evaluation, in order to ensure that program operations are consistent with the program design and to measure its impact. This effort will generate a sustainable policy that can adapt over time to possible amendments, but still maintain favorable results.

Training: A fundamental Requirement for the DTC

Training is fundamental to establishing and stabilizing DTCs, and is included in the ten guiding principles for DTCs: "Continuous interdisciplinary training promotes effective planning of DTCs and their operation" (NADCP, 1997). Therefore, promoting the program through training and knowledge is essential so that the program can operate successfully on a national scale. It has been said of training that "drug treatment courts represent a fundamental change in criminal justice and treatment systems; because of this, all members of the team must understand basic aspects of each of their functions" (Safer, 2004).

Therefore, training is not only essential in installing this type of program, but it is also a way of guaranteeing the long-term quality of DTCs, as professionals require new knowledge and ongoing training (Droppelmann, 2008).

Training should be in two areas. The first is on the general DTC model, and includes reports on implementation, flowcharts of procedures, drug dependencies and hearing performance (Droppelmann, 2008). The second is directed to giving specific guidance to every stakeholder on detailed roles and tasks.

An Educational Manual was published in 2010 in Chile, making it easier for the stakeholders (judges, prosecutors, defense attorneys, psycho-social teams, and coordinators) to obtain the required knowledge. The Manual covers the main aspects of DTC training, and includes audiovisual materials, such as recorded hearings and interviews with key actors, to better illustrate how the model operates, and the roles that each of the actors plays (Droppelmann, 2010).

A training course should cover many subjects, but we will discuss only those issues that we are interested in emphasizing.

First, the importance of educating stakeholders about the original DTC model, including guiding principles and basic elements that a typical program must have: integration between the justice system and the health system, an interdisciplinary team, a professional diagnosis of problematic drug use, judicial monitoring including regular hearings, a plan of incentives, and intervention geared to rehabilitation and social integration (Droppelmann, 2010). Ongoing training in this regard will make it possible to spread the model in a faithful way without decreasing its quality or its effectiveness.

Another important area is the formation of a DTC coordination team. The creation of the team is essential, as the program is based on a non-adversarial justice model in which the actors work toward treating and rehabilitating the offenders. Keeping this in mind, we emphasize the following roles and functions of the main actors – an essential focus for training – laid out in the educational materials:

- The role of the judge is to lead the DTC program, as he/she must expand his or her range of actions to encompass the promotion of rehabilitation. To this end, some essential qualities for a DTC judge are: Be impartial and consistent. Listen to participants. Be empathetic. Have knowledge of drug dependence issues Be willing to work in groups Focus on conflict resolution

Prosecutors must adapt their traditionally adversarial role and promote the rehabilitation of the defendant. They, too, need to be trained in drug dependence issues, be willing to work in teams, and focus on problem-solving. Defense attorneys must also adapt their own role: while this does not mean they have to leave aside their role as defense counsel, they must guide their performance toward the rehabilitation of

the defendants through the identification of relevant cases for the program, the explanation and guidance to both the defendant and the team on significant issues, the promotion of trust among the management team, and the monitoring of the process.

Treatment of DTC participants is carried out by a case management team, formed by a psychologist and a social worker. They must possess suitable training, given that their main role is to manage DTC cases from the very first investigation until the offender graduates, including a continuous follow-up during the suspension of the proceedings. Besides conducting research into cases, they must coordinate - along with the treatment center - the confirmation of the diagnosis, and, if the participant does not attend voluntarily, he/she must be persuaded and encouraged to do so. After defendants enter the rehabilitation program, the team must monitor their participation and coordinate the delivery of information by the treatment center. Finally, once defendants graduate from the program, the case management team must support participants through their reintegration process.

In short, we emphasize that training is essential to the implementation and continuity of the program. As we have seen here, training must provide basic content in order for actors to understand the DTC model, as well as their respective roles and functions in this program. The “drug treatment courts should promote educational opportunities, encourage working group members to continue being trained, and give training - whenever possible - to both new members and more experienced ones as well” (Safer, 2004).

Problems Identified during the Initial Implementation and future alignments of the drug treatment court program

The application of the DTC model to Chilean circumstances was beneficial in the sense of promoting better understanding about the relationship between crime and drugs and drug treatment, rather than just crime and punishment. It also made it possible to identify critical issues that may help identify certain problems that may hamper the proper development of the program. The difficulties of the Chilean process can be summarized in three areas. First, the number of people who, due to their legal profile, can access the DTC; second, the lack of an organization that will enable DTCs to stop operating as a pilot program; and finally, the ongoing need for interagency coordination.

The number of people who, due to their legal profile, can access the DTC

The first issue is the most important, since no program can continue to operate over time without a large target population eligible for the program. In Chile, the lack of participants is due to the very limited legal profile imposed on criteria to access the program, namely, only first-time offenders are admitted. Consideration is being given to amending the law to encompass offenders who have more complex criminal profiles, such as those who reoffend with more serious crimes, especially those who commit property crimes and have a higher prevalence of drug use.¹³

Need for an Organization to coordinate implementation of the program regionally and/or nationally

Along with amendments to the law, the Chilean DTC program must take the important step of ceasing to operate as a pilot program and become a public policy program. To do so, a solid institution must be created as a central coordinating unit, either regional or national, to support the DTC programs, assure program operations, development and assessments. Such an organization is currently being developed, under the institutional framework of the Ministry of Justice. This will permit the program to expand nationwide, with the important premise of maintaining fidelity to the original model.

Need for Interagency Coordination

Finally, we know that DTCs are a clear example of interagency coordination and that their creation has never been an easy task. Therefore, it is necessary to create the circumstances in which all organizations that in some way take part in or influence the program are in coordination. This task will be ongoing and must be given priority by the coordinating unit. Guaranteeing inter-organizational coordination is a basic requirement for these programs to remain functional over time.

Conclusions

Making a public policy program sustainable is not an easy task, as both its creation and its continuity depend on the development of the policy making process and on the initiative's historical and social context. A policy does not emerge from the national and international context in isolation, and its implementation and its development over time are permeated by this context.

¹³ According to the I-ADAM study carried out by *Paz Ciudadana Foundation*, 2010.

Nevertheless, there are actions that a public policy of this kind cannot omit if it is to be effective: ongoing monitoring and evaluation to identify the operation and the impact of the program, so that the program may be modified and adapted to its context; ongoing training for all stakeholders; and inter-agency coordination, and promotion of the program as an efficient rehabilitative tool.

It is also important to identify critical themes relating to each country's reality and individual needs. This chapter used the Chilean experience as an example of an adaptation of a successful program, which was implemented in a way that might seem very different from other settings. Watching for and knowing about other forms of program operation and implementation makes it possible to not only encourage similar experiences, but also contribute to the overall knowledge of the DTC model.

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