

The Changing Face of Justice in Maine's Drug Courts

By Jon D. Levy

In commenting upon how to best implement change, to paraphrase Mark Twain, habit is not to be flung out the window, but to be coaxed downstairs one step at a time. We are in the thick of implementing significant changes in the operations of Maine's thirty-one District Courts. These changes are proving to require little coaxing and they go beyond improvements in process. Rather, they seek to redefine the role of the judge and the degree to which the courts look beyond the interests of the individual litigants and focus equally upon community values and needs. This article will consider these changes as reflected in the juvenile and adult drug courts now operating in Maine and why they represent an important step toward a new concept of justice.

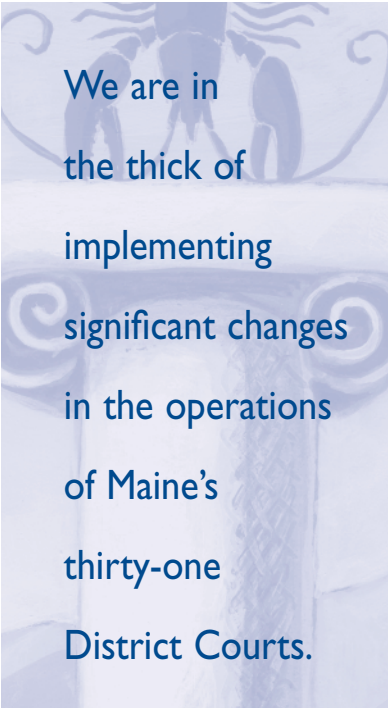
Beginnings

The first drug court in America was created in 1989 by Judge Stanley Goldstein in Dade County, Florida. Judge Goldstein had grown tired of witnessing the revolving door of offenders who abused drugs and alcohol, and for whom recidivism was a common and predictable outcome. He reorganized his court's schedule so that "drug court" participants would return to court on a weekly basis while on probation, so as to face a heightened level of judicial scrutiny and accountability. One attorney who participated in the implementation of Judge Goldstein's drug court was Janet Reno, then county attorney for Dade County. Within a few years, Reno was appointed Attorney General of the United States and under her leadership the Justice Department took on the task of encouraging state courts across the United States to experiment with the drug court

approach. Those efforts have borne fruit.

As of 2001, there are over 580 drug courts operating in forty-seven states. They have led to the development of similar problem-solving courts including "mental health courts," "child protection courts," and "domestic violence courts," which, like drug courts, are premised upon a judge assuming greater responsibility for assuring that offenders are held accountable for making the needed changes in their lives.

In Maine, the first drug court was initiated at the Cumberland County Courthouse in 1998 under the leadership of Justices Roland Cole and Robert Crowley. Known as Project Exodus, the Portland drug court succeeded during its two years of operation in helping adult offenders to break out of the chain of addiction and, in the process, substantially reduced the incidence of recidivism.



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Fifty-nine percent of the offenders admitted to Project Exodus successfully graduated from the year-long program.¹

In January 2000 the Maine District Court launched five juvenile drug treatment courts in Biddeford, Portland, West Bath, Augusta, and Bangor. In 2001 a sixth juvenile drug treatment court was added in Lewiston. On the adult side, five adult drug treatment courts located in Alfred, Portland, Lewiston, Bangor, and Machias were launched in April 2001 as a joint project of Maine's Superior and District Courts. Today, on at least one day in any given week, one-fifth of Maine's trial judges can be found presiding in a juvenile or adult drug court.

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What Is a Drug Court?

It has long been recognized that changing human behavior is as much a function of carrots as it is sticks. This simple truth is reflected in Maine's Adult Criminal Code and Juvenile Code, which both recognize that the prevention of crime through the rehabilitation of the offender is as important an objective as the punishment of the offender through incarceration.² The drug courts take this truth one step further by establishing that not only is it the responsibility of a judge to pronounce sentence, but also to play a leadership role following the pronouncement of sentence to ensure that the restorative aims of the sentence are fulfilled.

Drug courts focus on the quality of the outcomes achieved by the court's sentence, and not just on the quantitative features of sentences (e.g., whether the defendant's sentence was five years versus ten years). Drug court judges concern themselves with whether the offender has maintained sobriety, become employed, gained his or her GED, obtained a job, paid child support, and numerous other issues associated with measuring the offender's post-sentence experience. The relative success of a sentence is understood by the degree to which the drug court participant transforms her or himself and breaks out of the chronic cycle of substance abuse and

both literally and figuratively reduced. Drug court participants voluntarily agree to waive many of the due process-based procedural protections as a condition of their admission to the drug court. In return, they receive the benefit of the drug court's structure and related services, and the possibility to receive a reduction in sentence if they successfully complete the year-long drug court program.

Why have the courts targeted substance abuse? At a recent panel discussion of experienced juvenile prosecutors and defense attorneys, the panelists' estimates of the percentage of children who enter Maine's juvenile justice system with a serious alcohol or drug abuse problem ranged from 50% to 80%. Similar estimates are commonly given for adults in Maine's adult penal system. The courts are focusing on substance abuse out of a recognition that a failure to do so renders the process of justice less effective in reducing recidivism and preventing crime.

A New Set of Tools

The drug court judge commonly utilizes several tools unique to drug courts, the most important being collaboration. Unlike traditional judging in which the judges reach their decisions in relative isolation, the drug court judge works as the leader of a team consisting of a case manager, probation officer, prosecutor, defense attorney, treatment provider and others. The judge confers with team members before each drug court session so that she or he has the benefit of each team member's information and opinions before facing the offender each week in the courtroom. For example, at a recent drug court session in Biddeford, I decided not to sanction a boy I'll refer to as James, age fifteen,³ for repeatedly skipping some of his classes after he arrives at school,

recidivism. Success, therefore, is not merely whether the state achieved a conviction and imposed a punishment, but also whether the sentence successfully targeted the offender's personal risk factors associated with recidivism.

In drug courts judges directly question and challenge offenders about these issues each week free from the formality traditionally associated with courtroom hearings: the presence of an attorney to speak on behalf of the offender, the right of the offender to remain silent if he or she so chooses, etc. The dialog between judge and offender is informal, direct and to the point. Offenders are often required to approach the bench, so that the gulf separating the judge and the offender is

notwithstanding the fact that I had previously admonished him for this behavior. At the team meeting—which preceded the drug court session—we discussed James along with the twelve other children in the Biddeford drug court. His substance abuse counselor made the point that James suffers from post-traumatic stress disorder (PTSD), a condition which makes it extremely difficult for James to sit through the eighty-minute block-scheduled classes he was experiencing for the first time, having recently entered high school as a freshman. James' PTSD is a product of him having witnessed repeated and serious incidents of domestic violence in his home. The drug court team's assessment regarding James was that it was not that he was intentionally flaunting the court's requirement that he attend all of his classes, but rather that his condition rendered him incapable of attending all of his classes. The drug court team concluded that our focus should be on engaging James' school, as opposed to punishing James, and I ultimately directed the drug court case manager to contact the school and initiate the Pupil Evaluation Team process.

The team discussion regarding James lasted no more than a few minutes, but it illustrates the difference between drug courts and regular courts. If James' case had come before me on a typical busy day in District Court, I and the attorneys involved in his case would probably not have known about his class attendance problems. Even if we did learn of these problems, we probably would not have addressed them as part of his sentence because a cursory examination of his situation suggests that he is actively enrolled in and attending school. Instead, our focus would be on the “bigger” issue of imposing a sentence in order to conclude

the case. The reality for James and many of the children who enter Maine's juvenile justice system, however, is that if their school life is permitted to disintegrate and their drug or alcohol abuse remains untreated, the likelihood that they will relapse and reoffend is greatly increased.

Another important drug court tool is the use of rewards and sanctions. While participating in drug court, offenders face a variety of “carrots” and “sticks” each week that are intended to motivate the offender toward sobriety and a successful life. Carrots might include words of praise from the judge, a round of applause from the other drug court participants, the relaxation of the court-imposed curfew or participation in a court-sponsored outdoor trip. There are a variety of sticks employed as well, ranging from admonishment by the judge to a “shock” jail sentence of immediate incarceration for up to a full week. Offenders facing jail as a sanction are afforded the right to be represented by counsel and have a more traditional hearing before the judge decides whether to impose a “shock” sentence as a sanction. The immediacy of a “shock” sentence is quite different from traditional sentences typically imposed long after and far removed from the misconduct that gives rise to the sanction.

There are several important benefits flowing from the fact that judges assigned to drug courts accept responsibility for presiding in the court every week. First, the judge develops a degree of expertise in substance abuse far beyond that achievable by presiding in traditional courts. The judge also becomes personally invested in the administration of the court and takes on a leadership role. Perhaps the most important benefit is that the judge becomes familiar with the drug court participants and their families. Returning

to the example of James' case, if James appeared before a judge on a regular juvenile court day, it is likely that the judge would have never met James before and would never see him again at least, that is, until James reoffended and was returned to court. In contrast, the week-to-week structure of the drug court causes the judge to develop an intimate familiarity with each offender and his or her progress and, as a result, to make more sophisticated decisions regarding the offender. The reciprocal benefit for offenders is that they quickly learn that it is not enough to just “get by” on probation; instead they become motivated to change in order to receive the rewards and avoid the sanctions of drug court.

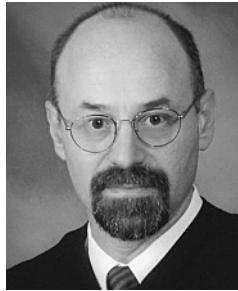
The New Face of Justice

It is natural to refer eponymously to America's new problem-solving courts by the problems they seek to address (e.g., “drug courts,” “domestic violence courts,” etc.), but a more accurate appellation is to simply refer to them as “courts,” albeit the first generation of courts of the twenty-first century. These are courts which are open to testing and developing principles of judicial case management, collaboration and enhanced accountability. We should expect that over time these principles will reach into other areas of adjudication and that the use of the courts' authority to achieve measurable results for victims and offenders will become a more familiar component of our broader concept of justice. There is ample evidence that this is occurring in Maine. In addition to the drug courts, the Maine District Court has in recent years begun using active judicial case management in divorce and other domestic relations cases in its Family Division, as well as in child protection cases. The District Court will soon launch

a pilot program at two court locations where drug court-style accountability and collaboration will be employed in domestic violence cases. The pilot program will establish a post-adjudication role for the judge that will compel offenders to return to court to be held accountable for making the changes contemplated by the court's orders. Recent research establishes a substantial increase in compliance with batterers' program requirements when mandatory court monitoring is in place.

An emerging new face of justice has taken root in Maine and elsewhere. To paraphrase Mark Twain, we must never throw out the window the bedrock principles that have given us the most advanced system of civil and criminal justice ever realized, but we must be open to innovation and the next step it provides us as we head down the stairs. These steps are leading us to the expectation that justice will focus as much on the quality of outcomes achieved by the courts as on the quantity of cases processed. This new face of justice calls upon judges to test innovative techniques to achieve what is, in the end, the traditional purpose of law: to advance the values and interests of the broader society when we adjudicate the rights and responsibilities of individuals. 🐉

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ENDNOTES

1. A subsequent evaluation of Project Exodus found that \$1.94 was saved for every \$1.00 spent on the program. The project ended upon the expiration of the federal grant that had paid its operational expenses.
2. See The relevant provision of the Maine Criminal Code is 17-A M.R.S.A. 1151(1), which sets forth the purpose, "To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety." The relevant provision of the Maine Juvenile Code is 15 M.R.S.A. 3002(1)(A), which sets forth the purpose, "To secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society."
3. "James" is a composite drawn from the experiences of several drug court participants and is presented here solely for purposes of illustration.