



1-1-2006

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Recommended Citation

Irby, John (2006) "Adult Drug Court in the East Central Judicial District," *North Dakota Law Review*: Vol. 82 : No. 4 , Article 9.

Available at: <https://commons.und.edu/ndlr/vol82/iss4/9>

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ADULT DRUG COURT IN THE EAST CENTRAL JUDICIAL DISTRICT

THE HONORABLE JOHN IRBY*

Adult Drug Court for the East Central Judicial District (ECJD) was initiated in January 2003. Drug Court, as an alternative to incarceration, is a court-supervised, treatment-oriented program that targets non-violent participants whose criminal actions stem from substance abuse. Offenders enter the program by application. While participation can result in reduced incarceration time, it is hopeful that the opportunity for meaningful treatment and the benefits that follow treatment would be the most substantial incentives for the participant.

Supervision from the court comes in the form of meeting weekly with a drug court coordinator, who is a North Dakota probation officer, and the treatment provider and the State's Attorney. The Drug Court Program is a voluntary program available to convicted drug and DUI offenders. This program includes regular court appearances before the Drug Court Judge. Treatment includes drug testing, individual and group counseling, and regular attendance at Twelve Step meetings through either Alcoholics Anonymous or Narcotics Anonymous. The program length is determined by a participant's progress and will be no less than one year.

The ECJD borrowed heavily from the operating format of the South Central Judicial District, which recently celebrated its sixth anniversary. The South Central's work allowed the ECJD to establish its Drug Court and make it operational without having to reinvent the process. North Dakota has approached the establishment and operation of adult Drug Courts in a very pragmatic way. Although the legislature had to provide resources for treatment and supervision, legislation was not necessary to provide for the judicial resources. For a convicted drug offender, successful completion of adult Drug Court is simply another condition of supervised probation. Those admitted to Drug Court are subject to extremely supervised probation. The keys to success are requiring treatment, having a place to attend

*Judge John Irby graduated from Minnesota State University, Moorhead in 1978 and the University of Wyoming College of Law in 1981. From 1981 to 2002, he practiced law with the firm Burgum & Irby, P.C., in Casselton, North Dakota. In 2002, Judge Irby was appointed to the East Central Judicial District by North Dakota Governor John Hoeven. In addition to his duties as a district court judge, Judge Irby has served as the primary adult drug court judge in the East Central Judicial District of North Dakota. He has served in this capacity since the drug court's inception in January 2003.

treatment, testing frequently for drugs, and requiring participation for a significant period of time, no less than one year.

Governor John Hoeven has pushed hard for Drug Courts throughout the state. When signing into law House Bill 1191,¹ which made permanent Drug Court Pilot Programs, Governor Hoeven said, “Drug Court not only reclaims lives, but it also saves tax payer dollars. Today, we make it a permanent and cost effective tool for our courts and corrections department.”² In addition to the support from the governor’s office, the East Central Judicial District Drug Court was developed through the cooperation and support of the North Dakota Supreme Court, the Cass County State’s Attorney’s Office, North Dakota Department of Corrections and Rehabilitation, Cass County Sheriff’s Department, Fargo and West Fargo Police Departments, North Dakota Bureau of Criminal Investigation, Southeast Human Service Center, North Dakota Job Service, local criminal defense counsel, and Dr. Jeff Bouffard and Dr. Kevin Thompson of North Dakota State University.

The ECJD has established an advisory board that consists of representatives from the treatment community, law enforcement, state’s attorneys, job services, defense attorneys, and court staff to develop and refine the Adult Drug Court’s mission and program eligibility requirements. The Drug Court Advisory Board has established the following as its mission statement:

The mission of the East Central Judicial District Drug Court is to enhance community safety through an immediately responsive alternative sentencing program for chemically dependent offenders.

The program seeks to reduce recidivism by holding offenders responsible for their behavior, stopping the abuse of alcohol and drugs, and introducing an individual to a continuum of services. We seek to rehabilitate offenders and increase effective utilization of law enforcement, treatment and judicial resources.

1. H.B. 1191, 58th Sess., 2003 N.D. Laws 1196.

2. News Release, Hoeven Signs Drug Court Legislation: New Law Makes Successful Pilot Program Permanent (Mar. 27, 2003), *available at* <http://governor.state.nd.us/media/news-releases/2003/03/030327.htm>.

The East Central Judicial District Drug Court holds the following as its program goals:

1. Reduce recidivism.
2. Reduce use of alcohol and drugs.
3. Provide increased opportunities for involvement in comprehensive treatment and maintenance programs.
4. Provide access to coordinate local and state services.
5. Improve the overall social functioning of offenders in areas such as employment, healthy family relationships and community activities.
6. Reduce costs to the criminal justice system.

The Drug Court Advisory Board has established entry criteria for those seeking Drug Court. Although the entry criteria are somewhat comprehensive, basically all participants must voluntarily submit an application to the Drug Court, provide a drug screen, and undergo an eligibility and chemical addiction assessment. Candidates who have also committed violent crimes or whose current offense includes drug delivery for profit are not eligible. Once the applicant has pled guilty, Drug Court will be made a condition of probation. Drug Court participants have to progress through the three phases of Drug Court. The North Dakota Department of Corrections—Division of Field Services supervises the participants in the program. The level of supervision decreases as the participants move through the phases. However, in all cases, supervision is much more intense than standard probation. For example, in Phase I, which is to last a minimum of four months, the participants must attend one Drug Court session weekly, provide a minimum of two alcohol or drug tests weekly, report to the probation officer as scheduled, attend two Alcoholics Anonymous or Narcotics Anonymous meetings weekly, obtain and maintain a Twelve Step sponsor, meet financial obligations, attend and participate in all counseling sessions, maintain approved, stable housing, maintain approved, stable employment, training, or education, view the Victim Impact Video, and have sixty days of continuous sobriety to move on to Phase II.

During Phase II, also a minimum of four months, the monitoring requirements are decreased. The participant must have 120 days continuous sobriety. The final phase, Phase III, is also a minimum of four months. Again, the amount of supervision is decreased and the participant must have 120 continuous days of sobriety. During this program, incentives and sanctions will be given based upon the progress of each participant.

All participants are required to have approved, stable housing and employment or participate in educational or vocational training. If participants are not able to meet that requirement, they may be required to complete community service. During the participant's involvement in Drug Court, the Drug Court Judge has the authority to employ a wide range of sanctions as a result of program violations. These sanctions can range from writing a report to imprisonment in the County Jail for a specified period of time. If a participant fails to meet the requirements of Drug Court, he or she will be terminated from Drug Court. Additionally, a petition to revoke the participant's probation will be made to the District Court and the participant will be sent back to the original sentencing judge to be re-sentenced.

According to the North Dakota Department of Corrections, the average cost of incarceration is approximately \$2,000 per month. Criminal defendants, for example, who have failed on the standard probation and are sentenced to the State Penitentiary for treatment, are sentenced, on average, for eighteen months. The direct cost to the state of North Dakota, then, would be \$36,000. In addition, the incarcerated defendant is not supporting his or her family, and often the family must turn to other public programs for support. An incarcerated individual produces little and pays no taxes. Drug Courts are cost-effective.

To date, seventy applicants have been accepted into the East Central Judicial District Drug Court Program. Twenty-eight participants have graduated. Twenty have been terminated and re-sentenced. Twenty are currently participating in the program.

The Drug Court Advisory Committee meets periodically to review progress and to revise the entry criteria. To date, treatment has been provided by way of federal grants that are administered by the Attorney General's office. The current treatment provider is ShareHouse, Inc.

The federal grants received are as follows:

2003: \$16,728 Total (\$12,044 Federal/ \$4,684 match)

2004: \$81,600 Total (\$58,752 Federal/ \$22,848 match)

2005: \$59,353 Total (\$40,360 Federal/ \$18,993 match)

2006: \$36,129 Total (\$23,484 Federal/ \$12,645 match)

The award in 2006 was reduced considerably compared to the previous years as a direct result of the reduction of federal funds. Presently, it appears that the State of North Dakota is willing to provide funding for treatment. It is not clear if treatment will continue to be provided on a

contract basis or if it will eventually be moved “in house” to the Department of Human Services.

The North Dakota Department of Corrections provides the Drug Court Coordinator and also provides an additional surveillance officer on a part-time basis. Drug Court Judges volunteer to participate with no reduction of their full responsibilities as District Court Judges. Although this author is the primary Adult Drug Court Judge, all of the judges in the ECJD have indicated their willingness to serve in this capacity. This will be essential to the success of the program given Governor Hoeven’s stated desire of expanding drug courts.

While Drug Courts are not effective in every case, it is an area where the Court can work in a positive way. For most of the participants and graduates of the East Central Judicial District Drug Court and their families, this process has worked in a way that incarceration cannot. One Drug Court graduate explained that Drug Court gave him the opportunity to put his life back together. Had he been at the State Penitentiary, he would not have his job; he would not have his house; and most importantly, he would not have been able to reunite his family after his children had been placed with Social Services.

There is no secret formula for success. The duration and intensity of the treatment program, the monitoring, and the visits with the judge, where sanctions can be meted out, almost immediately contribute to giving the participants the tools to cope with their addiction.

The East Central Judicial District is grateful for the strong support from the Governor, Attorney General, and the Legislature. Their ongoing support of this program will be essential to keep it successful.