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“THEY JUST NEEDED TO BE GIVEN THE OPPORTUNITY”:

JUDICIAL PERSPECTIVES OF DRUG/DUI COURTS IN SOUTH DAKOTA

by

RyLeigh Christopherson

A Thesis Submitted in Partial Fulfillment
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ABSTRACT

“They Just Need to Be Given the Opportunity”:

Judicial Perspectives of Drug/DUI Courts in South Dakota

RyLeigh Christopherson

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Drug/DUI courts have existed in the state of South Dakota since 2007 when the state became the last to implement a drug/DUI court program. Currently, South Dakota has 17 problem-solving courts which include drug, DUI, mental health, and veterans courts. The drug/DUI court model works to circumvent participants out of the criminal justice system by targeting the root cause of their criminal behavior. The role of the judge in this model is essential. Previous research has found that how participants view the quality of their interactions with the presiding judge is one of the most influential factors for their success in a drug/DUI court. In South Dakota, drug/DUI court judges preside over both traditional court proceedings and drug/DUI court sessions. This gives drug/DUI court judges a unique perspective of the criminal justice system. Interviews with three drug/DUI court judges in South Dakota reveal the benefits that these courts have on communities in the state. The perspectives of these judges highlight the importance of drug/DUI courts while also exposing areas where there is room for expansion and improvement.

KEYWORDS: Drug Court, DUI Court, Problem-Solving Court, Specialty Court, Treatment Court, South Dakota.

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Finally, I'd like to thank the people who supported me throughout the past four years and allowed me to develop a deep love of learning. To my family, my best friend, the USD mock trial team, and all of my professors, thank you.

Introduction

I don't think that it is a bold claim to say that the criminal justice system is not perfect. However, during an internship I completed in a drug/DUI court, I heard a man crediting his 300 days of sobriety to this specialty court, "I have been to the penitentiary. It didn't work. But this...this works." In that moment I was reminded that, even with its numerous flaws, there are parts of the system which can actually help people. Yet, despite the fact that by this point I was three years into my criminal justice degree, drug/DUI courts were a part of the system that mostly existed in the background of my education. We were told that they existed, but we were never taught how they work and what they accomplish. Drug/DUI court's work to reduce reoffending by addressing the root of the offenses committed is vital and I was lucky enough to see this process in action.

In the summer of 2023, I was able to sit in on a couple sessions of drug/DUI court in central South Dakota and I didn't expect it to have the impact on me that it did. I was used to a courtroom being an intimidating place where the judge quickly moved through their docket with lawyers and defendants shuffling in and out, but drug/DUI court was different. Instead of defendants being brought into the courtroom by the bailiff or accompanied by their attorney, the participants entered the courtroom wearing the medals they had earned for moving through the drug/DUI court program. They greeted each other, some reminding others to put their medals on, and then sat together in the jury box. This was so different from what I had seen in other court proceedings, and I was not sure what was going to happen next. To my surprise, the judge began the proceedings, and one-by-one called each participant to the front of the room. She asked them about their week and had them elaborate on both the highs and the lows. There was a grandfather who talked about going swimming with his grandkids, and a mother who talked about taking her

kids back to school shopping. One young man was visibly nervous and talked with the judge about how his first week in the program was going. He explained how he didn't have a car to drive to the police station to do his required drug tests and immediately other participants jumped in to offer him a ride. The last question that the judge asked each participant was how many days of sobriety they had. No matter if they said they were over 300 days sober, or if they said that they were on day one, the entire court room clapped for them. I could feel my eyes start to fill with tears because I had never seen something like this before. This was a room filled with people who could have been sitting in the penitentiary, cast off from society, but instead they were here. They were human beings just like me, and instead of being cast away they were given an opportunity to get back on the right path. I had never felt so hopeful while sitting in a courtroom and I felt the urge to tell every single person I knew about what I had just seen.

This experience was so different than anything I had seen or conceptualized before in the criminal justice system, and it made me want to investigate further. I began to understand that the role of the judge in these proceedings was vital to the success of this process. I was fascinated in how the role of the judge in this setting differed from their usual role on the bench. I also discovered that drug/DUI courts in South Dakota were proving to be successful in keeping South Dakotans with substance abuse issues out of the cycle of reoffending. The value of drug/DUI courts cannot be understated, and the perspectives of these judges are important to understand because they highlight when people are given the opportunity to participate in a drug/DUI court it is beneficial in many ways that traditional penitentiary sentences are not. Hence, this sparked interest culminated into a research project I designed and executed to speak with these judges because they have the unique perspective of working with both the traditional court and problem-solving court models. From speaking with judges who preside over these courts I was able to

learn about their experiences with drug/DUI courts and how they benefit participants and the larger community. These interviews revealed how they combat misconceptions about these courts and instead demonstrate the impact they have on South Dakotans and our criminal justice system. Thus, this paper will cover what drug/DUI courts are, how they work, and analyze the judicial perspectives that highlight their importance in the South Dakota criminal justice system and how these courts could be expanded in the state to give more people the opportunity to benefit from these programs.

Literature Review

Drug/DUI Courts: A Crash Course

In 1989, the first drug court was founded in Miami, Florida as a response to the rising number of drug offenses (Vick & Keating, 2007). This was not the first attempt made during the twentieth century to address the rise in drug related offenses, but it was the foundation of the model that has evolved into the “modern-day treatment-oriented” drug court system we recognize today (Vick & Keating, 2007, p. 290). The drug court model that was created in 1989 was innovative and, unlike other methods that were failing to address the rise in drug offenses, this model was the first to utilize a treatment component. This alternative tactic was first proposed by Judge Herbert Klein who based his approach around his suggestion of, ‘We could try to help them’ (Vick & Keating, 2007, p. 90). His approach was to switch the focus from criminalization to creating a program that recognized substance abuse as a disease that needed to be treated. This laid the foundation for the drug court model used today, which combines drug treatment with the legal and moral authority of the court in the effort to break the cycle of drug use and drug related crime (Mitchell et al., 2001). Eventually, this model for problem-solving courts (i.e. alternative courts, treatments courts, and specialty courts) was implemented in other

scenarios where it could be effective to address the underlying aspects of criminal behavior concerning DUIs, mental health, and veteran's issues.

Eligibility for a drug/DUI court varies depending on where the court is located. However, in South Dakota, according to Judge Jerome Eckrich & Roland Loudenburg (2012), the eligibility requirements are that the prospective participant are the following:

- Facing a felony charge that would result in a sentence to the penitentiary.
- Diagnosed with a substance use disorder.
- Recommended to the program by the state's attorney.
- Over 18 years old.
- Lives within a reasonable distance of the court.
- Has a nonviolent criminal history.
- Voluntarily completes the court application.
- Accepted into the program by the drug/DUI court team.
- Pleads guilty to the felony charge and accepts responsibility.
- Sentenced to complete drug/DUI court by a judge.

Participants are also made aware at the time of sentencing that if they are removed, or terminated, from drug/DUI court before completing the program, they will be sentenced to the penitentiary. The length of the sentence is at the discretion of the sentencing judge (Eckrich & Loudenburg, 2012). These programs are completely voluntary, "If a defendant chooses not to participate, (s)he does not enter the program" (Eckrich & Loudenburg, 2012, p. 174).

Drug/DUI courts are overseen by a judge, but unlike traditional court, these programs utilize a team collaboration approach where the judge works alongside a court coordinator, community supervision officer, state's attorney, defense attorney, law enforcement, and a

treatment representative (NADCP, 2018b). This team then works with the court participants to ensure that they are staying on track with the program by being in regular contact and checking in with other team members to make sure the participants are attending required treatment sessions and completing drug/alcohol testing. Participants are required to take frequent and random drug and alcohol tests, attend treatment sessions, attend court sessions, and secure work and housing while in the program. The specifics of a drug/DUI court program can vary, but in South Dakota a drug/DUI court program typically consists of five-phases which can be successfully completed in eighteen to twenty-four months (Eckrich & Loudenburg, 2012). To provide an example of what these phases are, the 2nd Circuit Drug Court participant handbook outlines each phase and what is required to move along in the program. The requirements are too extensive to list in full, but some include a minimum number of continuous days of sobriety, attending all scheduled meetings, keeping a weekly/daily planner, and maintaining approved housing and employment (Second Judicial Circuit, 2022). As the participant progresses through each phase the requirements for court attendance and drug/alcohol testing are reduced. For example, in phase 1 participants are required to attend weekly court sessions while in phase 5, participants are only required to attend a court session once a month (Second Judicial Circuit, 2022).

The Judge's Role in Drug/DUI Courts

The judge's role in the drug/DUI court model is very important as studies have found that one of the most influential factors for a participant's success in the program is how the participants view the quality of their interactions with the presiding judge (NADCP, 2018a). Even though the judge works with a team in this model, they are still the ones who make the final decisions regarding participants' progress in the program. During drug/DUI court sessions,

the judge spends time talking to each participant about their progress and learns about the participant's needs. The judge consults with the drug/DUI court team each week in a pre-court staff meeting to ensure that "each team member's perspective is taken into consideration when important decisions are made in the case" (NADCP, 2018a, p. 22). The judge ultimately decides whether or not to give sanctions to participants who fail to attend required meetings, court sessions, or if they relapse. The judge can also give incentives for participants who are doing well in the form of vouchers that pay for one of their mandatory drug tests or gift cards for the grocery store.

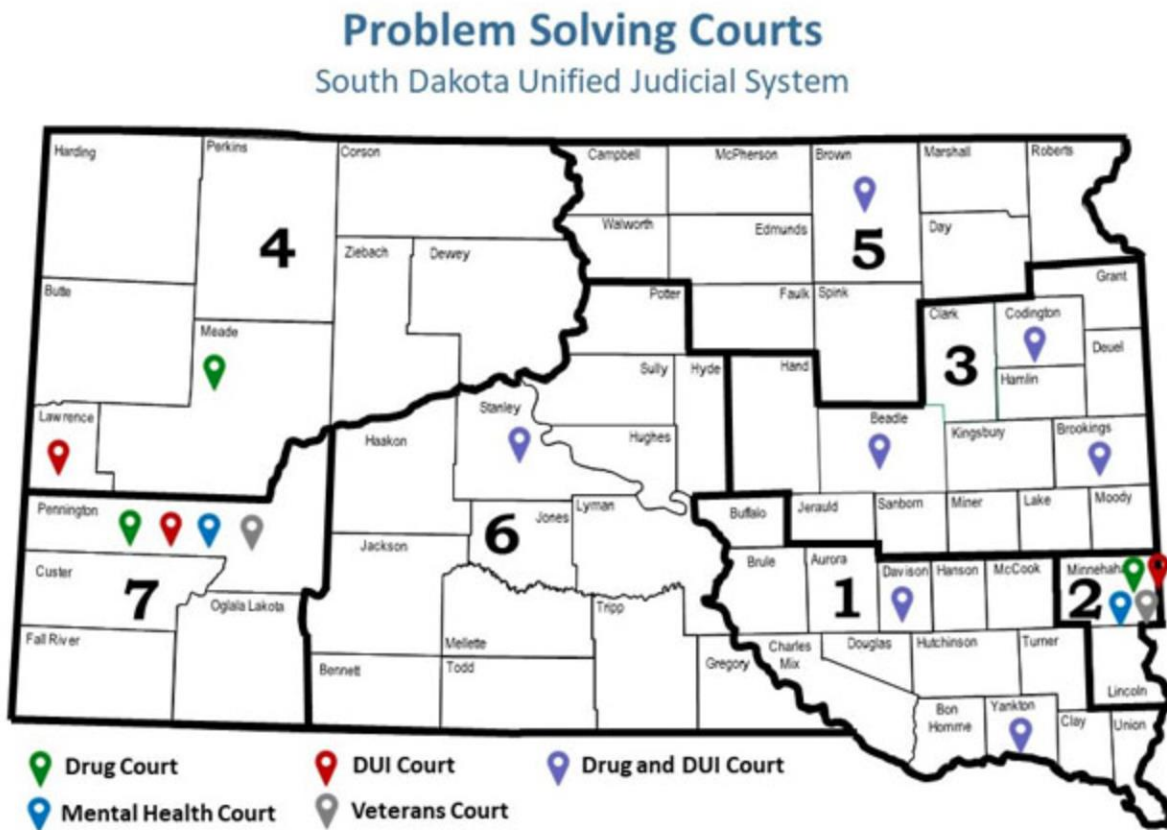
Drug/DUI court judges also have the power to terminate a participant from the program if they "no longer can be managed safely in the community or if they fail repeatedly to comply with treatment or supervision requirements" (NADCP, 2018a, p. 28). The termination process can vary, however, in South Dakota, the state Supreme Court established a policy regarding termination of a drug/DUI court participant. Their ruling requires that a motion must be made by a member of the drug/DUI court team to terminate a participant. After this motion is made, the court services officer "will provide written notice to the participant of the alleged violation(s), and the Court shall advise the participant of his/her due process rights and the potential penalty of termination from Drug Court" (In the matter of the adoption of a policy regarding termination of a drug court participant, 2017, p. 2). The participant is then entitled to have counsel during the termination proceedings and can either admit or deny the allegations against them that led to the motion to terminate. They will then have the opportunity to address the judge and the drug/DUI court team, with the drug/DUI court team able to provide information regarding the participant's progress and any other relevant material. The judge will then make the final decision of whether or not the participants is terminated from the program. All of the termination proceedings will

occur during a regularly scheduled drug/DUI court session (In the matter of the adoption of a policy regarding termination of a drug court participant, 2017).

Drug/DUI Courts in South Dakota

In 2007, South Dakota was the last state in the U.S. to implement a drug court program (Eckrich & Loudenburg, 2012). High rates of methamphetamine use were overwhelming the South Dakota criminal justice system which eventually spurred the implementation of a drug court in South Dakota called the Northern Hills Drug Court (Eckrich & Loudenburg, 2012). Since the opening of the Northern Hills Drug Court, South Dakota has increased from having one drug court to having 17 problem-solving courts that include drug, DUI, drug/DUI, mental health, and veteran's courts. These courts are located primarily in counties with the highest populations in South Dakota, The locations of all the problem-solving courts in South Dakota can be seen in Figure 1. Minnehaha County (Sioux Falls) and Pennington County (Rapid City) are the only counties with all four types of problem-solving courts (South Dakota Unified Judicial System, n.d.). Many counties also have a combined drug/DUI court instead of having a separate drug and DUI court. The counties with a combined drug/DUI court are Brown County (Aberdeen), Brookings County (Brookings), Davison County (Mitchell), Stanley/Hughes/Sully County (Pierre), and Yankton County (Yankton) (South Dakota Unified Judicial System, n.d.). It is also important to note that problem-solving courts don't necessarily only serve people who live in the county they are located in, as long as someone lives within a reasonable distance to the court, they can participate. For example, Davison County's drug/DUI court program is named the James Valley Drug/DUI Court because it serves the larger James Valley area instead of just residents of Davison County.

Figure 1



Note: Sourced from *Problem Solving Court* by South Dakota Unified Judicial System, https://ujis.sd.gov/Circuit_Court/Problem_Solving_Courts/Default.aspx

Given the rural nature of the state, there are many areas of South Dakota that do not have a problem-solving court available within a reasonable distance. For example, if you live in McIntosh, South Dakota, which is the Corson County seat, the closest problem-solving court is located 170 miles (approximately 2 hours and 40 minutes) away in Fort Pierre, South Dakota.

According to Noreen Plumage (2020), Director of the South Dakota Problem-Solving Court Division, in South Dakota the number of clients served by problem-solving courts went from 490 in 2018 to 607 in 2020 (p.5). Additionally, the rate of those who successfully graduated from South Dakota problem-solving courts went from 59% to 61% from 2018 to 2020 (Plumage, 2020, p. 5). Statewide, out of the 210 participants who are three years post-graduation from a

problem-solving court there has only been an 18% recidivism rate (Plumage, 2020). This means that 172 post-graduate participants have not received a felony conviction since they have graduated (Plumage, 2020). In comparison, the overall recidivism rate in South Dakota for those who were released in 2019 is 40.3% according to the South Dakota Department of Corrections (2023, p. 2).¹ Given the limited amount of time in which South Dakota has established problem-solving courts throughout the state, it is difficult to come to any definitive conclusions regarding the effect of problem-solving courts on recidivism. But the numbers we do have are promising.

The data that South Dakota does have, initially shows a clear trend of significant reductions in recidivism for problem-solving court graduates. The South Dakota Legislative Research Council concluded in their 2018 Drug Court Program Evaluation Report that “graduates are less likely to recidivate in the post-program period than drug court failures and non-participants” (p. 23). In this evaluation they found that the Northern Hills Drug Court had a 67.9% reduction in recidivism and the 2nd Circuit Drug Court (Minnehaha County) had a 63.3% reduction for drug court graduates one-year post-program when compared to drug court failures and non-participants (South Dakota Legislative Research Council, 2018). It is important to continue to analyze how problem-solving courts in South Dakota impact recidivism rates, especially if the state has a goal of rehabilitating criminal offenders and reducing recidivism. In addition to a reduction in recidivism rates, reports consistently show that drug/DUI courts are more cost effective. It is much more expensive to house someone in the state penitentiary than it would be to have them go through a drug/DUI court program. According to the SD Legislative Research Council in 2018

¹ Data provided by the South Dakota Department of Corrections did not include a breakdown of recidivism rates specifically for drug/alcohol related crimes.

The average cost of a successful graduate is \$13,630... In contrast, the cost to have incarcerated the same graduate would have been \$34,972, using the 597-day average completion rate at a low-to-medium-risk corrections facility (p. 26)²

The National Association of Drug Court Professionals provides ten best practice standards for adult drug courts. In 2018 the South Dakota Legislative Research Council analyzed if the states drug/DUI courts were aligning with those best practice standards. According to the Legislative Research Council in this report, “South Dakota drug courts are required to operate programs following best practice standards” (2018, p. 8). There was one standard that each drug/DUI court failed to adhere to this standard at least 90% of the time (2018). This standard was “Historically Disadvantaged Groups” which the NADCP outlines the standard as:

Citizens who have historically experienced sustained discrimination or reduced social opportunities because of their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status receive the same opportunities as other citizens to participate and succeed in the drug court (South Dakota Legislative Research Council, 2018, p. 8).

The Legislative Research Council cited that the reasons why South Dakota drug/DUI courts meet this standard less than 89% of the time was because there was “no monitoring, tracking, or evaluation of completion rates” along with participants having limited access to culturally sensitive materials and their being no available cultural sensitivity training for drug/DUI court team members (2018, p. 10). However, it is also important to note that in South Dakota Native American’s are grossly overrepresented in the criminal justice system. According to the Vera

² This comparison was what the South Dakota Legislative Research Council decided to use in their 2018 drug court evaluation report. As of 2024, this is the only reported research regarding the cost comparison between a drug/DUI court program versus incarceration in South Dakota.

Institute, Native Americans made up 9% of South Dakota's population, but 41% of the jail population and 33% of the prison population. White people make up 85% of the state population and only 44% of the jail population and 55% of the prison population (2019). However, in South Dakota drug/DUI courts, Native Americans are not overrepresented at the same level. The South Dakota Legislative Research Council reported that white people made up 74% of drug/DUI court participants and only 21% of participants are Native American (2018). This data suggests that South Dakota drug/DUI courts are not adequately serving the state's Native American population and ensuring that they are offered equal opportunities to participate in these programs.

The South Dakota Problem-Solving Courts Division's logo reads "Problem Solving Courts Work; Making a Difference". and many of the drug/DUI courts in South Dakota include "Changing Lives, Improving Communities" on their promotional materials. There is intent here to indeed make a difference and initial data is backing that up, but it is also important to provide narration besides the numbers. By hearing from judges who preside over South Dakota drug/DUI courts we can put these statistics into context and uncover the judicial and outside perspectives of these courts and if they are making a difference, changing lives, and improving communities.

Interviews

Because of my experience as an intern for the South Dakota Unified Judicial System I was able to have access to judges around the state of South Dakota who preside over drug/DUI courts. To qualify for this study, participants had to be a judge in South Dakota who currently presides over a drug court, DUI court, or a combined drug/DUI court. All interviews took place between November and December 2023 in person or online, depending on the preference of the participant and lasted approximately 30 minutes. During the interview participants had control of

which parts of the conversation were recorded and if they would like anything to remain off the record. All participants chose a pseudonym and any information related to their specific location was omitted to protect their privacy. For this study I interviewed three judges who preside over a drug court, DUI court, or combined drug/DUI courts in different regions of South Dakota.

Analytical Method

For the three qualitative interviews I utilized the abductive method described by Timmermans and Tavory (2012). Timmermans and Tavory (2012) describe the abductive method as a “continuous process of conjecturing about the world that is shaped by the solutions a researcher has ‘ready-to-hand’” (p. 172). Essentially, the abductive method explains when the researcher has previous knowledge or experience with the chosen topic, and they use that knowledge to further develop the research, allowing for new findings. The abductive method is the most appropriate for this research as I used my previous experience as an intern for the South Dakota Unified Judicial System (which houses the state’s Problem-Solving Court Division) and education as a criminal justice major to inform my choice of topic.

During my internship, I completed problem-solving court training and read extensively on the best practice standards for drug courts. I attended two drug/DUI court sessions in central South Dakota, where I saw how different the role of the judge was compared to what I had seen in traditional court proceedings. My experience inspired me to complete independent research on the judicial perspectives of problem-solving courts in the state of South Dakota. I went into this research project with expectations of what I might discover based on previous conversations with judges and other problem-solving court professionals in South Dakota. However, following the abductive method, I was open for organic discovery to occur throughout the research process.

Findings

The judges who were interviewed used the pseudonyms Judge R, Judge H, and Judge M. Judge R presides over a drug court in eastern South Dakota, Judge H presides over two drug/DUI court programs in eastern South Dakota, and finally, Judge M presides over a DUI court in Western South Dakota. They shared their experience, perspectives, and stories of the impact that these courts have on participants, their community, and on themselves. This work specifically is centered around looking at drug/DUI courts in South Dakota through the eyes of judges who work not only with these courts but also with the traditional court processes. The purpose of these findings is to demonstrate the benefits that drug/DUI courts provide in South Dakota in comparison to the traditional processes, address common misconceptions, as well as to inform about the express importance of these courts. This analysis will be categorized into four sections; procedural perspectives, combating misconceptions, if drug/DUI courts work, and if these courts should be expanded.

Procedural Perspectives

The National Association of Drug Court Professionals (NADCP) in 2018 reported that in a study of 70 drug courts there were significant reductions in recidivism rates when “judges were assigned to the Drug Courts on [a] voluntary basis” (p. 22). When asked how they had become a presiding judge of a drug/DUI court in South Dakota, Judge M said that “I guess I could say I was voluntold³ I was going to do it.” She went on further to describe how she had previously been a prosecutor who handled juvenile cases and had expressed interest in specialty courts during the interview she had before becoming a judge. She explained that “Specialty courts in a weird way almost mirror juvenile court. That individual perspective and approach, and I think

³ This is a colloquial term that generally refers to when someone is volunteered for a task by another person.

it's more effective than the general cattle call court, and I wanted to be involved in that." Judge H also had also been a prosecutor before becoming a judge and discussed how being a state's attorney on the drug/DUI court team led her to asking to continue being a part of the drug/DUI court in her new role as a judge. Finally, Judge R explained that they had become a judge before South Dakota had implemented its first drug court. She said that, before the implementation of drug/DUI courts, in the traditional court setting "I was basically facilitating the revolving door." Judge R believed that "there had to be a different approach, because what I'd been doing for the last twenty plus years wasn't effective." She advocated for the implantation of a drug court in her county. She said that "it was worth the effort."

Drug/DUI courts differ in many ways from a traditional court proceeding. For the judges who were interviewed, and all judges who preside over a problem-solving court in South Dakota, they work in both traditional court proceedings and drug/DUI court. When asked to describe drug/DUI court to someone who doesn't work in the criminal justice field they described it as "a court ordered, supervised probationary program", "a highly intensive probation supervision court", and "an alternative to a penitentiary sentence that promotes long term sustained recovery". The judges described the program by comparing it to probation, which is something that the general public would be more familiar with. However, being a participant of drug/DUI court involves a lot of things that probation does not which explains the judges use of words like "intensive" in describing it.

Unlike probation, where a someone mostly just needs to follow the law and stay out of trouble, in drug/DUI court there is a much more hands on approach that requires a lot of active involvement from the participants and the members of the drug/DUI court team. Judge H explained that drug/DUI court requires participants to

- Participate in weekly court appearances.
- Complete drug and alcohol testing.
- Meet with a probation officer.
- Meet with treatment providers.
- Obtain safe housing, a good job, and good education.
- Get to a place of recovery and stability so they can find themselves on a different path outside of the justice system.

Despite their use of the term probation to describe drug/DUI court, their perspectives show that drug/DUI court has a different goal than probation. It is not just about getting a person through their sentence; it is about addressing the root cause of their criminal behavior to keep them out of the system.

When discussing the goals of the drug/DUI court they worked in, the judges focused on explaining how the main goal is to redirect people who have gotten caught up in the criminal justice system due to substance abuse issues. Judge M said that one goal for the program is to “give the participants the tools to become more positive contributing members of our community so when they are done with our program, they don’t fall back into the pattern of behavior that got them there.” This was echoed by the other judges who said the goals included giving “the participants the tools to become more positive, contributing members of our community so when they are done with our program, they don’t fall back into the pattern of behavior that got them there”, helping “folks that are justice involved... get to a point where they’re done with the system”, and “getting enough skills and tools so they can maintain long term recovery and sobriety”. From these statements, it is clear that when presiding over drug/DUI court, there is a different approach to addressing criminal behavior. These programs focus on giving people the

opportunity to participate in a treatment plan that addresses the reasons why they engaged in criminal behavior.

So, how does drug/DUI court differ from a traditional court setting? When asked, all three judges discussed how in the traditional courtroom “there’s no relationship, there’s no, there’s no connection”. In comparison, the drug/DUI court model allows them to “just have conversations with them” and they “tend to know quite a bit more about folks in these programs.” The way that drug/DUI courts are set up to take place over a span of 18 to 24 months allows for the judge to make connections with the participants and learn more about their lives. This connection between the participant and the judge is not something that is able to be fostered in the traditional court setting. Judge M said that in a traditional court proceeding “I don’t have time to even ask ‘How are you doing today?’ That doesn’t happen in regular court.” However, “In DUI court, the first thing, ‘How was your week?’” Unlike in traditional court, the judges explained that in drug/DUI court “there is a relationship that is built”. Judge M said that wishes she had time to ask the kind of questions she does to drug/DUI court participants in every case “But I don’t.”

Judge H said that drug/DUI court is “intended to feel different, and I hope that’s how they feel”. Not only does it feel different for the participants, but it also feels different for the judges. To Judge M, drug/DUI court is “very different than regular court. I love it. It’s the highlight of my week.” Each judge also described how the drug/DUI court model allowed them to do more for participants or as Judge R explained it “My toolbox is much fuller”. She also explained that in traditional court “your hands are somewhat tied by the constraints of the law.” Judge M gave examples of the things that they are able to do for drug/DUI court participants that they don’t have the ability to do in regular court thanks to grants that the program has received

from private grantors; “We’ve helped with dental bills for people whose teeth were rotten and others for helping them with housing so they can actually get into their own apartment.” There was also discussion about the team approach that the drug/DUI court model implements are beneficial for participants and the judges. Judge R said the reasoning for that is “because I don’t have an expertise in mental health. I don’t have an expertise in substance use. So having those people be part of the team gives me more insight to what I need to be doing.” This individualized approach is something that judges don’t have the ability to do in traditional court proceedings, but drug/DUI court allows them to connect with participants and do more to help them than what they are able to do for defendants in traditional court.

Combating Misconceptions

With a name like drug/DUI court, it is not surprising that the purpose of these courts can be misunderstood by those not familiar with them. Judge R discussed how “they got that nickname, Hug-a-Thug. And I think that was a negative look on the treatment courts.” This misunderstanding that these courts are a “free get out of jail card” and that they are an easier alternative to serving a sentence in the penitentiary. Each judge explained how drug/DUI court is actually more difficult than a penitentiary sentence is. Judge H discussed the difficulty of completing a drug/DUI court program and said that she wished people understood that:

It is not just hug-a-thug courts or kumbaya time. We are way harder than going to prison or sitting in jail. The folks that come into these programs are monitored on a daily basis and supported by a group of professionals that help them with every aspect of their life, whether they want it or not right away. It’s very intense. It’s something that really holds them accountable.

Judge M also discussed the hard work required to complete these programs “The pen is easier. It is hands down easier than DUI court, because you have to work through a lot of hard stuff in any specialty court.”

Judge M talked about how people can misunderstand the underlying issue that drug/DUI courts are designed to treat, “It’s not as easy as saying you should stop drinking. Well duh, they probably already thought of that and if it was that easy, they would have done it.” Many people have the perception that people with multiple drug or DUI offenses should be locked up. Judge M pushed back against this by saying that this is “a short-term result and if we just locked people up that have addiction issues, they wouldn’t be sober. They would be not drinking while they’re in the pen.” In a drug/DUI court program the participants are required to do many things, and there is a lot more required of them than if they were on probation. “I think a lot of people misunderstand and think ‘Oh, it’s just like, whatever, they talk to a probation officer once a week.’ It’s not. They go into so many appointments and meetings and check-ins, and all the sobriety testing.” The fact that these programs take a lot of work and effort from the participant where one of the main points that the judges discussed when talking about what they wished people knew about drug/DUI courts. The other point they stressed was that the people in these programs are human beings that are in tough situations who want to do better. Judge H discussed how the participants of drug/DUI court have often suffered trauma and lack the support they need. She said that in drug/DUI court they are “playing catch up and helping them heal from their trauma, manage the addictive side, get back on the right footing. They’re all just really good people that... just kind of fell off the path.”

It is also important to note that drug/DUI courts are voluntary programs. A person is only sentenced to one of these courts if they decide to apply for it. If at any time, they decide they are

no longer willing to put in the work required they would go through the termination process and be sentenced to the penitentiary. Similarly, if they are not complying with the requirements of the program, they face the possibility of being terminated from the court and sent to the penitentiary. When asked what she wished everyone knew about drug/DUI courts, Judge R responded, “I think that it’s important for people to realize that drug courts do keep our community safe, reduces our prison population, and it creates productive members of our society.” When asked the same question, Judge M responded, “That these courts really, really work and that there are human beings that are in the program that deserve better and are willing to work to get better and they just need to have, to be given, that opportunity.” Without the drug/DUI courts, the opportunity to get back on the path falls further out of reach for those who are already in a state of crisis. Drug/DUI courts give people the opportunity to be rehabilitated without the additionally trauma of a prison sentence. Drug/DUI courts are not a hug-a-thug program or a get-out-of-jail free card, they are an opportunity for people to get back on the path. The path that leads them away from drugs, alcohol, and the penitentiary.

Judge M told a story that exemplifies how drug/DUI courts help people get back on that path. She explained how there is a woman in the court she presides over who “was in probably the highest state of crisis I’ve seen for any of our participants when she started.” This woman was homeless, in a dangerous relationship, unemployed, had been incarcerated for months and when she started the program “she was terrified to talk.” Judge M explained how the court helped her gain some stability in her life, but it was this woman’s hard work that has allowed her to succeed in the program.

She’s doing so well now. It’s her, she put in all that hard work. We were there to help, but we’re kind of backup in a way because if she didn’t want to do it, she wouldn’t do it.

Now she's in college classes. She's got a great job, she's in this kind of transitional housing program, and she's got the biggest smile on her face sometimes in court, which I didn't even see for the first few months. That's the type of stuff I love because had she gone to the pen, she'd already be out by now. She would have still been homeless, and it would have exacerbated that problem. It'd been harder for her to find a job. She avoided that by participating [in drug/DUI court].

It is stories like these that show the importance of these courts, and the impact that they have on people's lives. This woman is an example of how, when given the opportunity, participants in drug/DUI courts are able to make a better life for themselves where they can be sober and stay out of the criminal justice system. Judge M said that cases like this one help her remember the importance of what the drug/DUI courts are doing for people. "Everyone has bad weeks, bad days. But this works, and this an example of how it really *really* works for the better."

From what the judges said it is clear that one of the best ways to change people's perspectives on these courts is to educate them about what the courts are actually doing. Not only is it important to educate people as to what the courts are doing, but it is also important to educate people about substance abuse disorders. Judge R mentioned that, in her eyes, there has been an increase in receptiveness to these programs because "drugs and substance use have affected so many families. In reference to her perspective of how her community views drug/DUI court Judge H said "We're very lucky in that people seem to be very supportive and understanding. I would say it was not always the case. I took some time and some selling on our end." She offered that "if people ever have questions, they should just come watch a court session and I think they would quickly see what it is that we do." It is important for drug/DUI courts to be supported by their communities. Through listening to the perspectives of those who

see the good that these courts are doing it is apparent that they are confident that the community will see the benefits of these programs if they take the opportunity to learn more about them.

Do these Courts Work?

“Yes, it totally does” was the response that Judge M gave when asked if drug/DUI courts work. She went on to explain that “I’ve seen firsthand, incredibly successful participants, including a few that when they started, I was like there’s no way this guy is going to graduate... and I love being proven wrong”. The stories that the judges shared of people who had graduated from a drug/DUI court are impactful and demonstrate not only how the program was able to work for participants, but it also shows the impact that the participants had on the judges. Judge M shared that:

We’ve got one of our graduates, he’s now a deacon at a church in town and leads church services. And another one is a business owner, and he went to barber school while he was in the program, and now he owns his own business. He actually cuts my son’s hair [laughs] which is pretty cool.

Judge R also shared that, “I had a young woman come back the other day, she’s seven years sober. She always comes back on her graduation date, and I always have her speak to the participants. But do I think it works? I think yes.”

The stories that the judges shared about participants who succeeded in these programs and were able to create a better life for themselves because of them are remarkable. Had the opportunity to participate in drug/DUI court not been available to them it is possible that they would not have been able to get sober or achieve the stability they needed in life to keep from relapsing and reoffending. From the stories of success the judges shared, it is clear that in their

experience many participants were invested and coupled with the drug/DUI court model is why the judges were able to say that these courts do work.

Of course, not every participant is going to be successful with drug/DUI court. Judge H cautioned that “It’s not perfect, nothing is, but I think it’s worth the resources and if we can circumvent a few people out of the system.... I think it’s worthwhile.” The judges explained that to be successful with drug/DUI court “The person has to be invested”. Judge M described how she stresses to new/prospective participants that “It is a voluntary program.” She makes sure that participants know that “you don’t have to do this, you can go to the pen. The pen is easier. It is hands down easier because you have to work through a lot of hard stuff in any specialty court.” For many it may seem like drug/DUI court is an easy way to get out of a prison sentence. However, drug/DUI court requires a lot of participants, and it forces them to deal with the things in their life that they are struggling with, but drug/DUI court allows those who qualify for the program to have the opportunity to try. Judge M stressed that “We can’t, we cannot just incarcerate people for addictions without having them want to try.”

The benefits that drug/DUI courts have on the communities that they serve is another topic that was discussed by the judges. One important benefit is that the participants are able to be active members in the community while in drug/DUI court, which wouldn’t be possible if they were sentenced to the penitentiary. Judge R explained “If you can do it in the community, why not keep people in the community with their family, having them pay child support. Having them work. Some of them [are] going back and getting their GED.” It is important to note that drug/DUI court is only an option for nonviolent offenders. Judge R clarified that keeping participants in the community is beneficial “if this person is not a danger to the community.” Judge M discussed how many members of the community wouldn’t be able to notice the impact

that drug/DUI courts have, but she went on to explain the importance of participants being able to be in their children's lives while in drug/DUI court; "having that, you know, parents that are not incarcerated, increases the likelihood that the child will do better." Participants are also able to get their GEDs or a college degree, get stable employment, and housing. These are all things that Judge M described as "ripple effects that have changed out community more than our community realizes."

Not only do drug/DUI courts benefit the community, but the community also impacts the program. Judge H said that she had seen community members go out of their way to support the program. There was one woman she spoke about who volunteers for the drug/DUI court, "she does amazing things like take clients out for lunch, buy them things they might need for a new job; gloves, boots, shoes, clothes... just shows up in all different sorts of ways." Judge H also spoke about a community member who is a yoga instructor, and she teaches a free yoga class specifically for the drug/DUI court clients. These types of interactions show how much of a positive impact that drug/DUI courts can have, not only for the participants, but for the community as well.

A reduction in recidivism rates and cost savings for taxpayers are two of the main areas that are used to calculate the success of these programs. Judge M was very upfront about the fact that these courts save people money, and they have a larger impact. "It is less expensive to do drug/DUI court than to send people to the pen, and DUI court is more likely to result in more positive, long term, than just incarcerating somebody." She also explained that for the program she presides over "our success rates of our graduates are fantastic." Judge H also discussed that:

For my two courts, some of the big numbers that we measure are graduation rates, retention rates, and recidivism rates. The two courts I cover have always had those

numbers above the state and national average. I would say, generally speaking, that feels like a success.

The South Dakota Problem-Solving Court Division reports on the South Dakota Unified Judicial System website that the graduation rate from problem-solving courts in South Dakota is 56%, and for each dollar that is invested in these programs there is a \$27 return (South Dakota Unified Judicial System, n.d.).

Expansion of Problem-Solving Courts in South Dakota

When asking whether drug/DUI courts should be expanded in the state, Judge R captured the initial response of the judges by saying that “The expansion of any alternative court that keeps people out of the penitentiary is advantageous for all of us as citizens.” However, while each judge stated that it would be beneficial to expand these programs there was a caveat. Judge H said that drug/DUI courts should be expanded “when and where it’s appropriate... it really needs to be in communities that can support it.” To be able to operate a successful drug/DUI court program the court needs to have access to the resources that the model requires. This includes treatment services and drug/alcohol testing centers that are usually unavailable in counties with low populations. In a rural state like South Dakota, there are many counties that don’t have access to these resources and are not located within a reasonable distance of a town with the necessary supportive places. “There are just some rural communities in South Dakota where if you don’t have adequate treatment resources to provision resources, it would not work.” Running a drug/DUI court is not an easy thing to do. If a community does not have access to the necessary resources, it would be extremely difficult to successfully run one of these courts. “In the rural areas if there aren’t the resources there, I’m not sure you can do drug court. Because to

do a drug court is to do drug court.” Despite this, Judge M mentioned that she thinks “the opportunity for improvement is so great. I wish everyone had access to it.”

It would be difficult, or even impossible, to successfully expand drug/DUI courts into the rural areas of South Dakota because they lack access necessary components needed to operate one of these programs. They could struggle to staff the court team, and there may not be enough participants to outweigh the cost of running the court. However, the judges also discussed the possibility of expanding existing drug/DUI court programs, so they are able to serve more people. “I think the first step would just be making sure that the courts we have can get filled up and be serving as many people as we can.” The message from the judges was clear that these courts work, and they are important. Judge M stressed that these courts should be expanded because “When we’ve got people that are willing to put in the hard work and wanting to do better and be better, we should be giving them that opportunity.”

Discussion

The judges that I interviewed all had mostly positive things to say about the drug/DUI courts that they preside over. They were clearly proud of the work these courts are doing and rightfully so. However, like every part of the criminal justice system there are critiques that need to be considered in light of the positive aspects of these courts. The findings of my interviews with these judges showed that these programs are important, and they do good work. It is also important to consider the perspective of these judges because they do have a bias since they work directly with these programs. The purpose of this discussion section is to dive deeper into discussing drug/DUI courts in the state, to consider some of the critiques of the system, and to

call for efforts to expand these courts in a way so that they provide equal opportunities for South Dakotans so benefit from them.

All of the judges that were interviewed for this project were women. Based on the information provided on the South Dakota Unified Judicial System website a large number of problem-solving courts in South Dakota are presided over by women. There are also a large number of problem-solving court coordinators in the state that are women. This is important to note because working with drug/DUI courts is an understandably emotionally intensive environment and there has been little to no research done regarding emotional labor in the judiciary, specifically when it comes to problem-solving courts. All of the judges I spoke to talked about how presiding over a drug/DUI court has impacted how they do their job in their capacity as a drug/DUI court judge and as a judge in other traditional proceedings. Each judge discussed feeling like their “hands are tied” in some capacity in traditional proceedings, however, because of their experience presiding over drug/DUI court they are more cognizant of the importance of understanding that there is more to the defendants they are seeing in their courtrooms than what meets the eye. This could be just a theme that appeared because of the small sample size of the larger problem-solving court judiciary in South Dakota, but it would be interesting to do a comparison of problem-solving court judges and judges who have never worked with a problem-solving court and see what the effect of the experience of presiding over a problem-solving court is.

A large critique for the drug/DUI courts in South Dakota is that there is a barrier of entry for the Native American population in the state. This is evidenced by the fact that in both the prison and jail populations in the state Native Americans are grossly overrepresented. Yet, the data regarding the ethnicity of problem-solving courts in South Dakota show that the percentage

of Native Americans in these programs is significantly less than that of the jail and prisons populations. There is no hard evidence of why this is since there is no overt language in drug/DUI court requirements that would bar Native Americans from being admitted into these programs, however, there are some factors that may be behind the lower numbers of Native American participants. First, in South Dakota states attorneys have to recommend that a defendant apply to a problem-solving court program. This is not to suggest that all states attorneys in areas with access to a problem-solving court program are purposefully not recommending Native American defendants to these programs, but more research should investigate why there is a large gap here.” Second, drug/DUI court programs typically require that participants do not have a violent criminal history. It is possible that because Native Americans in South Dakota are more likely than white people to be arrested and charged with a violent crime that this also creates a barrier of entry into the drug/DUI court programs.

A final possible reason for the lower representation of Native Americans in South Dakota drug/DUI courts is the location of these programs in the state. Vera Institute in 2019 found that in South Dakota “on a per capita basis, the most rural places in the state often lock up the most people in jail and send the most people to prison” (p. 1). However, in South Dakota drug/DUI courts are located in the most urban areas of the state. It was also reported by Vera Institute that Ziebach and Roberts counties had the highest rates of admissions into jail and prison respectively in 2015. These counties are both rural counties that are located on tribal lands in South Dakota. The judges interviewed when asked about expansion all discussed how rural counties lack the necessary resources to be able to run a drug/DUI court program, however, it is important to consider how many people are not able to have the opportunity to benefit from these programs

because of their location and how a large number of the people not being given the opportunity are Native American.

The judges interviewed discussed how drug/DUI court programs decrease the prison populations. While these programs do divert a number of people out of jails and prisons, there has been no effect on the overall incarceration rates in the South Dakota. In fact, the number of people in South Dakota jails has increased 544% since 1970 and 49% since 2000. The prison population has seen similar increases; 365% since 1983 and 49% since 2000 (Vera Institute, 2019). While drug/DUI courts may be diverting a number of people out of the criminal justice system, it is not making a dent in the overall number of people who are being incarcerated in South Dakota. Mass incarceration in South Dakota is only continuing to grow and as of March 31st, 2024, there are 3,797 adults in South Dakota who are incarcerated (South Dakota Department of Corrections, 2024). As incarceration rates continue to increase it is important to evaluate how the impacts of drug/DUI courts in South Dakota may be overshadowed by other issues within the system.

Drug/DUI courts do incredibly important work, but it is crucial that they are not used as a Band-Aid to cover a bullet hole. It is great that those who work within these programs see them as providing an important service for participants. The next step for these courts in South Dakota should be focused on how these courts can continue to have positive impacts on participants while also ensuring equal opportunities to South Dakotans to benefit from these programs. The National Association of Drug Court Professionals outlines that drug/DUI court programs should be ensuring that they are accessible to historically disadvantaged groups (South Dakota Legislative Research Council, 2018). In South Dakota that standard is not being met. Expansion of problem-solving courts in the state should focus on working towards meeting that standard

and putting efforts toward research to understand how these programs can be improved. This could include increasing funding for treatment programs, expanding the reach of these courts to rural areas in the state, or looking at other ways that the state could reduce incarceration rates. Drug/DUI courts do make a difference for people in South Dakota and continued improvement would expand their ability to make that difference.

Conclusion

When I had the opportunity to actually see what happens during a drug/DUI court session I was left wondering why it seemed like nobody was talking about these programs. I will never forget what it was like to see a group of people who were putting in the work to be better for themselves, for their families, and for their community. It is an experience that made me want to stop every person on the street and tell them about this thing that is changing people's lives in such a positive way. I've learned from my time researching and talking to judges about drug/DUI court that this is a facet of our criminal justice system that needs to be acknowledged because it is a step in the right direction of addressing criminality at its root and helping people instead of locking them up. The perspectives of the judges I interviewed highlight how the drug/DUI court model works. From their experiences, I found that these programs are worth investing in and they provide benefits to not only participants but also to those in the community and to the judges themselves. If there is anything that you take away from reading this, I hope that it is that drug/DUI courts give people the opportunity to change their lives for the better. Contact a drug/DUI court near you and ask if you can sit in on a court session. You'll see for yourself why it is so important to spread the message that these courts work. My conversations with judges who preside over these courts exemplified the reasons why South Dakota needs to

continue to invest in these programs and expand them in ways that create equal opportunities for South Dakotans with substance abuse disorder. When given the opportunity, drug/DUI courts make the criminal justice system better and continued investment and research into these programs can help expand opportunities for the criminal justice system to help more people in South Dakota.

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