



Barriers to Treatment for High-Need, High-Risk Individuals in U.S. Drug Courts

Drug Courts Fact Sheet Series

Overview

Drug courts are specialized courts within the U.S. criminal justice system set up to provide alternative sentencing options for people charged with criminal behavior linked to drug possession, sale, or addiction. The National Association of Drug Court Professionals notes in its *Best Practices Standards* that drug courts should target predominantly high-need and high-risk participants, that is, those with a significant need for treatment for a substance use disorder, and those who are very likely to reoffend.

But in a 2016-17 study of drug courts in three key states – Florida, New Hampshire, and New York – Physicians for Human Rights found that high-need, high-risk individuals are systemically excluded from accessing the treatment they need. This is due to:

Eligibility Criteria

- A key barrier to participation in drug court programs for high-need, high-risk people was the very process by which eligibility was determined. Federal and state grants, and, in the case of Florida, a state statute, often exclude participants with specific types of charges from diversion into drug courts. For example, people charged with offenses considered violent, and repeat felony offenders are excluded by federal grants and by the Florida state statute. Many drug courts accept first-time offenders only. Some jurisdictions at the county level will impose their own exclusion criteria, such as those charged with the sale of drugs rather than simple possession. A person who is both high-need and high-risk will likely hit one or several of those exclusion factors: they will have been arrested multiple times, they will sell drugs to fund their use, and they may have displayed violent behavior as a result of their addiction.

Exclusion from Residential Treatment

- Even if a person does get accepted as a drug court participant, in some places, available treatment centers do not take court-mandated clients charged with violence offenses, especially for residential treatment, which is deemed far more effective than outpatient treatment for people with substance use disorder. These rules bar some high-need participants from getting the specific care they need.

Insurance Limitations

- Both drug court teams and treatment providers told PHR that they at times were compelled to recommend inappropriate treatment plans for participants whose insurance would not cover the option indicated by best practice, especially for high-need people. Notably, many insurance providers covered only 28 days of inpatient or residential treatment, or less. Treatment providers told PHR that insurance companies regularly refuse to pay for the length or type of treatment recommended by the attending physician, and that they then are forced to assign alternative, less appropriate, treatment.

High-need, high-risk individuals are systematically excluded from accessing the treatment they need.

Overview

continued

The Department of Justice can contribute to lifting these barriers by ensuring that federal funding for drug courts provides incentives for the acceptance of high-need, high risk individuals. In addition, the Department of Justice can facilitate better access to treatment by expanding so-called pre-booking diversion initiatives, that is, initiatives that divert individuals in conflict with the law due to substance use disorders away from the criminal justice system before they are booked with a crime.

Recommendations To the Department of Justice

- Remove restrictions attached to current federal grants such as the Bureau of Justice Assistance and Substance Abuse and Mental Health Services Administration grants (and any other federal grants for drug courts) requiring that only non-violent offenders be diverted to treatment courts, thereby allowing courts to take 'high-risk, high-need' people based on medical best practice and diagnosis, not legal criteria;
- Provide increased funding for state and local pre-booking diversion initiatives (Law Enforcement Assisted Diversion programs). These initiatives have been shown to dramatically decrease recidivism and avoid re-arrest of people with addiction-related criminal behavior.



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