

Drug Treatment Courts

The Canadian Legal Framework –
an outline

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ROOT CAUSES



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The problem

- Drug addicted offenders are caught in the revolving door of drug use/addiction and criminal behavior to support a drug habit.

An innovative approach

- Create a strong partnership between legal case processing and substance abuse treatment - establish a Drug Treatment Court (DTC)

Treatment Model

- Most Canadian DTC programs utilize non residential treatment programs
- Residential programs are utilized when required

Partners

Partners:

- Addiction Treatment Services
- Mental Health Services (Durham and Metro West Toronto)
- Legal Aid
- Court
- Participant

Partners

- Probation
- Ministry of the Attorney General
- Office of Director of Public Prosecutions
- Police
- Community Partners e.g. job training, housing etc.

Who is eligible?

- Almost all Canada's DTCs are adult programs
- Metro West Community Restoration Court (accepts youth)

Who is eligible ?

Adults:

- Non violent offender
- addiction to cocaine, crack cocaine, opiates, ecstasy/crystal methamphetamine
- Alcohol as a subsidiary or accompanying addiction

Who is eligible?

Adults:

- Dual diagnosis – addiction and mental health (Durham)

Who is eligible?

Youth: (Metro West Toronto)

- Abuse of illicit drugs
- Addiction to all illicit drugs
- Dual diagnosis – addiction and mental health

Modes of Participation

- Pre Plea (pre adjudication) – no plea is entered. Charges are typically withdrawn after program completion.
- Pre Plea mode is rarely used for adults in Canada
- Pre Plea mode frequently utilised for youth

Modes of Participation

- Pre Plea participants, in effect, agree to waive their section 11(b) *Charter* right to a trial within a reasonable time

Modes of Participation

- Post Plea (post adjudication) – a guilty plea is entered. Participant receives a non custodial sentence upon program completion.
- Post Plea mode is the typical mode of participation for adults in Canada

The Legislative Framework

- There is no legislation in Canada defining a Drug Treatment Court Program or describing what the key components of a Drug Treatment Court should be.

The Legislative Framework

- There are provisions in the *Criminal Code* and the *Controlled Drugs and Substances Act* that facilitate the operation of a Drug Treatment Court in Canada

Criminal Code

- Section 720 (2) of the *Criminal Code* allows a the court to delay sentencing for an accused to attend a treatment program approved by the province such as a Drug Treatment Court

CDSA

- Section 10 (4) (a) of the *Controlled Drugs and Substances Act* allows a the court to delay sentencing for an accused to attend a Drug Treatment Court Program approved by the province.

Criminal Code

- s. 515 - bail provisions
- bail conditions can be tailored to facilitate the implementation of the key components of a Drug Treatment Court program

Criminal Code

- S732.1(3)(h) – for creative conditions
- s.732.2(3) – allows for early termination of probation
- S742.4(1) and 742.4(5)- for changes to optional conditions of a conditional sentence order

13 Key Components

- A Court is a Drug Treatment Court when it adheres to 13 internationally recognised principles

Components 1 to 4

- Marriage of Treatment Services with the Court
- Non-adversarial Approach to Decisions
- Eligible Offenders are Identified Early
- (Holistic) Treatment Services

Components 5 to 9

- Urine Testing
- Incentives and Sanctions
- Ongoing Judicial Supervision
- Evaluation
- Interdisciplinary Training

Components 10 to 13

- Partnerships with the Community
- The importance of Case Management
- Program must be Flexible
- Planning for After -care

Rules and Waiver & Bail

- Drug Treatment Court bail conditions and Rule and Waiver Agreements (Forms) enable Drug Treatment Courts to implement these principles

Rule and Waiver Form

- A Rule and Waiver form describes program expectations and is signed by the participants after receiving independent legal advice.

Eligible offences

- Low level drug offence
- Low level non drug offence
- No or low violence
- Addiction must be the primary cause or a significant contributor to criminal behaviour

DTC Process

- No specific legislation for DTC
- Program designed to fit in existing legislative framework – Criminal Code
- Program specific rules and expectations encompassed by “Rule and Waiver” Forms and bail conditions

DTC process

- Participant must obtain independent legal advice
- All applicable legal rights/issues and program expectations and rules contained in Rule and Waiver Form
- Participant must sign Rule and Waiver Form

DTC Process

- Post Plea (post adjudication):
- Guilty plea - sentencing delayed
- Non custodial sentence imposed upon completion
- Common for both adult and youth

DTC Process

- Pre–Plea (Pre adjudication):
- Charges withdrawn on completion
- Common for youth
- Rare for adults - insufficient interest

DTC Process

- Arrest
- Drug Treatment Court Application
- Screening by Crown
- Preliminary Assessment by Treatment Provider

DTC Process

- Group Assessment (Case conference/Pre trial)
- Rule and Waiver Form signed
- In court interview by Judge
- Release on bail for further assessment by the treatment provider

DTC Process

- Return to Court
- Eligible persons enter the program
- An assessment period to determine suitability for program

DTC Process

- Program duration an average of 12 months
- Non custodial sentence is imposed on successful program completion