Missouri Treatment Courts: The Road to Redemption

By Gary P. Toohey & Cynthia K. Heerboth
From the beginning, life wasn’t easy for Megan Crisp. Bounced from foster home to group home because of her mother’s drug use, she was left to fend for herself by age 18.

Despite a fervent wish to avoid taking the path chosen by her mother, she began using drugs when she was 16. By age 20, she had given birth to a son, who was eventually taken away from her. She then used drugs throughout her second pregnancy. When the baby was born, the hospital conducted a newborn crisis assessment and, as required by state law, advised authorities.

When Megan eventually wound up in the Jackson County Family Drug Court, one of several types of specialty courts created in jurisdictions across the state, she took advantage of a variety of services – including parenting classes – in addition to those dealing directly with her addiction. “They had a foundation put in place to where I could actually have a chance in life,” she said.

Megan successfully completed the family drug court program and is now in college, where she is an honor student pursuing a degree in graphic design. She is giving back to the community by helping many of the same organizations that reached out to her at her time of need.

What are treatment courts such as the one that helped Megan reclaim her life? They are judicially-supervised dockets designed to help individuals with substance abuse problems – either drugs or alcohol – become productive members of society. Participants “are regularly and randomly tested for drug use, required to appear frequently in court for the judge to review their progress, rewarded for doing well and sanctioned for not living up to their obligations.”

As of May 31, 2013, there were a total of 132 treatment court programs in Missouri: 90 adult drug courts, seven juvenile drug courts, 12 family drug/treatment courts, 18 DWI courts, four veterans’ courts, and one reintegration court (see map on page 9).

As Missouri marks the 20th anniversary of its first treatment court, proponents of these programs say they:

• Offer a proven, cost-effective method for diverting offenders from incarceration;
• Lower the recidivism rate of offenders;
• Allow offenders to remain in their communities, support their families, and pay taxes;
• Reduce the number of babies born addicted; and
• Lower crime rates and the need for foster care, and ensure that child support payments are made.

Statistics would seem to bear out the truth of these arguments. Figures released by the Missouri Drug Courts Coordinating Commission – an entity created by the state legislature to oversee the allocation of resources to treatment courts – show (as of June 1, 2013) that the state’s various treatment programs have more than 3,400 participants. The graduation rate for all programs is more than 50 percent, with a retention rate greater than 60 percent.

The commission notes that potential incarceration cost savings or cost avoidance for 2,707 adult offenders diverted from state prisons is approximately $27 million. Fiscal 2013 average incarceration costs are $20,870 per year per person, while treatment court costs are $6,190 per year per person.

Since their inception, the commission adds, Missouri treatment courts have had more than 12,900 graduates – with 603 drug-free babies born to treatment court participants.

“[Treatment courts] reduce crime, they reduce criminal behavior, [and] they are far and away the most effective criminal justice response to addiction-driven behavior,” said Stone County Associate Circuit Judge Alan Blankenship, who oversees that county’s drug and DWI courts.

“From a moral, a fiscal and a law-and-order perspective,” said then-Chief Justice William Ray Price in 2011, “drug courts, DWI courts, juvenile diversion programs, veterans’ courts, reentry courts and community supervision strategies are better investments of taxpayer money, for their target populations, than prisons.”

**BORN OF NECESSITY, GROWN BY SUCCESS**

Treatment courts in America were largely born of necessity.

During the mid-1980s, many state and local criminal justice systems [became] inundated with felony drug cases. Court dockets became overcrowded with drug cases and drug-involved
offenders, leaving fewer resources available to adjudicate serious, violent felonies. During this same period, it became increasingly clear that: (1) incarceration in and of itself does little to break the cycle of illegal drug use and crime, and offenders sentenced to incarceration for substance related offenses exhibit a high rate of recidivism once they are released; and (2) drug abuse treatment is demonstrably effective in reducing both drug addiction and drug-related crime if participants remain in treatment for an adequate period of time.6

Thus, in 1989, the first drug court in America became operational in Dade County, Florida. “Tired of the same faces and the same cases repeatedly appearing before the court, a visionary group of justice professionals decided that the system as it existed was broken and there had to be a better way.”7

The solution they proposed – “combining drug treatment with the structure and authority of the judge”8 – immediately paid dividends by altering the lifestyle and behavior of drug court participants.

What began in 1989 as an experiment by the Dade County Circuit Court to call upon the authority of a sitting judge to devise – and proactively oversee – an intensive, community-based, treatment, rehabilitation, and supervision program for felony drug defendants in an effort to halt rapidly increasing recidivism rates, has become a national movement….9

Within a decade after the initiation of the Dade County project, nearly 500 drug courts were in operation within the United States. As of June 30 of last year, some 2,734 drug courts were operating in every U.S. state and territory.

The first Missouri drug court was established in Jackson County 20 years ago after the Missouri General Assembly gave circuit courts the authority “to provide an alternative for the judicial system to dispose of cases which stem from drug use.”10

The Show-Me State today has more drug courts than any state other than New York and California, and has more treatment courts per capita than any other state in the nation.11 In most jurisdictions, judges oversee the operation of these courts; however, in larger urban areas, judicially-appointed commissioners often serve that function.

The need for such courts in Missouri is obvious:

- In 2012, Missouri led the nation with 1,985 meth-lab incidents.
- There were 18,206 persons admitted into Missouri state prisons in fiscal year 2012. Of these, 6,763 had drug or DWI convictions.
- According to Fostering Court Improvement, 2,676 children were removed from their homes as a result of caretaker drug or alcohol use from April 2012 to March 2013.12

“The success [of drug courts] has spawned a new generation of problem-solving court programs that are successfully confronting emerging issues for our nation.”13 In Missouri, these include courts designed to address the specific needs of alcohol-dependent repeat offenders (DWI courts), veterans and military personnel struggling with a variety of disorders (veterans treatment courts); people with mental illnesses within the criminal justice system (mental health courts); and those about to make the transition from incarceration to society (reentry/reintegration treatment courts).14

While each of these treatment courts has its own unique methods designed to address the specific needs of participants, all have two things in common: 1) participants have, or have had, some sort of substance abuse problem; and 2) the participants are non-violent offenders.

**THE APPEAL OF TREATMENT COURTS**

The popularity and appeal of treatment courts can be traced to such reported benefits as

- more effective supervision of offenders in the community; … greater accountability of defendants for complying with conditions of release and/or probation; greater coordination and accountability of public service provided; … and more efficiency for the court system by removing a class of cases that place significant resource demands for processing, both initially as well as with probation violations and new offenses that otherwise would undoubtedly occur.15

One of the staunchest proponents of treatment courts is former Supreme Court of Missouri Judge William Ray Price, Jr. In 2010, during the annual “State of the Judiciary” address to members of the Missouri General Assembly, then-Chief Justice Price spoke bluntly of the need for the alternative justice provided by treatment courts:
For years we have waged a “war on drugs,” enacted “three strikes and you’re out,” sentencing laws, and “thrown away the key” to be tough on crime. What we did not do was check to see how much it costs, or whether we were winning or losing. In fact, it has cost us billions of dollars and we have just as much crime now as we did when we started. We have created a bottleneck by arresting far more people than we can handle down through the rest of the system.

We may have been tough on crime, but we have not been smart on crime. Perhaps the biggest waste of resources in all of state government is the over-incarceration of nonviolent offenders and our mishandling of drug and alcohol offenders.

“The simple fact is, we are spending unbelievable sums of money to incarcerate nonviolent offenders, and our prison population of new offenders is going up, not down – with a recidivism rate that guarantees the cycle will continue to worsen at a faster and faster pace, eating tens of millions of dollars in the process. Missouri cannot afford to spend this much money without getting results. …

Nonviolent offenders need to learn their lesson. I’m not against punishment. Most often, though, they need to be treated for drug and alcohol addiction and given job training. Putting them in a very expensive concrete box with very expensive guards, feeding them, providing them with expensive medical care, surrounding them with hardened criminals for long periods of time, and separating them from their families who need them and could otherwise help them does not work.”

“From the beginning, drug courts held appeal for another reason: their potential to relieve over-burdened justice systems and correctional facilities. … State and local officials – most of whom face overcrowded facilities and large corrections budgets – are more interested than ever before in the impact drug courts have on jail and prison space.”

“Treatment] courts have proliferated because many people are convinced that uniting treatment and judicial supervision is a more effective way to limit future drug use and crime than either strategy employed in isolation.”

These courts “represent the combined efforts of justice and treatment professionals to actively intervene and break the cycle of substance abuse, addiction, crime, delinquency, and child maltreatment” through a “blending of justice, treatment, and social service systems.”

To achieve this objective, comprehensive drug court programs may – depending upon the court and the needs of the participants – involve such officials as the judge; the prosecutor; the defense attorney; the probation and parole officer; an outside treatment provider; a children’s division social worker (for family drug courts); law enforcement
officers; a juvenile officer; school officials; the drug court administrator; guardians ad litem; and more.  

**DRUG COURTS**

“We know drug courts work,” Chief Justice Price said during his 2010 address to the legislature. “We have more than 8,500 graduates. And we know the tremendous savings that result from drug courts in Missouri … At one-fourth to one-fifth the cost of incarceration, more than one-half of drug court participants graduate, and recidivism is only in the 10 percent range. The last five meta studies on drug courts, from all across the United States, have shown that drug courts reduce crime from 8 to 26 percent.”

**Adult Drug Courts**

An adult drug court is a specially-designed court docket with the goal of achieving “a reduction in recidivism and substance abuse among drug-involved offenders in the community. An adult drug court seeks to increase the offender’s likelihood of successful recovery through continuous, intense judicially-supervised treatment, mandatory periodic drug testing, community supervision and use of appropriate sanctions and other rehabilitation services.”

Drug courts across the nation typically use one of two approaches: deferred prosecution programs or post-adjudication programs.

In a **deferred prosecution or diversion setting**, defendants who meet certain eligibility requirements are diverted into the drug court system prior to pleading to a charge. Defendants are not required to plead guilty and those who complete the drug court program are not prosecuted further. Failure to complete the program, however, results in prosecution. Alternatively, in the **post-adjudication model**, defendants must plead guilty to their charges but their sentences are deferred or suspended while they participate in the drug court program. Successful completion of the program results in a waived sentence and sometimes an expungement of the offense. However, in cases where individuals fail to meet the requirements of the drug court (such as a habitual recurrence of drug use), they will be returned to the criminal court to face sentencing on the guilty plea.

In Missouri, many of the treatment courts dealing with criminal offenders utilize the post-plea/post-adjudication model; however, there is no standardized requirement. Programs are developed at the local level and it is their decision as to what types of cases they choose to accept. “Some programs use a combination of pre-plea and post-plea, depending upon the situation and what point of the criminal case process they receive the referral,” explained a treatment court specialist with the Office of State Courts Administrator.

Jackson County Circuit Court Commissioner David Fry, who handles that county’s adult drug court, said the diversion program used in that court is much preferable to the post-conviction model. “I don’t know why we would spend all the time and money to rehabilitate someone in the community only to have them handicapped by a conviction,” he explained.

“Though eligibility requirements differ by court, generally defendants [in adult drug courts] must be charged with drug possession or a non-violent offense and must have tested positive for drugs or have an established drug abuse problem at the time of arrest.” Nevertheless, assessments and treatment plans are individualized to address the clinical needs of each person, which may involve (in addition to substance abuse treatment) trauma and mental health treatment, educational and vocational counseling, housing assistance, medical health referrals, and life skills building.

Defendants eligible for the drug court are identified as soon as possible after arrest and, if accepted, are referred immediately to a multi-phased out-patient treatment program entailing multiple weekly (often daily) contacts with the treatment provider for counseling, therapy and education; frequent urinalysis (usually at least weekly); frequent status hearings before the drug court judge (bi-weekly or more often at first); and a rehabilitation program entailing vocational, educational, family, medical, and other support services.
In addition to completing the prescribed treatment plan, drug courts may require participants who complete the program “to obtain a GED, maintain employment [and] be current in all financial obligations, including drug court fees and child support payments, if applicable.”

“A lot of our people are done in 16 months or less,” said Commissioner Fry. “It is an individual thing, and I’ve had people that we’re working with stay in the program for up to two years. As long as you’re making some progress and merit in the effort, I’m pretty slow to kick them out.”

“On the other hand,” he added, “in order to preserve the integrity of the program, you can’t just leave someone in here where there is no effort and no progress.”

“No one wakes up in the morning and thinks, ‘You know, I want to be a drug addict,’” said City of St. Louis Drug Court Commissioner James Sullivan. “A drug addiction is a chronic, relapsing disease. That’s why the court, and the treatment team, needs to have patience with the participants. If we have done everything that we can do in an evidence-based practice way to assist this individual in casting off their former lifestyle, but the person refuses to be honest with us or not show up, then we’re probably through with them.”

Commissioner Fry said the success of drug courts is dependent upon societal recognition of their value.

“We’ve always had really good community support here,” he said. “You look at people and say that they’re drug offenders – which is kind of a harsh label – and these are sons and daughters of people in our community. It’s a pretty rare situation where there is a family that hasn’t been affected by someone with substance abuse problems.

“Our community has been good about looking at this and saying, ‘Look, we support this because it is our kids that are getting caught up collectively. We want a better way than sending them down to the penitentiary and putting more felons in there.’ It’s money better spent.”

Juvenile Drug Courts

The juvenile drug court “is a docket within a juvenile court, to which selected delinquency cases … are referred …. The youth referred to this docket are identified as having problems with alcohol and/or other drugs. During the program, the juvenile treatment court team meets frequently (often weekly), determining how best to address the substance abuse and related problems of the youth and his or her family that have brought the youth into contact with the justice system.”

Who is the typical participant in a juvenile drug court?

“Typically, you see a very sullen child,” said Circuit Judge Patricia Joyce, who administers the Cole County juvenile drug court. “He or she is not happy they are there. Their parents are at their wit’s end. They don’t know what to do with them. The child has typically gone to school very little during the last year or year and a half. They have barely gotten any credits, their grades are awful, they have a lot of suspensions and disciplinary problems at school, they’re out all night, and their parents have no idea as to where they are and what they’re doing.

“Ultimately, they get involved in drugs, and the [juvenile drug court] is the first time they’ve had treatment.”

As with other treatment courts, the juvenile drug court features such familiar themes as collaborative/integrated efforts across a variety of disciplines, strong judicial interaction, establishment of defined goals for participants, and a mix of discipline and incentives to succeed. But juvenile drug courts are unique in that they must deal with another factor: the shifting needs of the adolescent client.

“It’s a pretty rare situation where there is a family that hasn’t been affected by . . . substance abuse.”

― Hon. David Fry

The most notable difference between the juvenile and adult drug court models is that the juvenile drug court practitioners must manage a client who is undergoing a constant change process – otherwise known as adolescent development. Brain growth and changes, increased importance of the social world vs. family needs, and gaining a sense of belonging are all constants in an adolescent’s life. . . .

In order to account for the development stages of adolescents and family dynamics, [treatment] strategies . . . place a larger focus on ancillary services and school-based support, all of which have been shown in research to increase protective factors in youth.

“You have to measure success differently with young people,” said Judge Joyce. “You have to be very patient with them, because success is not measured in the same way that it is measured as an adult. I’m happy to watch small progress, because it is part of a cumulative effect that allows a lot of them to make significant improvement.”
Experience also indicates that active participation in a treatment program by parents and other family members is key:

Research has consistently shown that programs are most successful when they actively address participants’ negative peer associations, as well as the often complex family dynamics – including family members with their own addictions – that many drug youth courts are dealing with. Juvenile drug court participants who have involved and supportive parents are more likely to be actively engaged in the court program, as well as in treatment.34

Judge Joyce noted, however, that not all parents are as supportive as she would like them to be.

“Some parents are very intimidated by their children,” she explained. “We really have to strengthen them to become better parents and not just turn the children over to us and say, ‘You raise them.’ Sometimes the parents are so disengaged and unwilling to be parents that we have to look and see if there is someone else in that child’s life that could be a role model for them.”

On the other hand, she says the court has a wonderful relationship with the local public school system. “We’ve had very good interaction with the schools, and they’ve always had someone at the [treatment team] meetings to support us.”

One ongoing problem is the fact that, at age 17, a youth is considered to be an adult by the legal system. “We don’t get those kids in here until they are about 15 and a half,” Judge Joyce said. “And we often run out of time because they turn 17 and age out of the juvenile court” before completing the treatment plan.

**Family Drug/Treatment Courts**

A family drug (or treatment) court “is a juvenile or family court docket, for which selected abuse, neglect and dependency cases are identified, when parental substance abuse is a primary factor. Judges, attorneys, child protection services and treatment personnel unite with the goal of providing safe, nurturing and permanent homes for children while simultaneously providing parents the necessary support and services to become drug and alcohol abstinent. Family dependency treatment courts aid parents in regaining control of their lives and promote long-term stabilized recovery to enhance the possibility of family reunification within mandatory legal timeframes.”35

Unlike adult and juvenile drug courts, family drug courts operate within the civil – not the criminal – realm. They exist to provide assistance to parents charged with the civil offense of abuse and/or neglect whose addiction or substance abuse has led to their referral to the program.

Who is the typical participant in such a program?

“Frequently, it is a single mom with two or more children who has stumbled and gotten into drugs and can’t take care of her kids,” said Jackson County Family Drug Court Commissioner Molly Merrigan. “Usually, it is a situation where the house is so filthy that the police come out, or kids aren’t going to school as often as they should, or neighbors notice that the children are outside and unsupervised.”36

As with adult and juvenile drug courts, treatment is based on a team concept. “When we do staffing, we’ve got the prosecutor, an attorney for the juvenile officer, the program officer, a guardian ad litem for each child involved, the caseworker, and the treatment officer of those programs,” Commissioner Merrigan said.

She also points out that the court doesn’t pay for treatment, but rather uses existing treatment resources in the community as part of a partnership within the community. But she notes that a quick response to an individual’s treatment needs has proven to pay dividends.

“One of the very specific factors that research has shown indicates success is early, intensive, immediate intervention,” she explained. “When these cases first get filed, they get screened immediately to see if they are legally available for the drug court. When you reach out to a person who is in crisis, and actually have services they can engage in immediately, the success rate goes up unbelievably. On the other hand, the further you get away from that crisis, the more they are able to rationalize their behavior.”

The goal of the family drug court is to preserve the family structure throughout the treatment process, but...
Commissioner Merrigan says the treatment team “walks a fine line, because the bottom line is that any decision that is made has to be in the best interest of the child.

“Just because you have a substance abuse problem does not mean that we could, or should, remove your children. We can frequently leave the children with the parents. It is so much easier to work with an intact family and figure out what is really going on. We try as much as we can to work with them in the home.”

On occasion, however, despite the best efforts of the court and its treatment team, action in the best interests of the children becomes necessary. But, as Commissioner Merrigan says, “I know in my conscience that if we have to go to termination of parental rights in a case, we have done everything that could possibly have been done to avoid that.”

**DWI TREATMENT COURTS**

In 2010, Missouri became one of the first states to pass legislation to establish DWI (driving while impaired) courts. This same legislation allows the DWI court judge or commissioner to grant limited driving privileges (LDP).

As of May 31, 2013, more than 457 Missourians – DWI court participants and graduates – with 5- or 10-year license revocations have been granted LDPs and drive legally. LDPs are granted only to those who have successfully reached the final stage of the three-phase program.

“All a 10-year revocation guarantees is that the offender is driving without a license, without insurance, and probably drunk,” said then-Chief Justice Price in his 2010 State of the Judiciary Address. “The goal is to return them to the state as productive tax-paying members of society who drive with licenses, with insurance, and who are sober.”

A DWI court is a post-conviction court system committed to altering the behavior of the alcohol-dependent repeat offender. Accordingly, these courts enjoy strong support from MADD (Mothers Against Drunk Driving) and numerous public safety organizations.

In general, DWI court participants have been convicted of three or more DWIs. “In Greene County, we take felony offenders. If someone is charged and they don’t go to prison, they go into our program as a condition of probation,” said Commissioner Peggy Davis of Greene County. “I do take a second misdemeanor docket that is voluntary.”

Although there are variants – for example, drug courts that also address the treatment needs of DWI offenders – as of May 31, 2013, there were 18 designated DWI

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**Justice Department to Cut Mandatory Minimum Drug Sentences**

Calling the federal government’s efforts to deal with low-level, non-violent drug offenders “ineffective and unsustainable,” U.S. Attorney General Eric Holder on August 12 announced that the Justice Department would no longer pursue mandatory minimum sentences for such individuals.

Noting that the U.S. is “coldly efficient in jailing criminals,” Holder said the nation “cannot prosecute or incarcerate” its way to becoming safer. Holder, while making it clear that the nation should remain tough on crime, said it is time to address racial disparities in sentencing, the budgetary strains of overpopulated prisons and policies for incarceration that punish and rehabilitate, not merely “warehouse and forget.”

The plan announced by Holder would scale back prosecution for drug offenders with no ties to large-scale organizations, gangs or cartels, adding that they would no longer be charged with offenses that “impose draconian mandatory minimum sentences.”

“Too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason,” he said, adding that the costs of incarceration are accompanied by “human and moral costs that are impossible to calculate.”

Holder said the U.S. prison population has grown by almost 800 percent since 1980, with federal prisons operating at nearly 40 percent above capacity. More than 219,000 federal inmates are currently behind bars, with nearly half serving time for drug-related crimes and suffering from substance abuse problems.

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Endnotes

courts in Missouri. Of the 3,475 individuals participating in treatment courts statewide, 882 were in DWI court programs.

“We started planning the DWI Court in Stone County in 2009 and it became operational in 2010,” Judge Blankenship said. “The drug court concept has a lot of different variations and spin-offs. DWI courts are one of the very successful companion courts. Stone County’s DWI court started as a component part of the county’s drug court, but we saw sufficient numbers to support it as a docket. The program has 15-25 people participating at one time.”

Adults who graduate from DWI court programs have a recidivism rate of slightly more than six percent. By contrast, the recidivism rate for individuals failing to complete the program is almost three times that amount – 18 percent. These numbers are even more impressive when one compares the cost of treatment (about $3,000 annually per individual) with the cost of incarceration ($16,000 per year per person).

The Department of Mental Health’s Division of Behavioral Health certifies agencies to provide services to people with a traffic offense related to abuse of either alcohol or drugs. The Substance Abuse Traffic Offender Program (SATOP) serves more than 30,000 DWI offenders annually. Those who successfully complete the DWI Court program will receive a SATOP completion form, as required by law, in order to have their driver’s license reinstated.

In Greene County, everyone who has been charged with a felony DWI is referred to the DWI court for a preliminary assessment by a probation officer and a SATOP screening. The assessment determines: 1) whether the DWI court guidelines have been met; 2) the severity of the person’s alcohol problem; and 3) what services may be needed by that individual. The defense attorney and the sentencing judge are then given the screening results. There is no free ride for the individuals participating in the DWI court, as expenses for the SATOP assessment and program fees, along with the DWI court fees, are approximately $3,200. This cost must be paid by the participant as one of the requirements of successfully completing the program.

Some DWI court participants are given medications such as naltrexone or Vivitrol to help them maintain sobriety. “We usually have eight to 12 people on medications that tend to reduce cravings. It just basically allows them to concentrate on their treatment,” said Judge Blankenship.

“The more that we know about brain chemistry, this is truly becoming the best practice,” said Commissioner Davis. “The guys and gals who are taking this are telling me it is the most incredible thing they have ever taken. It blocks the cravings. Those who are truly addicted think of nothing but the next drink. This [medication] calms the brain and calms the cravings to allow them to focus on their treatment.”

What happens if there is a relapse? “We understand that we are dealing with alcoholics and people whose behavior has been driven by their addiction,” said Judge Blankenship. “We understand that they will relapse and they will have problems with the program. The team is prepared to respond to that behavior with evidence-based, proven strategies designed to help them change their behavior. If they ultimately fail, they are referred to traditional criminal court for a traditional response.”

While such failures are rare, they do occur from time to time. Still – perhaps indicative of the hope these programs offer to participants – those who administer them prefer to focus on the positive.

“Our very first DWI court graduate had multiple felony DWI cases and was imprisoned in Michigan for two years,” said Judge Blankenship. “Today, she is about three and a half years sober, is a frequent invited speaker at drug court and drug court-type conferences nationally, and is working on a degree in psychology with the intention of becoming a substance abuse counselor.”

MENTAL HEALTH TREATMENT COURT

In late 2011, Missouri had 11 mental health treatment courts. These courts may serve as a pre-plea or post-plea diversion program and deal with a person with a DSM-IV-TR Axis I diagnosis who has been charged or convicted of either a felony or misdemeanor. Axis I disorders include schizophrenia, anxiety disorders, major mood disorders, bipolar disorder, post-traumatic stress syndrome (PTSD), attention deficit hyperactivity disorder (ADHD), or other disorders.

Prior to the establishment of mental health courts, those suffering from mental illness would often repeatedly cycle through courtrooms and be incarcerated in facilities ill-equipped to address their needs or provide adequate treatment.

The criminal justice system was not designed to provide mental health treatment; its main purposes
are to ensure public safety, promote justice, and punish and prevent criminal behavior. The mental health system, in contrast, focuses primarily on the treatment of illnesses, public health, and harm reduction. Despite these differing mandates, the two systems have been thrust together because of overlapping commitments to the same people.

Thus, collaboration between criminal justice agencies and mental health treatment providers is critical.

This collaboration is evident in Greene County’s mental health court. “The court partnered with a mental health provider,” said Commissioner Davis. Potential participants are screened not only by the prosecutor and probation officer, but also by case managers from a regional mental health center. “These services people receive through mental health courts are simply programs that are already being provided through existing mental health providers. All mental health courts are doing is operating on existing mental health resources,” Commissioner Davis said.

Unlike Greene County’s DWI court, there is no charge to participants in the mental health court. Many of the existing services are paid through the Missouri Department of Mental Health. Additionally, § 630.053, RSMO, established a “Mental Health Earnings Fund” that receives monies from “[f]ees received pursuant to the substance abuse traffic offenders program.”

**Co-occurring Addictions**

“Research has shown that 70 percent of people who participate in our drug court have a separately diagnosable or diagnosed mental health issue that we have to deal with, also,” Judge Blankenship said. “With many addictions, what is being learned is that much of the alcohol or drug use is basically self-medicating to deal with a mental issue.”

“There are some people who have co-occurring disorders – mental disorders that are being adequately treated with medication, but they have an addiction. Those people can stay in existing [drug] treatment courts,” Commissioner Davis said. “You come to realize that some are truly delusional and are not going to do as well as others, so we move them over to mental health court.

“Mental health court is designed to take in folks who are severely and persistently mentally ill. They are significantly mentally ill to the point that their ability to participate in another treatment court would be somewhat impaired. They have medication issues, [and] they have comprehension issues,” she added.

People can be referred to mental health treatment courts by their attorney, the prosecuting attorney, judge or probation officer, but they have to be facing a criminal charge. “Participants do not have to have an addiction, just a mental problem that has led to a crime,” said the administrator of the drug courts of Greene County. “The goal is to stabilize: get them on meds, find housing, whatever they need to meet the terms of probation or be able to function,” she added.

**VETERANS TREATMENT COURT**

In January 2008, the first veterans treatment court began operations. It was created by New York Judge Robert Russell, presiding judge of the Buffalo Drug Court and Buffalo Mental Health Court, in response to the large number of veterans appearing on his dockets. Many of these veterans were suffering from mental illness or addicted to alcohol or drugs due, in part, to combat-related stress or difficulty in adjusting to life at home. These courts provide the treatment and structure to give veterans the opportunity to live a sober and stable life while restoring their military honor and their commitment to family and community.

The veterans treatment court is based on the drug court model. However, “[o]ne unique component of veterans treatment court is the mentor program.” These mentors are volunteer veterans and active-duty soldiers. Experience indicates that veterans are “more likely to respond more favorably to another veteran than to others who [do] not have similar experiences.”

On July 10, when Governor Jay Nixon signed SB 118 into law (effective August 28, 2013), Missouri joined 27...
other states with similar legislation to establish veterans treatment court programs that are hybrid drug and mental health court dockets. The act creates a standardized veterans treatment court structure to serve current or former military personnel struggling with substance abuse, mental illness or co-existing disorders.

At the time this legislation was signed into law, Missouri already had four veterans treatment court programs on the circuit level in the City of St. Louis, Jackson County, Pulaski County and the SEMO Veterans Treatment Court program, which covers a region of 10 counties in and around Cape Girardeau County. The Kansas City municipal court also has an operational veterans treatment court.46 “Boone County is to open a veterans treatment court this month,” said Associate Circuit Judge Christine Carpenter of the Columbia/Boone County Reintegration Court.47

“We are actually helping to plan a veterans court for southwest Missouri,” added Judge Blankenship. “We intend to have it set in Lawrence County. There is a Veterans Administration office and clinic in Mt. Vernon,” he said. Plans call for its use as a regional hub that other courts can refer to as a treatment court.

Besides reducing crime and improving public safety, the veterans treatment courts serve as a way to help those who have served our country get their lives back.

**REENTRY/REINTEGRATION COURT**

“Reentry Courts seek to stabilize returning parolees during the initial phases of their community reintegration by helping them to find jobs, secure housing, remain drug-free and assume familial and personal responsibilities.”48

In an effort to promote law-abiding behavior among parolees, more than two dozen reentry courts are currently in operation in the U.S., with more planned. “Reentry courts provide close supervision, links to social services, and intensive case management to offenders returning home after incarceration.”49

The only reintegration court in Missouri is located in Columbia. At a 2010 roundtable concerning reintegration, Scott Johnston, former chief state supervisor of the Missouri Board of Probation and Parole, said that Missouri uses a “transition accountability plan.” Most Missouri prisons have transitional housing units where inmates spend the last six months of a sentence. While living in these units, the inmates work on “developing connections with the community,” Johnston said.

In Columbia, reintegration court participants are released directly to Reality House, a locked facility where they are prepped for court by the court coordinator. “They’re always released on Tuesday; they always are interviewed and given all the information on Wednesday; they come to court on Thursday,” explained Judge Carpenter. “In the one-on-one that you have with the participants … it’s very important to them that they are speaking to a judge.”

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— Hon. Christine Carpenter

“The concept of the reentry court necessitates considerable cooperation between corrections and local judiciaries, because it requires the coordination of the work of prisons in preparing offenders for release and actively involving community correction agencies and various community resources in transitioning offenders back into the community through active judicial oversight.”50

In Missouri, the reintegration court began in 2007 as a federally-funded, three-year pilot project in the counties of St. Charles, Boone and Jackson. The only county to develop the court was Boone County. As that funding was ending in 2010, the Department of Corrections and the Office of State Courts Administrator (OSCA) worked together to receive one of only nine state-level federal stimulus grants awarded in the United States to fund the reintegration court for three more years. However, as of September 30, 2013, this court will no longer function, as funding has ended.

**OPPOSITION TO TREATMENT COURTS**

Despite the mountain of statistics and many examples of restored lives resulting from successful completion of treatment court programs, there are those who disagree with the fundamental concept.

A 2011 report issued by the Drug Policy Alliance put it bluntly: “The issue is not whether drug courts do some good – they undoubtedly do – but whether the proliferation of drug courts is good social policy as compared with other available approaches to addressing drug use.”51

That report criticizes such courts for:

- Failing to demonstrate cost savings, reduced incarceration, or improved public safety by selecting for inclusion those expected to do well in such programs.
- Leaving many people worse off than if they had received drug treatment outside the criminal
justice system, had been left alone, or even been conventionally sentenced. “Not only will some drug court participants spend more days in jail while in drug court than if they had been conventionally sentenced, but participants deemed ‘failures’ may actually face longer sentences than those who did not enter drug courts in the first place (often because they lost the opportunity to plead to a lesser charge).”

- Making the criminal justice system more punitive toward addiction by ultimately ejecting from drug court programs “those who are not able to abstain from drug use for a period of time deemed sufficient by the judge.”

In lieu of drug courts, the report urges use of “a non-criminal, health-centered approach to drug use … founded on the understanding … that the benefits of punishment-oriented treatment programs for most people whose illegal activity is limited to petty drug possession are outweighed by the negative consequences.”

The Sentencing Project, a Washington, D.C.-based non-profit organization engaged in research and advocacy on criminal justice policy issues, concedes that the variances in treatment court models from locale to locale – cited by proponents as a strength of the treatment court model – make it difficult to quantify their success:

Despite general indications of drug court efficacy, … a number of questions remain. Because drug courts are designed and operated at the local level, there are fundamental differences that make cross-jurisdictional comparisons difficult. While the general framework may be portable from program to program – a diversion program for certain categories of low-level defendants who have demonstrated a linkage between their drug abuse and criminal offending – specific selection criteria, protocols for adjudication, means of supervision and revocation procedures can differ dramatically.

The localism that defines drug court design complicates efforts to identify best practices.

Former Saint Louis University Law Professor Eric Miller, now at Loyola Law School in Los Angeles, says this “localism” leads to inconsistencies in structure that result in “fragmented or piecemeal criminal justice policies.”

“There’s no prescribed structure for what these courts ought to look like,” he explained. “The only structure you might get would come through Missouri statutes, and Missouri statutes have a very short and open-ended definition as to what constitutes a drug court. And these ancillary courts that have sprung up – DWI courts, mental health courts, and the like – are operating essentially under a statute designed for drug courts that has granted them some kind of license to operate.”

Professor Miller believes that the “murky” nature of the treatment court process should be of concern to both participants and citizens.

“I think we should be worried that this lack of structure occurs on an ad hoc basis – often courtroom to courtroom,” he said. “It’s not as if the judges all get together to legislate their own policy. But what we have, then, is that they’ve taken one part of their power – to engage in docket management – to transfer all cases that have particular factors – drug use or mental health issues, or whatever – before one court or one judge.”

But Judge Blankenship, who oversees Stone County’s drug and DWI courts, says these courts must remain flexible in order to be effective.

“The drug court model is good. It is the most heavily researched criminal justice response to addiction ever, and it is important that drug courts adhere to, and maintain a fidelity to, the model,” Judge Blankenship explained. “That is important, in my opinion, to do. And, as part of this model, these programs are constantly researched and new information is learned. They evolve over time in response to that research.”

Critics of drug courts also claim that the operation of these courts results in a profound alteration of the traditional functions and adversarial nature of the U.S. justice system.

The judge – rather than lawyers – drives court processes and serves not as a neutral facilitator but as the leader of a “treatment team” that generally consists of the judge, prosecutor, defense attorney, probation officer and drug treatment personnel. The judge is the ultimate arbiter of treatment and punishment decisions and holds a range of discretion unprecedented in the courtroom, including the type of treatment mandated, whether

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methadone prescription is acceptable (and at what dosage) and how to address relapse. The defense lawyer, no longer an advocate for the participant’s rights, assists the participant to comply with court rules.55

“If you think about the criminal justice system, traditionally it is focused on adjudication — either a trial or, more commonly now, plea bargaining,” said Professor Miller. “The defendant gets the full protection of the Fifth and Sixth Amendments.”

By contrast, he said, a treatment court judge “is god in his or her court, and can determine how much time an offender spends without much in the way of scrutiny from superior courts. The judge has a huge amount of power, and is concerned primarily with disciplining obstinate offenders and rewarding compliant ones.”

“In large part, I respectfully disagree,” responded Judge Blankenship. “Drug courts are still courts of law that observe due process…. Yes, drug courts are different, but the Constitution still lives and thrives, and they are a proper part of the judiciary.”

Professor Miller concedes that “problem-solving courts can be great, but there has to be some overarching policy that applies across jurisdictions.

“These courts are set up to ensure that the blight of mental illness, addiction and homelessness is removed from our suburban streets,” he added. “The reason that people like them is the coercion aspect – it gets people who are viewed as either ill or criminal off the streets and allows us to control them. It is an expansion of judicial monitoring of individuals into social services and public health in a way that courts have not generally been involved.”

Commissioner Merrigan understands such concerns, but says the benefits of these programs far outweigh potential concerns.

“I understand where they’re coming from. It is a different role for a judicial officer,” she said. “But there is a benefit to a therapeutic, non-adversarial approach. There is nothing worse than trying to work with a client, getting invested in them and then watching them just drift away from you because somehow there just wasn’t enough to keep them engaged and keep them motivated. And that’s what drug courts are able to do.”

CONCLUSION

“When we think about what drugs do to people, we fail to understand that it takes away their dreams and it takes away the fiber of one’s life,” Commissioner Sullivan reflected. “What we have is an opportunity to change their future. When I see individuals in front of me in drug court, the possibilities of who they are and what they might mean to society are unfathomable.”

Although treatment courts are frequently cited as cost-effective when compared with the expenses associated with incarceration, proponents of these courts say that money isn’t the bottom line.

“Specialty courts are designed to be transformative. Offenders who preyed on victims become producers who contribute to communities.

“You can’t assign a dollar value to that.”56

ENDNOTES
2 Drug Courts Coordinating Commission Treatment Court Program Status, Office of State Courts Administrator (May 1-31, 2013).
4 Telephone interview with Judge Alan Blankenship (July 31, 2013).
     8 Id.
11 Treatment Court Facts, Drug Courts Coordinating Commission (July 2013).
12 Id.
18 Id.
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FEATURING ARTICLE

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24 E-mail from KC Rafferty, Treatment Court Specialist, Court Business Services Division, Office of State Courts Administrator (July 31, 2013) (in possession of authors).

25 Telephone interview with David Fry, Jackson County Circuit Court Commissioner (July 29, 2013).


29 Id.

30 Telephone interview with James Sullivan, City of St. Louis Drug Court Commissioner (August 5, 2013).


32 Telephone interview with Cole County Circuit Judge Patricia Joyce, Cole County (August 8, 2013).


34 Id.


36 Telephone interview with Molly Merrigan, Jackson County Family Drug Court Commissioner (July 30, 2013).

37 Treatment Court Facts, Drug Courts Coordinating Commission (revised July 2013).

38 Greene County DWI Court: Frequently Asked Questions 9 (revised 9-30-13).


40 Greene County DWI Court: Frequently Asked Questions 9 (revised 9/30/12).


42 Section 630.053, RSMO Supp. 2012.