

Drug Court Cowboys

King County's controversial Drug Diversion Court sentences addicts to rehab, not hard time

By Todd Matthews
Photography by Erik Castro



Judge Michael Trickey doesn't like to see defendants more than once

"I've served years and years in jail for drug-related crimes—since I was 18 years old," says today's recovering heroin addict and newly minted graduate. He is a short, middle-aged man with thinning black hair and a somewhat dazed and monotone voice—a direct residue of his decades of chronic drug use. We are seated on a bench in a marble hallway on the seventh floor of the King County Superior Court building in downtown Seattle. "Being in and out of jail has been a natural part of my life for the past 27 years," he adds, gesturing toward the nearby courtroom. "I was given a chance, and I took advantage of it."

Drug Court began handing out new chances in 1994 in Miami, Florida. Today there are more than 450 Drug Court programs in the United States: King County's program was the 12th such program in the nation. A mentor site for similar programs in the United States, King County Drug Court has proved to be a cost-

effective yet highly unconventional way of treating and rehabilitating drug-addicted felony offenders.

At today's graduation, the recovered heroin addict is not the only person with reason to celebrate. There is also a young mother who started the Drug Court program addicted to heroin, pregnant with her second child, and a middle-aged phar-

macist who entered the program addicted to self-prescribed painkillers. "I feel like a different person," he says. "I spent so much time in chronic pain, and taking pills. Now my life is under control."

Self-control. Recovery. Rehabilitation. These words are part of self-help vocabulary. But Drug Court is much more than self-help. Sure, there are pats on the back and praise. But there are also jail sanctions, an almost weekly diary of court appearances, appointments with counselors, drug testing, and drug and alcohol recovery meetings. Drug Court is many things: an exercise in tough love; a rather revolutionary, though sometimes criticized, arsenal in the so-called "war on drugs"; a truly different approach to law enforcement.

REHAB VS. JAIL TIME

On a Friday afternoon last fall, I sat down with King County Superior Court Judge Michael J. Trickey in his chambers on the seventh floor of the King County Courthouse. An older man with broad shoulders and salt-and-pepper hair, Judge Trickey has presided over Drug Court for nearly a year. "Drug Court is an unorthodox court by design," Judge Trickey explains. As we sit in his chambers, city workers jackhammer a downtown corner below—symbolic of the reconstruction that Drug Court is performing within the criminal justice system in King County. "We need to have a fundamental shift, in my mind, in how we treat people with addictions, while protecting the public with this new approach."

Drug Court is not for everyone. Individuals must be eligible for the program in order to opt in. A Drug Court candidate must be charged in King

It is a rare day when a longtime heroin addict receives a handshake from a judge, an award, a slice of cake and a dismissed felony charge. Welcome to graduation day at King County Drug Diversion Court, a program designed to divert substance-abusing defendants in felony drug possession cases away from jail and toward treatment and recovery.

County Superior Court under the Violation of Uniform Controlled Substance Act (VUCSA). Moreover, candidates may not have any felony charges, prior violent or sexual offenses, or any indicia of drug dealing in the charged case—which includes possession of more than 2.5 grams of heroin, cocaine or methamphetamine. Eligible candidates have two weeks to observe the court and decide whether to participate. If they decide against Drug Court, they are transferred to a “mainstream” court. If they decide to opt into the program, they waive many of their rights, including the right

individual’s progress. If the court finds that a Drug Court participant fails to meet any of the above requirements, he or she is sanctioned by the court and may face community service hours, Drug Court observation days, writing assignments, jail time and, ultimately, termination from the program. The average Drug Court participant spends approximately 16 months in Drug Court, working his or her way through each level before graduating from the program.

“Drug Court is a way to treat people so that they don’t come back into the system, while protecting the public and sav-

stopped committing crimes in the past 10 years of my life.”

KINDER, GENTLER LAWYERS

As Drug Court is an unorthodox court, so Judge Trickey is an unorthodox judge. Moving from a traditional courtroom—first as a lawyer, and then as a Juvenile Court judge—to Drug Court has meant a great deal of adjustment for him. True, he is still the final arbiter in his courtroom. He still wears the traditional black robe. And he still looks to the defense and prosecution for information on each case. But his job



George Garberding is the go-to defense attorney for those who want to give Drug Court a try.

A new graduate gets a well-deserved sugar fix.

As SPD’s liaison, one of Sean Whitcomb’s main duties is to sell Drug Court to other cops.

to a jury trial, the right to call witnesses and to cross-examine the state’s witnesses, the right to testify and the right to contest the VUCSA charge. Similarly, if participants terminate from the program—either on their own, or by the decision of the judge—they will proceed to a bench trial based solely upon the information in the police report.

Three different levels chart a participant’s progress through Drug Court. Level one, which typically lasts 90 days, involves all treatment sessions required by the treatment agency, two urinalysis tests per week and verified attendance at three treatment-approved sober support group meetings per week. Level two requires all treatment sessions directed by the treatment agency, one urinalysis test per week and verified attendance at three treatment-approved sober support group meetings per week. Level three requires all treatment sessions directed by the treatment agency, one urinalysis test per week and verified attendance at two treatment-approved sober support group meetings per week. In addition, one or two times per month, a participant appears in court where the judge, prosecutor and defense attorney assess that

ing people money,” Judge Trickey observes. People with problems such as drug and alcohol addiction are appearing before the criminal justice system in what could only be described as a revolving door. Recent statistics compiled by the Urban Policy Institute indicate that 33 percent of the individuals who entered Drug Court and failed to complete the program had a new felony charge; 25 percent who were eligible for the program but declined to participate had a new felony charge. However, fewer than 10 percent of Drug Court graduates collect new felony charges. “Anybody who has been working in the criminal justice system for a long time knows and under-

has been personalized on many levels—an element of the Drug Court proceedings that is a bit unsettling and, frankly, disarming to both courtroom observers and program participants. In one instance, Judge Trickey asks a defendant how many pieces of cake he had at the morning’s graduation. In the next instance, he allots a jail sanction to a Drug Court defendant who has produced a “dirty” urinalysis test. Drug Court requires a lot more communication between the judge and the individual defendant in court—more than in any other part of the court system. “Drug Court requires me to be more actively involved,” Judge Trickey explains, “as

“I spent so much time in chronic pain and taking pills, and now my life is under control.”

—recovered addict and Drug Court grad

stands that most people who get involved in the criminal justice system have substance abuse problems,” Judge Trickey says. “That’s just causing a lot of street crime. Some of the people who graduate from Drug Court come in and say, ‘I’m drug-free. This is the first time I’ve

opposed to relying on the lawyers to make their presentations to the court. So I had to change from the more traditional judicial style to the Drug Court style, which requires a more one-on-one relationship with the defendants.”

One Thursday morning, 30 minutes

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before Drug Court is scheduled to begin, the prosecutor, two defense attorneys, court liaisons and Judge Trickey are huddled in the judge's chambers. They are reviewing the day's calendar. While a traditional trial may include off-the-record dialogue between the defense and prosecution, Drug Court *relies* on such exchanges. Each weekday morning the judge hosts these pre-court staffing sessions, where all parties compare notes, brainstorm and make decisions on each case. The relationship between the defense and prosecution is nonadversarial, resulting in a problem-solving approach to each case, rather than the typical "winner" and "loser" scenario. Moreover, having discussed the cases prior to court session, each party approaches the bench well prepared, with a plan that is agreed upon and familiar to the judge.

"Drug Court is intended to be a cooperative effort, rather than the same old adversarial system," says Paige Garberding, one of the court's public defenders. "The prosecutor and defense attorney cooperate. We may disagree at times about exactly how to get there, but we don't lose sight of the fact that we all work together."

The end result: a streamlined, amiable and efficient courtroom setting—one that sends a consistent message to each Drug Court participant.

Garberding, who is employed by the Associated Counsel for the Accused, has worked as a public defender for nearly two decades, and as a Drug Court defense



Prosecutor Denis O'Leary sifts through the files of the day's court cases.

attorney for three years. Perhaps no one else in Drug Court understands each program participant more than she does. She is often the sole point-person for a client struggling with addiction, who's trying to make it through the program. "A lot of people think that defendants get an easy ride at Drug Court," Garberding admits. "But a lot of the defendants choose Drug Court, despite the fact that they may get more jail time in Drug Court sanctions than they would if they just pled guilty and went on probation."

"A lot of defendants tell me, 'It's easier for me to just go to prison. I can have a roof over my head for free. I can have three square meals a day. I don't have to work.' Drug Court takes a lot more effort. It's not just a physical investment. They also have to make a psychic investment. The mental, emotional and intellectual investment they have to make—and *keep* making—is an ongoing process. If they want to stay in recovery, they have to keep it up for the rest of their lives, one day at a time."

SELLING DRUG COURT TO LAW ENFORCEMENT

Based on stats alone, the Drug Court program should be a championed alternative to traditional criminal justice policies. According to a study by the University of Washington, the cost of adjudicating one VUCSA case in Drug Court is \$287; the cost of adjudicating the same case in a mainstream court is \$400. Similarly, 78 percent of the \$670,000 spent treating drug offenders in King County is offset by about \$520,000 in foregone court and jail costs. According to the Washington State Department of Corrections, in 1997 the

cost to incarcerate one felony offender for a year was \$15,207; according to Drug Court statistics, the cost to treat and rehabilitate the same offender is \$2,000 per year. Considering that more than 90 percent of the individuals who graduate from the program do not collect new felony charges, Drug Court looks like a bargain.

But Drug Court has not exactly been an easy sell to law enforcement. It wasn't until November 2000 that the King County Superior Court system recognized Drug Court as a viable program, and folded it into its regular budget. The program has been labeled "alternative" for quite some time, and it is a description that is somewhat unsettling to Judge Trickey. "Drug Court is an *established* alternative," he points out. "The key way to think about it is that 'alternative' doesn't necessarily mean 'temporary.' Drug Court is a way to keep people out of the system, which is really going to guarantee long-term cost savings."

Debunking the myths of Drug Court falls to Officer Sean Whitcomb. As the Drug Court liaison for the Seattle Police Department, it's Whitcomb's job to make the case for Drug Court to his colleagues, and he spends much of his time sharing the program's positive attributes with fellow officers and distributing Drug Court participant lists to police department roll calls.

Before working as the Drug Court liaison, Whitcomb was a bike patrol officer in Seattle's University District, where he was seeing repeat offenders getting arrested, serving jail time, then reoffending when released—their drug addiction never addressed during that cycle. Some offenders were arrested and released with little jail time served. "I would think, 'Wait a minute. I just arrested that guy two weeks ago, and now he's back out on the street,'" says Whitcomb.

This seemingly ineffective "catch-and-release" cycle contrasts with the success of Drug Court. But Drug Court has had to overcome the notion among many in local law enforcement that the program is a lenient alternative to criminal justice. Even he needed convincing early on, admits Whitcomb. "Before I even knew about this position or even applied for the job, my impression of the program was very negative," he says. "People on the street would tell me they were on the Drug Court program, as if 'Ooh, they're special because they are in Drug Court.'"

Officer Whitcomb's views about Drug Court have drastically changed. "Law

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CRUNCHING THE NUMBERS

Who's using in America

Gender: 71% male; 29% female

Race: 50% Caucasian; 35% African-American; 7% Hispanic; 5% Native American; 3% Asian

Drug of choice: 28% cocaine; 26% alcohol; 26% heroin; 11% marijuana; 6% amphetamines; 3% other

Drug history: 54% began using drugs as adolescents or younger; 49% used daily; 51% used for 10 years or more; 75% considered themselves continuous drug users

Source: Department of Judicial Administration

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enforcement is a key part of Drug Court," he explains. "We are the people who make the arrests and file the reports. It's my job to let the court know what is going on in the streets."

Still, some people in the law enforcement community continue to believe that Drug Court is an easy ride. "Do the crime, do the time" was the mentality early on—and still is in small pockets of law enforcement. "If you look at the cost savings and the recidivism rate," says Whitcomb, "it's quite simple. The program is clearly working."

Mary Taylor, the Drug Court program coordinator, has the numbers to back up the claim of success. She cites a study conducted by the Department of Judicial Administration that shows the number of Drug Court graduates has increased every year since 1995—except 1999. Between 1995 and September 2000, 350 people graduated from King County's Drug Court program. The numbers are indeed impres-

sive—350 people recovered, 280 people not reoffending. "Drug Court changes people's behavior," Taylor says, "so that they aren't using drugs or committing new crimes."

The graduation rate is 23 percent—a figure that, in some circles, is either frowned upon or touted. Many critics look at this less-than-25-percent success rate as an argument for continued incarceration for all drug offenders. But Drug Court supporters claim that the individuals who graduate, though relatively small in number, do so recovered from alcohol and/or drug abuse and rarely reoffending—bonuses that incarceration does not provide.

Drug Court prosecutor Denis O'Leary, also cites the savings associated with the program. When a Drug Court participant opts into the program, he or she waives all rights to a jury trial. "When is the last time an officer was subpoenaed for Drug Court?" O'Leary argues. "When is the last time an officer has had to come downtown and testify in Drug Court? Never. We are able to save money by not drawing local law enforcement personnel into the system." In addition, one prosecuting attorney, two public defenders and one judge are assigned to Drug Court—a relatively small staff that handles approximately 1,000 cases per year, on a \$1.1 million annual budget.

Low cost to taxpayers, drug and alcohol recovery treatment for felony offenders, reduction in crime—these are all selling points for Officer Whitcomb. If a member of the law enforcement community is critical of Drug Court, says Whitcomb, it's typically because that individual doesn't *know* about the program. "I try to do what I can to let police officers know about Drug Court," Officer Whitcomb says, "and show them that the program is working."

The real proof is in the graduates. Lois, a former crack-addicted prostitute, is an unqualified success. "I never had a problem with the system," Lois says. "I had a problem with myself. I needed something or someone to say, 'Hey, I'll help you.' And the people at Drug Court did that. They laid out a plan and it worked."

"Drug Court is a good program," Lois concludes. "But if you're not willing to succeed, you're not going to make it. I entered the program with every fiber of my being determined to succeed. And I did." **L&P**

—Todd Matthews profiled Prison Legal News' publisher Paul Wright in our December/January 2000–2001 issue. He's a regular L&P contributor. An archive of his freelance articles is at www.wahmee.com.

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