

Office of the Governor
Criminal Justice Division

Criminal Justice Advisory Council Report

Recommendations for Texas Specialty Courts

January 2013



Prepared pursuant to Governor's Executive Order RP-77 directing the submission of a report to the governor, lieutenant governor, and the Speaker of the House on Council findings.

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With special thanks and acknowledgement to Judy Switzer, Program Manager for her efforts and continued work to support specialty courts across Texas.

LETTER FROM THE CHAIR

Dear State Leaders:

It is my honor to present this report on behalf of the Texas Criminal Justice Advisory Council.

On February 28, 2012, Governor Perry reauthorized by Executive Order creation of the Criminal Justice Advisory Council to advise and report on the operation of specialty courts throughout Texas. “Specialty court” is a term of art referring to a docket of cases handled by judges and may refer to veterans’ courts, drug courts, family drug courts, DWI courts, etc. These courts focus on the underlying cause of an individual’s involvement in our court system by addressing the root problem of addiction. National statistics indicate that individuals who successfully complete a specialty court do not re-enter the court system, i.e. they do not commit new crimes or have children removed.

The Executive Order directed the Council to focus on Texas specialty courts with the following in mind:

- Best Practices: what are they and are they being utilized by Texas specialty courts in their creation, staffing and operation;
- Effectiveness: what measures and collected data speak to the efficacy of Texas specialty courts as cost-effective methods of reducing crime; and
- Due Process: what methods ensure the rights of participants are protected while in a Texas specialty court program.

This past year Council members volunteered an untold amount of hours, resulting in two primary recommendations:

1. Legislation: Consideration of a bill to be presented during the 83rd legislative session consolidating the various specialty court statutes, including uniform guidelines for establishment of specialty courts, adoption of best practices, standardized performance data collection and team immunity; and
2. Best Practices: Recognition, promotion and implementation of the research-driven best practices guidelines to assist in the creation and maintenance of successful specialty court programs.

While much has been accomplished, more remains to be done and I look forward to the continued efforts of this Council as we work to promote the efficacy of specialty courts across the state.

Sincerely,



Ruben G. Reyes, Chair
Criminal Justice Advisory Council

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OVERVIEW

In February 2012, Governor Rick Perry issued Executive Order RP-77 to reauthorize the Governor's Criminal Justice Advisory Council (hereinafter, "Council") with the mandate to advise him on matters related to the operation of specialty courts throughout Texas. Specifically, the Council was charged with advising the governor on:

1. Best practices relating to the creation, staffing and operation of specialty courts in Texas.
2. Measures by which the effectiveness of individual specialty court programs can be evaluated.
3. Methods of ensuring that the rights of participants in specialty courts are respected and protected.

The Council was tasked with reporting its findings in writing to the governor, the lieutenant governor, and the speaker of the House.

Specialty courts, such as adult and juvenile drug courts, veteran courts, DWI courts, and family drug courts, are believed to be a humane and cost-effective method to prevent offenders with substance abuse problems, including those with a co-existing mental health problem from re-entering the criminal justice system. Currently, there are nearly 140 operational specialty courts in Texas. Because of the exponential growth of specialty courts throughout Texas over the last decade, the opportunity exists to identify and replicate best practices by drawing upon the local knowledge and experience of the dedicated professionals who have created successful specialty court programs.

The governor appointed nine members to the Council, designating one member to serve as Chair, and 13 ex-officio members representing the legislature, judiciary, and various state and local agencies. The Office of the Governor and other appropriate state agencies were charged with providing administrative support for the Council.

Following the first meeting in April 2012, the Council divided into three subcommittees:

1. The Best Practices and Performance Measures Subcommittee;
2. The Legislative Subcommittee; and
3. The Legal Issues Subcommittee.

The Council brought in national experts to address issues specific to specialty courts, including research-driven best practices and performance measures, and the importance of targeting the correct population to decrease recidivism rates. The Council spent countless hours identifying and researching materials to address the duties as assigned. This report will provide a summary of the work of each subcommittee and the Council as a whole.

BEST PRACTICES AND PERFORMANCE MEASURES SUBCOMMITTEE

The purpose of this subcommittee was to promote research-driven best practices for the State of Texas relating to operating specialty courts. The establishment of uniform research-driven best practice guidelines and core performance measures will provide guidance to existing and newly created specialty courts.

The subcommittee set the following goals:

1. Create and maintain online a central specialty court registry.

Action: Pursuant to Sec. 469.003 of the Health and Safety Code, specialty court programs must notify the criminal justice division (CJD) of the governor's office before or on implementation of the program. CJD currently maintains a list of all known and active specialty courts in Texas which is also available online at <http://governor.state.tx.us/cjd/programs/>.

Recommendation: As resources permit, it is recommended an online searchable database for specialty courts be developed allowing programs to register their court online and giving users the ability to search for specific programs by type, county, or other options.

2. Promote adherence to the Ten Key Components and research-based best practices for specialty courts.

Action: Section 469.001(a) of the Health and Safety Code codifies the Ten Key Components established by the National Association of Drug Court Professionals (NADCP) as essential characteristics specialty programs must embody. National research shows that adherence to the Ten Key Components yields significantly better outcomes and improved recidivism rates for specialty courts. Members reviewed several studies and articles and found the following themes related to the best outcomes:

- Team engagement,
- Wraparound services,
- Drug testing,
- Responses to participant behavior (incentives and sanctions),
- Drug court hearings and the judge's role, and
- Data collection, monitoring and training.

(See [Appendix A](#) for a comprehensive summary of the Ten Key Components and examples of research-based best practices.)

Recommendation: It is recommended that the state support the adoption and implementation of identified research-driven best practices to serve as guidelines for specialty courts to assist in the operation of successful programs.

3. Identify measures by which specialty courts can be evaluated to determine the reduction in recidivism and increase cost-savings.

Action: Pursuant to Sec. 469.003 of the Health and Safety Code specialty court programs must provide information regarding the performance of their program to CJD on request. After reviewing numerous research articles and publications on this issue the subcommittee identified the following core performance measures to gauge the efficacy and cost-effectiveness of specialty court programs:

- Retention
- Sobriety
- Recidivism
- Units of Service

The subcommittee is continuing to research this issue in an effort to develop standardized definitions, metrics, and data collection methods that could be employed by and reported on from all specialty courts in Texas.

Recommendation: The Council should continue its work to develop and define standardized performance measures so that relevant data can be collected and analyzed to determine the efficacy and cost effectiveness of specialty court programs in Texas.

LEGISLATIVE SUBCOMMITTEE

The purpose of this subcommittee was to review existing statutes related to specialty courts and make legislative recommendations without a fiscal impact to the state budget.

The subcommittee's goal was to propose legislation to consolidate existing specialty court statutes, address team immunity, and promote best practices.

Action: The subcommittee reviewed the existing statutes governing the different types of specialty courts contained in various codes including: Chapter 469 of the Health and Safety Code – Drug Court Programs; Chapter 617 of the Health and Safety Code – Veterans Courts; and Chapter 264 of the Family Code –

Family Drug Court Programs. Due to the similarity in programming and requirements it would be beneficial to consolidate these statutes and move them to the Government Code.

The existing statutes do not address or expressly provide immunity for team members. The subcommittee reviewed legislation adopted in other states related to immunity and drafted proposed language to be included in any new legislation in Texas.

The subcommittee also considered the work of the Best Practices and Performance Measures subcommittee and drafted proposed language to be included in any new legislation in Texas encouraging adherence to their recommendations.

This work was presented to the Council at-large who then worked with the Texas Legislative Council to draft legislation to be considered during the 83rd legislative session.

Recommendation: It is recommended the state legislature pass the proposed or a similar version of the proposed legislation. The intent of the bill is to provide clear guidelines and uniform requirements on the establishment of specialty court programs, introduce immunity for team members, promote programmatic best practices, and clarify the requirements that specialty courts report their existence to CJD.

LEGAL ISSUES SUBCOMMITTEE

The purpose of this subcommittee is to promote due process in Texas specialty courts particularly in the areas of constitutional waivers, bond conditions, and participant confidentiality. This subcommittee also focused on the unique challenges faced by judge, prosecutor, and defense counsel in their respective roles on the drug court team.

The subcommittee set the following goals:

1. Provide guidance to judges in their presiding role over specialty court dockets.

Action: The subcommittee reviewed various articles and opinions discussing the role of a judge in a specialty court context. Examples of common issues include:

- Can a judge require participation in specialty court as a condition of bond?
- Should a judge presiding over a participant in a specialty court matter recuse himself from hearing a probation revocation case for that participant?
- Must the participant object to that judge hearing the case in order for recusal to be an issue?

Several ways to address these and other issues were discussed, including obtaining written waivers signed by the participant with defense counsel specifically consenting to the judge hearing the case and a memorandum stating information obtained during specialty court proceedings is exempt from being used against the participant, subject to applicable exceptions.

Recommendation: The Council should continue to research this issue with the resulting outcome included as a best practice for specialty courts.

2. Define the roles of defense attorneys within a specialty court setting.

Action: Defense counsel in specialty courts must work collaboratively with the specialty court team to support, encourage, and guide participants into a sober, law-abiding lifestyle. It was noted that this shift to a non-adversarial role often conflicts with defense counsel's traditional responsibility of protecting the interests of their clients. The subcommittee reviewed the work of the Drug Court Planning Initiative (DCPI), a planning project of the U.S. Department of Justice, Bureau of Justice Assistance, as well as a reports published by the National Drug Court Institute on this issue, including "*Critical Issues for Defense Attorneys in Drug Court: Monograph Series 4*"¹ and "*Participation of Defense Attorneys in Drug Courts*".² Consistent with the findings of these authorities, defense attorneys can participate in specialty court activities while still upholding their duties to protect the rights of their clients given a clear definition of roles and understanding that a defense attorney's responsibilities to an individual client may differ from those of a member of a collaborative treatment team.

Recommendation: The role of defense counsel must be well defined and include at a minimum: a) recognize the responsibilities as a collaborative treatment team member differ from those responsibilities to individual clients, b) inform clients eligible for treatment court about the advantages and disadvantages of treatment as compared to traditional litigation, c) advocate for fair and equal treatment of clients, d) take precaution to recognize and balance potential role conflicts where the defense serves as both counsel for an individual client and a drug court team member, and e) educate peers, colleagues and judiciary in the efficacy of specialty courts. The Council should continue to research this issue with the resulting outcome included as a best practice for specialty courts.

¹ The National Drug Court Institute, *Critical Issues for Defense Attorneys in Drug Court: Monograph Series 4*, 2003.

² The National Drug Court Institute, *Participation of Defense Attorney's in Drug Courts*, *Drug Court Review*, Volume III, Issue 1, 2012.

3. Define the roles of the prosecutor within a specialty court setting.

Action: Traditionally, prosecutors advocate punishment in response to criminal behavior with the standard ideology that ‘sanctions’ ensure public safety. Public safety can also be achieved in a specialty court setting as prosecutors instead partner with other team members to help participants reach sobriety and thus criminal-free behavior. The subcommittee reviewed DCPI’s (Drug Court Planning Initiative) recommendations related to core competencies for drug court prosecutors which include specific roles and tasks to be undertaken by the prosecutor.

Recommendation: The role of prosecutors in a specialty court setting must be well defined and include at a minimum: a) maintain relevant knowledge about addiction and treatment options, b) select appropriate participants, c) participate in team meetings, d) monitor offender progress and advocate for appropriate incentives and sanctions for program compliance, and e) educate peers, colleagues and judiciary in the efficacy of specialty courts. The Council should continue to research this issue with the resulting outcome included as a best practice for specialty courts.

4. Identify whether bond conditions are an appropriate mechanism to order an offender into a specialty court.

Action: The subcommittee reviewed Section 76.011(a) of the Government Code authorizing a court to order a person released on bond to submit to the supervision of, or receive services from, a community supervision and corrections department (CSCD), including pre-trial intervention programs. Subsection (b) provides that programs operated by a CSCD may include reasonable conditions related to the purpose of the program, including testing for controlled substances. Subsection (c) limits supervision of a person in a pretrial intervention program operated by CSCD for a period not to exceed two years.

Recommendation: It is recommended these provisions continue to allow an offender to participate in pretrial intervention programs such as specialty courts. It is also recommended that consideration be given to excluding specialty court participants ordered into pretrial intervention specialty court programs operated by a CSCD from the two-year supervision time limit as set by Sec. 76.011(c).

5. Identify appropriate medical and legal waivers required for specialty court participation.

Action: Distinction must be made between pre- and post-adjudication specialty courts. Constitutional protections (federal and state) address the legal rights which may be waived by a participant, how they may be waived and when they may be waived. Additionally, confidential health and substance-abuse treatment

information must be protected and safe-guarded. The subcommittee collected and is in the process of reviewing sample consent and waiver forms from various specialty court programs across the state.

Recommendation: It is recommended that the Council create a standardized packet of consent and waiver forms to be considered as a best practice for Texas specialty courts to follow to ensure participants are entitled proper due process.

CONCLUSIONS AND RECOMMENDATIONS:

Specialty court programs work to prevent offenders from unnecessarily going further into the criminal justice system. In Texas, the use of specialty courts has been credited as a factor in the reduction of incarcerated offenders. In spite of this seeming success, the state lacks reliable statewide data on the performance and outcomes of specialty court programs. Recognizing the size and diversity of Texas prevents a one-size-fits-all approach. The Council was established to foster the implementation of statewide best practices while ensuring the rights of participants are protected. In summary the following recommendations are hereby made:

1. Enact legislation consolidating the various specialty court statutes, including provisions for clear and uniform guidelines for the establishment of specialty courts, immunity for the judge and team members, and reporting requirements;
2. Recognize and promote implementation of the research-driven best practices guidelines to assist in the creation and maintenance of successful specialty court programs;
3. Continue efforts to define core performance measures at a statewide level so that efficacy and cost-savings can effectively be measured;
4. Establish an online specialty court registry;
5. Consider excluding participants ordered into pretrial intervention specialty courts operated by a CSCD from the two-year time limit as set by Sec. 76.011(c) of the Government Code; and
6. Continue development of standard consent and waiver forms for use by programs to ensure due process rights of participants are protected.

APPENDIX A

Best Practices Guidelines

10-Key Components of Drug Court

(Adapted From: Drug Court Review Volume III, Issue 1, Best Practices in Drug Courts Special Issue)

Key Component #1 – Drug courts integrate alcohol and other drug treatment services with justice system case processing.

Performance Benchmarks

1. Initial and ongoing planning is carried out by a broad-based group, including persons representing all aspects of the criminal justice system, the local treatment delivery system, funding agencies, and the local community's other key policymakers.
2. Documents defining the drug court's mission, goals, eligibility criteria, operating procedures, and performance measures are collaboratively developed, reviewed, and agreed upon.
3. Abstinence and law-abiding behavior are the goals of a drug court program, with specific and measurable criteria marking progress. Criteria may include compliance with program requirements, reductions in criminal behavior and alcohol and drug (AOD) use, participation in treatment, restitution to the victim or to the community, and declining incidence of AOD use.
4. The court and treatment providers maintain ongoing communication, including frequent exchanges of timely and accurate information about the individual participant's overall program performance.
5. The judge plays an active role in the treatment process, including frequently reviewing treatment progress. The judge responds to each participant's positive efforts as well as to noncompliant behavior.
6. Interdisciplinary education is provided for every person involved in drug court operations to develop a shared understanding of the values, goals, and operating procedures of both the treatment and justice system components.

Key Component #2- Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

Performance Benchmarks

1. Prosecutors and defense counsel participate in the design of screening, eligibility, and case-processing policies and procedures to guarantee that due process rights and public safety needs are served.
2. For consistency and stability in the early stages of drug court operations, the judge, prosecutor, and court-appointed defense counsel should be assigned to the drug court for a sufficient period of time to build a sense of teamwork and to reinforce a non-adversarial atmosphere.
3. The prosecuting attorney reviews the case and determines if the defendant is eligible for drug court program; participates in a coordinated strategy for responding to positive drug tests and other instances of noncompliance; agrees that a positive drug test or open court admission of drug possession or use will not result in the filing of additional drug charges based on that admission; makes decisions regarding the participant's continued enrollment in the program based on performance in treatment rather than on legal aspects of the case, barring additional criminal behavior.
4. The defense counsel reviews all necessary program and legal documents; advises the defendant as to the nature and purpose of the drug court, the rules governing participation, the consequences of abiding or failing to abide by the rules, and how participating or not participating in the drug court will affect his or her interests; explains all of the rights that the defendant will temporarily or permanently relinquish; gives advice on alternative courses of action, including legal and treatment alternatives available outside the drug court program, and discusses with the

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defendant the long-term benefits of sobriety and a drug-free life; explains that because criminal prosecution for admitting to AOD use in open court will not be invoked, the defendant is encouraged to be truthful with the judge and with treatment staff, and informs the participant that he or she will be expected to speak directly to the judge, not through an attorney.

Key Component #3- Eligible participants are identified early and promptly placed in the drug court program.

Performance Benchmarks

1. Eligibility screening is based on established written criteria. Criminal justice officials or others (e.g., pretrial services, probation, TASC) are designated to screen cases and identify potential drug court participants.
2. Eligible participants for drug court are promptly advised about program requirements and the relative merits of participating.
3. Trained professionals assess drug court-eligible individuals for AOD problems and suitability for treatment.
4. Initial appearance before the drug court judge occurs immediately after arrest or apprehension to ensure program participation.
5. The court requires that eligible participants enroll in AOD treatment services promptly.

Key Component #4 – Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

Performance Benchmarks

1. Individuals are initially screened and thereafter periodically assessed by both court and treatment personnel to ensure that treatment services and individuals are suitably matched.
2. Treatment services are comprehensive.
3. Treatment services are accessible.
4. Funding for treatment is available to the drug court participants.
5. Treatment services have quality controls.
6. Treatment agencies are accountable.
7. Treatment designs and delivery systems are sensitive and relevant to issues of race, culture, religion, gender, age, ethnicity and sexual orientation.

Key Component #5 – Abstinence is monitored by frequent alcohol and other drug testing.

Performance Benchmarks

1. AOD testing policies and procedures are based on established and tested guidelines, such as those established by the American Probation and Parole Association. Contracted laboratories analyzing urine and other samples should also be held to established standards.
2. Testing may be administered randomly or at scheduled intervals, but occurs no less than twice a week during the first several months of an individual's enrollment. Frequency thereafter will vary depending on participant progress.
3. The scope of testing is sufficiently broad to detect the participant's primary drug of choice as well as other potential drugs of abuse, including alcohol.
4. Test results are available and communicated to the court and the participant within one day. The drug court functions best when it can respond immediately to noncompliance, the time between sample collection and availability of results should be short.
5. The court is immediately notified when a participant has tested positive, has failed to submit to AOD testing, has submitted the sample of another, or has adulterated a sample.

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6. The coordinated strategy for responding to noncompliance includes prompt responses to positive tests, missed tests, and fraudulent tests.
7. Participants should be abstinent for a substantial period of time prior to program graduation.

Key Component #6- A coordinated strategy governs drug court responses to participants' compliance.

Performance Benchmarks

1. Treatment providers, the judge, and other program staff maintain frequent, regular communication to provide timely reporting of progress and noncompliance and to enable the court to respond immediately. Procedures for reporting noncompliance are clearly defined in the drug court's operating documents.
2. Responses to compliance and noncompliance are explained verbally and provided in writing to drug court participants before their orientation. Periodic reminders are given throughout the treatment process.

Key Component #7- Ongoing judicial interaction with each drug court participant is essential.

Performance Benchmarks

1. Regular status hearings are used to monitor participant performance.
2. The court applies appropriate incentive and sanctions to match the participant's treatment progress.
3. Payment of fees, fines and/or restitution is part of the participant's treatment. The court supervises such payments and takes into account the participant's financial ability to fulfill these obligations. The court ensures that no one is denied participation in drug courts solely because of an inability to pay fees, fines, or restitution.

Key Component #8- Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

Performance Benchmarks

1. Management, monitoring, and evaluation processes begin with initial planning. As part of the comprehensive planning process, drug court leaders and senior managers should establish specific and measurable goals that define the parameters of data collection and information management. An evaluator can be an important member of the planning team.
2. Data needed for program monitoring and management can be obtained from records maintained for day-to-day program operations, such as the numbers and general demographics of individuals screened for eligibility, the extent and nature of AOD problems among those assessed for possible participation in the program, attendance records, progress reports, drug test results, and incidence of criminality among those accepted into the program.
3. Much of the information needed for monitoring and evaluation is gathered through an automated system that can provide timely and useful reports. If an automated system is not available manual data collection and report preparation can be streamlined. Additional monitoring information may be acquired by observation and through program staff and participant interviews.
4. Automated manual information systems must adhere to written guidelines that protect against unauthorized disclosure of sensitive personal information about individuals.
5. Monitoring reports need to be reviewed at frequent intervals by program leaders and senior managers. They can be used to analyze program operations, gauge effectiveness, modify procedures when necessary, and refine goals.
6. Process evaluation activities should be undertaken throughout the course of the drug court program.
7. A qualified independent evaluator should be selected and given responsibility for developing and conducting an evaluation design and for preparing interim and final reports. If an independent evaluation is unavailable the drug court program designs and implements its own evaluation, based on guidance available through the field.
8. At least six months after exiting a drug court program, comparison groups should be examined to determine long-term effects of the program.

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9. Drug court evaluations should consider the use of cost-benefit analysis to examine the economic impact of program services.

Key Component #9 – Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

Performance Benchmarks

1. Key personnel have attained a specific level of basic education, as defined in staff training requirements and in the written operating procedures. The operating procedures should also define requirements for the continuing education of each drug court staff member.
2. Attendance at education and training sessions by all drug court personnel is essential. Regional and national drug court training provide critical information on innovative developments across the Nation. Sessions are most productive when drug court personnel attend as a group.
3. Continuing education institutionalizes the drug court and moves it beyond its initial identification with key staff who may have founded the program and nurtured its development.
4. An education syllabus and curriculum are developed, describing the drug court's goals, policies, and procedures.

Key Component #10 – Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

Performance Benchmarks

1. Representatives from the court, community organizations, law enforcement, corrections, prosecution, defense counsel, supervisory agencies, treatment and rehabilitation providers, educators, health and social services agencies, and the faith community meet regularly to provide guidance and direction to the drug court program.
2. The drug court plays a pivotal role in forming linkages between community groups and the criminal justice system. The linkages are a conduit of information to the public about the drug court, and conversely, from the community to the court about available community services and local problems.
3. Partnerships between drug courts and law enforcement and/or community policing programs can build effective links between the court and offenders in the community.
4. Participation of public and private agencies, as well as community-based organizations, is formalized through a steering committee. The steering committee aids in the acquisition and distribution of resources. An especially effective way for the steering committee to operate is through the formation of a nonprofit corporation structure that includes all the principle drug court partners, provides policy guidance, and acts as a conduit for fundraising and resource acquisition.
5. Drug court programs and services are sensitive to and demonstrate awareness of the populations they serve and the communities in which they operate. Drug courts provide opportunities for community involvement through forums, informational meetings, and other community outreach efforts.
6. The drug court has a professional staff that reflects the population served, and the drug court provides ongoing cultural competence training.